THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 21.05.2014

\+ **ITA 232/2014**

COMMISSIONER OF INCOME TAX-VI ..... Appellant

versus

WORLDWIDE TOWNSHIP PROJECTS LTD ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr Rohit Madan, Mr P. Roy Choudhary and Mr Akash Vajpai.

For the Respondent: None.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J (ORAL)

1. This is an appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act'). The appellant impugns the order dated 31.10.2013 passed by the Income Tax Appellate Tribunal (ITAT), whereby the ITAT had held that the penalty order passed by the Assessing Officer under Section 271D of the Act was unsustainable, as it was passed beyond the period of six months as prescribed under Section 275(1)(c) of the Act.

2. The learned counsel for the Revenue contends that the ITAT erred in holding that Section 275(1)(c) of the Act was applicable in the present case. According to the Revenue, Section 275(1)(a) of the Act would be applicable in respect of the penalty imposed in the facts and circumstances

of the case and not Section 275(1)(c) of the Act.

3. Briefly stated the facts are:-

3.1 That the respondent/assessee filed its return of income for the assessment year 2007-08 on 30.10.2007. The return was taken up for scrutiny and the Assessing Officer found that during the year in question, the assessee had shown purchases of land worth ₹14.22 crores which was reflected as closing stock in trade. The assessee had also reflected a sum of ₹14,25,74,302/- as Sundry Creditors. The assessee explained that the Sundry Creditor reflected in its books was M/s PACL India Ltd., which had purchased lands on behalf of assessee from several land owners. M/s PACL India Ltd. had made payments through demand drafts to various land owners from whom the land was acquired on behalf of the assessee. The Assessing Officer concluded, that the transaction as disclosed by the assessee amounted to M/s PACL India Ltd. extending a loan to the assessee. The Assessing Officer further concluded that the said transaction fell foul of the provisions of Section 269SS/269T of the Act, which proscribed any person from accepting any loan or deposit exceeding ₹20,000/- otherwise than by an account payee cheque. Since no funds had passed through the bank accounts of the assessee for acquisition of the lands or the alleged loan extended by M/s PACL India Ltd, the Assessing Officer concluded that penalty proceedings under Section 271D of the Act were liable to be initiated. Although, the Assessing Officer, by its assessment order dated 30.12.2009, accepted the income as returned by the assessee he issued directions for initiating penalty proceedings under Section 271D of the Act for alleged violation of the provisions of Section

269SS/269T of the Act.

3.2 The assessment order dated 30.12.2009 was carried in appeal by the assessee, *inter alia*, on the ground that the conclusion of the Assessing Officer, that the assessee had infringed the provisions of Section 269SS/269T of the Act was erroneous, as no cash payments had been made or received by the appellant. The assessee also challenged initiation of penalty proceedings under Section 271(1)(c) and 271D of the Act. The CIT (Appeals) rejected the appeal filed by the assessee by an order dated 23.02.2012, whereby it held that since no penalty had been levied by the Assessing Officer under Section 271(1)(c) or 271D of the Act, the appeal filed by the assessee was pre-mature and could not be adjudicated.

3.3 Thereafter, the Assessing Officer passed a penalty order dated 10.03.2012 under Section 271D of the Act whereby the Assessing Officer held that the assessee had violated the provisions of Section 269SS of the Act as sums aggregating ₹14,25,74,302/- were transferred to the loan account in the form of book entries, otherwise than through an account payee cheque or a account payee draft. This according to the Assessing Officer contravened the provisions of Section 269SS of the Act and, accordingly, a penalty of ₹14,25,74,302/- was imposed.

3.4 This order was also carried in appeal before the CIT (Appeals). The assessee impugned the penalty order on the grounds that it was barred by limitation as well as on merits. The CIT (Appeals) rejected the contentions of the assessee that penalty order was beyond the prescribed period of limitation and held that the order fell within the purview of Section 271(1)(a) and not Section 275(1)(c) of the Act. However, on merits the

CIT (Appeals) referred to the decision of this Court in ***CIT v. Noida Toll Bridge Co. Ltd.***: **262 ITR 260** and negated the finding of the Assessing Officer that Section 269SS of the Act was violated in the given circumstances of the case.

