

**Court No. - 5**

**Case :- INCOME TAX APPEAL No. - 134 of 2003**

**Assessment Year 1997-98**

**Appellant :- Commissioner Of Income Tax-Ii Kanpur**

**Respondent :- M/S Sher Cot Leather Craft Ltd. Kanpur**

**Counsel for Appellant :- S.C.,S.Chopra**

**Counsel for Respondent :- S.K.Garg,A. Bansal,S.Pathak**

**Hon'ble Dr. Satish Chandra,J.**

**Hon'ble B. Amit Sthalekar,J.**

The present appeal has been filed by the Department under Section 260-A of the Income Tax Act, 1961, against the judgment and order dated 31.5.2003, passed by the Income Tax Appellate Tribunal (Lucknow Bench) in I.T.A.No.508/Luc/2001, for the assessment year 1997-98. A Coordinate Bench of this Court on 8.12.2010 has admitted the appeal on the following substantial questions of law:-

*"1. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was correct in law in deleting penalty under Section 271D of the Income Tax Act, 1961?"*

*2. Whether on the facts and in the circumstances of the case, the Income Tax Appellate Tribunal was justified in holding that the assessee company did not receive any cash as the payments were managed from one Shri Asif Viquor to the creditors of the assessee company?"*

Heard Sri Shambu Chopra, learned counsel for the Department and Sri Ashish Bansal, learned counsel for the

assessee.

After hearing both the parties and on perusal of the record, it appears that the penalty is levied under Section 271-D for the violation of the provision of Section 269SS of the Act. The Tribunal in its order, after examining the entire material on record, had observed that the company made entries in the books of account for acknowledging the debt and as such there was no cash receipt on the part of the assessee-company. The company did not receive any cash. No cash was involved.

When that is so, no penalty is leviable under Section 271-D of the Act. No addition is made in quantum appeal.

By considering the totality of the facts and circumstances of the case, we find no reason to interfere with the impugned order passed by the Tribunal specifically when both the appellate authorities have given concurrent findings. The same is hereby sustained along with the reasons mentioned therein.

Hence, the answer to the substantial question of law is in favour of the assessee and against the Department.

In the result, the appeal filed by the Department is dismissed

**Order Date :- 13.12.2013**

Asha