

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
BEFORE SHRI N.S.SAINI, AM & SHRI PAVAN KUMAR GADALE, JM

आयकर अपील सं./ITA No.136/CTK/2017

(निर्धारण वर्ष / Assessment Year :2015-2016)

Mamata Patra, W/o-Sri Apurba Kumar Patra, Plot No.292/Q, Behera Sahi, Nayapalli, Bhubaneswar- 751012	Vs.	Jt. CIT, Range-5, Bhubaneswar-75007
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AHCPP 1576 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

निर्धारिती की ओर से /Assessee by : Shri S.K.Agrawalla, AR

राजस्व की ओर से /Revenue by : Shri A.Tigga, DR

सुनवाई की तारीख / Date of Hearing : **09/04/2018**

घोषणा की तारीख/Date of Pronouncement **11/04/2018**

आदेश / O R D E R

Per Shri Pavan Kumar Gadale, JM:

This is an appeal filed by the assessee against the order of the CIT(A)-2, Bhubaneswar, passed in IT Appeal No.370/2015-16, dated 31.01.2017 u/s.271D/250 of the Income Tax Act, 1961 for the assessment year 2015-2016.

2. The sole disputed issue with respect to violation of provisions of Section 269SS of the Act resulting in imposition of penalty u/s.271D of the Act.

3. Brief facts of the case are that the Joint Commissioner of Income Tax observed that the assessee has accepted cash loan of Rs.3,00,000/- from Sachidananda Nayak on 21.11.2014 and another cash loan of Rs. 4,50,000/- from Dambarudhar Nayak on 19.11.2014 in contravention of

the provisions of section 269SS of I.T. Act, 1961. The assessee was show-caused to explain as to why penalty u/s. 271D of I.T. Act, 1961 should not be imposed. In reply the assessee stated that creditor has sold Bolero car for Rs.3,40,000/- and his sons are working in different banks and he has withdrawn cash from bank account and that out of these sources cash loan of Rs. 3,00,000/- was given to the assessee. However, the AO found that the assessee did not produce the bank statement of Sachidananda Nayak from his sons. Regarding Dambarudhar Nayak, it was the contention of the assessee that he is an agriculturist, he is unmarried, and stays with his mother, his mother has land of 2.86 acres from which two yields of paddy is cultivated and that he gets 1.55 lakhs per year from landed property. It was further contended that Dambarudhar Nayak gave Rs.4,50,000/- in cash to the assessee out of above income. The AO observed that if Dambarudhar Nayak is holding landed property, conducts agricultural operations then he is capable of having a bank account and further noted that no evidence has been brought on record regarding assets and liabilities of Dambarudhar Nayak and filing of return of income. Finally, the AO concluded that there was intention of tax evasion on the part of the assessee and levied penalty of Rs.7,50,000/- u/s. 271D of I.T. Act, 1961.

4. Against the penalty order, the assessee filed an appeal before the CIT(A). During the appellate proceedings, the assessee filed written submissions along with documents. The CIT(A) after considering the

submissions of the assessee and findings of AO, confirmed the penalty and dismissed the appeal of the assessee.

5. Ld. AR before us submitted that the assessee had accepted the cash loan of Rs. 7.50 lakh from two persons namely Sachidananda Nayak Rs. 3,00,000/- & from Dambarudhar Nayak Rs. 4,50,000. Out of these two persons Mr. Dambarudhar Nayak is an agriculturist residing in rural area and does not have any Bank account. As per the provisions of the Act an agriculturalist who does not have the Bank account can give the loan in cash. Therefore, there is no violation of the provisions of section 269SS of the Act and no penalty is imposable. Mr.Sachidananda Nayak is the cousin brother of the assessee and has sold Bolero vehicle and out the sale proceeds loan of Rs.3,00,000. Both the loans are genuine and the transactions was explained with sources. Hence, there is no intention of tax evasion and there is no violation of provisions of Section 269SS of the Act. Therefore no penalty can be imposed.

6. Contra, Id. DR submitted that the assessee has not given any explanation as to why cash loan of Rs. 7.5 lakh was obtained. The assessee was provided opportunities and the assessee has not given reasonable cause for accepting cash loan of Rs. 7.5 lakh. Therefore, the Id. DR prayed for dismissal of the appeal of the assessee.

7. We have heard rival submissions of both the parties and perused the materials on record. The sole dispute is with respect to for violation of provisions of Section 269SS of the Act. Ld. AR's contention that the assessee has not evaded any tax and Sachidananda Nayak and

Dambarudhar Nayak, from whom the assessee has accepted the cash loans, have disclosed the transaction in their accounts. The Id. AR further emphasized that the statements were recorded from the persons in respect of cash loan of Rs.7.5 lakhs from the above persons. Further a letter was addressed to the Asst. Chief Judicial Magistrate-11, Jaipur dated 28.5.2015, that these two people have provided cash loan to the assessee and also submitted documents to substantiate the same. We find there is no dispute with respect to the source the Id. AR submitted that there is no tax evasion and relied on the provisions of the Act on levy of penalty. The Id. AR submitted that the assessee has filed return of income on 13.11.2015 whereas penalty order u/s. 271D of the Act was passed on 13.10.2015. We find the assessee has filed the return of income disclosing income from house property, business and profession and other sources and balance sheet was filed along with supportive financial statements. The Id. AR's contention that the assessee was holding the cash for the business operations at Jaipur and there is no malafide intention and the said transaction was disclosed in the income tax returns. Whereas the Id. DR submitted that the assessee has violated the provisions by accepting the cash loan. Further the Id. AR emphasized that the assessee has no intention to violate the provisions and has a reasonable cause in accepting the cash as the business transaction performed at Jaipur to be on cash to cash basis. The Id. AR supported his submission with judicial decisions which are as under :-

