

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER
&
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No. 249/Viz/2022

(निर्धारण वर्ष / Assessment Year : 2017-18)

DCIT,
Central Circle-1,
3rd Floor, Rajkamal Complex,
Lakshmipuram Main Road,
Guntur-522007,
Andhra Pradesh.

(अपीलार्थी/ Appellant)

Vs. M/s. Bharathi Consumer Care
Products Private Limited,
Sy. No. 280, 281, Peddaparimi
Village, Nidumukkala Post,
Guntur – 522016,
Andhra Pradesh.
PAN: AADCB 9107 B

(प्रत्यर्थी/ Respondent)

C.O. No. 17/Viz/2023

(In आयकर अपील सं./ I.T.A. No. 249/Viz/2022

(निर्धारण वर्ष / Assessment Year : 2017-18)

M/s. Bharathi Consumer Care
Products Private Limited,
Sy. No. 280, 281, Peddaparimi
Village, Nidumukkala Post,
Guntur – 522016,
Andhra Pradesh.
PAN: AADCB 9107 B

(Cross Objector)

अपीलार्थी की ओर से/ Assessee by

प्रत्यर्थी की ओर से / Revenue by

Vs. DCIT,
Central Circle-1,
3rd Floor, Rajkamal Complex,
Lakshmipuram Main Road,
Guntur-522007,
Andhra Pradesh.

(Appellant in appeal)

Sri M.V. Prasad, AR

Dr. Satya Sai Rath, CIT-DR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

16/10/2023

31/10/2023

O R D E R

PER S. BALAKRISHNAN, Accountant Member :

The captioned appeal is filed by the Revenue against the penalty order passed U/s. 271D by the Ld.AO in DIN No. ITBA/PNL/F/271D/2021-22/1034956727(1) dated 18/8/2021 for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is into the business of manufacturing of detergent products such as detergent powders and soaps. A search and seizure operation U/s. 132 of the Act was conducted on 30/08/2016 in the group case of Sri Arunachalam Manickavel. During the course of assessment proceedings, the Ld. AO noticed the cash deposits of Rs. 1,74,52,500/- during the demonetization period. The assessee claimed that the source of such cash deposits was loan from Sri Arunachalam Manickavel, one of the Directors of the assessee company. The Ld. AO called for confirmation from Sri Arunachalam Manickavel wherein Mr. Arunachalam Manickavel has confirmed that the amount of cash loan was out of money received from M/s. Gowtham Buddha Textile Park P. Ltd. The Ld. AO rejected the contention of the assessee as well as the confirmation of Mr. Arunachalam Manickavel and considered the cash deposits of Rs. 1.74 Crs

as unexplained cash credit U/s. 68 of the Act and brought to tax as per section 115BBE of the Act. Further, the same amount was brought to tax in the hands of Sri Arunachalam Manickavel (individual) on the same ground but on protective basis. Aggrieved by the additions made by the Ld. AO, the assessee filed an appeal before the Ld. CIT(A) who has deleted the addition as the creditworthiness and genuineness of the transactions were proved by the assessee. Aggrieved by the order of the Ld. CIT(A), the Revenue filed an appeal before the ITAT, Visakhapatnam Bench wherein the Tribunal upheld the order of the Ld. CIT(A). Thereafter, the Ld. AO considered that the assessee-company has violated the provisions of section 269SS of the Act and made a proposal to levy the penalty U/s. 271D of the Act vide letter dated 8/6/2021. In response to the notice, the Ld. Counsel for the assessee appeared and submitted the explanation before the Ld. AO by filing the written submissions on 7/7/2021. The Ld. AO rejected the submissions made by the Ld. Counsel for the assessee and found that there is no any reasonable cause for acceptance of cash of Rs. 1.74 Crs by the assessee company from one of its Directors and considered that it is a fit case for levy of penalty U/s. 271D of the Act and therefore levied a penalty of Rs. 1.74 Crs U/s. 271D of the Act. Aggrieved by the order of the Ld.

