

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)
BEFORE SH. M. BALAGANESH, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 1748 & 1749/Del/2012, A.Y. 2002-03

m/S. Sofitra Impex (P) Ltd. C-34, Zakir Bagh, New Delhi PAN : AAECs1474R	Vs.	ACIT, Range-9 New Delhi
Appellant		Respondent

Assessee by	Dr. Rakesh Gupta, Adv. & Sh. Somil Agarwal, Adv.
Revenue by	Shri Anuj Garg, Sr. DR

Date of hearing:	05.10.2023
Date of Pronouncement:	11.10.2023

ORDER

Per Anubhav Sharma, JM :

These two appeals have been filed by the assessee against the orders dated 24.02.2009 and 18.02.2009 of Id. CIT(A)-XII, New Delhi for the assessment year 2002-03 on the ground that the action of the Ld. CIT(A)-XII, New Delhi by confirming the penalty u/s. 271D of Rs.13,86,244/- and u/s. 271E of Rs.2,95,500/-, is wrong, arbitrary, illegal and against the facts and circumstances of the case.

2. Since the facts involved in both the appeals are common, hence, for the sake of convenience, the same are being disposed off together by this consolidated order.

3. The brief facts of the case are that during the scrutiny proceedings of the assessee company, the Assessing Officer noted that the assessee company had received cash of Rs.6,29,000/- from Anwar Jalil Ahmed Khan, Rs. 7,30,000/- from Sofia Praveen Khan, both directors of the assessee-company and Rs.27,244/- from M/s. Softech Solutions Pvt. Ltd. On being apprised of the fact by the Assessing Officer, the assessee at first instance claimed before the AO that the assessee company had not accepted any cash deposit and in support submitted a cash book where there was no mention of receipts of the above amounts. The Assessing Officer treated the said cash book as unauthentic as it was not prepared as per accounting principles. The Assessing Officer also observed in the assessment proceedings that the auditor of the company in column No. 24(a) & (b) of Form 3CD, has not reported the details of amounts received and repaid in view of the provisions of section 269SS & 269T, whereas the Assessing Officer on scrutiny of accounts found that the assessee company has taken loan in cash on different dates & repaid the same in cash in contravention of section 269SS & 269T of the Act.

4. On the basis of above facts, the Assessing Officer initiated penalty proceedings u/s. 271D & 271E of the Act. In the penalty proceedings, the

assessee submitted that the money was received from director Smt. Sofia Praveen Khan as share application money for allotment of share capital, but the Board rejected the allotment of share and the money so received was repaid to her in cash. The Assessing Officer observed that it was neither a loan nor share application money, but was a temporary deposits with the company, as no interest is said to have been paid by the assessee on its repayment which is the precondition of a loan. The Assessing Officer, therefore, concluded that the assessee has received the money in cash in violation of section 269SS and repaid the same in cash in violation of section 269T of the Act and imposed a penalty of Rs.13,86,244/- u/s. 271D and Rs.2,95,500/- u/s. 271E of the Act. The assessee carried the matter in appeals before the Id. CIT(A), who after considering the penalty orders and the submissions of the assessee, confirmed the penalty orders passed by the Assessing Officer.

5. Thereafter the assessee had approached the Tribunal and by order dated 10.01.2017 the Tribunal has disposed of the appeals collectively with following findings :

“5. The Id. AR of the assessee contended that the amount was deposited by Mrs. Sofia Praveen Khan only of Rs.7,30,000/- and not Rs.13,86,244/-. This amount was received as share application money for issue of share capital in the company. She is a NRI and had agricultural income which is not taxable in India. When the Board of Directors rejected the offer for purchase of shares of the company, then the share application money was returned by cheque No. 87757 and 87755 for Rs.4,00,000/- and Rs.3,00,000/- respectively. No any cash payments have been received from Sh. Anwar Jalil Ahmed Khand the AO has wrongly

mentioned the same amount twice received from Mrs. Sofia Praveen Khan as mentioned in the reply of the assessee placed at paper book page 21 & 22 before us. Therefore, no penalty is leviable against the assessee company. Reliance is placed on the following judgments :

- (i). CIT v. Idhayam Publications Ltd., 285 ITR 221 (Mad.)*
- (ii). CIT vs. Sunil Kumar Goel, 315 ITR 163 (P&H)*
- (iii). CIT vs. Balaji Traders, 303 ITR 312 (Mad.)*
- (iv). CIT vs. Maheshwari Nirman Udyog, 302 ITR 201 (Raj.)*
- (v). CIT vs. Bhagwati Prasad Bajoria(HUF) 263 ITR 487 (Gau.)*
- (vi). ADI vs. Kumari A.B. Shanthi, 255 ITR 258 (SC)*
- (vii). Smt. Dimple Yadav Appeal No. 174 of 2015 dt. 21.08.2015(All).*

6. The ld. DR, on the other hand, relied on the orders of the Assessing Officer and submitted that the assessee clearly violated the provisions of section 269SS and 269T of the Act and all the case laws relied by the ld. DR do not support the case of assessee because the assessee could not be able to submit any reasonable cause under which it received the money in cash and repaid the same in cash. The AO noted in the assessment order at page No. 2 & 3 that the cash book submitted was not authentic and manipulated one. The Tax Auditor has also hidden the actual cash payments received and paid in violation of section 269SS and 269T in its tax audit report.

