



\$~R-183

***IN THE HIGH COURT OF DELHI AT NEW DELHI**

Date of Decision: December 12, 2014

+ ITA 1421/2006

THE COMMISSIONER OF INCOME TAX

..... Appellant

Through Mr.Akash Vajpai, Advocate for
Mr.Kamal Sawhney, Senior
Standing Counsel

versus

M/S SIDHARTHA SECURITIES AND TRADERS LTD.

..... Respondent

Through Mr.Prakash Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE V. KAMESWAR RAO

SANJIV KHANNA, J (ORAL)

The present appeal by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act' in short) was admitted for hearing vide order dated 26.11.2007 on the following substantial question of law:-

“Whether in the facts and circumstances of the case, the Income Tax Appellate Tribunal was correct in deleting the penalty imposed by the Assessing Officer under Section 271D of the Income Tax Act, 1961 in respect of journal entries said to have been made by the assessee?”



2. In the present case, penalty order under Section 271D w passed in proceedings relating to assessment year 2001-02. The allegation was that the respondent assessee had taken unsecured loan of Rs.8,52,71,500/- from M/s Oswal Agro Mills Ltd., New Delhi, otherwise than by an account payee cheque or bank draft in violation of Section 269SS of the Act. M/s Oswal Agro Mills Ltd. had discharged the respondent assessee's liability towards creditors. Thus, no amount was paid to the respondent assessee and no cash payments were made. Book entries were made to acknowledge and accept that amount of Rs.8,52,71,500/- was payable by the respondent assessee to M/s Oswal Agro Mills Ltd. It appears that the said payments were made by M/s Oswal Agro Mills Ltd. to enable the respondent assessee acquire shares of group companies and acquisitions were initially shown as investments. The assessee had also debited net interest of Rs.21,775/- in the Profit and Loss A/c for the assessment year 2001-02 as due and payable to M/s Oswal Agro Mills Ltd.. The assessment order passed in the case of respondent assessee for the assessment year 2001-02 is also placed on record. The said assessment order shows that the total income of the assessee was assessed at loss of Rs.37,190/- as against declared loss of Rs.40,590/-. The disallowance of Rs.3,400/- was on account of fee paid to the Registrar of Companies. Thus bona fides of the transactions and book entries were not in debate and were



accepted by the Revenue.

3. The penalty was affirmed in the first appeal by the Commissioner of Income Tax (Appeals). However, the Tribunal has deleted the penalty by the impugned order dated 28.02.2006 relying upon decision of the Delhi High Court in *Commissioner of Income Tax vs. Noida Toll Bridge Co. Ltd. [2003] 262 ITR 260 (Delhi)*.

4. Recently on 20.11.2014 in ITA No.33/2002 titled *Commissioner of Income Tax vs. M/s Ruchika Commercials and Investment Pvt. Ltd.*, we had the occasion to deal with the question whether Section 269SS is violated if there is a book entry through journal and when there is no actual payment in cash, and it has been held that the said provision would not be violated. In the said decision we had relied upon another decision of the Delhi High Court in *Commissioner of Income Tax vs. Worldwide Townships Project Ltd. [2014] 367 UTR 433 (Delhi)*. It has been held that mere book entries would not result in violation of Section 269SS and accordingly penalty under Section 271D cannot be sustained. In the present case also there were mere book entries which had resulted in an amount becoming due and payable by the respondent assessee to M/s Oswal Agro Mills Ltd. M/s Oswal Agro Mills Ltd. had not given any loan or deposit in cash or by way of money to the respondent assessee. M/s Oswal Agro Mills Ltd. had made payments to third party creditors of the respondent assessee.



In view of the said payments to the creditors, book entries were made in the journal of the respondent assessee, acknowledging their liability to pay the said amount to M/s Oswal Agro Mills Ltd.

5. In view of the aforesaid factual position, the question of law mentioned above has to be answered in favour of the respondent assessee and against the appellant revenue.

The appeal is disposed of. No costs.

SANJIV KHANNA, J.

V. KAMESWAR RAO, J.

DECEMBER 12, 2014/km