

No escape from penalty even if cash received in excess of Rs. 20,000 was deposited on same day in bank a/c

Summary – The High Court of Madras in a recent case of Vasan Healthcare (P.) Ltd., (the Assessee) held that where director of assessee-company obtained cash in excess of Rs. 20,000 as loan from a financier and same was deposited by him in cash in bank account of company, merely because director took cash loans from financier, and deposited it in current account of assessee-company on very same day and assessee utilized it to pay salaries, rent and EMI commitments could never be a ground to be taken as a mitigating factor to escape from rigour of levy of penalty under section 271D

Facts

- The director of the assessee company namely, AM had borrowed cash loans exceeding Rs. 20,000 from JD, who was a financier. The loan was further transferred by director to the current account of the assessee-company. The Assessing Officer issued *show cause notice* regarding violation of provisions of section 269SS by receiving cash amount exceeding Rs. 20,0000. The assessee while responding to the show cause notice stated that the transactions between JD, (Financier) and Dr. A.M one of the directors of the assessee were already under scrutiny inasmuch as there was no direct nexus between JD, and the assessee, and the amounts borrowed from JD, by the Director was introduced through his running account with the company for the purpose of meeting/running expenses of the assessee. The Assessing Officer rejected same and imposed penalty under section 271D upon the assessee.
- On appeal, the Commissioner (Appeals) as well as the Tribunal also upheld the order of the Assessing Officer.
- In the assessee's appeal to the High Court:

Held

- One of the grounds urged by the assessee was that the assessee has shown reasonable cause for having availed loan transactions, availed loans by way of cash, which aspect was not appreciated by the Tribunal in a proper prospective. However, before going into the said aspect, first the contention advanced by the assessee regarding multiplicity of penalty proceedings is to be decided.
- The assessee's case is that for the very same transaction, AM has been visited with notices under section 271D and 271E. The director is contesting those proceedings and the matter is now pending before the Tribunal. For the very same transaction, the company was also issued with notices under sections 271D and 271E which have now culminated in the impugned order of the Tribunal and the Tribunal ought to have heard the appeals filed by the director as well as the company together and without doing so, the Tribunal erroneously sustained the penalty imposed on the company without deciding the appeals filed by the director against the penalty proceedings.

- The subtle but marked difference, which should be noticed is that the present appeals arise out of a penalty proceedings and they are not quantum appeals wherein, tax has been imposed on the assessee. Thus, the theory of double taxation cannot be imparted in a penalty proceedings. The result is one or more persons will be liable for penalty under section 271D, if he or they violate the provisions of section 269SS. Thus, the contention that there is multiplicity of proceedings is a complete misnomer. This finding is further strengthened from the factual matrix of the case admitted by the assessee. The director of the assessee-company has borrowed huge cash loans from JD, who is stated to be a financier. His quantum assessments are also now pending before the Tribunal for the assessment years 2012-13 to 2015-16. The said JD, is shown to have extended huge cash loans to the director. Accepting a loan in contravention to the provisions of section 269SS automatically attracts section 271D. Therefore, the director having accepted cash loan in contravention to section 269SS has become exposed to penalty proceedings under section 271D. The director is shown to have deposited the cash loans so obtained by him in his individual capacity into the current account/bank account of the assessee-company. The assessee-company having accepted the same in cash remittance, in contravention to section 269SS, has also exposed themselves to levy of penalty under section 271D. Therefore, there can be no mix up of these two individual transactions and the theory of multiplicity deserves to be out rightly rejected.
- This observation is further strengthened on examining the language employed in section 269SS, the erstwhile section 276DD and section 271D (with effect from 1-4-1989). One common and conspicuous feature in all these provisions is that it uses the expression 'no person', but sections do not refer to an assessee, but refers to 'a person'. This aspect has to be borne in mind while considering the correctness of the penalty proceedings. Hence, this aspect also goes to show that the assessee cannot raise a plea of multiplicity of proceedings.
- The assessee before the Tribunal contended that the assessee-company has not paid any interest to the director and the transaction was in the form of a running account. It was further submitted that the director would withdraw the cash from the assessee's current bank account and repay the same to the financier, JD. It was the further submission of the assessee that they, being a company, cannot take a loan directly from the financier, JD, as taking of loan from individual was specifically barred. This admitted case of the assessee clearly reveals total lack of *bona fides*. Any amount of pleadings or statement of accounts can be of no assistance to the case of the assessee. The assessee, being private limited companies, were clearly aware of the fact that no borrowal can be done by them from individuals. Thus, the director of the company became the conduit. The director received huge cash loan from JD. The loan so obtained were deposited by him in cash in the bank account of the company. Thus, the director acted as a shield to the transaction to give it a colour, as if it is the money given by the director to the company. Furthermore, the same director withdrew money from the running account of the company to pay back to the financier, JD.
- Next, lets move on to consider the submission of the assessee as to whether the assessee had shown reasonable cause to escape from the rigour of levy of penalty under section 276D and 276E.

