(2014) 03 P&H CK 0078

High Court Of Punjab And Haryana At Chandigarh

Case No: I.T.A. No. 111 of 2013 (O&M)

Charan Dass Ashok Kumar	APPELLANT
Vs	
Commissioner of Income Tax	RESPONDENT

Date of Decision: March 14, 2014

Acts Referred:

- Income Tax Act, 1961 - Section 143(3), 260A, 269SS, 271D, 273B

Citation: (2014) 365 ITR 367

Hon'ble Judges: Anita Chaudhary, J; Ajay Kumar Mittal, J

Bench: Division Bench

Advocate: Ravish Sood, Advocate for the Appellant; Rajesh Katoch, Advocate for the Respondent

Judgement

Ajay Kumar Mittal, J.

This appeal has been preferred by the assessee u/s 260A of the income tax Act, 1961 (in short, "the Act") against the order dated September 20, 2012, annexure A-6, passed by the income tax Appellate Tribunal, Amritsar Bench, Amritsar, in I.T.A. No. 369(ASR)/2011 for the assessment year 2006-07, claiming the following substantial questions of law:

"1. Whether the Tribunal, while disposing of the appeal, is right in law in refusing to take cognizance of extract of the cash book dated December 29, 2005, placed at page 9 of the paper book furnished by the appellant-firm, specifically when during the course of hearing of the appeal the Tribunal after duly taking cognizance of the same had raised queries, made notings, and even called upon the Departmental representative to place his counter-submission as regards the same, by so doing had therein admitted the same, and no objection/defect as regards the same was ever brought to the notice of the appellant-firm, either by the Registry or by the Bench?

2. Whether the findings of the Tribunal that the appellant-firm had not furnished any documentary evidence or any explanation either before it or before the lower authorities being perverse cannot be sustained in the eyes of law?

3. Whether the Tribunal is right in law in upholding the penalty imposed in the hands of the appellant-firm u/s 271D of the Act for technical/venial breach of the provisions of section 269SS, specifically when the said loan transaction stood duly recorded in the books of account which were unilaterally produced before the Assessing Officer during the course of the assessment proceedings and neither the genuineness of the loan nor the source thereof had ever been doubted by the Assessing Officer while framing the assessment of the appellant-firm?

4. Whether the Tribunal is right in law in upholding the levy of penalty imposed u/s 271D of the Act in respect of a cash loan raised by the appellant-firm from its agriculturist customers, which was prompted by urgent need of funds to meet out outstanding bank liability, remaining under the bona fide belief that cash transactions with the agriculturist customers were permissible in toto, specifically when the said loan transaction stood duly recorded by the appellant-firm in its regular books of account which were unilaterally produced before the Assessing Officer during the course of the assessment proceedings and neither the genuineness of the aforesaid loan transaction nor its source had ever been doubted by the Revenue/Department, specifically when no prejudice was caused to the Revenue/Department in the instant action of the appellant-firm inasmuch as it did not attempt by the impugned act to avoid any tax liability?

5. Whether the Tribunal is right in law in upholding the levy of penalty u/s 271D of the Act in the hands of the appellant-firm on the basis of premature observations, findings and investigations?."

A few facts relevant for the decision of the controversy involved, as narrated in the appeal, may be noticed. The appellant-firm as a kacha arhtia (commission agent in food grains) was dealing with agriculturists. It was carrying out cash transactions with respect to payments to the agriculturists of the sale proceeds of their agriculture produce which was sold through it as an intermediary. The business of the appellant-firm which was already facing financial crisis due to lack of liquidity, was burdened with a full availed credit facility of Rs. 5 lakhs from Punjab and Sind Bank. It was further adversely hit when on one part the bank was pressing hard for the repayment of the outstanding dues and, on the other hand, the real brothers of one of the partners of the appellant-firm, namely, Shri Charan Dass, who had put joint family property as a security with the bank was pressuring him for getting a clear title of the property from the bank. The appellant-firm decided to clear the outstanding liability towards the bank in toto wherein the same as on December 29, 2005, stood reflected at an amount of Rs. 5,10,726. However, on the relevant date, the cash in hand available with the appellant-firm was only Rs. 66,128.66 and, therefore, the latter raised a loan from one of its agriculturist customers, Shri Jugraj

