

Krishna Kr. Pathak (Huf) Vs. Ito

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Court : Income Tax Appellate Tribunal ITAT Kolkata

Decided On : Mar-12-2004

Reported in : (2004)90TTJ(Kol.)940

Appellant : Krishna Kr. Pathak (Huf)

Respondent : ito

Judgement :

The assessee has filed this appeal for the asst. yr. 1993-94 against the order of the learned Commissioner (Appeals), dt. 29-10-2002, by which the learned Commissioner (Appeals) has confirmed the penalty under section 271D of Rs. 10,000 for violation of section 269SS of the IT Act.

The assessing officer stated that the assessee accepted loan of Rs. 10,000 by way of cash from Sri Krishna Kr. Pathak during the financial year 1992-93 relevant to the assessment year under appeal. The assessing officer stated that the aggregate amount of unpaid loan exceeded Rs. 20,000 and as such the assessee violated the provision of section 269SS of the Act. The assessing officer levied the penalty under section 271D of the Act of Rs. 10,000 which is 100 per cent of the loan taken in cash in violation of section 269SS of the Act. Being aggrieved, the assessee filed appeal before the first appellate authority.

The assessee contended that Sri Krishna Kr. Pathak is the Karta of the assessee (HUF) and he handles the affairs of both his personal and that of the assessee (HUF). There was a current account between the assessee (HUF) and the Karta

and there is no relation of lender and lendee or depositor or deposit between the two. The transaction between them was in the nature of temporary adjustment/accommodation. It was contended that Shri Krishna Kr. Pathak, Karta of the assessee(HUF), spent Rs. 10,000 on account of gifts on marriages of the relatives, on behalf of the assessee (HUF) and debited the assessee (HUF) account. However, the learned Commissioner (Appeals) did not accept the contention of the assessee and held that section 269SS of the Act does not provide an exception and as such confirmed the penalty imposed by the assessing officer. Hence, the assessee (HUF) is in further appeal before the Tribunal.

During the course of hearing of the appeal, the learned authorised representative of the assessee made his submissions on the lines of the submissions made before the authorities below. He further submitted that the transaction between the assessee (HUF) and Karta of the assessee (HUF) does not fall within the mischief of section 269SS of the Act. He further submitted that the said temporary accommodation or adjustment between the assessee (HUF) and the Karta does not tantamount to loan or deposit and as such, section 269SS of the Act is not attracted. He submitted that it was a debt only by passing a journal entry and no interest was payable on the outstanding amount. On the other hand, the learned Departmental Representative relied on the orders of the authorities below.

We have carefully considered the rival contentions and have perused the orders of the authorities below. We observe that the assessee (HUF) and the Karta of the assessee (HUF) were maintaining current account with each other and the transactions between them were in the nature of temporary adjustment/accommodation and there was no cash loan or deposit by the Karta of the assessee(HUF). However, the department has not disputed the submission of the assessee (HUF) that no interest was paid or payable or received by either side. It has been held by the Ahmedabad Bench of the Tribunal in *Shrepak Enterprises v. Dy. CIT* (1998) 64 ITD 300 (Ahd) that provisions of section 269SS are not applicable for payment of amount made by partner to a firm and no penalty is imposable under section 271D of the Act. The Cochin Bench of the Tribunal has also held in *Muthoot M. George Bankers v. Asstt. CIT* (1993) 46 ITD 10 (Coch) that temporary accommodation or adjustment between sister concern does not

tantamount to loan or deposit and as such, the transactions do not attract section 269SS of the Act. The Hyderabad Bench of the Tribunal has also considered the similar issue in the case of Dillu Cine Enterprises (P) Ltd. v. Addl. CIT (2002) 80 ITD 484 (Hyd) wherein the director of a private company maintained current account with the company where he deposited and withdrew funds as per exigencies of the company. It was held that such transactions had nothing to do with evasion of tax or concealment of income and the transactions did not fall within the mischief sought to be remedied by section 269SS of the Act. The Pune Bench of the Tribunal in the case of Sun Flower Builders (P) Ltd. v. Dy. CIT (1997) 61 172/227 (Pune) held that acknowledgement of debt by the assessee-company by passing a journal entry in its books of accounts would not come within the ambit of the words "loan" or "deposit" as mentioned in section 269SS of the Act.

In view of the above, we hold that by passing the journal entry by the Karta of the assessee (HUF) on account of expenditure incurred by assessee (HUF) for giving gifts to relatives on behalf of the assessee (HUF) does not amount to loan or deposit within the meaning of s. 269SS of the Act and as such, no penalty is leviable under section 271D of the Act. Accordingly, we cancel the penalty of Rs. 10,000 as confirmed by the learned Commissioner (Appeals) by allowing the ground of appeal taken by the assessee.

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