

आयकर अपीलीय अधिकरण, मुंबई

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES 'A' MUMBAI**

सर्वश्री आय.पी. बंसल, न्यायिक सदस्य एवं चंद्र पुजारी, लेखा सदस्य के समक्ष

**BEFORE SHRI I.P. BANSAL, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA NO. 720/MUM/2011(A.Y. 2003-04)

ITA NO. 721/MUM/2011(A.Y. 2004-05)

Chemfert Traders (Bombay) Pvt. Ltd.

169, Vinod Villa, 11th Road,
Khar (East), Mumbai 400 052

PAN: AAACC1557K

(Appellant)

The ACIT 1(1),

Mumbai.

Vs. (Respondent)

Appellant by : Shri M. Rajshirke

Respondent by : Shri Neil Philip

Date of hearing : 18/02/2015

Date of pronouncement : 18/02/2015

ORDER

PER I.P.BANSAL, J.M:

Both these appeals are filed by the assessee and are directed against two separate orders passed by Ld. CIT(A) dated 20/08/2010 for assessment years 2003-04 and 2004-05. Grounds of appeal read as under:

“On the facts and in the circumstances of the case and in law the learned CIT(A)’s erred in confirming the penalty of Rs.50,000/- levied by the assessing officer, u/s. 271D of the I.T. Act, 1961 on account of contravention of provisions of section 269SS of the I.T.Act, 1961.”

2. The assessee company is engaged in the business of manufacturing and trading of fertilizers. Fertilizers manufactured by the assessee are sold in Satara, Sanghli and Kolhapur Districts of Maharashtra to farmers and various farmers co-operative societies. The sales are done by salesman appointed by the company district wise. According to the submissions made by the assessee before the AO, for the purpose of running the business, the assessee company was accepting loans from various parties due to sudden requirement of the business, which include relatives of one of the salesman. In respect of assessment year 2003-04 the following loans were obtained by the assessee from the relatives of salesman namely Mr. Sopan Bhoite.

Sr.No.	Name of the party	Transaction	Date of transaction	Amount (Rs.)
1.	R.D.Bhoite	Loan taken	14.10.2002	25,000/-
2.	Vikas S. Bhoite	Loan taken	14.10.2002	25,000/-
			Total	50,000/-

The aforementioned loans were returned back in the assessment year 2004-05 as follows:

Sr.No.	Name of the party	Transaction	Date of transaction	Amount (Rs.)
1.	R.D.Bhoite	Loan repaid	10.03.2004	25,000/-
2.	Vikas S. Bhoite	Loan taken	10.03.2004	25,000/-
			Total	50,000/-

2.1 As aforementioned amount exceeded a sum of Rs.20,000/-, the AO applying the provisions of section 269SS of the Income Tax Act, 1961 (the Act), which was violated, levied penalty under section 271D of the Act of the equal amount for A.Y 2003-04 and for the A.Y. 2004-05 for the violation of section 269T, penalty under section 271E of equal amount is imposed. It was explained that the assessee has paid interest on the loans to the said parties and the same has also been

accounted for in the books. The reasons, why the loan was accepted and repaid in cash is that both the above parties are farmers and neither they have any bank account nor there is any bank in their village, therefore, the loan was accepted in cash as well as was repaid in cash. It was submitted that according to the exceptions laid down in the section, where the loan is accepted and repaid to agriculturist, who did not have bank account no penalty should be levied as the default would be mainly technical in the nature. Thus, it was pleaded before AO that no penalty should be levied. However, AO did not accept such submission of the assessee and levied the penalty. Ld. CIT(A) has also confirmed the same. Aggrieved by this, assessee filed aforementioned appeals.

3. Apart from reiterating the contentions raised before AO and Ld. CIT(A), Ld. AR of the assessee has placed reliance on the decision of Hon'ble Madras High Court in the case of CIT vs. Balaji Traders, 303 ITR 312 (Mad), in which it has been held that where money was received for commercial expediency and necessitated by business and there was no revenue loss, levy of penalty under section 271D would not be justified.

3.1 Reliance was also placed on the decision of Hon'ble Rajasthan High Court in the case of CIT vs. Maheshwari Nirman Udyog (2008) 302 ITR 201 (Raj), ITAT Chandigarh Bench in the case of DCIT vs. Flat and Housing Promoters, 303 ITR (AT) 453(Chd), wherein it has been held that where creditors were agriculturists in remote villages and they did not have any bank account before making deposit with the assessee, then it should be accepted as reasonable explanation and penalty should not be levied. Reference was also made to the decision of Hon'ble Punjab & Haryana High Court in the case of CIT vs. Saini Medical Stores,, 277 ITR 420 (P&H) to contend that bonafide and genuine transactions would constitute

reasonable cause for not invoking the provisions of section 271D and 271E of the Act.

3.2 Reference was also placed on the decision of Hon'ble Bombay High Court pronounced on 12/6/2012 in the case of CIT vs. Triumph International Finance (I) Limited (I) Ltd., in Income Tax Appeal No.5746 of 2010, copy of which was placed on our record to contend that in absence of any finding recorded in the assessment order or in the penalty order to the effect that repayment of loans/deposit was not under a bonafide transaction and was made with a view to evade tax, the cause shown by the assessee was a reasonable cause and in view of section 273B no penalty could be imposed.

4. On the other hand, Ld. DR relied upon the order passed by AO and Ld. CIT(A).

5. We have heard both the parties and their contentions have carefully been considered. In the present case, in assessment year 2003-04 cash loans were obtained and in A.Y 2004-05 they were repaid. According to the plea raised before AO as well as Ld. CIT(A), the persons who have advanced these loans to the assessee are relatives of a salesman who reside in a village and were having no bank account. Such contention of the assessee has not been discarded or disproved. It is also not mentioned in the penalty order that the aforementioned amount taken by the assessee in violation of section 269SS and repayment thereof in violation of section 269T was not bonafide transaction and the same was made with a view to evade tax. If it is so, then according to the decision of Hon'ble Bombay High Court in the case of CIT vs. Triumph International Finance (I) Ltd. (supra), no penalty is imposable either under section 271D or under section 271E as

the explanation submitted by the assessee would be considered to be reasonable cause under section 273B of the Act. For the sake of completeness the observations of their Lordships from para-25 of the said decision are reproduced below:

“25. In the result, we hold that the Tribunal was not justified in holding that repayment of loan/deposit through journal entries did not violate the provision of Section 269T of the Act. However, in the absence of any finding recorded in the assessment order or in the penalty order to the effect that the repayment of loan/deposit was not a bonafide transaction and was made with a view to evade tax, we hold that the cause shown by the assessee was a reasonable cause and, therefore, in view of Section 273B of the Act, no penalty under section 271E could be imposed for contravening the provisions of section 269T of the Act.

5.1 In view of above discussions, we hold that it is not a fit case where levy of penalty either under section 271D or under section 271E is justified. The same are deleted and the appeals filed by assessee are allowed.

6. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 16/02/2015

आदेश की घोषणा खुले न्यायालय में दिनांक: 16/02/2015 को की गई ।

Sd/-

(चंद्र पुजारी /CHANDRA POOJARI)

लेखा सदस्य /ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 16/02/2015

Sd/-

(आय.पी. बंसल / I.P. BANSAL)

न्यायिक सदस्य / JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई
/ DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai

व.नि.स./Vm, Sr. PS