AO, the assessee filed an appeal before the Ld. CIT(A), Visakhapatnam. The Ld. CIT(A) considered that the sources for the deposits have been proved in the case of Sri Arunachalam Manickavel and thereby relying on the decision of the Hon'ble ITAT, Visakhapatnam in the case of Dharmana Products (P) Ltd vs. ACIT, Circle-4(1), Visakhapatnam allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us and raised the following grounds of appeal:

- 1. The order of the Ld. CIT(A) is erroneous in law and the facts and circumstances of the case.*
- 2. The Ld.CIT(A) erred in law and facts in deleting the penalty levied U/s. 271D of Rs. 1,74,00,000/-.*
- 3. The Ld. CIT(A) has erred in ignoring the judicial pronouncement of Hon'ble Supreme Court in the case of M/s. Vasan Healthcare Vs. Addl. CIT reported in [2011] 125 taxmann.com 266 (SC).*
- 4. The Ld. CIT(A) has erred in law and facts in deleting the penalty even when the assessee company could not establish any bona fide reason as to why the assessee could not get a loan or deposit by A/c Payee Cheque or A/c Payee Demand Draft.*
- 5. The Ld. CIT(A) has erred in not considering the contention of the AO that the assessee has not proved any exigency to forego the route of transacting through banking channel.*
- 6. The Ld. CIT(A) has erred in relying on the submissions of the assessee that under the Companies (Acceptance and Deposits) Rules, 1975, Rule 2(b)(ix), transaction between the Director and company are not loan or deposit but only in the nature of current account ignoring the judicial pronouncements given by the Hon'ble Delhi High Court in the case of Commissioner of Income Tax vs. Samora Hotels (P) Ltd reported in [2012] 19 taxmann.com 285 (Delhi) and the Hon'ble Madras High Court in the case of Vasan Healthcare (P)*

Ltd vs. Addl Commissioner of Income Tax, Range-2, reported in [2019] 103 taxmann.com 26 (Mad.).

7. *The Ld. CIT(A) erred in concluding that when genuineness of transactions is proved to be correct, no penal proceedings get attracted, even though no bona fide reason exists.*
8. *Any other ground that may be urged at the time of hearing."*

3. Further, we also find that the assessee has filed the Cross Objection by raising the following grounds:

- “1. *The Ld. CIT(A) is justified in finding that the facts as contained in Hon’ble Supreme Court in the case of M/s. Vasan Healthcare Pvt Ltd., are distinguishable with the facts of the present case, since the Director of the company do not have source to give cash loan and further obtained cash loan from financiers who also do not have any sources.*
2. *The Ld. CIT(A) is justified in holding that when the genuineness of the transaction, creditworthiness of the Director and company are not doubted and held to be genuine, no penal proceedings are attracted and hence penalty levied U/s. 271D is unreasonable and therefore the establishment of any bonafide reason does not warrant.*
3. *The Ld. CIT(A) is justified in holding that as per the Companies (Acceptance and Deposits) Rules, 1975, under Rule 2(b)(ix), deposit does not include any amount received from a Director or Shareholder of a Private Limited Company and therefore, the transaction between the Director and the company is not in the nature of a loan or deposit. Hence violation of provisions of section 269SS does not attract.*
4. *The Ld. CIT(A) is justified in following the Hon’ble Madras High Court in the case of CIT vs. Idayan Publications Limited since the facts and issue involved in the case of Delhi High Court in CIT vs. Samora Hotels Pvt Ltd is on “bonafide belief” but not on the violation of provisions of section 269SS and hence distinguishable.*
5. *The Ld. CIT(A) is justified in holding that when the penal provisions itself are not attracted, the other technical issues like bonafide reasons etc., are not relevant.*

6. *On the facts and circumstances of the case, the penalty order passed U/s. 271D is invalid in law as there is no satisfaction written in the Assessment Order.*
7. *Any other ground of cross objections that may be raised at the time of hearing."*

4. At the outset, the Ld. AR pleaded that Ground No.6 of the Cross Objection shall be taken up first as this being a legal issue and depending upon the adjudication and outcome of the same, the other grounds may be considered on merits. Accordingly, first we take up the Ground No.6 of the Cross Objection raised by the assessee being a legal issue wherein the assessee contested that the penalty order passed U/s. 271D is invalid since there is no satisfaction written in the assessment order.