Singh, son of Shri Gurdev Singh, r/o Village Rahdiala, on December 29, 2005, which was duly recorded by the appellant-firm in its books of account. The said amount including Rs. 10,726 was deposited by the appellant towards full and final discharge of the entire outstanding bank liability and, consequently, the aforesaid joint family property lying with the bank was got released. The case of the appellant was taken up for scrutiny proceedings. Penalty proceedings for raising the loan by the appellant-firm in contravention of the provisions of section 269SS of the Act were initiated by the Additional Commissioner of income tax, Moga. The appellant aggrieved by the order filed an appeal before the Commissioner of income tax (Appeals), Ludhiana, which was also dismissed, vide order dated February 23, 2011, annexure A-3. Still not satisfied, the appellant filed an appeal before the Tribunal. Vide order dated September 20, 2012, annexure A-6, the Tribunal dismissed the appeal. Hence, the instant appeal by the assessee.

2. We have heard learned counsel for the parties and perused the record.

3. In terms of the order dated January 27, 2014, learned, counsel for the appellant has produced the revenue record to show Jugraj Singh, son of Shri Gurdev Singh, r/o Village Randiala, from whom the assessee had taken a loan of Rs. 5 lakhs in cash had sufficient means to pay the same. It was urged that it was under compelling circumstances that the loan in cash was taken as the assessee was to discharge the bank liability and banking facility was not readily available in the village. Reliance was placed on the judgments in Sona Paper Board and Ltd. v. Joint CIT (I.T.A. No. 142 of 2009, decided on April 20, 2011 (P & H)), Assistant Director of Inspection Investigation Vs. Kum. A.B. Shanthi, , Commissioner of Income Tax Vs. Saini Medical Store, , Commissioner of Income Tax Vs. Sunil Kumar Goel, , Hindustan Steel Ltd. Vs. State of Orissa, and CIT v. Datta Nagari Sah Pat Sanstha Maryadit [2010] 322 ITR (St.) 13 (SC) in support of the submissions.

4. On the other hand, learned counsel for the Revenue submitted that the Assessing Officer, the Commissioner of income tax (Appeals) and the Tribunal have concurrently come to the conclusion that there was no reasonable cause u/s 273B of the Act for accepting loan in cash and thus, there was violation of section 269SS of the Act and, accordingly, penalty u/s 271D of the Act was rightly levied.

5. After hearing learned counsel for the parties, we do not find any merit in the appeal.

6. The findings recorded by the Assessing officer, vide order dated November 28, 2008, annexure A. 1 read thus:

"Assessment in its case was completed, vide order u/s 143(3) of the income tax Act, 1961, dated November 28, 2008. At the time of framing the assessment, it was observed by the income tax Officer I, Moga, that the appellant-firm had accepted a loan of Rs. 5 lakhs in cash on October 29, 2005, from Shri Jugraj Singh, s/o. Shri Gurdev Singh, r/o. Village Randiala, for verification of facts necessary copy of

