Dy. Cit Vs. Ramesh Chandra Sharma

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Court : Income Tax Appellate Tribunal ITAT Jaipur

Decided On : Apr-27-2004

Reported in : (2004)90TTJ(JP.)1061

Appellant : Dy. Cit

Respondent : Ramesh Chandra Sharma

Judgement :

This is an appeal filed by the revenue against the order of the Commissioner (Appeals), dated 11-2-1997, for assessment year 1993-94.

The revenue is agitating on the ground that the learned Commissioner (Appeals) has erred in cancelling the penalty of Rs. 1,01,000 imposed under section 271D of the Income Tax Act for violation of provisions of section 269SS of the Act.

The brief facts of the case are that the assessee had accepted loan/deposit in cash in violation of provisions of section 269SS. The details of such cash/deposit are as under .

The Dy. CIT, Ajmer Range, Ajmer, concluded that these loans/deposits had been accepted in cash without any reasonable cause. Therefore, he imposed penalty of Rs. 1,01,000 under section 271D of the Income Tax Act, 1961. The learned Commissioner (Appeals), after having considered the reasons and various case laws given by the assessee at pp. 2 and 3 of his order, opined that no penalty can be imposed for mere technical violation. The learned Departmental Representative has vehemently argued that the assessee has no reasonable cause to accept loan in cash and the learned Commissioner (Appeals) had deleted this penalty without going into the reasons for accepting loan in cash. The learned Departmental Representative (IT) relied upon the judgments of Hon'ble Supreme Court in the case of Asstt. Director of Inspection (Investigation) v. Kum. A.B. Shanthi (2002) 255 ITR 258 (SC) and Hon'ble Rajasthan High Court in the case of CIT v. Manoj Lalwani (2003) 260 ITR 590 (Raj). On the basis of these decisions, the learned Departmental Representative (IT) contended that validity of the provisions contained in section 40AB (sic-269SS) had been upheld and the penalty can be cancelled only for reasonable cause.

The learned authorised representative of the assessee contended that provisions of section 269SS regulate the mode of acceptance of loans and deposits as a measure to prevent tax evasion as explained in CBDT Circular No. 387, dated 6-7-1984. He also relied upon the case of Hindustan Steel Ltd. v. State of Orissa (1972) 83 ITR 26 (SC) and contended that if it is proved that the deposit was not taken with the object of evading any payment of income-tax, the penal action deserves to be dropped. If there is only a technical or venial breach of law, the provision of section 271D which is exceptional and very harsh should not be invoked. He also relied upon the decision of Hon'ble Rajasthan High Court in the case of Kantilal Purshottam & Co. v. CIT (1985) 155 ITR 519 (Raj) wherein it was held that the benefit of ambiguity should go to the assessee and for technical default no penalty can be imposed. He also argued that from the facts it is evident that no deposit in excess of Rs. 20,000 was accepted by the assessee in particular set of books of account. There was no guilty intention on the part of the assessee. The assessee was under the bona fide belief that when a particular transaction does not exceed Rs. 20,000, no penalty can be levied under section 271D. At the end, the learned authorised representative relied upon the decision of Hon'ble Supreme Court in the case of Motilal Padampat Sugar Mills Co. Ltd. v.State of Uttar Pradesh & Ors. (1979) 118 ITR 326 (SC) and contended.

that it is only because of mere ignorance of law that the assessee accepted these loans in cash.

We have heard the rival submissions. We also find that none of the cash transactions involves cash exceeding Rs. 20,000. In the case of CIT v.Aloo Supply Co. (1980) 121 ITR 680 (Ori), the Hon'ble Orissa High Court held that the appellant was under the bona fide belief that provisions of section 271D was not applicable to such transactions. The learned authorised representative has rightly placed reliance in the case of Motilal Padampat v. State of Uttar Pradesh (supra), wherein it is held that there is no presumption that every person knows the law. It is often said that every one is presumed to know the law, but that is not a correct statement. There is no such maxim known to the law. In our opinion, this is a case of technical violation and venial breach.

Therefore, the learned Commissioner (Appeals) has rightly cancelled the penalty levied by the Deputy Commissioner Range. Therefore, we decline to interfere with the order of the Commissioner (Appeals).