7. We have considered the rival submissions and have gone through the entire material available on record and we find that the assessee has taken diverse stands at different points of time. In the assessment proceedings, initially the assessee stated that no cash payment has been received. In the penalty proceedings, it was stated that cash payment was received as share application money and was repaid to Sofia Praveen Khan on rejection of the offer by the Board of Directors. The appellant could not bring any evidence on record to support his claim regarding the amount received from Sofia Praveen Khan towards share application money and the rejection of the share capital allotment by the Board. The appellant has also failed to rebut the finding of the authorities below that once, both the depositors were the directors of assessee company, there was no reason to believe that the proposed offer of share capital allotment was withdrawn, for which no evidence is laid on record. The assessee also could not adduce any evidence before us to support its stand that the amount so received from

Sofia Praveen Khan was repaid by way of cheques or the amounts received from Sofia Praveen Khan was mentioned twice by the AO. The cash book submitted was not found authentic, as it was an extract typed on A-4 size paper as mentioned by the ld. CIT(A) in the impugned order. There is also no plausible explanation with respect to the amount received from M/s. Softech Solutions Pvt. Ltd. The Tax Auditor has also not reported true facts in respective columns of tax audit report as mentioned above. In presence of all these facts, we do not find any justification to interfere with the conclusions of the ld. Authorities below that the appellant has taken loan in contravention of section 269SS and has repaid the same in contravention of section 269T of the Act entailing penalty u/s. 271D and 271E of the Act. The case laws relied on behalf of the appellant do not render support to the appellant, as the appellant in the instant case has failed to explain any reasonable cause under which it received and repaid the loan in cash in violation of section 269SS and 269T of the Act. The ld. CIT(A) has dealt with the issue in detail and has passed a reasoned order. We accordingly, find no justification to interfere with the orders of the ld. CIT(A). As a result, both the appeals of the assessee deserve to be dismissed.

8. In the result, both the appeals of the assessee are dismissed.”

6. However the assessee preferred Miscellaneous application no. 667 and 661/Del/2017 which were allowed on 03.12.2021 with following order :-

“The order in this case has been passed on 10.01.2017. During the hearings, the Assessee has submitted a brief note containing the two judgments namely :-

1) Motilal Padampath Sugar Mills Co. Ltd. V. State of UP 118 ITR 326 (SC)

2) Hindustan Steel Limited V. State of Orissa 83 ITR 26 (SC).

2. M.A. has been filed before us arguing that the two case laws of the Supreme Court have not been considered by the Bench while adjudicating the issue of penalty levied u/s 269 SS and 269T.

3. We have gone through the order passed by the Tribunal which duly considered (1) CIT V. Idhayam Publications Ltd. 285 ITR 221 (Mad), (2) CIT V. Sunil Kumar Goel, 315 ITR 163

(P&H) (3) CIT V. Balaji Traders, 303 ITR 312 (Mad) (4) CIT V. Maheshwari Nirman Udyog, 302 ITR 201 (Raj) (5) CIT V. Bhagwati Prasad Bajoria (HUF), 263 ITR 487 (Gauhati) and find that the two Supreme Court judgments relied by the assessee have not been considered. Hence, the order is being recalled.”

7. Accordingly, the matter was heard and Ld. AR initially stressed on the facts that since the order dated 03.12.2021 has mentioned that the initial order dated 10.01.2017 stand recalled therefore, the appeal has to be heard on merits however, we are of the view that the Miscellaneous Application was filed for limited purpose pointing out non-consideration of two judgments of Hon'ble Supreme Court and accordingly the order was recalled to the extent of considering those two judgments and to see if those judgments in any way lead to a different consequence than one made by the Co-ordinate Bench earlier.

8. Ld. AR has submitted that out of bona fides and being unaware of the state of law with regard to extent to which cash amount can be transacted the two Directors who are NRI had given the cash loan which was also repaid. Ld. AR has relied the judgment of Hon'ble Supreme Court of India in the case of *Hindustan Steel Ltd. vs. State of Orissa (supra)* to submit that as the nature of proceedings are Quasi-criminal proceedings so it is required to ascertain if there was a deliberate act of defiance of the technical provisions. Ld. AR further relied the Hon'ble Supreme Court of India in the case of *Motilal Padampat Sugar Mills Co. Ltd. vs. State of Uttar Pradesh (supra)* to contend that both Directors were non-resident and not aware of technicalities of provisions so assessee cannot be held liable for breach of technical provisions of the Act.

8.1 Ld. DR on the contrary, submitted that the violation is not technical but of substantive provisions which are meant to curtail undisclosed income transactions.

9. After giving thoughtful consideration to the matter on record and the submissions made, the Bench is of considered view that the two judgments cited by Ld. AR in no way of effects the merits of the case as discussed in para 7 of the order dated 10.01.2017 and reproduced above. The bench has duly appreciated the conduct of assessee as with regard to change of stand and how the assessee company was unable to establish before the Tax Authorities on the basis of any evidence that the disputed loans received in cash was even a genuine loan transaction.

10. The Bench is of considered opinion that violation was of Section 269SS of the Act which deals with the modes of accepting certain loans deposits and specified sums and Section 269T of the Act which deals with the modes of repayment of certain loans for deposits are violation which are not to be examined from the perspective the person who has given the loan or to whom the loan was returned but from the perspective of the recipient of the loan. Thus, the innocence pleaded on account of ignorance of law of Directors who are claimed to be non-resident is insignificant. There is no question of any benefit to the assessee company on the basis of claim of bona fides of the Directors. The provisions of Section 269SS and 269T of the Act imposed statutory liability

and cannot be said to held to be mere technical violation in case of companies. Consequently considering the two judgments relied and cited before the Bench at the time of arguments, no benefit can be given to the appellant. The grounds raised have no substance and **the appeals are stand dismissed.**

Order pronounced in the open court on 11th October, 2023.

Sd/-

**(M. BALAGANESH)
ACCOUNTANT MEMBER**

Sd/-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:-11 .10.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**