

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH
KOCHI**

BEFORE S/SHRI P K BANSAL, VICE PRESIDENT & GEORGE GEORGE K, JM

ITA Nos 136 &137/Coch/2016 (Asst Year 2006-07)

M/s. Loyal Bankers, Cherukole, Kozhencherry, Pathanamthitta.	Vs	The Addl. Commr of Income Tax Thiruvalla Range, Thiruvalla.
(Appellant)		(Respondent)

PAN No.	AAAFL 9068K
Assessee By	Smt. Mekhala M. Benny, Adv.
Revenue By	Sh Shantham Bose, CIT(DR)
Date of Hearing	03/10/2017
Date of pronouncement	05/10/2017

ORDER

PER GEORGE GEORGE K, JM:

These appeals, at the instance of the assessee, are directed against two orders of the CIT(A), Kottayam, both dated 28.01.2016. The relevant assessment year is 2006-07.

2 Since common issues are involved in these appeals and they pertain to the same assessee, they were heard together and are being disposed of by this consolidated order for the sake of convenience and brevity.

3. We shall first take up the assessee's appeal in I.T.A. No. 136/Coch/2016 for adjudication.

3.1 The only issue raised in ITA No. 136/Coch/2016 is whether the CIT(A) is justified in confirming the penalty imposed under section 271D of the Act amounting to Rs.2,85,000/-.

3.2 Briefly stated the facts of the case are as follows:

The assessee is a firm engaged in the money lending business. For the assessment year 2006-07, the Addl. Commissioner of Income-tax imposed penalty under section 271D amounting to Rs.2.85 lakhs, for violating the provisions of Sec. 269SS of the I.T. Act. The relevant finding of the Addl. CIT reads as follows:

“Section 271D of the Income Tax Act, 1961 stipulates that if a person takes or accepts any loan or deposit in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.

Now on going through section 269SS of the Act, it is evident that the Act does not grant any exemption for loans or deposits accepted to senior citizens, agriculturist, relatives etc. regarding the mode of acceptance of the loans or deposits. I am also not satisfied with the explanation offered by the ass for the default. Under the circumstances the assessee firm is liable for penalty under section 271D on an amount of Rs.2,85,000/- (as per the list in the assessee's letter dated 23-06-2009).

I am fully satisfied that the assessee firm has without any satisfactory reasons or explanations ignored the requirements as to the mode of acceptance of loans and deposits and that therefore it is liable for penalty under section 271D of the Income Tax Act, 1961. Such penalty being a sum equal to the amount of loan or deposit so taken or accepted amounts to Rs. 2,85,000/-. I therefore levy a penalty of Rs.2,85,000/- u/s. 271D of the Income Tax Act, 1961. This shall be paid as per demand notice and challan enclosed.”

3.3 Aggrieved by the order of the Addl. CIT imposing penalty under section 271D of the Act, the assessee preferred an appeal to the first appellate authority. The CIT(A) confirmed the penalty imposed under section 271D of the Act. The relevant finding of the CIT(A) reads as follows:

“I have considered the rival submissions of both sides and observed as follows:

It is noted that Assessing Officer rejected the contention of the AR on the ground that the AR was not able to explain the case satisfactorily. The Assessing Officer did not accept the appellant's contention that these deposits in cash were only in very few instances and only in emergency circumstances especially from relatives/agriculturists/senior citizens etc. who insisted cash deposits or who did not have any bank account facility or those who have brought cash outside banking hours. The undersigned also finds that the appellant was not able to substantiate that there was business exigency forcing the appellant to take cash loans on those particular dates. The issues referred to by the appellant could not be attributed to any similarity with that of the instant case. Hence I hereby confirm the order of the Assessing Officer.”

3.4 The Ld Counsel for the assessee had sought for adjournment. However, we proceeded to dispose of the issue on merits, since there were no adequate reasons stated for adjournment of the case. The Ld. DR on the other hand supported the orders of the Income Tax authorities.

3.5 We have heard the rival submissions and perused the material on record. The loans from sundry parties during the relevant assessment year is amounting to Rs.1,56,55,043/-. On going through the list of sundry parties, it is noticed that only in few instances, cash deposits were accepted, i.e., for Rs.2.85 lakhs, which is less than 2% of the total loans /deposits accepted by the assessee. The claim

of the assessee is that these deposits are received from relatives, agriculturists, senior citizens etc. who do not have any banking facility. The assessee is catering its business to rural population. The turnover of the assessee is not that large. The claim of the assessee that the deposits received in cash were from the agriculturists, senior citizens etc. cannot be totally brushed aside as false. It is a specific case of the assessee that it had reasonable cause as mentioned in section 273B for not adhering to the provisions of section 269SS. Only in very few instances, the assessee had received the cash deposits above the prescribed limit. The depositors in rural/village are mainly agriculturists, senior citizens etc. and they could have insisted for receiving the deposits in cash. The Hon'ble Apex Court in the case of Asst. Director of Inspection vs. Kum. A.B. Shanthi (255 ITR 258) held that if for any reason the taxpayer could not get a loan or deposit by account payee cheque or demand draft for some bonafide reason, the penalty may be dispensed with as per section 273B. The apex court further held that Section 273B is intended to mitigate undue hardship that may befall the assessee on account of penalty under section 271D and 271E. Further, in CIT vs. Balaji Traders, the Madras High Court has categorically held that the business exigencies of an assessee would constitute a reasonable cause as envisaged under section 273B for not imposing penalty under Section 271D. The Madras High Court has relied on the decision of the apex court in A.B. Shanthi (supra). In CIT vs. Sahara India Financial Corp. Ltd. (257 CTR 215 (Delhi)), the Hon'ble High Court of Delhi has held that existence of inadequate banking facilities and

