
(2011) 04 MAD CK 0484
In the Madras High Court
Case No : Tax Case (Appeal) No. 34 of 2005

P. Baskar

APPELLANT

Vs

Commissioner of Income Tax

RESPONDENT

Date of Decision : 11-04-2011

Acts Referred:

Income Tax Act, 1961 — Section 269SS, 271D, 273B, 276DD

Citation : (2012) 340 ITR 560

Hon'ble Judges : P.P.S. Janarthana Raja, J;Chitra Venkataraman, J

Bench : Division Bench

Advocate : N. Quadir Hoseyn, for the Appellant; K. Subramaniam, Senior Standing Counsel, for the Respondent

Final Decision : Dismissed

Judgement

Mrs. Chitra Venkataraman, J.—The assessee has come up on appeal as against the order of the income tax Appellate Tribunal, Chennai "A", Bench dated January 14, 2004, in I. T. A. No. 787/Mds/1996 raising the following substantial questions of law :

1. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in law in confirming the levy of penalty u/s 271D of the Act especially in the context of the finding that there was no reasonable cause was not based on any material before it?
2. Whether, on the facts and in the circumstances of the case, the Tribunal was justified in not deleting the penalty in the light of the Supreme Court's decision reported in Asst. Director of Inspection (Investigation) v. Kum. A. B. Shanthi (2002) 255 ITR 258 (SC) and more particularly in the absence of a finding as to the non-genuineness of the loan ?
3. Whether the Tribunal was right in law and justified in confirming the penalty on short accommodations especially when the officer himself eliminated short accommodations from levying penalty ?

2. The assessee is doing the business of purchase and selling of yarn in the name and style of Senthil Andavar Yam Stores. For the assessment year 1994-95, the assessee had cheque discounting loan facilities with the financiers. The Assessing Officer found that 72 items of cash loans on various dates from various parties were in contravention of section 269SS of the income tax Act, 1961 (hereinafter called as "the Act"). After going through the objections of the accounts (assessee ?), the assessing authority pointed out that even though 72 items of cash loans were contrary to the provisions, yet there were certain cash loans which were for short accommodation. After eliminating short accommodations and the smaller amounts of loans taken out for business needs, the assessing authority confirmed his proposal in respect of 16 transactions to impose penalty u/s 271D of the income tax Act in respect of the violation done under the provisions of section 269SS of the income tax Act. Aggrieved by the said penalty, the assessee preferred an appeal before the Commissioner of income tax (Appeals). The assessee succeeded before the Commissioner of income tax (Appeals), who accepted the case of the assessee/appellant herein that the amounts were taken on requirement of liquidity position and the peculiar nature of trade of the assessee-company and allowed the appeal.

3. Aggrieved by the same, the Revenue went on appeal before the Tribunal. The assessee contended that the cheques in favour of the appellant-company was given to the financier, who got them discounted and paid the money in cash to the assessee. For this, the assessee had issued post-dated cheques to the financier assuring repayment. The Tribunal referred to the decision of the apex court in the case of Asst. Director of Inspection (Investigation) v. Kum. A. B. Shanthi [2002] 255 ITR 258 (SC) upholding the provisions of section 269SS or section 271D or section 276DD and allowed the Revenue's appeal.

4. Aggrieved by the same, the present appeal has been filed by the assessee. Learned counsel for the assessee pointed out to the grounds of appeal before the Commissioner of income tax (Appeals), in respect of various amounts levy of penalty, and submitted that the Assessing Officer had failed to take note that even in respect of the disallowed 16 transactions, the amounts therein were for short accommodations only and was not a loan transaction. Therefore, the Assessing Officer committed a serious error in treating the various transactions as violation of section 269SS of the Act. He further submitted that in any event, having regard to the provisions of section 273B of the Act, when the assessee had given the cause for taking the loan by way of cash, the Assessing Officer and the Tribunal should have considered the same before levying penalty.

5. Heard learned counsel for the appellant as well as learned senior standing counsel for the respondent and perused the materials placed before this court.

6. Section 269SS of the Act prescribes the mode of taking or accepting loan or deposits. It is stated that no person shall take or accept from any other person, any loan or deposit for an amount more than Rs. 20,000 otherwise than by an account payee cheque or account payee bank draft. A perusal of section 271D

shows that on any violation of the provisions of section 269SS and the assessee taking a loan by cash, penalty equal to the sum of the amount of loan so taken or accepted and would be leviable u/s 271D. However, section 273B of the Act states that u/s 271D, penalty would not be leviable only if and when the assessee shows a reasonable cause for any such failure to adhere to the provisions of section 269SS. Applying section 273B to the case, we find that except for mere statement that the receipt of amount in cash was on account of the business exigency and to meet the liquidity, there is hardly any material to show that in fact there was a real exigency that compelled the assessee to go for cash loan.

7. The Assessing Officer found that there were 72 items of cash loan on various dates during the course of the year, and after eliminating short accommodations, restricted the disallowance on 16 items for the purpose of considering the levying of penalty u/s 271D. The assessee preferred an appeal before the Commissioner of income tax (Appeals), who referred to the decision of the Madras High Court in the case of Kumari A.B. Shanthi (alias) Vennira Adai Nirmala Vs. Assistant Director of Inspection, Investigation, and ultimately held that the explanation of the assessee was satisfactory and that there was reasonable cause for accepting the loan in cash, consequently, the penalty was cancelled. The Tribunal considered the very same materials and pointed out that even taking loan for short-term, the assessee should have substantiated the circumstances warranting taking cash, in the absence of any material to show that there was business exigency for taking loan amount as cash, the question of condoning the violation as such for the purpose of section 271D read with section 273B does not arise. We are in entire agreement with the finding of the Tribunal herein.

8. Learned counsel for the appellant-assessee placed reliance on the unreported judgment in T. C. No. 49 of 2004 dated December 18, 2006, (since reported in CIT v. Balaji Traders, (2008) 303 ITR 312 (Mad) , where under similar circumstances, in the appeal preferred by the Revenue as against the order of the Tribunal, was dismissed by this court. A perusal of the unreported judgment of this court shows that as against the cancellation of levy of penalty, the Revenue came up on appeal before this court. Following the decision of this court in Commissioner of Income Tax Vs. Ratna Agencies, this court rejected the Revenue's appeal at the admission stage itself holding that having regard to the pure finding of fact on the reasonable show-cause shown by the assessee for cancelling the penalty, no question of law, much less a substantial question of law arose for interference. Even extending the said decision to the facts herein, it is seen that the Tribunal found, as a matter of fact, that the assessee had not shown any reasonable cause for taking cash loan. As regards the first of the item of Rs. 85,000 as representing an opening balance, except for a mere statement, there are hardly any materials to show that the said amount was an opening balance. Considering the series of transactions on taking cash loan from various parties, it is difficult for this court to accept the case of the assessee. Accordingly, the tax case appeal stands dismissed. No costs.