

3. None appeared for Respondent Assessee. Therefore, we proceeded to dispose of the appeal hearing the Ld. DR of the Appellant Revenue and perusing the material available on record.

4. The Revenue raised the following effective ground of appeal:-

"That the Ld. CIT(A), Asansol has erred in law and on facts by allowing the relief of Rs.12,31,400/- imposing of penalty by the AO u/s. 271E."

5. The above sole ground is to be decided as to whether the CIT-A justified in deleting the penalty as imposed by the AO to an extent of Rs.12,31,400/- U/Sec.271E of the Act.

6. The assessee is an individual and engaged in the business of trading of gold and conducting his business in the name and style as "Ranjit Roy Jewellers" which is a proprietary concern. The assessee filed his return declaring a total income at Rs.2,23,021/- and under scrutiny, the AO determined the total income at Rs.30,19,764/- and to that effect an order U/Sec. 143(3) of the Act was passed.

7. During scrutiny proceedings, the AO found that the assessee has repaid a loan of Rs.12,31,400/- in cash to M/s. C.M. Roy & Sons on various dates with different amounts of Rs.2,90,000/-, Rs.2,72,000/-, Rs.2,72,000/-, Rs.2,92,000/- and Rs.1,05,400/- and initiated penalty proceedings U/Sec. 271E by issuing a notice for violation of Section 269T of the Act. The assessee explained that he is a partner in the said firm and it is a payment between partner and his firm and pleaded that Section 269T is not applicable.

8. Considering the contentions as made by the assessee through his reply dt. 09-06-2011 as discussed above, the AO was of the opinion that assessee himself admitted in the assessment proceedings that he repaid

the loan in cash and accordingly, imposed a penalty of Rs.12,31,400/- U/Sec. 271E of the Act

9. The CIT-A by relying on the decision of Hon'ble High Court of Rajasthan in the case of ITO Vs. Lokhpat Film Exchange (Cinema) reported in 304 ITR 172 (Raj) and on a decision of Kolkata Tribunal in ITA No.1916/Kol/2004 held that the firm and partners are not separate and cancelled the penalty imposed by the AO.

10. Before us the Id.DR submits that the Assessee himself admitted that he repaid the loan amounts to the said firm C.M.Roy & Sons in the assessment proceedings and changed his version during the penalty proceedings with a new theory that he is the partner in the said firm and relied on the decision of Hon'ble High Court of Kerala in the case of Grihalakshmi Version reported in (2015) 63 taxmann.com 196 (Kerala) and argued that there was no such material to show that the Assessee is partner in the said firm and to show further on which basis repayments were made to the said firm and urged to allow the appeal.

11. Heard Ld.DR and perused the material available on record. Taking into consideration the facts borne by the record and we may examine the facts and law laid down thereon in the case *supra* relied on by the Ld.DR. The brief facts, during the assessment proceedings, it was found that the Assessee accepted deposits and made repayments in violation of the provisions contained in Section 269SS and 269T of the Act and penalty provisions of Section 271D and 271E are initiated and u/Section 271D a penalty of Rs.10,83,000/- which is equal to the cash loans taken by the assessee in contravention of 261SS of the Act and u/Section 271E, penalty of Rs.2,97,000/- which is equal to the amount of cash loans repaid by the assessee in contravention of 269T of the Act were levied. The penalty order was confirmed by the Commissioner of Income Tax (Appeals) and by the Tribunal.

12. Therefore, the Assessee raised questions of law amongst others before the Hon'ble High Court relevant to the issue on hand is whether the authorities below erred in not considering the issue whether the cash receipts, being bonafide transactions between the assessee and its sister concerns/partners, can be considered as loans or deposits attracting the provisions of Sections 269SS and 269T of the Act. The Hon'ble High Court of Kerala held as under:

15. The third contention that was raised by the assessee was that if money is taken from partners or sister concerns, it could not be treated as loans or deposits. In support of this contention, counsel for the assessee relied on judgments in Commissioner of Income Tax v. T.Perumal (Indul.) [2015] 370 ITR 313 (Mad) and Commissioner of Income Tax v. Muthoot Financiers and another [2015] 371 ITR 408 (Delhi). Reading of these judgments show that these cases were decided on the basis of the documents that were available before the Court. On the other hand, insofar as these cases are concerned, though it is the admitted case that amounts were received from partners and other sister concerns of the assessee and were repaid, there is no material whatsoever to infer that these receipts were anything other than loans or deposits. There is no law that every receipt from a partner or a sister concern cannot, in all circumstances, be treated as a loan or deposit. On the other hand, the nature of the receipt would depend upon the agreement between the parties and the evidence that is produced. As we have already stated, there is no material whatsoever to accept the case of the assessee that these are loan or deposit. In such circumstances, the findings of the Assessing Officer confirmed by the Appellate Commissioner and the Tribunal that it was a loan or deposit that was received by the assessee also has to be upheld and we do so.

