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Cit Vs. Makhija Construction

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Court : Madhya Pradesh

Decided On : Mar-14-2002

Reported in : (2002)176CTR(MP)145

Appeal No. : IT Appeal No. 3 of 2002 14 March 2002

Appellant : Cit

Respondent : Makhija Construction

Advocate for Pet/Ap. : R.L. Jain, *for the Revenue*

Judgement :

By the Court

Heard Shri R.L. Jain, learned counsel for appellant on the question of admission.

Revenue has filed this appeal under section 260A of the Income Tax Act, 1961, against the order of Tribunal, Indore, dated 22-8-2001, whereby appeal of revenue has been rejected. Brief facts material for deciding the said case, are mentioned herinbelow.

2. Respondent-assessee firm raised loan from six parties amounting to Rs. 2,15,000. These loans were not through account payee cheques but were only through crossed cheques. Penalty proceedings were initiated by Deputy Commissioner Indore. In response to the show-cause notice issued to assessee, it

was submitted by it that six creditors were members of the same family. The family had two partnership firms, known as Gujarat Construction Company and assessee M/s Makhija Construction Company, in which different family members were partners.

On consideration of the submissions so advanced Deputy Commissioner imposed a penalty of Rs. 2,15,000 on assessee.

Assessee being aggrieved by the said penalty preferred an appeal before the Commissioner (Appeals). The appellate authority recorded a finding that there was only a minor deviation as instead of paying the amounts by crossed account payee cheques, the same were paid only by crossed cheques. Thus, the penalty imposed by Deputy Commissioner was quashed. Feeling aggrieved by the said order revenue preferred an appeal before the Tribunal. Tribunal has rejected appeal of the assessee (sic revenue) mainly on the ground that cheques were crossed and were deposited in the account of assessee-firm through banking channel. Consequently and in the result provisions of section 269SS of the Act could not be attracted. A further finding has been recorded that bank has also issued a certificate in this regard that all the amounts of six creditors have been shown in the account of Makhija Construction Company, i.e., assessee. Bank has further mentioned that all the six transactions in question were as per the banking norms and there was no flaw in the transaction, whereby the aforesaid amount of Rs. 2,15,000 was transferred in the account of assessee. Tribunal has come to the conclusion that for such minor deviation no penalty could have been imposed on the assessee as otherwise the transaction appears to be genuine, proper and bona fide.

In view of the aforesaid finding recorded by the Tribunal we find that there is no merit and substance in the is appeal. It does into involve any substantial question of law and the appeal hereby fails and dismissed.

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