

Income Tax Appeal No. 634 of 2007
Commissioner of Income Tax, Ghaziabad and others

VS

Sh. Surendra Singh Khurana, Prop. M/s Jai Bharat Motor Transport Col, 76-A/1
Ram Nagar, Ghaziabad.

HON'BLE YATINDRA SINGH, J
HON'BLE RAJES KUMAR, J.

1. This is an appeal under section 260A of the Income Tax Act, 1961 (hereinafter referred to as the Act) against the order of the Tribunal dated 12.1.2007 relating to assessment year 1998-99.
2. The assessee has taken loan of ₹2,66,700/- from Sri Har Mohan Singh Khurana, Sri Man Mohan Singh, Sri Sukhpal Singh and Sri Jaswant Singh in cash.
3. Since the amount has been found deposited in cash in the books of account, the assessing authority was of the view that section 269 SS of the Act was flouted and accordingly penalty under section 271D of the Act has been levied to the extent of ₹2,66,700/-. The case of the assessee was that the persons from whom the loan were taken were agriculturist and in emergency the amount has been taken in cash. The assessing authority has not made any addition under section 68 of the Act.
4. The Commissioner of the Income Tax (Appeal) by order dated 3.1.2005 allowed the appeal and deleted the penalty. Being aggrieved by order of the Commissioner of the Income Tax (Appeal), revenue filed appeal before the Income Tax Appellate Tribunal (the Tribunal). The Tribunal by the impugned order, dismissed the appeal filed by the Revenue.
5. The Tribunal has recorded finding that the assessing authority has not doubted the genuineness of the loan and has not made any addition under section 68 of the Act. The Tribunal further recorded finding that the depositors were agriculturist and the loan was given under the emergency and were duly explained before the assessing authority and accordingly confirmed the order of the CIT (Appeals) for deleting the impugned penalty. The finding recorded by the Tribunal is finding of fact. We do not find any error in the impugned order of the Tribunal. Under section 273 B of the Act in case it is established that there was the reasonable cause in accepting the deposit in cash. The penalty is not leviable. In the present case the Tribunal as well as Commissioner Income Tax Appeal have accepted the explanation of the assessee in respect of the reasonable cause.
6. The appeal fails and it is dismissed.

Date: 5.10.2010
SKS