- According to the assessee, the account of the director and the company were genuine and the loans received were utilized to pay the salaries, rents and EMI commitments. The amounts so received by the director were deposited in the companies bank account on the very same day and the Commissioner (Appeals) as well as the Tribunal failed to properly appreciate the cash flow details produced by the assessee. In the preceding paragraph, it is commented upon as to how the director has acted as a shield/conduit to the transaction to give it a colour, as if it is the monies of the director, which were deposited in the companies bank account. Furthermore, it is pointed out as to how the assessee themselves accepted before the Tribunal that there is a clear prohibition from raising loans from individual. Taking these factual aspects into consideration, the Tribunal seriously doubted the *bona fides* of the plea raised by the assessee. The Tribunal had, in fact, done a fact finding exercise based upon the cash flow statement produced by the assessee. After going through the cash flow statement, the Tribunal expressed that the same is questionable. Further, the assessment seems to have been made on the basis of reworked notional balance sheet and statement of accounts prepared from the seized records. This factual finding also deters from showing any indulgence to the assessee. Nevertheless, it is examined as to whether the cause shown by the assessee was a reasonable cause.
- The assessee's plea of reasonable cause/genuinity is only based on the conduct of the director in depositing the huge loans received in cash from JD into the bank account of the company on the very same day. To be entitled to the benefit under section 273B, the onus is on the person claiming such benefit to show that he could not get a loan by account payee cheque or demand draft and the cause shown by him should be genuine and *bona fide*. Thus, merely because the director took cash loans from the financier, JD, and deposited it in the current account of the assessee-company on the very same day, and assessee utilised it to pay salaries, rent and EMI Commitments can never be a ground to be taken as a mitigating factor to escape from the rigour of levy of penalty under section 271D. Thus, the assessee has been under a thorough misconception. There is a bald statement made that JD will give loans only in cash, however much it may be. To be noted that the loans received by the director and later by the company is more than Rs.90 crores. The assessee is private limited companies, not individual assessee.
- There can be no straight jacket formula to examine the *bona fides* and genuinity of the plea raised by a person, who states that he was for certain *bona fide* reasons unable to get a loan or deposit by account payee cheque/demand draft. Therefore, precedence cannot always be the Rule and there is need to examine the factual position.
- Thus, deposit of the cash by the director received from JD into the bank account of the assessee on the same day and those amounts, being utilized for making several payments including salaries, apart from that the director withdrawing money from the assessee's bank account and remitting to the financier by cash can never be taken to be a *bona fide* transaction.
- What is most disturbing is that it is not a solitary instance, as the same type of transactions have been carried on by the assessee and the director from the assessment year 2012-13. There is

absolutely no genuinity or bonafideness in the transaction done by the assessee and it will not amount to reasonable cause for the purpose of exercise or discretion by the Assessing Officer under section 273B.

- With regard to alternate plea raised by the assessee stating that the penalty should be restricted to the peak of the cash deposits, it is found that such a plea did not find favour with the Tribunal and in the light of the reasons assigned in the preceding paragraphs, a plea raised by the assessee is rejected.
- Thus, for the above reasons, the assesseees have not made out any case for interference with the order passed by the Tribunal. In the result, the appeals are dismissed and the substantial questions of law are answered against the assessee.