account of the said person was called for by the Assessing Officer which revealed that the assessee accepted a cash loan of Rs. 5 lakhs on October. 29, 2005. Accordingly, the income tax Officer I, Moga, referred the proceedings u/s 271D of the income tax Act, 1961, for imposition of penalty as the assessee had violated the provisions of section 29SS of the income tax Act, 1961. The Assessing Officer referred these proceedings to the undersigned, vide his office letter No. ITO/Moga/7507, dated January 13, 2009. Therefore, a show-cause notice u/s 271D read with section 269SS of the income tax Act, 1961, dated January 19, 2009, was issued to the appellant-firm which was duly served upon the assessee on January 27, 2009, and the proceedings under this section were fixed for hearing on February 6, 2009. This show-cause notice remained uncomplied as neither the assessee attended the penalty proceedings nor any written reply has been received. Again, a fresh show-cause notice No. 180, dated April 24, 2009, was issued for April 29, 2009, which was duly served upon the assessee on April 27, 2009. This show-cause notice also remained uncomplied as none attended nor any written reply has been received in this office. To meet the ends of justice again a show-cause notice No. 484, dated May, 2009 was issued for May 14, 2009, which was duly served upon the assessee on May 12, 2009. This show-cause notice also remained uncomplied as neither the assessee attended the penalty proceedings nor the assessee sent any written explanation in this regard.
In the absence of any reply by the assessee, it is presumed that the assessee has nothing to say in this matter and the appellant-firm accepts its default committed under the provisions of section 269SS of the income tax Act, 1961. The default of the appellant-firm is clearly established as the appellant-firm has accepted the loan of Rs. 5 lakhs in cash from Shri Jugraj Singh s/o. Shri Gurdev Singh in contravention of the provisions of section 269SS and as such the assessee is liable to pay, by way of penalty, a sum equal to the amount of loan so taken/accepted. Therefore, penalty of Rs. 5 lakhs is imposed on the appellant-firm u/s 271D of the income tax Act, accordingly."

7. The Commissioner of income tax (Appeals), vide order dated February 23, 2011, annexure A. 3 affirmed the penalty order with the following observations:

"5. I have gone through the contention of the appellant''s counsel and also perused the relevant penalty order as well as the rival submissions filed by following the provisions of section 269SS of the income tax Act, 1961, which is reproduced as under:

''No person shall after the 30th day of June 1984, take or accept from any other person (hereafter in this section referred to as depositor), any loan or deposit otherwise than by an account payee cheque or account payee bank draft if--

(a) The amount of such loan or deposit or the aggregate amount of such loan and deposit, or

(b) On the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid, or

(c) The amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b) is twenty thousand rupees or more.''

In the case in hand, the appellant has accepted a cash loan amounting to Rs. 5,00,000 from one person which is very clear violation of the provisions of section 269SS of the Act. The appellant''s counsel plea that it was due to exigency of circumstances is also irrelevant as the loan was taken for repayment of another bank loan and which could very well taken by the cheque. Further, the facts of the case law cited by the counsel are different and not applicable to the facts of the case. The Assessing Officer in this case provided repeated opportunities to the appellant but the appellant did not appear before the Assessing Officer. Keeping in view the above factual position of the case, I am of the view that the Assessing Officer has rightly imposed penalty u/s 271D of the Act on the above said ground. Therefore, the penalty levied is hereby confirmed and appellant''s grounds of appeal are dismissed."

8. On further appeal by the assessee, the Tribunal, vide order dated September 20, 2012, annexure A. 6, upheld the findings recorded by the Commissioner of income tax (Appeals) as under:

"8. We have heard the rival contentions and perused the facts of the case. The learned counsel for the assessee, Shri Ravish Sood, has filed paper book containing 96 pages out of which pages 1 to 8 are the written submissions, which in fact, have not been read before us. Page 9 of the paper book is the photocopy of cash book which contains on one side deposit of Rs. 5 lakhs cash from Shri Jugraj Singh, s/o. Shri Gurdev Singh and on the other side deposit of cash with PSB amounting to Rs. 5,10,726 in cash on October 29, 2005. From paper book pages 10 to 96 there are copies of decisions of various courts of law. In fact, there is only one page of the cash book showing deposit of Mr. Jugraj Singh and the payment of Rs. 5,10,726 to the bank on October 29, 2005. The said page is unsigned by the assessee or by the learned counsel for the assessee and has no validity in the present case. There is no other explanation placed on record by the learned counsel for the assessee given before any of the authorities below. The learned counsel had advanced the arguments before this Bench as mentioned hereinabove without any documentary evidence or without furnishing any explanation before any of the authorities below or even before us. Now, the question arises whether the arguments advanced by the learned counsel appearing for the assessee before this Bench can take shape of the explanation before both the authorities below or even before us and that too without any documentary evidence or cogent explanation. To our view such