3.5 The aforementioned order of CIT (Appeals) dated 28.01.2013 was challenged by both the Revenue as well as the assessee. Whilst the assessee was aggrieved with the conclusion of CIT (Appeals) that the penalty order was within time, the Revenue was aggrieved by the finding that Provisions of Section 269SS of the Act were not violated. The ITAT accepted the contention of the assessee that penalty order under Section 271D of the Act was barred by time as the provisions of Section 271(1)(c) of the Act were applicable in the given facts of the case. In view of this finding, the ITAT concluded that the appeal preferred by the Revenue has become infructuous.

4. The learned counsel for the Revenue has contended that the assessment order for the assessment year 2007-08 was passed on 30.12.2009. The assessee's appeal, impugning this order before CIT (Appeals), was rejected on 23.02.2012. According to the Revenue, an order imposing penalty under Section 271D of the Act could be passed till 31.03.2013 (i.e. one year after the end of the financial year 2011-12 during which the appeal order was passed). It was submitted that since the penalty order under Section 271D of the Act was passed on 10.03.2012, the same was within the period prescribed under Section 275(1)(a) of the Act. The said contention is permitted on the basis that provisions of Section 275(1)(a) of the Act are applicable. This was disputed by the assessee. It is

the assessee's case that in the given facts and circumstances, Section 275(1)(c) of the Act is applicable which provides that the penalty order has to be passed in the financial year in which the proceedings for imposing the penalty are initiated or within six months of initiation of such proceedings, whichever is later. Initiation of proceedings was referred to in the assessment order dated 30.12.2009. Thus, the time period for imposing penalty expired on 31.03.2010. The penalty order refers to a show cause notice dated 07.03.2011. There is some controversy whether this show cause notice was in fact, issued. However, without going into this controversy, it is apparent that if Section 275(1)(c) of the Act is applicable then in any view the period for passing the penalty order would expire within six months of the said date.

5. Concededly, if Section 275(1)(c) of the Act is applicable, the penalty order is beyond the prescribed period. In the present case, the penalty sought to be imposed on the assessee is for alleged violation of Section 269SS of the Act. It is well settled that a penalty under this provision is independent of the assessment. The action inviting imposition of penalty is granting of loans above the prescribed limit otherwise than through banking channels and as such infringement of Section 269SS of the Act is not related to the income that may be assessed or finally adjudicated. In this view Section 275(1)(a) of the Act would not be applicable and the provisions of Section 275(1)(c) would be attracted. The Rajasthan High Court in the case of ***Commissioner of Income-Tax v. Hissaria Bros.***: **(2007) 291 ITR 244 (Raj.)** after examining a case which was factually similar to the present one, expressed similar view and held as under:-

> "The expression other relevant thing used in Section 275(1)(a) and clause (b) of Sub-section (1) of section 275 is significantly missing from clause (c) of section 275(1) to make out this distinction very clear.
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> We are, therefore, of the opinion that since penalty proceedings for default in not having transactions through the bank as required under sections 269SS and 269T are not related to the assessment proceeding but are independent of it, therefore, the completion of appellate proceedings arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under sections 271D and 271E may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings and, therefore, clause (a) of sub-section (1) of section 275 cannot be attracted to such proceedings. If that were not so clause (c) of section 275(1) would be redundant because otherwise as a matter of fact every penalty proceeding is usually initiated when during some proceedings such default is noticed, though the final fact finding in this proceeding may not have any bearing on the issues relating to establishing default e.g. penalty for not deducting tax at source while making payment to employees, or contractor, or for that matter not making payment through cheque or demand draft where it is so required to be made. Either of the contingencies does not affect the computation of taxable income and levy of correct tax on chargeable income; if clause (a) was to be invoked, no necessity of clause (c) would arise."