- i) *CIT Vs. Maheshwari Nirman Udyog [2008] 302 ITR 201 (Rajasthan) :*

“Held :

Sec. 273B provides that if the assessee proves that there was reasonable cause for any failure, no penalty shall be imposable on the person or the assessee as provided under s. 271D. Both the fact-finding authorities found that the transaction in question is a genuine transaction and the explanation given by the respondent-assessee has been accepted by the CIT(A) as well as by the Tribunal. Court cannot go into the aspect whether the finding of fact arrived at by the authorities below is proper or not. It is required to be noted that the powers of the Court are limited as to correct substantial error of law, if any. Whether a particular transaction is genuine or otherwise is a question of fact and if it has been found by the appellate authority that the assessee had shown reasonable cause for accepting the money in cash, the finding of fact given by the appellate authority, which is affirmed by the Tribunal is not required to be interfered with by this Court as it cannot be said that any substantial question of law arises for determination of this Court and whether the assessee has made out a case for accepting the amount in cash, finding on such aspect can be said to be finding of facts based on material on record. Whether a particular finding of fact is correct or not, is not a question which could be examined by the Court in this appeal. Considering the aforesaid aspects of the matter, the finding given by the appellate authority as well as the Tribunal that the transaction in question is a genuine transaction, cannot be disturbed by this Court in the present appeai. It is also required to be noted that s. 269SS has to be read along with s. 273B and at the time of awarding penalty, authority is required to consider whether there was a reasonable cause for the said failure as envisaged under s. 269SS. Considering the aforesaid aspect of the matter, it cannot be said that any substantial question of law arises for the determination of the Court in the present appeal and the same stands dismissed.”

ii) *CIT Vs. Bhagwati Prasad Bajoria (HUF) (2003) 263 ITR 0487*

“Held:

Keeping in view the object of introducing s. 269SS the legislature has given discretion to the assessing authority under s. 273B to levy the penalty as provided under s. 271D or not. Under s. 273B if the Court finds that there was a reasonable and sufficient cause for not imposing the penalty on the assessee in the given facts and circumstances of the case the penalty shall not be levied. The transaction of loan has found place in the books of account of the assessee as well as the lender of the loan. None of the authorities have reached to the conclusion that the transaction of the loan was not genuine and it was a sham transaction to cover up the unaccounted money. It appears that the assessee felt need of money and thus he approached the money-lender for advancement of the money, the transaction is reflected in the promissory notes executed by the assessee in favour of the lender. When there is an immediate need of money the person cannot get such money from the nationalized bank to satisfy the immediate requirement. To

satisfy the immediate requirement of money the person normally approaches the money-lender of his friend or relative who could lend money to him to satisfy his immediate requirement. In those circumstances it cannot be said that the assessee has entered into a transaction to avoid the payment of tax or to defraud the Revenue. The element of mens rea is not bone out from the nature and the manner in which the transaction was carried out. In these circumstances there is no justification or reasonable cause to remand the matter for adjudication afresh by the CIT(A) for consideration of reasonableness within the meaning of s. 273B. In the facts and circumstances of the case the Tribunal was justified and correct in law in upholding the judgment of the CIT(A) in deleting the penalty imposed on the assessee under s. 271D though for the different reasons.” **(Para 7)**

iii) *CIT Vs. Saini Medical Store, (2005) 275 ITR 79 :-*

“Conclusion :

CIT(A) having accepted that violation of the provisions of s. 269SS was under a bona fide belief of the assessee and the same was not with any intention to avoid or evade the tax while deleting penalty under s. 271D and the findings of CIT(A) having been confirmed in appeal by the Tribunal, no substantial question of law arises”.

8. We consider the overall aspects of the case and provisions of law and judicial decisions relied on by the Id. AR and the business activity of the assessee and we find strength in the arguments of Id. AR on genuineness of transaction and circumstances of the case. Accordingly, we set aside the order of the CIT(A) and delete the addition and the grounds of appeal of the assessee are allowed.

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

Order pronounced in the open court on this 11/04/2018.

Sd/-

(N. S. SAINI)

लेखा सदस्य / ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)

न्यायिक सदस्य / JUDICIAL MEMBER

कटक Cuttack; दिनांक Dated 11/04/2018

प्र.कु.मि/PKM, Senior Private Secretary

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. Appellant-Assessee
Mamata Patra,
W/o-Sri Apurba Kumar Patra,
Plot No.292/Q, Behera Sahi,
Nayapalli, Bhubaneswar-751012
2. Respondent-Revenue
Jt. CIT, Range-5, Bhubaneswar-75007
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Senior Private Secretary)

आयकर अपीलीय अधिकरण, कटक / ITAT, Cuttack