5. Before us, the Ld. AR submitted that the Ld. AO in his order U/s. 143(3) of the Act has proposed to levy the penalty U/s. 271AAB and 271AAC of the Act. The Ld. AR further vehemently argued that since the quantum appeal before the Ld. CIT(A) as well as before the Hon'ble ITAT has been held in favour of the assessee, penalty U/s. 271D cannot be levied. The Ld. AR relied on the decision of the Visakhapatnam Bench in the case of ACIT vs. Kanchumarthi Venkata Sita Ramachandra Rao in ITA Nos. 245 & 246/Viz/2020 (AY 2016-17), dated 30/08/2022. The Ld. AR also relied on the decision

of the Hon'ble High Court of Telangana in the case of Srinivasa Reddy Reddeppagari vs. JCIT, Central Circle, Range-2, Hyderabad in W.P No. 44285 of 2022. Further, the Ld. AR also placed reliance on the judgment of the Hon'ble Supreme Court in the case of CIT vs. Jai Laxmi Rice Mills Ambala City reported in [2015] 64 taxmann.com 75 (SC).

Per contra, the Ld. DR submitted that the penalty proceedings U/s. 271D and the quantum proceedings are mutually exclusive and as per section 271D of the Act the Joint Commissioner of Income Tax can impose penalty in the case if there is any contravention of the provisions of section 269SS of the Act. The Ld. DR placed heavy reliance on the case of M/s. Vasan Healthcare (P) Ltd vs. Addl. CIT reported in [2019] 103 taxmann.com 26 [Mad.].

6. We have heard the rival contentions and perused the material available on record. Admittedly, in the quantum proceedings both in the case of the assessee company and in the case of Sri Arunachalam Manickavel, the Hon'ble Tribunal has held in favour of the assessee. Further, the reliance placed by the Ld. AR on the judgment of the Hon'ble Supreme Court in the case of CIT vs. Jai Laxmi Rice Mills Ambala City (supra), wherein the Hon'ble Supreme Court has held that the

Ld. AO has to record his satisfaction for the purpose of initiating penalty proceedings under the Act. The Hon'ble Supreme Court has held as follows:

"As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under section 271(1)(c) of the Act. Thus, insofar as penalty under section 271E is concerned, it was without any satisfaction and therefore no such penalty could be levied."

7. Further, this Bench of the Tribunal in the case of ACIT vs. Kanchumarthi Venkata Sita Ramachandra Rao (supra) has followed the decision of the Hon'ble Supreme Court in the case of CIT vs. Jai Laxmi Rice Mills Ambala City (supra) and has held that when there is no satisfaction report recorded by the Ld. AO in the assessment record, no penalty could be levied. The decision of the Hon'ble Supreme Court in the case of M/s. Vasan Healthcare (P) Ltd vs. Addl. CIT (supra) relied on by the Ld. DR is distinguishable on the fact that in that case the creditworthiness and genuineness of the source of the funds could not be proved by the assessee. Further, in the instant case, the Hon'ble jurisdictional Bench of the Tribunal has deleted the additions both under the protective basis and the substantive basis as the creditworthiness and genuineness of the source of the funds were proved beyond doubt.

Considering these facts and circumstances of the case as stated above and following the principles of consistency as well as following the judicial pronouncements as discussed above, we are of the considered view that the penalty order U/s. 271D passed by the Ld. AO without recording proper satisfaction, deserves to be quashed and hence there is no infirmity in the order of the Ld. CIT(A) and therefore no interference is required. It is ordered accordingly.

8. Since the legal issue raised by the assessee is allowed in favour of the assessee, the other grounds of cross objections raised by the assessee its CO which are supportive in nature need no separate adjudication.

9. Similarly, considering the outcome of the legal issue raised by the assessee which is allowed in favour of the assessee in the foregoing paragraphs of this order, the adjudication of the grounds raised by the Revenue in its appeal ITA No.249/Viz/2022 becomes merely an academic exercise and hence dismissed.

10. In the result, appeal of the Revenue is dismissed and the Cross Objection of the assessee is allowed as indicated herein above.

Pronounced in the open Court on 31st October, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

Dated : 31.10.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – M/s. Bharathi Consumer Care Products Private Limited, Sy. No. 280, 281, Peddaparimi Village, Nidumukkala Post, Guntur – 522016, Andhra Pradesh.
2. राजस्व/The Revenue – Deputy Commissioner of Income Tax, Central Circle-1, 3rd Floor, Rajkamal Complex, Lakshmiapuram Main Road, Guntur – 522007, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam