

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH : KOLKATA

[Before Hon'ble Shri A.T.Varkey, JM & Shri M.Balaganesh, AM]

I.T.A No.162 /Kol/2017

Assessment Year : 2009-10

I.T.O., Ward-24 (1),
Kolkata

-vs.-

M/s Dayamayee Marble & Granite
Kolkata

[PAN : AAFFD 7699 K]

(Appellant)

(Respondent)

For the Appellant : Shri Saurabh Kumar, Addl. CIT, Sr.DR

For the Respondent : Shri Somnath Ghosh, Advocate

Date of Hearing : 09.05.2018

Date of Pronouncement : 15.05.2018

ORDER

Per Shri M.Balaganesh, AM

1. This appeal of the revenue arises out of the order for the Asst Year 2009-10 of the Learned Commissioner of Income Tax (Appeals)-6, Kolkata [in short the Ld. ITA] in Appeal No. 208/CIT(A)-6/Kol/15-16 dated 02.11.2016 against the order passed by the J.C.I.T- Range-24, Hooghly [in short the ld AO] under section 271D of the Act dated 30.10.2015 for the Asst Year 2009-10.

2. The only issue to be decided in this appeal is as to whether the ld CITA was justified in deleting the penalty levied u/s 271D of the Act in the facts and circumstances of the case.

3. The brief facts of this issue is that the assessee is a partnership firm engaged in the business of trading in marbles and granites. During the year under appeal, the assessee had received an amount of Rs.12,00,000/- on various dates from its partner Shri Avijit Saha towards capital contribution made by the said partner in the assessee firm. The ld. AO made an observation that this receipt of capital contribution from the partner by the assessee firm tantamount to loan or deposit and since the same was

received in cash, it had violated the provisions of section 269SS of the Act and accordingly penalty u/s 271D of the Act being 100% of the loan amount would be exigible in the instant case. The Id. AO accordingly levied penalty u/s 271D of the Act.

4. The Id. CIT(A) observed that introduction of capital contributed by a partner in the partnership firm does not fall under the ambit of loan or deposit within the meaning of section 269SS of the Act. Moreover, he observed that the partner has duly reflected this introduction of capital of Rs.12,00,000/- in the partnership firm (i.e. assessee firm) in his individual balance sheet. The Id. CIT(A) also observed that the assessee firm also had treated the receipt of Rs.12,00,000/- from the partner as capital introduced by the said partner. Accordingly he deleted the penalty levied u/s 271D of the Act.

5. We have heard the rival submissions. We find that the capital contributed by the partner in the partnership firm does not tantamount to loan or deposit within the meaning of section 269SS of the Act and accordingly we do not find any infirmity in the order of the Id. CIT(A) cancelling the penalty levied thereon. Hence, we do not deem it fit to interfere in the order of the Id. CIT(A). Accordingly the grounds raised by the revenue are dismissed.

6. In the result, the appeal of the revenue is dismissed.

Order pronounced in the Court on 15.05.2018

Sd/-
[A.T.Varkey]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 15 .05.2018

[RG SPS]

Copy of the order forwarded to:

- 1.M/s. Dayamayee Marble & Granite, Hooghly Station Road, PPO & Distt. Hooghly-712103.
2. I.T.O., Ward-24(1), Hooghly.
3. C.I.T.(A)-6, Kolkata. 4. C.I.T.-8, Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

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By Order

Senior Private Secretary
Head of Office/D.D.O.. ITAT, Kolkata Benches