reluctance of customers to utilize banking facilities due to illiteracy constituted a reasonable cause so as to delete penalty imposed by Assessing Officer under section 271D. Similarly the Hon'ble High Court of Gujarat in CIT vs. Maa Khoodyar Constructions (365 ITR 474), has held that no penalty can be levied for cash loans exceeding Rs.20,000/- from agriculturists living in remote areas when transactions were not doubted.

3.7 In view of the aforesaid reasoning and the judicial pronouncements cited supra, we are of the view that there is reasonable cause as mentioned in section 273B of the I.T. Act, for accepting cash deposits to the tune of Rs.2.85 lakhs. Therefore, penalty imposed u/s. 271D of the Act is not warranted and we delete the same. It is ordered accordingly. Hence the appeal filed by the assessee in I.T.A. No. 136/Coch/2016 is allowed.

ITA No. 137/Coch/2016 (Assessee's appeal)

4. The only issue raised in this appeal is whether the CIT(A) is justified in confirming the penalty imposed u/s. 271E of the I.T. Act. The Addl. CIT had imposed penalty u/s. 271E by observing as follows:

"The following amounts were repaid in contravention of section 269T from various types of deposits as under:

- | | |
|-------------------|---------------|
| 1. Pigmy deposits | Rs.1,82,133/- |
| 2. Fixed Deposits | Rs.2,96,200/- |

3. Loan amounts Rs.2,59,000/-
Rs.7,37,333/-

The repayments of Rs.2,96,200/- under the head fixed deposit are in fact repayments to the partners of the assessee from itself (1) Manu C Kurian Rs.27,000/- (2) Thomas Mathew Rs.50,200/- and (3) Beena P. Varkey Rs.2,19,000/- According to the assessee these repayments does not attract the provisions of section 269T as it is a transaction between firm and partners. According to the assessee wherever the repayments were made in cash they were made only in emergency situations to sundry parties who either had no bank account facility or senior citizen who required cash urgently or agriculturists or retired persons etc. and that any such contravention of section 269T was only unintentional. The assessee wanted to drop the penalty proceedings under the above circumstances.

Section 271E of the Act stipulates that if any person repays any loan or deposits referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay by way of penalty a sum equal to the amount of the loan or deposit so repaid."

4.1 The CIT(A) confirmed the imposition of penalty u/s. 271E of the I.T. Act. The observation of the CIT(A) in confirming the penalty reads as follows:

" I have considered the rival submissions of both sides and decided the issue as following:

It is noted that Assessing Officer rejected the contention of the AR on the ground that the AR was not able to explain the case satisfactorily. The appellant's contention that these repayments in cash are exempted to some specified group viz. senior citizens, agriculturists, relatives, retired persons and partners of the firm and that too in very few instances of emergency circumstances only is not sustainable. The fact that the depositors did not have any bank account facility also could not be accepted as sufficient reason. Accordingly, the undersigned also finds that the appellant was not able to substantiate that there was business exigency forcing the appellant to repay the deposits without complying with the provisions of section 269T of the Act. The issues referred to by the appellant could not be attributed to any similarity with that of the cases referred by the assessee. Hence I hereby confirm the order of the Assessing Officer."

4.2 We have heard the Ld. DR and perused the material on record. Out of the total repayments of deposit by cash amounting to Rs.7,37,333/-, only a sum of Rs.2,59,000/- is paid to the outsiders. For deleting the penalty u/s. 271D. we have stated that the assessee is operating its business in rural/village area and most of its customers/clients are agriculturists, senior citizens etc. Only on few instances,

repayment of loans has been made by cash. Our reasoning for deleting the penalty u/s. 271D will hold good for deleting the penalty imposed under the provisions of section 271E also. Accordingly, we hold that there is reasonable cause as mentioned in section 273B of the Act for non compliance of the provisions of section 269T of the I.T. Act. It is ordered accordingly. Therefore, the appeal filed by the assessee in ITA No. 137/Coch/2016 is allowed.

5. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open Court on 5th /10/ 2017.

sd/-	sd/-
(P K BANSAL)	(GEORGE GEORGE K)
Vice President	Judicial Member

Cochin: Dated 5/10/ 2017

GJ

Copy to:

1. M/s. Loyal Bankers, Cherukole, Kozhencherry, Pathanamthitta.
2. Addl. Commissioner of Income Tax, Thiruvalla Range, Thiruvalla.
3. CIT(A), Kottayam.
4. Pr. CIT, Kottayam.
5. DR
6. Guard File

By order

Assistant Registrar
ITAT, COCHIN