6. The ITAT, following the aforesaid decision allowed the appeal preferred by the assessee. We do not find any infirmity with this view.

7. More importantly, we are unable to appreciate as to how in the given circumstance of the case an offence under Section 269SS of the Act is made out. At this stage, we may refer to Section 269SS of the Act. The relevant extract of the same reads as under:-

"**269SS. Mode of taking or accepting certain loans and deposits**

No person shall, after the 30th day of June, 1984, take or accept from any other person (hereafter in this section referred to as the depositor), any loan or deposit otherwise than by an account payee cheque or account payee bank draft if,—

(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more:

Provided that the provisions of this section shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by,—

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(c) any corporation established by a Central, State or Provincial Act;

(d) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing notify in this behalf in the Official Gazette:

Provided further that the provisions of this section shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and the person by whom the

loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act.

Explanation.—For the purposes of this section,—

(i) "banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949), applies and includes any bank or banking institution referred to in section 51 of that Act;

(ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(iii) "loan or deposit" means loan or deposit of money."

8. A plain reading of the aforesaid Section indicates that (the import of the above provision is limited) it applies to a transaction where a deposit or a loan is accepted by an assessee, otherwise than by an account payee cheque or an account payee draft. The ambit of the Section is clearly restricted to transaction involving acceptance of money and not intended to affect cases where a debt or a liability arises on account of book entries. The object of the Section is to prevent transactions in currency. This is also clearly explicit from clause (iii) of the explanation to Section 269SS of the Act which defines loan or deposit to mean *"loan or deposit of money"*. The liability recorded in the books of accounts by way of journal entries, i.e. crediting the account of a party to whom monies are payable or debiting the account of a party from whom monies are receivable in the books of accounts, is clearly outside the ambit of the provision of Section 269SS of the Act, because passing such entries does not involve acceptance of any loan or deposit of money. In the present case, admittedly no money was transacted other than through banking channels. M/s PACL India Ltd.

made certain payments through banking channels to land owners. This payment made on behalf of the assessee was recorded by the assessee in its books by crediting the account of M/s PACL India Ltd. In view of this admitted position, no infringement of Section 269SS of the Act is made out. This Court, in the case of ***Noida Toll Bridge Co. Ltd.*** *(supra)*, considered a similar case where a company had paid money to the Government of Delhi for acquisition of a land on behalf of the assessee therein. The Assessing Officer levied a penalty under Section 271D of the Act for alleged violation of the provisions of Section 269SS of the Act since the books of the assessee reflected the liability on account of the lands acquired on its behalf. On appeal, the CIT (Appeals) affirmed the penalty. The order of the CIT was successfully impugned by the assessee before the ITAT. On appeal, this Court held as under:-

> "While holding that the provisions of Section 269SS of the Act were not attracted, the Tribunal has noticed that: (i) in the instant case, the transaction was by an account payee cheque, (ii) no payment on account was made in cash either by the assessed or on its behalf, (iii) no loan was accepted by the assessee in cash, and (iv) the payment of Rs. 4.85 crores made by the assessee through IL & FS, which holds more than 30 per cent. of the paid-up capital of the assessee, by journal entry in the books of account of the assessed by crediting the account of IL & FS.
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> Having regard to the aforenoted findings, which are essentially findings of fact, we are in complete agreement with the Tribunal that the provisions of section 269SS were not attracted on the facts of the case. Admittedly, neither the assessee nor IL & FS had made any payment in cash. The order of the Tribunal does not give rise to any question of law, much less a substantial question of law.

We accordingly decline to entertain the appeal. Dismissed."

9. In our view, the present appeal is bereft of any merit and is, accordingly, dismissed.

VIBHU BAKHRU, J

S. RAVINDRA BHAT, J

MAY 21, 2014
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