

आयकर अपीलीय अधिकरण, 'बी', न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.1040/Mds/ 2016

निर्धारण वर्ष /Assessment year : 2010-2011

Sabibna Muyeenuddin
No.10, Casuarinas Drive,
Neelangarai,
Chennai 600 115.

Vs. The Joint Commissioner of
Income Tax,
Business Range V,
Chennai.

[**PAN AOMPS 6663K**]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by
प्रत्यर्थी की ओर से /Respondent by

: Shri. T. Banusekar, C.A.
: Shri. Surpriyo Pal, IRS, JCIT.

सुनवाई की तारीख/Date of Hearing

: 13-10-2016

घोषणा की तारीख /Date of Pronouncement

: 28-10-2016

आदेश / O R D E R

PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER

Assessee in this appeal assails a levy of penalty of Rs.74,40,000/- under Section 271D of the Income-tax Act, 1964 (in short the Act) for violation of section 269SS.

2. Fact propos are that during the course of assessment proceedings for assessment year 2010-2011, it was noticed by the

Assessing Officer that assessee has taken cash loans totaling Rs.67,20,000/- from her husband Shri. P.K. Mohammed Muyeenuddin. The cash loans received were in turn given by the assessee to one M/s. Silicon Valley Auto Components (P) Ltd as loan through banking channels. Assessing Officer issued notice to the assessee seeking reason why penalty u/s.271D should not be levied for violation of section 269SS of the Act. Reply of the assessee read as under:-

"1. According to Sec.273B, no penalty shall be imposable u/s.271D on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.

2. In my case, it was a genuine transaction and it was not in dispute nor it was the case where the transaction is laced with unaccounted income.

3. The amount received by way of cash from my husband was immediately deposited by me in my bank account and have issued a cheque in favour of the Private Limited Company namely M/s. Silicon Valley Auto Components Pvt. Ltd in which my husband is a director and shareholder. Hence it is clear that immediately on receipt of the cash from my husband I have deposited the same in the banking channel and hence I have exhibited a bonafide intention of accounting the cash through banking channel.

4. Purpose of loan is the company wants funds for working capital. In SVAC, if my husband gives as a Unsecured Loans to the company, the same cannot be returned back due to pegging letter given to the company by the bankers.

5. The entire transaction of receipt of cash from husband and depositing the same in the bank account held by me has been reflected in the Income-tax returns filed by me for the A. Y.2010-11. These are

transactions between family members i.e. between husband and wife where provisions of Sec. 271D may not be attracted".

Ld. Assessing Officer did not accept the above explanation. According to Ld. Assessing Officer assessee was having a bank account but she still took the loan in cash. Further as per Ld. Assessing Officer Shri. Muyeenuddin could have transferred the money from his account to his wife account easily. In any case as per the Assessing Officer there was no exemption in Section 269SS for any husband to wife transactions. He held the assessee liable for penalty under section 271D of the Act. Reliance was placed by the Ld. Assessing Officer on the decision of Co-ordinate Bench in the case of *Builtec Engineers & Builders vs. DICT (2013) 31 Taxmann.com 406*.

3. Assessee's appeal before Ld. Commissioner of Income Tax (Appeals) did not meet with any success. As per Ld. Commissioner of Income Tax (Appeals) it was not a solitary transaction and assessee was not ignorant also. Further according to him, genuineness of the transaction had nothing to do with Section 2689SS & 269T of the Act. According to him no reasonable cause was shown for accepting the loan in cash. He confirmed the levy of penalty.

4. Now before us, the Ld. Authorised Representative took a number of lines of argument. These could be summarized as under:-

- (i) If Shri. Muyeenuddin had directly introduced the money to the company where he was director, he could have never withdrawn the money due to conditions of loan the company had agreed with Indian Bank.
- (ii) The transaction between husband and wife cannot be considered as loan. Reliance placed on the case of *Mohammed Saleem vs ACIT (ITA No.833/Hyd/2008, dated 20.11.2009 of Hyderabad Bench)*
- (iii) Family transactions between two assesses if disclosed in accounts there can be no penalty u/s.271D of the Act. Reliance was placed on the judgment of *Hon'ble P & H High Court in the case of CIT vs. Sunil Kumar Goel (2009) 315 ITR 163.*
- (iv) There can be no penalty u/s.271D of the Act on genuine transactions. Reliance was placed on judgment of P& H High Court in the case of *CIT vs. Speedway Rubber (P) Ltd (2010) 326 ITR 31.*
- (v) Urgent necessity is a reasonable cause for levying penalty. Reliance was placed on the judgments of Jurisdictional High

Court in the case of *CIT vs. Ratna Agencies (2006) 284 ITR 609* and *CIT vs. M. Yesodha (2013) 351 ITR 265*.