13. In the aforesaid decision, the contention of the Assessee was that the money taken from partners and sister concerns does not constitute a loan or deposit, but however, the Hon'ble High Court upheld the findings of the authorities below in favour of the Revenue on the ground that the Assessee could not produce any material whatsoever to infer that the said receipts were anything other than loans or deposits. In the present case, the contention of the Assessee was that in the penalty proceedings vide its letter dt:15-11-2010 admitting the fact that it is a loan repaid to his partnership firm and such repayment does not attract the provisions under Section 269SS of the Act as there was no term lender and borrower exists between the partner and its

firm. We find that basing on which submissions the CIT-A cancelled the penalty imposed by the AO placing reliance on the decision in the case of CIT vs Lokhpat Film Exchange (cinema) of Hon'ble High Court of Rajasthan reported in 304 ITR 172 (Raj), held under the general provision relating to Partnership Act that partnership firm is not a juristic person and for inter relationship different remedies are provided to enforce the rights arising out of their inter se transactions, the issue about separate entities apart, it cannot be doubted that the assessee has acted bona fide and his plea that inter se transactions between the partners and the firm are not governed by the provisions of ss. 269SS of the Act and the relevant portion of which is reproduced herein below:

2. *These two appeals arise out of two separate orders passed by the AO levying penalty under ss. 271D and 271E in respect of certain transactions between the assessee firm and its partners described as deposits from the partners. The transaction relates to receipt of deposit during the accounting period relevant to asst. yr. 1990-91 from its partners Shri Jay P. Motinani and Shri Bhagwati Chandnani by way of deposits. The AO considering it to be intra party transactions of deposit otherwise then by way of cheque or bank draft inviting the provisions of ss. 269SS and 269T and considering these payments and repayments were in violation of ss. 269SS and 269T imposed penalty under ss. 271D and 271E respectively for receiving the deposit in cash and payment in cash.*

The assessee had claimed that in view of the fact that partners and firm are not independent of each other and the firm is not juristic person, these transactions cannot be considered as intra person but were only for the purpose of carrying on partner's own business. The fact that under the IT Act, the firm and partners of the firm are recognised as independent units, the same cannot be treated for all purposes to be separate and independent. The assessee had contended that in that view of the matter, they had not violated the requirement of ss. 269SS and 269T while conducting these transactions. However, the AO did not accept this explanation and rejected the plea of the assessee and imposed penalties under ss. 271D and 271E.

The penalties were not sustained by the CIT(A).

3. *The Tribunal relying on a decision in CIT vs. R.M. Chidambaram Pillai, etc. 1977 CTR (SC) 71 : (1977) 106 ITR 292 (SC) wherein the Supreme Court has said that there cannot be a contract of service, in strict law, between a firm and one of its partners so as to consider the salary paid to the partner as income from salary held that for the purpose of ss. 269SS and 269T also the firm and partners cannot be considered to be separate entity and deleted the penalty.*

Hence, these two appeals are before us raising the common issue in both appeals.

4. *The firm was constituted with a particular object of constructing cinema and is now no more in existence. Sec. 273B has mitigated the penalty to be levied under ss. 271D and 271E by providing that where assessee is able to establish that there was reasonable cause for failure to comply with ss. 269SS and 269T, no penalty is leviable.*

5. *By considering the decision of the Supreme Court in the aforesaid decision and considering the facts that under the general provision relating to Partnership Act that partnership firm is not a juristic person and for inter relationship different remedies are provided to enforce the rights arising out of their inter se transactions, the issue about*

separate entities apart, it cannot be doubted that the assessee has acted bona fide and his plea that inter se transactions between the partners and the firm are not governed by the provisions of ss. 269SS and 269T was bona fide and reasonable ground existed on which they had not adhered to the requirement of conducting the transaction through bank only. Therefore, on the facts found by the AO as well as the Tribunal, the assessee was otherwise not liable to be subjected to penalty.

14. The provision contemplated under Section 269SS explains that no person shall take or accept from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft after the 30th day of June, 1984. In the aforesaid decision the Hon'ble High Court upheld the order of Tribunal in deleting the penalty as imposed by the AO u/Section 271E for violation of section 269SS of the Act. It pertinent to note that the Tribunal taken support from the decision in the case of *CIT vs. R.M. Chidambaram Pillai, etc.* of Hon'ble Supreme Court reported in 106 ITR 292 (SC) which held that for the purpose of ss. 269SS and 269T also, the firm and partners cannot be considered to be separate entity and deleted the penalty. we find that the CIT-A found examined and satisfied that the assessee is a partner in a firm i.e M/s.C.M.Roy & Sons and the AO also during the course of assessment proceedings on perusal of the ledger account in respect of advance receipt and payment found that the Assessee credited an amount of Rs.23,25,000/- as advance from customers with an endorsement "*To advance memo no- to- from customers*" and also found the entire sale to M/s.C.M.Roy & Sons. Therefore, the assessee takes advances from its customers and makes payment to its firm time to time for meeting the business needs. We hold that the money received or paid in the above circumstances specially between the partners and its firm can be treated in the nature of advance and not loan or deposit as contemplated in sec.269SS of the Act and that the payments between the partnership firm and its partner and vice versa are payment to self. As discussed above the advances received by the assessee were from proper source and there is no doubt the genuineness of the transactions. In such

circumstances, the penalty imposed u/s.271E of the Act is not maintainable. In view of above decisions of Hon'ble Supreme Court and High Court *supra*, respectfully following the same, we cancel the penalty levied by the A.O. u/sec.271E of the Act. Therefore, ground involving the same raised by the revenue is dismissed.

15. In the result, the appeal of the revenue is dismissed

ORDER PRONOUNCED IN OPEN COURT ON 14-12-2016

Sd/-

Sd/-

M.Balaganesh
Accountant Member

S.S. Viswanethra Ravi
Judicial Member

Dated 14/12/ 2016

Copy of the order forwarded to:

1. The Appellant/department: Income Tax Officer
Ward 3(1), Parmar Building, Apkar Garden (West),
54 G.T Road, Asansol-713304.
- 2 The Respondent/assessee: Sri Ranjit Roy Prop: Ranjit Roy Jewellers
C/o M/s. C.M Roy & Sons, C.R Road, Raniganj, Asansol,
Dist: Burdwan(WB).
- 3 /The CIT(A) 4.The CIT
5. DR, Kolkata Bench
6. Guard file.

**PP/SPS True Copy,

By order,

Asstt Registrar

ITA No. 2425/Kol/13
M/s. Ranjit Jewellers

