

**IN THE HIGH COURT OF ANDHRA PRADESH
AT AMARAVATI**

THE HONOURABLE SRI JUSTICE G.NARENDAR

THE HONOURABLE SMT. JUSTICE KIRANMAYEE MANDAVA

WRIT PETITION NO: 32190/2023

ORDER: *(Per Hon'ble Smt. Justice Kiranmayee Mandava)*

The order under challenge in the W.P. No.32190 of 2023 is the proceedings of the Assessing Officer passed under Section 271D of the Income Tax Act, 1961, (hereinafter referred to as 'Act') levying penalty of Rs.6,65,00,000.

2. The learned counsel for the petitioner contends that penalty under Section 271D of the Act, is levied without recording any satisfaction in contemplating levy of penalty.

3. It is stated that a search and seizure operation was conducted under Section 132 of the Income Tax Act, the case of M/s. Usha Bala Group and M/s. V.V.Balaksirshna Rao. During the search proceedings in the case of M/s. V.V.Balakrishna Rao, certain incriminating documents relating to the petitioner were found. Applying the provisions of Section 153C of the Act, the petitioner was asked to submit his return of income. Pursuant thereto, the petitioner has furnished his return of income on 15-04-2022, admitting total income

of Rs.23,14,400/-. Notice under Section 143(2) of the Act,

dated 25-04-2022 was issued to the assessee for making assessment under Section 143(3) read with Section 153C of the Act. Simultaneously notice under Section 142(1) of the Act was issued requiring the petitioner to produce certain copies of bank accounts, explain the cash transaction with Balakrishna Rao etc., amounting to Rs.6.65 crores. Pursuant to the same, the petitioner submitted his reply dated 12-06-2022 stating that he did not take any loans in cash as alleged that said transactions were received through Banking channels. Thereafter another notice dated 15-06-2022, was issued requesting the petitioner to furnish the information by 22-06-2022. The petitioner submitted his explanation reiterating his previous explanation regarding loans stated to have obtained in cash. It is further contended that a similar notice was issued to the creditor of the petitioner, Venkata Balakrishna Rao, under Section 133(6) of the Act, dated 06.07.2022, who, after requesting for time till 22-07-2022 did not respond to the notice issued, therefore, summons under Section 131 of the Act was issued. In response to the same, the said Balakrishna Rao, submitted his reply. After examining the reply of the said Balakrishna Rao, with reference to the seized material, the department issued show cause notice dated 10-08-2022, requiring the petitioner to submit reply by 16-08-2022. In the said notice, it was observed that on cross verification of the details furnished by the petitioner and Balakrishna Rao, there are no discrepancies, however, the seized material contains document(s), which includes a letter dated 02-06-2014, stated to have been issued by the petitioner to Balakrishna Rao, acknowledging the avilment loan of Rs.6

crores, and pledging of immovable properties as collateral security. By pointing out from the material before it, the AO concluded that (pg.14 of assessment order) the petitioner had financial transaction with Balakrishna Rao, outside the books and outside banking channels for the subject assessment year. The relevant material relied upon by the AO was copied/scanned and pasted in the assessment order (Pgs.15 to 54) making the same as part of the assessment order. From the said transactions, 60 transactions were tabulated which indicate advances to the petitioner and repayment by the petitioner. The Assessing Officer on the basis of the said material observed that Usha Bala Group had received an amount of Rs,95,14,267/- towards interest. And it was concluded that the petitioner had accepted an amount of Rs.6,65,00,000/- as loan and repaid an amount of Rs.7,70,27,007/- on various dates. He thus paid an amount of Rs.1,05,27,007/- in excess, out of which Rs.95,14,267/- was identified as interest paid to Usha Bala. The petitioner was thus asked to show cause as to why the excess amount should not be treated as the amount paid by the petitioner during the year, without sources and shall not be treated unexplained money under Section 69A of the Act. The petitioner had stated that no cash loans were either obtained or no cash repayment made much less the interest was made by the assessee. The Assessing Officer, while concluding the assessment proceedings taking note of the letter of the petitioner dated 02.06.2014, acknowledging the receipt of amount of Rs.6,00,00,000/- on 22.11.2013. In response the petitioner has stated *inter*

alia (pg. 77) that the letter dated 02-06-2014, was given in anticipation of obtaining the loan subject to mortgage of the properties. It was further stated that thereafter, after issuing the letter dated 02-06-2014, the petitioner has not availed the loan nor pledged the property. The Assessing Officer made addition of Rs.1,05,27,007/-, under Section 69A of the Act, which according to the Assessing Officer is excess payment over and above the loans accepted. After passing of the assessment order the Assessing Officer, has referred the file to the Joint Commissioner of Income-tax, intimating the violations said to have been committed by the petitioner and for appropriate action. The learned Joint Commissioner of Income-tax, has initiated the penalty proceedings under Section 271D of the Income Tax Act, and levied penalty of Rs. 6,65,00,000/-. Challenging the same, the present Writ Petition is filed.

