(2013) 04 P&H CK 0175

High Court Of Punjab And Haryana At Chandigarh

Case No: Income Tax C. No. 3 of 2002 (O and M)

Auto Piston MFG. Co. P. Ltd.	APPELLANT
Vs	
Commissioner of Income Tax	RESPONDENT

Date of Decision: April 23, 2013

Acts Referred:

- Income Tax Act, 1961 - Section 260A, 269SS, 271D

Citation: (2013) 355 ITR 414

Hon'ble Judges: Ritu Bahri, J; Hemant Gupta, J

Bench: Division Bench

Advocate: S.K. Mukhi, for the Appellant; Denesh Goyal, for the Respondent

Final Decision: Dismissed

Judgement

Ritu Bahri, J.

The present appeal u/s 260A of the income tax Act, 1961 (for short "the Act")/is against an order dated April 24, 2000, passed by the income tax Appellate Tribunal, Amritsar Bench, Amritsar (for short "the Tribunal") in I.T.A. No. 127(ASR)/1994, confirming the penalty u/s 271D arising out of the assessment year 1991-92. The appellant claimed the following substantial questions of law:

(1) Whether, in view of the facts and in the circumstances of the case, the income tax Appellate Tribunal was justified in confirming the penalty of Rs. 1,92,000 u/s 271D of the income tax Act, 1961?

(2) Whether the penalty can lawfully be imposed by assuming what the assessee could have done instead of what the assessee has actually done?

(3) Whether the justification of explanation is to be judged on the basis what the assessee could have done instead of on the basis what the assessee has done?

2. We have heard learned counsel for the parties and find that the appeal does not raise the above substantial questions of law. The findings recorded by the learned

Tribunal are pure findings of fact.

3. The appellant-company could not disburse the bonus due on Diwali to its workers and promised to make the payment of bonus in the first week of March, 1991. The assessee accepted the loan of Rs. 1 lakh from M/s. Singh Finance and Investment Co. P. Ltd., vide bearer cheque No. 925744 dated March 8, 1991, and a sum of Rs. 92,000 in cash was taken from the promoters/distributors of the company on December 5, 1990. However, the Assessing Officer had imposed the penalty of Rs. 1,92,000 u/s 271D of the Act on the basis of the alleged contravention of section 269SS on account of two cash credit entries.

4. In response to the show-cause notice issued by the assessing authority, the assessee filed its reply and took the stand that they were expecting the money from Calcutta Depot in the beginning of March, 1991. In order to save the factory, from being close down, the company raised a loan of Rs. 1 lakh on March 7, 1991. This ban was disbursed on March 8, 1991, as a bonus in order to pacify the workers. The expected amount from the Calcutta Depot was received on March 12, 1991, and it was on this day that the complete bonus was disbursed. The penalty of Rs. 1 lakh has been imposed as this amount was credited in the books of account. The appellant company had taken a loan of Rs. 92,000 from its promoters/distributors in order to make the payment to the Excise Department in order to avoid the penal action of the Excise department.

5. The Commissioner of income tax (Appeals), vide his order dated November 23, 1993, accepted the explanation given by the assessee and set aside the impugned penalty u/s 271D of the Act. Further, in appeal the Tribunal, vide order dated April 24, 2000, restored the order dated December 23, 1992, of the assessing authority and observed as under:

17. In this case, from the explanation of the assessee, the urgency of disbursing bonus on March 8, 1991, does not seem to be plausible as the same could have been disbursed even on the next day also because in case the assessee had taken the amount by ed payee cheque, the amount of the same could have been realised by the assessee the next day, because if we consider the address and the bank accounts of the assessee and that of M/s. Singh Finance and Investment Co. (P.) Ltd., Amritsar, from whom loan of Rs. 1 lakh is taken by the assessee, as both are operating their businesses in Amritsar and as the learned Departmental representative has even mentioned in the original grounds of appeal, the assessee and M/s. Singh Finance and Investment Co. (P.) Ltd., Amritsar, who had given a loan of Rs. 1 lakh to the assessee, were having their bank accounts in the same bank and during the course of arguments, this fact has not been controverted by the assessee. Even if presuming that the assessee wanted the realisation of the amount of the bearer cheque on March 8, 1991, itself, i.e., the date of issue of the cheque, even then the acceptance of the loan amount of Rs. 1 lakh through bearer cheque was not justified because in case the assessee had accepted the payment through

crossed account payee cheque/draft and since both the parties were having accounts in the same bank, proceeds of the cheques could have been very easily realised on the date of presentation itself, i.e., March 8, 1991, because the bank was only to pass the debit entry in the accounts of the assessee, and M/s. Singh Finance and Investment Co. (P.) Ltd. and credit entry in favour of the assessee, which could have been easily done during the working hours of the bank, on the same day. Hence, we conclude that in the existing circumstances of the case of the assessee, the Commissioner of income tax (Appeals) has failed in appreciating that there was absolutely no urgency in accepting the bearer cheque in disbursing the bonus to its workers by the assessee on March 8, 1991, as the same could have been easily postponed for at least one more day for making the payment to its workers. The learned Commissioner of income tax (Appeals) has further failed in appreciating that since both the parties were operating and had their bank accounts issued on March 8, 1991, could have been done on the same day and there was no justification in accepting the bearer cheque in violation of section 269SS of the income tax Act 1961.

6. The explanation given for acceptance of the loan of Rs. 92,000 in cash by the assessee on December 5, 1990, has been discussed as under:

22. Now, we would like to deal with the explanation of the assessee from another angle in order to see whether there was any bona fide urgency with the assessee for accepting the cash amount of Rs. 92,000 from its promoters. From the original grounds of appeal of the Revenue (which have not been controverted by the assessee during the course of arguments) that the assessee had issued the cheque of the Excise Department on November 16, 1990, and November 17, 1990, amounting to Rs. 91,338/50 but without bothering to see whether there was sufficient cash balance in its bank account or not. On December 5, 1990, it realised, that the Excise Department was presenting the cheques for encashment and then it rushed to take the cash of Rs. 92,000 from its promoters, to deposit the same in bank to avoid the alleged penal action of the Excise Department. The question arises as to why the assessee issued cheques on November 16, 1990, and November 17, 1990 to the Excise Department, when the assessee did not have sufficient balance in its bank account. Even if it was so then why it waited till December 5, 1990, and not arranged the amount immediately after the issue of the cheques. Had the assessee done so then it could have done it by taking this amount of Rs. 92,000 from the promoters of the company, through account payee cheques or draft which could have enabled the assessee to genuinely avoid penal action of the Excise Department, as well as penalty of the income tax Department, which had now to suffer on account of violation of section 269SS of the income tax Act, 1961.

7. The order of the Tribunal had dealt with all the questions of fact and there is no question of law much less the substantial question of law to be considered u/s 260A of the Act. The Tribunal being the last court of fact has discussed in detail and has

discarded the explanation given by the assessee. The assessee has contravened the provisions of section 269SS of the Act. In appeal, this court cannot re-examine the explanation offered by the assessee. The appeal arises out of an order returning findings of fact. In view of the above, we uphold the order of the Tribunal. Consequently, the present appeal is dismissed.