IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, AM &Shri Manomohan Das, JM

ITA No.999/Coch/2022: Asst.Year:2017-2018

Maqtro Pictures 6/383-A2, Maleppally Road Thrikkakara, Ernakulam – 682 021. [PAN: ABEFM6261A]	vs.	The Income Tax Officer Non Corporate Ward 2(4) Kochi.
(Appellant)		(Respondent)

Appellant by: Sri.P.M.Veeramani, CA
Respondent by: Smt.J.M.Jamuna Devi, Sr.DR

Date of Hearing : 11.07.2023		Date of Pronouncement: 25.09.2023

O R D E R

Per Sanjay Arora, AM:

This is an Appeal by the Assessee agitating the confirmation of penalty under section 271D of the Income Tax Act, 1961 ('the Act' hereinafter) dated 20.01.2022 for assessment year (AY) 2017-2018 by the Commissioner of Income Tax (Appeals), Income Tax Department (NFAC) vide order u/s.250(6) of the Act dated 18.11.2022.

2. The brief facts of the case are that the assessee, a partnership firm, in the business of film production, was in the course of assessment proceedings for the relevant year, found to have been received sums aggregating to Rs.3,08,604 from it's two partners, i.e., Maqtro Pictures Private Limited (MPPL) and Leeja Mathew (LM) at Rs.2,99,000 and Rs.9,604, respectively, in cash. As the same were apparently in violation of s. 269SS of the Act, attracting penalty u/s.271D, penalty proceedings there-under were initiated, and the penalty levied and confirmed in first appeal. Aggrieved, the assessee is in second appeal.

3. The assessee's only explanation before us, as indeed at the earlier stages, relying upon on the decision in *CIT v. Muthoot Financiers* [2015] 371 ITR 408 (Del) and *CIT v. Lokhpat Film Exchange (Cinema)* [2008] 304 ITR 172 (Raj), besides others by the Tribunal, was that a partnership firm is not a juristic person, much less independent and apart from its' partners, being only a compendious name for the partners constituting it for the time being. Credits in their accounts cannot, therefore, be regarded as a loan or deposit, so as to contravene s.269SS. In fact, the assessee's return for the year was selected for scrutiny only for verifying the capital introduced during the year, source whereof stands verified and accepted by the Revenue.

4. We have heard the parties, and perused the material on record.

4.1 Section 269SS of the Act proscribes acceptance of a loan or deposit by one person from another otherwise than by an account payee cheque or account payee bank draft, where the same exceeds, including the unpaid amount already received to date, Rs.20,000. Section 269T, similarly, conditions repayment of loan or deposit, defined for the purpose of these provisions as loan or deposit of money.

4.2 A partnership firm and its' partners are distinct persons under the Act (s.2(31)). Nothing, therefore, turns on adverting to the partnership law to contend of a partner and the firm in which he is a partner as representing the same person, and that therefore s.269SS is not applicable to transfer of monies between them. That is, the argument has little relevance in the context of the Act which, regarding them as separate persons, albeit related, provides for their separate assessments there-under; for deduction of salary/interest allowed to it's partners by a firm in computing it's income; specific provisions, as s.40A(2)(a), governing transactions between them. That a partnership firm is not a juristic person, which is indeed so, has therefore no bearing in the context of the Act or ss.269SS/T. Even in the context of the partnership law, a firm has attributes of a legal person inasmuch as it can, acting through it's partner/s, enter into a contract; sue for and be sued against, i.e., in it's

name, for its non-performance, viz. for any sums due to or, as the case may be, by it; hold property in it's name, etc. In fact, the partnership law obliges it to maintain capital and, where so agreed upon, loan – including interest bearing, accounts of its' partners, and which forms the basis of allowance of interest thereto in computing a firm's income under the Act. Why, an account, which is a record of transactions, can only be of another, so that the firm maintaining an account/s of its' partners, which the partnership law mandates, is itself a proof of the two being different entities there-under, i.e., vis-à-vis each other, though may be liable to be regarded one for those dealing with them. In the cases relied upon, which we have perused, the said argument has been considered as constituting a reasonable cause in the facts and circumstances of the case, which itself implies that the provisions of ss.269SS/T are *per se* applicable. Reliance there onto support the argument advanced is, therefore, a contradiction in terms.

