
(2005) 09 MP CK 0031

In the Madhya Pradesh High Court

Case No : IT Appeal No. 70 of 2005 6 September 2005

Sudarshan Cold Storage (P) Ltd.

APPELLANT

Vs

Joint Commissioner of Income Tax, Range-2

RESPONDENT

Date of Decision : 06-09-2005

Acts Referred:

Income Tax Act, 1961 — Section 260A, 269SS, 271D

Citation : (2008) 296 ITR 188 : (2006) 153 TAXMAN 516

Hon'ble Judges : Ashok Kumar Tiwari, J;A.M. Sapre, J

Bench : Full Bench

Advocate : G.M. Chafekar and P. Prasad, for the Assessee, for the Appellant;

Judgement

1. This is an appeal filed by the assessee u/s 260A of the Income Tax Act against the order, dated 24-10-2004, passed by learned Members of ITAT in ITA No. 437/Ind./2003 for the assessment year 1998-99. The question that arises for consideration in this appeal is, whether appeal involves any substantial question of law within the meaning of section 260A of the Act?

2. Heard Shri G.M. Chafekar, learned senior counsel with Shri P. Prasad, learned counsel for the appellant.

3. Having heard learned counsel for the appellant and having perused record of the case, we are of the opinion that appeal does not involve any substantial question of law. In other words, what is involved in the appeal is pure question of fact and hence, the appeal is liable to be dismissed in limine.

4. The dispute in this case relates to imposition of penalty leviable u/s 271D of the Act. The assessing officer had imposed a penalty of Rs. 3,19,420. However, it was reduced to Rs. 2,89,420 by Commissioner (Appeals) which was upheld by the Tribunal by impugned order, giving rise to filing of this appeal.

5. It is a case where assessee received loan amount in cash in excess of Rs. 20,000 thereby contravening the provisions of section 269SS of the Act. It is for

committing contravention of section 269SS of the Act, the penalty proceedings have been initiated against the assessee. The question relating to payment and its receipt by the assessee was examined in detail by Tribunal in para 4 which we would like to quote in verbatim infra to show that impugned finding does not call for any interference. This is what the Tribunal while upholding the penalty held in para 4 :

"We have considered the rival submissions carefully and have gone through the relevant material on record. First of all, we would like to observe that penalty was deleted in case of CIT v. Deltachem (India) (P) Ltd. (supra) because there Tribunal had clearly found that money received in cash was credited to share application account and the same is not case before us. In this case money received on various dates from various persons has been credited to the respective accounts of such persons. For example, from page 2 which is copy of Shri Kamal Pannalal Patwari, it is gathered that there was an opening balance of Rs. 85,000 and cash was received on various dates aggregating to Rs. 1,20,000 and the total amount of credit in this account comes to Rs. 2,05,000. Out of this, a sum of Rs. 1,77,780 has been straightaway transferred to share application account. This clearly shows that money was never received in the form of share application because same was not credited under the head "Share application money". Even if it is presumed that account has not been specifically titled as share application money account, it would appear to be only an ordinary account of deposit because total money taken from this party is Rs. 2,05,000, whereas shares issued to him are only Rs. 1,77,780. Same is the case with other party. Learned Commissioner (Appeals) has also noted that assessee has himself disclosed a sum of Rs. 15.17 lakhs as unsecured loan in the balance sheet. Ld. Commissioner (Appeals) has also noted that various depositors had clearly admitted in their affidavits that only a sum of Rs. 1,77,780 was in respect of share application in many cases and rest of the money was unsecured loan. In view of these circumstances, we find nothing wrong with the order of learned Commissioner (Appeals) and confirm the same."

6. In our view, it is a pure question of fact involving no question of law much less substantial question of law so as to attract the rigour of section 260A *ibid*. In fact, the Tribunal as a last court of fact went into the question of fact independently and then concluded on facts that the explanation offered by the assessee is not correct and, hence, a case of contravention of section 269SS is made out. We are not inclined to hold that aforesaid finding recorded by the Tribunal involves any substantial question of law. In this appeal, we cannot examine facts nor can re-examine the explanation offered. It is on facts as is clear from the narration of facts done by the Tribunal we respectfully concur with the reasoning of the Tribunal and uphold the same.

7. As a consequence, the appeal fails and is dismissed in limine.