IN THE HIGH COURT OF JHARKHAND AT RANCHI

Tax Case No. 01 of 2001

M/s Bharat Safety Glass P. Ltd. ... ...Petitioner
Vrs.
Commissioner of Income Tax, Ranchi ..... Respondent

CORAM: HON'BLE THE CHIEF JUSTICE
HON'BLE MRS. JUSTICE JAYA ROY

For the Petitioner: Mr. B. Poddar, Sr. Advocate
Mr. Mahendra Choudhary, Adv.
Mr. Piyush Poddar, Adv.
Ms. Darshana Poddar, Adv.
Ms. Amrita Sinha, Adv.

For the Respondents: Mr. Deepak Roshan, Sr. S.C.(I.T.)
Mr. Amit Kumar, Adv.
Ms. Rupa Kumari, Adv.

Dated 10th October, 2012.

Heard learned counsel for the parties.

2. The following substantial questions of law has been referred to this Court by the Income Tax Appellate Tribunal, Patna Bench, Patna vide order dated 18.8.2000:

(i) Whether on the facts and circumstances of case provisions of section 269SS are attracted to the amounts received from sister concern as Temporary accommodation to meet immediate requirements of the business and is levy of penalty u/s271D justified?

(ii) Whether the statement made by the Hon'ble Finance Minister is a statement to be considered to interpret the provisions of law and the intention behind the enactment of law?

3. Learned senior counsel for the petitioner submitted that learned C.I.T.(A) has considered the facts in detail in para-2 of the order dated 29.7.1994 and held that the assessee was making sales to M/s Bebbco and received money from the said Company either by cheque or in cash. During the year under consideration, cheque receipts was amounting to rupees more than four lakhs and cash receipts was amounting to Rs.3,03,142/- against opening balance of Rs.1,97,468/- in the account of M/s Bebbco, in addition to the sales made to them and amounting to Rs. 4,42,776/-/. By making a cash payment of Rs.87,650/-, the account was squared up. This transaction was treated not to be

a transaction of deposit but it was a transaction during the course of business in the opinion of the C.I.T.(A). The C.I.T.(A) has, therefore, held that in that situation, there is no violation of Section 269SS and set aside the penalty imposed by the A.O. under Sections 271E and 271D of the Income Tax Act, 1961 for the Assessment Year 1991-92.

4. The learned Income Tax Appellate Tribunal, Patna Bench, Patna reversed that finding vide its order dated 05.12.1997 by holding that though the transaction was between the sister concerns, even then it was a financial transaction between two concerns which covered under the provisions of Section 269SS of the Act of 1961. It has been held that the accommodation loans are also loans and they do not fall under the category of loans. In view of the above reasons, the Tribunal has set aside the order of C.I.T.(A) and upheld the order of A.O. for imposition of penalty against the assessee.

5. Learned senior counsel for the petitioner relied upon the judgment of a Division Bench of this Court, delivered in the case of ***OMEC Engineers Vrs. Commissioner of Income-Tax*** reported in ***[2007] 294 ITR 599(Jhar)*** and submitted that merely because of technical mistake committed by the assessee, the penalty should not have been imposed under Section 271 of the Act of 1961.

6. Learned counsel for the Revenue vehemently submitted that to avoid such type of transactions only, specific provision has been made in the Act as provided under Section 269SS, which have no exception and it includes all transactions between the parties when they deal in cash instead of transaction through cheque.

7. We have considered the submissions of the learned counsel for the parties and perused the facts of the case. We are of the considered opinion that the facts are not in dispute that the assessee had transaction with its own sister concerns and management of that concerns was vesting in the same person. They are having the commercial transaction and during that course, they used to pay the amount through cheque or cash. There was excess amount of Rs.3,03,142/- which appears to have a cash payment received by the assessee. In the facts of the case, it cannot be held that these transactions could not have

been business transactions and during the course of the transactions, some payments have been made in cash. Otherwise also, it may only be a technical mistake retaining certain loans of one party, which is peculiar in the facts of the case. We are of the considered opinion that imposing penalty, under Section 271D of the Act of 1961, cannot be justified. Therefore, order dated 05.12.1997 passed by the I.T.A.T., Patna is hereby set aside and the question is answered that in the facts of the case, the transactions entered into between the parties cannot make liable the assessee for imposition of penalty under Section 271 D of the Act of 1961.

The reference is answered, accordingly.

(Prakash Tatia,C.J.)

(Jaya Roy, J.)

Sudhir