

**IN THE INCOME TAX APPELLATE TRIBUNAL, CUTTACK BENCH,  
CUTTACK**

**BEFORE SHRI N.S SAINI, ACCOUNTANT MEMBER AND SHRI ABY T.  
VARKEY, JUDICIAL MEMBER**

**ITA No.115/CTK/2016**  
Assessment Year : 2008-09

Sri Dipak Kumar Sahu, S/O. Muralidhar Sahu, At/PO: Jaleswar, Dist: Balasore.	Vs.	JCIT, Balasore Range, Balasore
PAN/GIR No. ADBPS 8726 K		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.K.Mishra, AR  
Revenue by : Shri Asit Kumar Mohapatra, CIT DR

**Date of Hearing : 16 /02/ 2017**  
**Date of Pronouncement : 17 /02/ 2017**

**ORDER**

**Per Bench**

This is an appeal filed by the assessee against the order of CIT(A)-Cuttack, dated 8.12.2015, for the assessment year 2008-09.

2. The sole ground of appeal taken by the assessee in this appeal is that the Id CIT(A) is not justified in sustaining the penalty of Rs.3,00,000/- as against Rs.3,28,176/- imposed by the Assessing Officer u/s.271E of the Act.

3. We have heard the rival submissions and perused the orders of lower authorities and materials available on record. In the instant case, the

Assessing Officer found that the assessee has repaid loan/deposit in cash in contravention of the provisions of section 269T of the Act. Therefore, the JCIT, Balasore Range after getting such information issued notice u/s. 274 read with section 271E of the Act to the assessee. He found that the assessee has repaid loan in cash to five persons totaling to Rs.3,28,176/- during the year. The assessee submitted to the query of the JCIT, that the persons are living in their native villages and having no bank accounts due to non-availability of banking facilities in the nearby areas. The JCIT was not satisfied with such explanation. He relied on the decision of Delhi Bench of the Tribunal in the case of Ajay Goel Vs. ACIT, Range-28, New Delhi, 126 ITD 89, where it was held that merely because the amount of Rs.2,00,000/- has been repaid in part not exceeding Rs.20,000/- on a single day would not absolve the assessee from the rigours of section 269T as was clear from the section itself. It was held that the assessee has violated the provisions of section 269 T of the Act by repaying loan/deposits in cash in contravention of the said provisions and has therefore become liable for penalty u/s. 271E of the Act for penalty of Rs.3,28,176/- U/s. 271E of the Act and levied penalty accordingly.

4. On appeal, the CIT(A) observed that the payment made to Kanchan Bala Thakkar amounting to Rs.20,386/- and Sri Banmali Mishra amounting to Rs.47,790/- may not come strictly as contravention of the provisions of section 269T of the Act. As regards the rest of the payments/deposits in cash is concerned, it appears that the assessee has made convenient arrangements with his family members regarding the rest of the amount

repaid in cash. Therefore, he considered those payments as violation of provisions of section 269T of the Act and, accordingly confirmed the penalty of Rs.3,00,000/-.

5. Before us, Id A.R. of the assessee has relied on the decision of Hon'ble Jharkhand High Court in the case of OMEC Engineers vs CIT, 294 ITR 599 (Jhar) and submitted that the Hon'ble High Court has held that there being no finding of the Assessing Officer, the CIT(A) or the Tribunal that the transaction made by the assessee in breach of provisions of section 269SS was not a genuine transaction, penalty u/s.271D is not leviable merely for technical mistake. He submitted that similarly in assessee's case, the return having been accepted under section 143(3) after scrutiny, there being also no finding that transactions were malafide aimed at disclosing concealed money, imposition of penalty under section 271D merely for technical mistake could not be sustained.

6. Ld D.R. on the other hand relied on the orders of lower authorities.

7. We find that in the instant case, penalty of Rs.3,28,176/- u/s.271E was imposed by the Assessing Officer and Id CIT(A) restricted the penalty to Rs.3,00,000/- on the ground of making repayment/deposit in cash by the assessee to the family members. Ld A.R. of the assessee has relied on the decision of Hon'ble Jharkhand High Court in the case of OMEC Engineers (supra), wherein, it has been held that there being no finding of the Assessing Officer, the CIT(A) or the Tribunal that the transaction made by the assessee in breach of provisions of section 269SS was not a genuine transaction, penalty u/s.271D is not leviable merely for technical mistake.

Similarly, in the present case also, we find that there is no finding of the Assessing Officer or the CIT(A) that the transactions in violation of section 269SS of the Act were not genuine. The assessee's return has been accepted u/s.143(3) of the Act after scrutiny. There is no finding that the transactions were malafide aimed at disclosing concealed money. Therefore, respectfully the decision in the case of OMEC Engineers (supra), we delete the levy of penalty of Rs.3,00,000/- u/s.271E of the Act and allow the ground of appeal of the assessee.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 17 /02/2017 in the presence of parties.

Sd/-

( Aby T. Varkey)  
JUDICIAL MEMBER

sd/-

(N.S Saini)  
ACCOUNTANT MEMBER

Cuttack; Dated 17 /02/2017  
B.K.Parida, SPS

**Copy of the Order forwarded to :**

1. The Appellant : Sri Dipak Kumar Sahu, S/O.  
Muralidhar Sahu, At/PO: Jaleswar, Dist:  
Balasore
2. The Respondent. JCIT, Balasore Range,  
Balasore
3. The CIT(A) Cuttack
4. Pr.CIT, Cuttack
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

BY ORDER,

SR.PRIVATE SECRETARY  
ITAT, Cuttack