4. Heard, submissions of the learned counsel for the petitioner and the respondents.

5. Perused the material on record.

6. The main contention of the petitioner is that no satisfaction was recorded in the assessment order with regard to levy of penalty under Section 271D of the Act. The petitioner relying on the decision of the Apex Court in the case of ***CIT Vs. Jai Laxmi Rice Mills, Ambala City***¹, contends that there was no evidence before the Assessing Officer to show that the petitioner has accepted the loans in cash. As noted from the assessment proceedings, the assessee was put on notice as regards the loans received in cash. The

¹ (2015)64 Taxmann.com75(SC)

petitioner has stated that he has not received any cash loans and he has denied to have received any cash loans, what all taken as loans were through banking channels alone. There was never any element of cash involved in the transaction.

7. The learned Senior Standing Counsel Sri Vijay Kumar Punna, appearing for the respondents would contend that against the order impugned an alternative remedy of appeal is provided under the provisions of the Act. Without availing such remedy filed the present Writ Petition, which would not be maintainable. He relies on the following decisions in support of his case:-

- i. In the case of M. Sougoumarin Vs. Assistant Commissioner of Income Tax, Circle-I, Puducherry, (2018) 95 taxman.com 240 (Madras)
- ii. In the case of Vasan Healthcare (P) Ltd. Vs. Additional Commissioner of Income Tax, Central Range-2, Chennai. (2019) 411 ITR 499 (Madras)
- iii. In the case of Five Star Marine Exports (P) Ltd. Vs Deputy Commissioner of Income Tax, Chennai, (2018) 92 Taxman.com 404 (Madras)
- iv. In the case of Vasan Healthcare (P.) Ltd. Vs. Additional Commissioner of Income Tax Range 2, Chennai, (2021) 278 Taxman 273 (SC)
- v. In the case of Al Ameen Educational Trust Vs. Commissioner of Income Tax, (2021) 283 Taxman 285 (SC)
- vi. In the case of Assistant Director of Inspection Investigation Vs. Kum.A.B. Shanthi, (2002) 255 ITR 258 (SC)

- vii. In the case of Ashok Kumar Vs. State of Haryana, (2010) 12 SCC 350
- viii. In the case of Dilip N. Shroff Vs. CIT, (2007) 6 SCC 329

8. We have gone through the material placed on record. The Assessing Officer, except to base his addition on the letter of the assessee dated 02-06-2014, did not record any finding that there has been any violation of the provisions of Sec.269SS of the Act by the assessee, nor was any satisfaction recorded to the effect that the alleged transaction of acceptance of loan would attract penal consequences. In the absence of any finding to the said effect, in our considered view, the penalty cannot be levied. A presumption can be drawn, in the absence of a finding by the Assessing Officer to the effect that the petitioner has violated the provisions of Sec.269SS of the Act, that the department has accepted the explanation furnished by the petitioner denying allegation of loan in cash. Therefore, it can unhesitatingly be said that, having satisfied with the explanation of the assessee, the Assessing Officer did not record any satisfaction in the assessment order to the effect that the provisions of Section 269SS of the Act, are violated and did not contemplate levy of penalty under Sec.271D of the Act.

9. In our view, the satisfaction of the Assessing Officer is required to be recorded because the officer, who passed the assessment order would not be levying the penalty under Sec.271D of the Act, unless it is recorded in the

assessment order, he cannot refer the file to superior officer *i.e.*, Joint Commissioner, for initiating levy of penalty. Unless the Assessing Officer, who is the primary authority, based on the material before it, during assessment proceedings, arrives at a finding that there has been a violation of the provisions, like in the present case, of Section 269SS, there will not be any occasion to the Joint Commissioner, who is not the Assessing Officer, to exercise his jurisdiction to levy Penalty under Section 271D. Following the decision of the Hon'ble Supreme Court in the case of ***Jai Laxmi Rice Mills*** referred *supra*, we set aside the order passed under Sec.271D of the Act.

10. The Writ Petition is accordingly allowed. There shall be no order as to costs.

As a sequel, interlocutory applications pending, if any, shall stand closed.

JUSTICE G.NARENDAR

JUSTICE KIRANMAYEE MANDAVA

Date:03.10.2024
MVK

THE HON'BLE SRI JUSTICE G.NARENDAR
AND
THE HON'BLE SMT. JUSTICE KIRANMAYEE MANDAVA

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