

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 30.1.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN  
AND  
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C. (A) Nos.185 of 2004 & 1542 to 1544 of 2005

Commissioner of Income Tax-VII  
Chennai. Appellant in  
all appeals

M/s. Kundrathur Finance & Chit Co.  
Chennai. Respondent in  
.. all appeals

Appeals under Section 260A of the Income Tax Act, 1961 against  
the common order of the Income Tax Appellate Tribunal, Madras 'D'  
Bench dated 5.6.2003 in ITA Nos.999, 1000, 1001 and 1002/Mds/2000  
for the assessment years 1996-97, 1997-98, 1998-99 and 1999-2000  
against the order of the Commissioner of Income Tax (Appeals) III,  
Chennai dated 03.03.2000 and made in ITA.NO.210,211,212 & 213/1999-  
2000/A.III against the order of the Joint Commissioner of Income  
Tax, Range-V, Chennai 600 006, dated 4.5.1999 and made in CRP.NO.21  
(9)/R.V/1996-97 to 1999-2000.

For Appellant

Mr. J. Narayanaswamy

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JUDGMENT

(Delivered by P.D.DINAKARAN, J.)

The appeals are directed against the order dated 5.6.2003 made  
in ITA Nos.999, 1000, 1001 and 1002/Mds/2000 for the assessment  
years 1996-97, 1997-98, 1998-99 and 1999-2000.

2. The brief facts of the case are stated as under:

The assessee is a partnership firm engaged in the business of chit and finance. During the survey, it was found that the assessee had accepted the cash deposits of more than Rs.20,000/- in contravention of Section 269SS of the Act. Hence, after giving an opportunity pursuant to the show cause notice, the Joint Commissioner imposed a penalty by exercising the power under Section 271D of the Act, equal to the amount of deposits in excess of Rs.20,000/- received in cash during the period relevant to the assessment years 1996-97 to 1999-00. Hence, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who allowed the appeal, which was subsequently confirmed by the Tribunal. Hence, the above appeal.

3. The learned counsel for the appellant raised the following substantial questions of law for our consideration.

- (a) Whether in the facts and circumstances of the case, the Tribunal had enough material to hold, and was right in holding that the assessee was justified in receiving deposits exceeding Rs.20,000/- in cash when the depositors did not have bank accounts?
- (b) Whether in the facts and circumstances of the case, the Tribunal was right in deleting the penalty under Section 271D on the ground that the depositors did not have bank accounts, when section 269SS provides for payment either by cheque or bank draft?"

4. Both the Commissioner as well as the Tribunal concurrently found that within the jurisdiction of the assessee finance, viz. Kundrathur, there is no banking facility for the depositors, who are, apart from the partners, pensioners, house wives and agriculturists. The explanation offered by the assessee was that in the absence of any banking facility in the locality concerned and in view of the business of the assessee, the deposits made by the depositors cannot be rejected on the only ground that they had not been paid by way of cheque as contemplated under section 269SS of the Act. On the other hand, it was not the case of the department that banking facilities are available within the jurisdiction of the assessee's business place viz. Kundrathur and the depositors were operating bank accounts. Under such circumstances, both the Commissioner and the Tribunal, exercising the discretion conferred under section 273B of the Act came to the conclusion that the transactions were found to be genuine and bona fide, and that the depositors did not have bank account and therefore, the assessee was

in no position to request them to make the deposits by cheque, assuming the same was in contravention of Section 269SS of the Act.

5. In this regard, it is apt to refer section 273B of the Act, which reads as follows:

"Penalty not to be imposed in certain cases.

Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271D, section 271E, section 271F, section 271FA, section 271FB, section 271G, clause © or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure."

(emphasis supplied)

6. The Apex Court, interpreting the powers conferred on the revenue under Section 273B of the Act in ASST. DIRECTOR OF INSPECTION (INVESTIGATION) v. A.B. SHANTHI (255 ITR 258) held that if there was a genuine and bona fide transaction and the taxpayer could not get a loan or deposit by account-payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretion not to levy penalty.

7. If that be so, since the authorities concerned having exercised the power conferred on them and satisfied that the transactions are bona fide on materials facts, viz. (i)there is no banking facility within the business jurisdiction of the assessee, viz. Kundrathur; and

(ii) it is not the case of the revenue that there is any banking facility nearby and the depositors are operating the funds through banks, but the authorities have come to the conclusion that the transactions are genuine and bona fide.

Therefore, it may not be proper for this Court to interfere with such discretion exercised by the authorities below, having satisfied with the reasonable cause for the failure to comply with Section 269SS of the Act.

8. We are, therefore, of the view that there is no error or illegality in the order of the Tribunal and therefore, no

interference is warranted. Finding no merit to entertain the above appeals, the same are dismissed.

kpl

Sd/  
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Income Tax Appellate Tribunal, Madras "D" Bench, Madras.
2. The Commissioner of Income Tax VII, Chennai.
3. The Commissioner of Income Tax (Appeals) III, Chennai.
4. The Joint Commissioner of Income Tax, Range V, Chennai.
5. The Central Board of Direct Taxes, New Delhi.
6. The Income Tax Officer, Special Ward, Tambaram.

+1 CC to Mr.Pushya Sitaraman, Advocate, SR No.3630

VC(CO)

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