

(2015) 03 CAL CK 0082
In the Calcutta High Court
Case No : I.T.A. No. 383 of 2005

Krishnapada Chanda

APPELLANT

Vs

Commissioner of Income Tax XI

RESPONDENT

Date of Decision : 31-03-2015

Acts Referred:

Income Tax Act, 1961 — Section 269 SS, 269SS, 271D, 273B

Citation : (2015) 03 CAL CK 0082

Hon'ble Judges : Arindam Sinha, J.; Girish Chandra Gupta, J.

Bench : Division Bench

Advocate : R.K. Biswas, for the Appellant; Asha Gutgutia, Advocates for the Respondent

Judgement

1. The subject matter of challenge in this appeal is a judgment and order dated 18th October, 2004 pertaining to assessment year 1999-2000 by which the learned Tribunal allowed the appeal preferred by the revenue setting aside the order passed by C.I.T. (Appeals) deleting the penalty imposed upon the assessee. The facts and circumstances of the case briefly stated are as follows;

"On 6th May, 1998, the assessee borrowed a sum of Rs. 1,90,000/- in cash from his brother. It is not in dispute that the sum of Rs. 1,90,000/- was withdrawn by the brother of the assessee from his own bank account. After the withdrawal was made, the sum was made over to the assessee and on the same day the assessee deposited the amount in his bank account. This is how cash loan of a sum of Rs. 1,90,000/- was received by the assessee which is in contravention of section 269SS of the Income Tax Act. The assessee was penalised by an identical sum of Rs. 1,90,000/- under section 271D." 2. In an appeal preferred by the assessee, the C.I.T. (Appeals) was of the opinion that there was a reasonable cause which led the assessee to took the loan otherwise than by an account payee cheque and, therefore, the penalty should not have been levied. The C.I.T. (Appeals) has obviously taken assistance of section 273B, which provides that no penalty shall be impossible for any failure referred to in section 269SS, if the

assessee proves that there was a reasonable cause for the said failure.

3. Aggrieved by the appellate order, the revenue preferred an appeal which was allowed by the Tribunal, which is under challenge. At the time of admission of the appeal the following questions were formulated;-

"i) Whether the Tribunal without considering the facts of the present case and the totality of the circumstances under which the cash loan was obtained by the assessee was justified in law in confirming the penalty amounting to Rs. 1,90,000/- imposed by the respondent No. 3 under Section 271D of the I.T. Act for violating the provision of Section 269 SS of the I.T. Act without even considering the object for which Section 269 SS of the I.T. Act was inserted by the Finance Act, 1984 and by interpreting Section 273B of the I.T. Act in a hypertechnical way as if the urgent requirement of money is the only criteria for applying the Section 273B of the I.T. Act for not imposing any penalty under Section 271D of the I.T. Act without even taking into consideration the genuineness of the loan transaction and the other genuine causes whereas Section 273B inter alia clearly says that no penalty shall be imposable if there is reasonable cause for accepting the cash loan and when all these aspects have been totally ignored by the Tribunal while deciding the present case?

ii) Whether on the facts and in the circumstances of the case, the order of the Tribunal confirming the penalty amounting to Rs. 1,90,000/- under Section 271D of the I.T. Act 1961 was perverse and not sustainable in law? "

4. Mr. Biswas, learned advocate appearing for the appellant submitted that the well reasoned order passed by the C.I.T. (Appeals) was interfered with by the learned Tribunal for no justifiable cause.

5. Mrs. Gutgutia, learned advocate appearing for the revenue submitted that absence of any reasonable cause to borrow the money in cash in contravention of section 269SS is substantiated by the fact that the assessing officer in his order dated 4th February, 2003 has disclosed the following undisputed facts.

"5.1 Furthermore, the facts on record reveal that while the assessee received the cash amount of Rs. 1,90,000/- on May 06, 1998 which he deposited in his bank account on the same day, the first payment of Rs. 50,000/- was made nine days later on 14.05.1998. The balance amount of Rs. 1,40,000/-, continued to be in the possession of the assessee till the next two payments were made more than a month later, i.e. on June 20 and 24, 1998, culminating with the final payment of Rs. 59,592/- on July 04, 1998. These facts show that there was sufficient time available for the assessee to accept the amount from the lender by way of a prescribed instrument under section 269SS of the Act (such as an account payee bank draft) for the first payment even assuming that it had to be paid to the French Motor Car Co. Ltd. latest by 14.05.1998. For the balance payments that were made several weeks later in June and July, 1998, the lack of any urgency whatsoever is palpably apparent." 6. We have not been impressed by the reasoning advanced by the assessing officer and brought to our notice by Mrs.

Gutgutia. The contravention of section 269SS, if any, took place on 6th May, 1998 when the loan in cash was obtained by the assessee.

7. That contravention could not have been remedied by any subsequent act suggested by the Assessing Officer quoted above. The aforesaid views of the Assessing Officer were correctly turned down by the Commissioner of Income Tax (Appeals) by holding as follows:

"Once having taken the loan and having deposited in his account, no purpose would have been served to take it out, and convert into a financial instrument after ascertaining the amount of installment payment to avoid the attracting provisions of Section 269SS ". 8. The fact that money was withdrawn on 6th May, 1998 from the bank account of the lender and the fact that the money was deposited in the bank account of the borrower on 6th May, 1998 itself is a pointer to show that the assessee was under a belief that there was a great urgency. True that he could have achieved the object by obtaining an account payee cheque from the lender but the same would have taken time for the purpose of clearance. The case of the assessee as regards urgency was accepted by the appellate authority by observing as follows:--

"Having booked the vehicle on 29.04.1998 and demand by the financier to make immediate payment, the appellant was apprehensive of getting his, booking cancelled are also of non-availability of truck due to heavy demand in the market. The appellant was not sure whether the payments will be lump sum or through installments. He was driven by a sense of urgency for which he took loan from his brother in cash and deposited the same in his bank account. It was his judgement regarding the urgency in the prevailing circumstances and according to him the urgency existed for making payment." 9. The observation of CIT(A) is a pointer to show that the case is clearly covered by Section 273B of the Income Tax Act.

10. It is elementary that an appellate authority interferes with an order not because the impugned order is not right but because the impugned order is shown to be wrong. Our attention was not drawn to any finding of the learned Tribunal indicating that the order of CIT(A) was wrong. Therefore, the interference was not only wrong but also perverse.

11. For the aforesaid reasons, the second question is answered in the affirmative and in favour of the assessee. The first question need not be separately answered. The appeal is thus allowed.