5. Per contra, the Id. Departmental Representative e supported the order of the lower authorities.

6. We have perused the orders and heard the rival contention. There is no dispute that loan was taken by wife from husband. No doubt on the genuineness of the transaction or source the money was ever raised by the Revenue. The transactions were properly reflected in the accounts of the respective assesses. Only chink in the armour is that assessee and her husband both had bank accounts, still the assessee chose to receive the loan in cash. However, there is no case for the Revenue that assessee's husband had withdrawn money from his account, prior to giving it in cash to the assessee. There would have been no saving of tax or any other probable motivating factor to do so. The money that was given was not out of any immediate withdrawals of cash by the assessee's husband from latters bank account. Despite this, the Revenue never doubted the source. In such a situation we are of the opinion assessee can rely on section 273B of the Act and say that there was a reasonable cause for not levying penalty. Hon'ble Jurisdictional High Court in the case of M. Yesodha (supra) had held as under paras 10 to 12 of its judgment.

10. The contention of the Revenue is that the amount received by the assessee from her father-in-law has to be treated only as a loan and it is a loan, then the assessee is liable to pay penalty under section 271D of the Income-tax Act. Whether it is a loan or other transaction, still the other provision, namely, section 273B of the Income-tax Act, comes to the rescue of the assessee, if she able to show reasonable cause for avoiding penalty under section 271D of the Income-tax Act. The Tribunal has rightly found that the transaction between the daughter-in-law and the father-in-law is a reasonable transaction and a genuine one owing to the urgent necessity of money to be paid to the seller. We find that this would amount to reasonable cause shown by the assessee to avoid penalty under section 271D of the Income-tax Act.

11. Referring to the decision *CIT v. Kundrathur Finance and Chit Co.* reported in [2006] 283 ITR 329 (Mad), this court in the decision *CIT v. Lakshmi Trust Co.* reported in [2008] 303 ITR 99 (Mad), held as follows:

"In the instant case, the Commissioner of Income-tax (Appeals) and the Appellate Tribunal found on the facts that the transactions were genuine and the identity of the lenders was also satisfied. The Appellate Tribunal also upheld the order of the Commissioner of Income-tax (Appeals) that there was no intention on the part of the assessee to evade the tax.

Once the said finding as to the genuineness of the transactions is arrived at by the Tribunal on the facts, following the decision of this court in *CIT v. Ratna Agencies* [2006] 284 ITR 609, wherein it was held that the finding recorded by the Tribunal in this regard is a finding of fact and no question of law much less a substantial question of law would arise, we do not have any hesitation to hold that it may not be proper for this court to interfere with such a finding of fact."

12. The Tribunal, referring to the decision of this court *CIT v. Lakshmi Trust Co.* reported in [2008] 303 ITR 99 (Mad), has rightly allowed the appeal. We do not find any error or infirmity in the order of the Tribunal to warrant interference. Accordingly, the substantial question of law is answered in favour of the assessee and this tax case (appeal) stands dismissed. No costs.

Though the assessee has not been able to show the urgency of the transactions as such, it could place on record evidence to show that if the money was directly introduced by her husband who was the director of the company he could not have withdrawn the amount due to restriction placed by Indian Bank on the company. Considering the facts and circumstances, we are of the opinion that levy of penalty under Section 271D of the Act was not warranted. Such levy is deleted. Orders of the lower authorities are set aside.

7. In the result, appeal of the assessee is allowed.

Order pronounced on Friday, the 28th day October, 2016, at Chennai.

Sd/-

(एन.आर.एस. गणेशन))

(N.R.S. GANESAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 28th October, 2016

KV

Sd/-

(अब्राहम पी. जॉर्ज)

(ABRAHAM P. GEORGE)

लेखा सदस्य/ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|--------------------------|------------------------------|-------------------------|
| 1. अपीलार्थी/Appellant | 3. आयकर आयुक्त (अपील)/CIT(A) | 5. विभागीय प्रतिनिधि/DR |
| 2. प्रत्यर्थी/Respondent | 4. आयकर आयुक्त/CIT | 6. गार्ड फाईल/GF |