

Income Tax - Assessee is real estate developer - borrows funds in cash to buy a plot of land - violation of Sec 269SS - Penalty u/s 271D - Since ready cash-backing helps in negotiating land deals, a reasonable cause existed u/s 273B - Penalty not sustainable: ITAT Third Member

Source : Internet

In Income tax related disputes, Revenue is mandatorily one of the parties. Does it mean that by the virtue of its status in all disputes, it is an adversary of the assessee. Not necessarily. It has a unique status as it is expected to grant the relief to an assessee even if one has not claimed it out of ignorance. In other words, Revenue is expected to collect revenue only as per the law, and not to disprove a particular business practice and deny the concessions granted by

the legislature. This is what happened in this case when the assessee, a real estate developer, could not resist the temptations to buy a piece of land at an attractive price, and decided to have the backing of hard cash to negotiate a better deal. For the deal the assessee borrowed cash from a trusted source and went ahead with the negotiations. But the deal fell through and the assessee had to deposit the cash in its bank account and issue a cheque for the

BETTER BE ENVIED THAN PITIED.

same amount to the source which lent him the cash from his cash book register.

This transaction was noticed by the AO who questioned the assessee. An explanation was furnished. The loan was obtained in cash with a view to enable the company to finalize the negotiations without any loss of time. According to the assessee, this cash loan was obtained in the best interest of business so that the deal could be expedited. It was considered necessary to have the funds in cash form on the ground of business expediency. The assessee also tried to explain the reasonable cause for obtaining this loan in cash so that the violation of the provisions of section 269SS would not attract any penalty by virtue of the provisions of section 273B of the Act.

However, the AO did not buy the theory of compelling reasons to borrow the cash and declined to believe the theory of reasonable cause as per the provisions of Sec 273B. The AO treats it as a glaring violation of Sec 269SS and initiates penalty proceedings u/s 271D.

The issue went to the CIT(A) where the assessee filed some additional evidence by way of an affidavit stating therein that the assessee had borrowed money for the purchase of land which was not ultimately materialize. The AO objected the filing of the affidavit. The CIT(A) ultimately sustained the order of the AO levying the penalty.

Finally the issue went to the Tribunal where a difference of opinion cropped up between the Members. The Member, AM, declines to buy the theory of reasonable cause pleaded by the assessee whereas the Member, JM, manages to see adequate reason to invoke Sec 273B. Thus the issue goes to the Third Member who finally goes with the Member, JM. The Third Member observes that,

++ The assessee-company is a builder and developer of lands. It is natural for it to look for purchase of lands which it can develop and make profits. When an opportunity presents itself, it was natural for the assessee to seize the same.

++ The assessee no doubt had a cash balance of above Rs. 12,00,000 in its books on 1-3-2002, but apparently the market price of the lands was around Rs.15 to Rs.20 lakhs and therefore the assessee, instead of using up the cash balance in its books and

restricting the borrowing to a much lesser amount, resorted to borrowing the sum of Rs.15 lakhs from N.K. Chemist in cash.

++ The advantage of negotiating for the purchase of agricultural lands for development with ready cash-backing cannot be disputed. It was this advantage that obviously propelled the assessee to keep the cash ready and negotiate with Mukeshbhai Desai for the purchase of land. All this is supported by the averments in the affidavit filed by Mukeshbhai Desai. These averments have not been impeached or discredited or found false.

++ When the deal did not materialize, the assessee deposited the cash in the bank and issued a cheque in favour of N.K. Chemist and closed the borrowing. The learned JM has viewed the above circumstances as constituting reasonable cause and I have no strong reasons to disagree with him in his conclusion. The learned AM has observed that land deals can be closed by paying a token sum as advance and therefore there was no need to borrow monies equivalent to the entire price payable.

++ There may be many ways in which a business deal can be put through and it is well-settled that essentially it is for the businessman to put a transaction through in the manner best suited to his interests. Possibly the transaction could have been put through in the manner suggested by the learned AM, but the Tribunal has to test the reasonableness of the explanation that is offered by the assessee in the touchstone of normal course of human conduct and probabilities.

++ Unless the explanation trotted out is so perverse or strange or unusual that it cannot conform to the normal course of human conduct or probabilities, the fact that the transaction can be put through in several other or different ways should not be an impediment in accepting the explanation as constituting reasonable cause. There is nothing to suggest that the assessee's explanation is in any manner improbable or impossible. It is supported on material facts by the affidavit of Mukeshbhai Desai.

Finally the Third Member agrees with the Judicial Member and holds that the explanation furnished by the assessee does constitute a reasonable cause u/s 273B and it does not call for levy of penalty u/s 271D. ■