

Cit Vs. Vikramajit Singh

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Court : Delhi

Decided On : Apr-24-2006

Reported in : [2007]292ITR274(Delhi)

Judge : T.S. Thakur and; Shiv Narayan Dhingra, JJ.

Appeal No. : IT Appeal No. 589 of 2006

Appellant : Cit

Respondent : Vikramajit Singh

Disposition : Appeal dismissed

Judgement :

1. For the assessment year 2001-02, the respondent- assessed claimed to have made certain repayment of what according to it was a loan taken from a sisterconcern. The assessing officer held that this repayment was contrary to the provisions of Section 269T of the Income Tax Act, which inter alia, required that such repayment could not be made except by an account payee cheque or an account payee bank draft drawn in the name of the person who had advanced the loan. A penalty of Rs. 17,88,090 was accordingly levied by the assessing officer upon the assessed under Section 271E of the said Act. Aggrieved the assessed appealed to the Commissioner (Appeals) who reversed the order passed by the assessing officer holding that Section 269T had no application to the repayment of a loan. The Commissioner (Appeals) held that there was a clear distinction

between a deposit and a loan and that the statute as it existed during the year under consideration dealt with repayment of deposit and not with repayment of loans. The Commissioner (Appeals) further held that Section 271E which empowered the authorities to levy a penalty was during the relevant assessment year restricted to penalty in cases where the repayment of deposit has been made otherwise than by way of an account payee cheque or draft drawn in the name of the lender. On either account, therefore, levy of penalty by the assessing officer was impermissible according to the Commissioner (Appeals).

2. Aggrieved by the above order, the revenue appealed to the Tribunal inter alia, contending that the provisions of Section 269T had been subsequently amended so as to cover a loan transaction also. It was argued that since the said amendment was clarificatory in nature, the provisions of Section 269T, even in its unamended form, ought to be made applicable to cases involving repayment of loans. The Tribunal has by the order under challenge before us repelled the said contention and affirmed the view taken by the Commissioner (Appeals).

3. We have heard learned Counsel for the parties at some length and perused the order under challenge. The Commissioner (Appeals), has, while holding that Section 269T of the Income Tax Act was not applicable to loans and that there was a distinction between a loan and a deposit, placed reliance upon a Single Bench decision of this Court in *Baidya Nath Plastic Industries (P) Ltd. v. K.L. Anand, Income Tax Officer* : [1998]230ITR522(Delhi) . In fairness to Ms. Bansal, we must record that even she did not dispute that Section 269T before its amendment in terms applied only to 'deposits' and not to 'loans'. What she contended was that the amendment of the said provision bringing loans also within its purview was only clarificatory especially when there was no change in the definition of the term 'deposit' given in the Explanation to Section 269T. There is, in our opinion, no merit in the contention that 'deposit' is synonymous to 'loan' for purposes of Sections 269T and 271E of the Act. In *Baidya Nath's case (supra)*, this Court has discussed the legal position on the subject and clearly held that 'deposit' is different from 'loan'. That view has commended itself to us. Not only that the Parliament has while introducing the amendment to Section 269T and Section 271E of the Act clearly recognised the fact that the existing provision did

not have any application to loans and that the amendment to the same was intended to extend its scope to loans also. This is evident from the following passage appearing in the Memorandum Explaining the Provisions in the Finance Bill, 2000, under the heading 'Modification of the provisions relating to mode of repayment of certain deposit':

Under the existing provisions of the Section 269T of the Act, no branch of a banking company, co-operative bank and no other company or co-operative society or partnership firm or other person, can repay any deposit made with such entity otherwise than by an account payee cheque or an account payee draft drawn in the name of the person who has made the deposit, in case where the amount of deposit or the aggregate of the deposit held, exceeds twenty thousand rupees.

The Explanation below Sub-section (2) of the said provisions speaks of a person other than a company includes deposit of any nature. The said section, which is intended to counteract tax evasions, is applicable only to deposit. It is proposed to substitute the existing section by a new section so as to extend its scope to loans also, and delete provisions contained therein, which have become obsolete.'

4. In the light of the above, we see no difficulty in holding that 'loans' came within the purview of Section 269T and the penalty provisions of Section 271E only after the amendment. The amendment was not simply clarificatory as argued by Mrs. Bansal. The fact that there was no change in the meaning assigned to the expression 'deposit' in the Explanation is in our opinion wholly inconsequential. The Explanation after the amendment defines the expression 'loan' or 'deposit' as under:

'loan or deposit' means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or deposit of any nature.

5. The Tribunal was in the light of what is stated above justified in holding that the penalty levied by the assessing officer was legally unsustainable. No substantial question of law arises for our consideration in this appeal which fails and is hereby

dismissed.

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