

IN THE HIGH COURT OF JUDICATURE AT MADRAS
Dated : 11.02.2013

Coram :
THE HONOURABLE MRS.JUSTICE R.BANUMATHI
and
THE HONOURABLE MR.JUSTICE K.RAVICHANDRABAABU

Tax Case (Appeal) No. 279 of 2010

The Commissioner of Income Tax-I,
Coimbatore. ... Appellant

Vs.
V.Sivakumar
Reliance Finance & Investments,
No. 275, Mettupalayam Road,
Coimbatore-641 013. ... Respondent

Appeal is filed under section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'A' Bench, Chennai dated 31.07.2009 made in I.T.A. No. 408/Mds/2009.

For Appellant : Mr.N.V.Balaji
Standing Counsel.

For Respondent : Mr.M.P.Senthil Kumar

JUDGMENT

Mrs. R. Banumathi, J.

The Revenue has preferred this appeal on the following substantial question of law:-

"Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was right in law in deleting the levy of penalty by the Assessing Officer under Section 271D of the Income Tax Act, 1961, even though the advance has been accounted as loan and interest debited?"

2. The assessee was a partner in four firms and Proprietor in Reliance Realtors. In the assessment year 2005-2006, assessee had taken loan from the four firms which were found to be in cash. The Assessing Officer initiated penalty proceedings under Section 271D of Income Tax Act and imposed penalty of Rs. 18 lakhs. The Commissioner of Income Tax (Appeals) dismissed the appeal (ITA. No. 68/07-08) and assessee

preferred further appeal (ITA. No. 142/Mds/08) before the Income Tax Appellate Tribunal. Tribunal remitted the matter to the Assessing Officer to give a definite finding whether the transaction was between the firm and partner. The Assessing Officer passed a fresh order (17.07.2008) that the assessee individual was a partner in four firms from where funds had been advanced to the assessee and imposed a penalty of Rs. 18 lakhs. In the appeal (ITA. No. 89/08-09) preferred by the assessee, Commissioner of Income Tax (Appeals) allowed the appeal holding that the transactions between the partner and the firm do not partake the character of a Loan or Deposit and therefore, there is no applicability of the provisions of Section 269SS of the Act. The further appeal (ITA. No. 408/Mds/2009) preferred by the Revenue was dismissed by the Tribunal on the finding that the assessee acted bonafide and that there was a reasonable cause within the meaning of Section 273B of the Act.

3. Mr. N.V. Balaji, learned counsel for Revenue submitted that though the assessee is partner of the firms, he has taken loan from the firms by cash in his capacity as Proprietor of Reliance Realtors and the Assessing Officer had recorded factual finding and in view of the consequences of violation of Section 269SS, justified in imposing penalty under Section 271D of the Act. Learned counsel for Revenue endeavoured to distinguish the cases relied upon by the Tribunal and submitted that the Assessing Officer has recorded factual finding that money has been advanced from the firms as loan and the same was debited from the accounts of the proprietary concern which would show that the transactions between the firms and the assessee were not in his capacity as a partner and while so, Commissioner of Income Tax (Appeals) and the Tribunal were not correct in saying that the transactions were between firms and partner and prayed that the substantial question of law be answered in favour of the Revenue.

4. We have heard Mr .M.P. Senthil Kumar, learned counsel appearing for the assessee.

5. The assessee had taken the amounts from four firms which were found to be in cash and the Assessing Officer has considered these payments were in violation of Section 269SS of the Act. Stand of assessee is that the amounts were taken in his capacity as partner and it cannot be taken as an independent transaction and there is no violation of Section 269SS of the Act. The partnership firm has no separate legal entity. There is no separate identification between the firm and the partner. Tribunal relied upon the decision in *CIT v. R.M. Chidambaram Pillai* [1977] 106 ITR 292 wherein the Hon'ble Supreme Court held 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 the salary and held that for the purpose of Sections 269SS and 269T, the firm and partners cannot be considered to be separate entity". The Hon'ble Supreme Court further

held that "payment of salary to a partner represents a special share of the profits and salary paid to a partner retains the same character of the income of the firm" and deleted the penalty.

6. In *CIT v. Lokhpat Film Exchange (Cinema)* [2008] 304 ITR 172 (Raj), it was held 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 and that the inter se transactions between the partner and firm are not governed by the provisions of Sections 269SS and 269T of the Act.

7. Relying upon the decisions in *R.M. Chidambaram Pillai's case (supra)*; *Asstt. DIT (Investigation) v. Kum. A.B. Shanthi* [2002] 255 ITR 258; *Lokhpat Film Exchange (Cinema)'s case (supra)*, Tribunal confirmed the finding of Commissioner of Income Tax (Appeals) that partnership firm is not a juristic person and there is no separate identity for the firm and partners and that the transactions between the firm and the partner cannot be brought within the meaning of Section 269SS of the Act.

8. Apart from the issue about the separate entity, being a partner the assessee had drawn amounts from the firms and there are no reasons to doubt the genuineness of the transactions. This Court in *CIT v. Kundrathur Finance & Chit Co.* [2006] 283 ITR 329 following the decision of the Hon'ble Supreme Court in *Kum. A.B. Shanthi's case (supra)* held that "if there was genuine and bonafide transaction and the tax payer could not get a loan or deposit by account payee cheque or demand draft for some bonafide reason, the authority vested with the power to impose penalty has a discretion not to levy penalty".

9. In *CIT v. Deccan Designs (India) (P.) Ltd.* [2012] 347 ITR 580, loans were taken from sister concern under condition business exigency. Referring to *Kundrathur Finance & Chit Co.'s case (supra)*; *CIT vs. Balaji Traders*, 303 ITR 312 (Mad) and *CIT v. Ratna Agencies* [2006] 284 ITR 609 (Mad.), the Division Bench of this Court dismissed the appeal holding that "there were enough reasons offered by the assessee to justify the cash transactions which it made with its sister concern" and that consequences of violation of Section 269SS is not attracted.

10. In *CIT v. Lakshmi Trust Co.* [2008] 303 ITR 99, the Division Bench of this Court held that "if there were genuine and bonafide transactions and the tax payer could not get a Loan or Deposit by account payee cheque or demand draft for some bonafide reason, the authority vested with the power to impose penalty has a discretion not to levy penalty".

11. Referring to *R.M. Chidambaram Pillai (supra)*; *Kum. A.B. Shanti (supra)*; *Lokhpat Film Exchange (Cinema) (supra)*, Tribunal held that there is no separate identity for the partnership firm and that the partner is entitled to use the funds of the firm and that the assessee acted bonafide and that there was a reasonable cause within the

meaning of Section 273B of the Act. We do not find any error or legal infirmity in the order of the Tribunal warranting interference. The substantial question of law raised in this appeal is answered in favour of the assessee and the Tax Case (Appeal) stands dismissed. No costs.

[R.B.I.,J.]

[K.R.C.B,J.]

11.02.2013

Index : Yes/No

Internet :Yes/No

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To

1. The Addl. Commissioner of Income Tax,
Range-II, Coimbatore.

2. The Commissioner of Income Tax (Appeals),
Coimbatore.

3. The Income Tax Appellate Tribunal,
Chennai Bench "A", Chennai.

R.BANUMATHI,J.

and

K.RAVICHANDRABAABU, J.

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Judgment

in

T C (A) No. 279 of 2010

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