arguments cannot be treated as explanation before any of the authorities below or even before us. The assessee has relied upon the decisions of various courts of law. As regards the decision of the hon''ble Punjab and Haryana High Court in the case of CIT v. Sunil Goel (supra), the facts in that case are quite distinguishable with the facts of the present case. In the present case, the assessee had not transacted between the family has not been established as against in the case of CIT v. Sunil Goel (supra). The assessee has to establish the business exigency in the present case as in the case of CIT v. Sunil Goel (supra). In the present case, no urgency or business exigency has been established by raising a loan of Rs. 5 lakhs and that too on October 29, 2005. The assessee has not produced before any of the authorities below or even before us that there was a dead line that the amount was required to be deposited with the bank only on October 29, 2005, and, thereafter, the assessee was to be heavily penalized or some dire consequences were in the offing by the bank. In the absence of any business exigency, the reasonable cause cannot be established. The assessee has not brought on record before any of the authorities below or even before us that the persons from whom loan has been taken is an agriculturist and does not maintain any bank account. Nothing has been brought on record that the assessee being kacha arhtia is also an agriculturist and does not maintain any bank account. The assessee could not establish that the said transaction was without any intention to avoid tax, since ignorance of law cannot be an excuse in the present facts and circumstances of the case. Therefore, the decision in the case of CIT v. Saini Medical Store (supra) is also distinguishable in the present facts and circumstances of the case. The other cases relied upon by the learned counsel for the assessee are also distinguishable in the present facts and circumstances and cannot help the assessee. In the facts and circumstances, the assessee is not able to prove that there was a reasonable cause in taking or accepting any loan or deposit otherwise by an account payee cheque or account payee bank draft. Therefore, we find no infirmity in the action of the learned Commissioner of income tax (Appeals), who has rightly confirmed the penalty levied by the Assessing Officer. Accordingly, all the grounds of the assessee are dismissed."

9. From the above, it would be discernible that the assessee-firm had accepted loan of Rs. 5 lakhs in cash on December 29, 2005, from Shri Jugraj Singh. The assessee-firm was issued repeated show-cause notices dated January 19, 2009, April 24, 2009, and May 14, 2009, but the assessee did not avail of the opportunity to give any explanation justifying the transaction of accepting loan of Rs. 5 lakhs from Jugraj Singh in cash in violation of the provisions of section 269SS of the Act. Accordingly, the Assessing Officer held that the assessee-firm had nothing to say in the matter and imposed penalty u/s 271D of the Act for contravening section 269SS of the Act. On appeal, it was noticed by the appellate authority that the plea of due exigency was not acceptable as, according to him, the loan was taken for discharging another bank loan and in such circumstances it could be by cheque. Before the Tribunal,

paper book was filed which contained the written submissions and the judgments relied upon by the assessee. In addition, at page 9 of the paper book was photo copy of the cash book showing deposit of Rs. 5 lakhs from Jugraj Singh and on the other side there was entry of Rs. 5,10,726 in cash deposited with PSB. It was noticed that even this was unsigned and in any case this by itself would not justify taking of loan in cash from Jugraj Singh. It was also not shown that the assessee as well as Jugraj Singh were not maintaining any bank account. Under the circumstances, it was concluded that the assessee had failed to establish that there existed reasonable cause in taking or accepting any loan or deposit otherwise than by an account payee cheque or account payee bank draft. The effort of the learned counsel for the appellant was to reappraise the material so as to record a finding that there was reasonable cause for the assessee to have accepted the loan of Rs. 5 lakhs from Shri Jugraj Singh in cash. The view which has been taken by the Assessing Officer, the Commissioner of income tax (Appeals) and the Tribunal concurrently is a plausible view and it cannot be said that there was any error in the approach adopted by them. Accordingly, we do not find any justification for interference. The scope of section 260A relates to matters where substantial question of law arises for consideration.

10. Adverting to the judgments relied upon by the learned counsel for the appellant it may be noticed that therein the Tribunal had recorded finding of reasonable cause u/s 273B of the Act and on that basis, it was held that no substantial question of law arose. The said cases were decided on individual facts involved therein and no advantage can be derived by the learned counsel for the appellant from the same. In view of the above, no substantial question of law arises and the appeal stands dismissed.