

Penalty justified if assessee failed to prove that loan taken was in fact trade transaction

Summary – The High Court of Madras in a recent case of Five Star Marine Exports (P.) Ltd., (the Assessee) held that where Assessing Officer finding that assessee had accepted loans by way of cash, in contravention of provisions of section 269SS, passed a penalty order under section 271D, since assessee failed to establish its stand that aforesaid transactions related to trade alone and, moreover, there was no distress situation which forced assessee to accept loan in cash, impugned penalty order was to be confirmed

Facts

- For relevant year, assessee filed its return declaring certain taxable income. While completing the assessment, the Assessing Officer found that the assessee had accepted loans by way of cash from seven persons totally amounting to Rs.41.95 lakhs.
- Since the assessee took a stand accepting the same as loan in contravention of the provisions of section 269SS, the Assessing Officer imposed penalty under section 271D(1).
- The Commissioner (Appeals) allowed assessee's appeal on the ground that the transactions done by the assessee with seven persons were in the nature of trade transactions relating to the purchases made on raw materials and did not relate to advancing or advance being made of a loan or a deposit and that the provisions of section 269SS were not attracted.
- The Tribunal, however, restored the penalty order passed by Assessing Officer.
- On appeal:

Held

- It was noted that before the Commissioner (Appeals), the assessee contended that all the six parties are suppliers of raw materials and that on the date, when the loans were said to have been taken, there was sufficient cash balance and not considering this, the Assessing Officer held that they were in the nature of loans. The Commissioner (Appeals), though took note of the said submission made by the assessee, found that the prawn seeds, which were supplied to the assessee, were treated at par with cash and that this was necessitated by the fact that the trade is highly volatile and accounting to that extent became difficult.
- In fact, the said contention of the assessee was considered by the Additional Commissioner, who had afforded an opportunity to the assessee to substantiate the genuineness of the parties and the claim made by them that the transactions related to trade alone, which were peculiar to the business carried on by the assessee. Though such an opportunity was granted to the assessee, they were unable to substantiate the genuineness of the parties. In fact, to that effect, a report has been submitted by the Additional Commissioner. The said report has been taken note to by the

Commissioner (Appeals) while passing the order. But unfortunately, there is no discussion as to why such a report should be ignored.

- Furthermore, the transactions with six parties have been considered by the Commissioner (Appeals). But, nowhere in the order, there is any finding to the effect that raw materials supplied by those six parties were shown as cash in the books of account of the assessee. Therefore, the Tribunal was fully justified in holding that the Commissioner (Appeals) erroneously held that the transactions were trade transactions. The Tribunal was also fully justified in observing as to how the purchases made by the assessee resulted in acceptance of cash from suppliers. Apart from that, the Tribunal was right in reversing the finding of the Commissioner (Appeals) on the ground that there was no distress situation for the assessee so as to take loan, since, it was their own case that they had sufficient cash during the relevant time.
- Thus, questions of law do not arise for consideration in this appeal and that the Tribunal rightly decided the factual issue. For the above reasons, there is nothing wrong in the order passed by the Tribunal.
- Accordingly, the assessee's appeal is dismissed.