4.3 Genuineness of the credit/s, also claimed, is, again, of no relevance. Where considered not so, the same is liable to be regarded as the firm's unexplained income u/s. 68, itself showing – if that was necessary, a firm and its' partners as separate persons under the Act, and which, therefore, cannot be regarded as 'received' despite it being reflected as such in accounts, i.e., as received from another.

4.4 We are conscious that the balance in the capital account of a partner in a firm may not represent, as in the case of a regular loan or deposit account, the definite sum paid by a partner to the firm or, in case of a debit balance, the sum, similarly, paid by the firm to him. That is, the definite sum payable to, or receivable from, a partner of a firm. This is as, as explained by the Hon'ble Apex court in *Sunil Siddharthbhai v. CIT* [1985] 156 ITR 509 (SC),accretions thereto on account of profit earned, and deductions there-from for the loss sustained, by the firm, may have occurred over time, and indeed may in future. Why, the same may also include the value of the assets brought by a partner in the partnership, and which surely

cannot be said to be a loan or deposit of money. The same represents the partner's stake in the firm, which, on it's dissolution, is available to him after providing for all the liabilities of the firm and, likewise, in case of retirement, up to that date. The Act, it may be noted, restricts the manner of acceptance or, as the case may be, repayment, of money from one to another, and is not concerned with the terms and conditions on which it is. Even as, thus, the balance outstanding would have to be looked at w.r.t. the attendant legal incidents, the transactions of transfer of money between a firm and it's partners would be subject to the provisions of s. 269SS/T, seeking to regulate the same with reference to the manner thereof, and the default, if any, examined w.r.t. its prescription.

4.5 The credits in the instant case, however, are not to the partner's capital accounts, fixed at Rs.1 lakh in a defined ratio of 90:10 between the two partners, which is to be accordingly maintained at that amount, but to their current accounts; described as loan accounts, also entitled for interest, as against the former as their capital accounts. The relevant clause of the partnership deed reads as under:

> "6. Capital:- The capital of the firm shall be Rs.100,000, and shall be introduced by the partners in the ratio of 90:10. However, the partners may bring in additional amount as may be considered necessary and in the interest of the business of the firm. All the amounts standing to the credit of the partners, both in respect of the value of assets contributed by them in the common stock of the firm, as also in respect of the moneys brought in the firm, shall be credited to the partners current account in (of) the firm from time to time."

The cash accepted from the partners is in their current accounts (PB pgs. 18-21), even as their capital accounts, representing the firm's capital, are, in terms of the partnership deed, at Rs.0.9 lakh and Rs.0.1 lakh respectively. No distinction can be drawn between the current account of a partner – described as a loan account, and the current account of another person dealing therewith; the same representing the amount loaned to or deposited with the firm and, subject to the terms of the agreement having a bearing thereon, liable, on demand, to be paid thereto; in fact, also bearing interest. As explained in *Grihalakshmi Vision v. CIT (Addl.)* [2015] 379

ITR 100 (Ker), on a similar plea being raised before the Hon'ble Court with reference to *Muthoot Financiers* (supra), that there is no law that every receipt in a partner's(or a sister concern's) account cannot, in all circumstances, be treated as a loan or deposit. As explained by it, the nature of the receipt would depend upon agreement between the partners and the evidence produced. (pgs.106-107)

5. We, for the reasons afore-stated, find little merit in the assessee's said argument. No other case, even as admitted by Sri. Veeramani, the ld. counsel for the assessee, during hearing, i.e., in terms of a 'reasonable cause', has been made out at any stage. Though we observe the assessee to have stated in first appeal that money was brought in by MPPL for urgent business needs of the firm, the same has not been substantiated at all, proving a reasonable cause, saving penalty, u/s. 273B. The cash receipt of Rs.9,604 from LM on 03.03.2017 is to meet the withdrawal –which is through bank, in her account for the same amount. Inasmuch as the same is an isolated transaction, liable to be considered on a stand-alone basis, we consider it as *bonafide* default not attracting penalty, which is, therefore, directed for deletion. The assessee gets part relief to that extent. We decide accordingly.

6. In the result, the assessee's appeal is partly allowed.

Order pronounced on September25, 2023 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin; Dated: September25, 2023
Devadas G*

Copy to:
1. The Appellant.
2. The Respondent.
3. The Pr. CIT concerned.
4. The Sr. DR, ITAT, Cochin.
5. Guard File.

Assistant Registrar
ITAT, Cochin