

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
JAIPUR BENCHES, JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एव श्री भागचन्द, लेखा सदस्य सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 109/JP/2018  
निर्धारण वर्ष/Assessment Year: 2013-14

Shri Neeraj Purohit A-153, Man-Darpan, Nehru Nagar Jaipur	बनाम Vs.	The JCIT Range-4 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AGSPP 2842 B		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Manish Agarwal  
राजस्व की ओर से / Revenue by: Smt. Seema Meena, JCIT - DR

सुनवाई की तारीख / Date of Hearing : 10/05/2018  
घोषणा की तारीख / Date of Pronouncement : 20/07/2018

आदेश / ORDER

PER BHAGCHAND, AM

The appeal filed by the assessee emanates from the order of the Id.  
CIT(A)-2, Jaipur dated 18-12-2017 for the Assessment Year 2013-14  
raising therein following grounds of appeal.

“1. On the facts and in the circumstances of the case and in law the Id. CIT(A) erred in confirming penalty of Rs. 7,46,105/- levied by AO u/s 271E of the I.T. Act, 1961 in respect of payment made to Tata Capital Limited, arbitrarily. Appellant prays penalty so confirmed deserves to be deleted.

1.1 That the Id. CIT(A) has further erred in confirming penalty levied by AO in respect of principal components of EMIs paid to Tata Capital Limited in cash, interest whereof was disallowed u/s 40A(3) which has already been allowed by Hon'ble ITAT by appreciating the exceptional circumstances under which the repayment of loan was made in cash and such order was available with Id. CIT(A) before passing impugned order, thus penalty of Rs. 7,46,105/- deserves to be deleted.

1.2 That the Id. CIT(A) has further erred in confirming penalty by grossly ignoring the submission of assessee that assessee was compelled to make payment in cash thus there was reasonable cause for not complying with the provisions of sec 269T of the I.T. Act, 1961. Appellant prays penalty levied by AO deserves to be deleted more particularly when the identity of recipient, genuineness of such payment and source of payment remained proved.

2.1 Apropos Ground No. 1 to 1.2 of the assessee, the facts as emerges from the order of the Id. CIT(A) are as under:-

“2.3 I have perused the facts of the case, the penalty order and the submissions of the appellant. This is an appeal against penalty levied under section 271E of the I.T. Act by the JCIT, Range-4, Jaipur. The facts are that the assessee had repaid loan and deposits to M/s. Tata Capital Limited of an amount of Rs. 7,46,105/ on various dates by modes other than those prescribed in Section 269T, in this case, cash. The assessee had explained that he had taken finance from M/s. Tata Capital Limited on four different assets for which post dated cheques were given to the bank. Since four EMI's were returned back due to insufficient funds, it was submitted that the financier insisted for repayment of cash only. After discussing the reply in detail, the JCIT levied that the above penalty.

In the present proceedings, it was stated that the provisions of section 269SS and 269T found place in the statute book only to counter evasion of taxes and since no doubt is expressed by the AO about the AO source of cash used for repayment of the loan the same should be allowed. It was further submitted that the JCIT has

not accepted the exigency of making cash payment on the ground that the assessee has not submitted any evidence that the assessee was compelled to make payment in cash. It was further submitted that the impugned Assessment Year additions were made under section 40A(3) for disallowance of Rs. 1,95,677/- being interest portion in the said payment of Rs. 7,46,105/- made in cash and the same had been deleted by the ITAT Jaipur relying on the case of M/s. Anupam Tele Services versus ITO.

The uncontroverted fact is that the appellant has not produced any evidence or confirmation to show the party had insisted for cash payment as held by the JCIT in her order, as even after substantial opportunity was afforded to the assessee for the same as and when requested by him. Further Section 269T is attracted once the condition laid down therein are violated. The genuineness of the transaction is not a criteria to prevent the application of section 269T. On this very issue the ITAT Jaipur in the case of ITA No.820/JP/2016 M/s. Arien Metals Pvt. Ltd., Jaipur vs ACIT , Jaipur has raised a very relevant point and held that penalty provisions would be applicable for default enshrined in them and other factors like genuineness of the transaction or tax effect would not be relevant. Though the case was with reference to penalty under section 271(1)(c ) but the ratio holds good in the present case as well. The relevant portion of the order is reproduced below:-

*“16. Further, we don't agree with the contenton of the ld.AR that no penalty can be levied simpliciter on the basis that the assessee was having the option of making the payment either within the prescribed due date of it failed, has the liberty to deposit in a later year where also the law permits the deduction on payment basis. In our view, it is not really an option rather it relaxes the rigour by way of providing an extended time for deposit for the limited purposes of allowance of a particular expenditure. At the same time, it doesn't absolve the assessee from interest and penal consequences for non-deduction of non-payment taxes. We find that similar provision exist under section 43B where also the prescribed payment are disallowed if not paid before the due date of filing of return of income and allowed on payment basis. Further, purely from an accounting stand point also, where the financial statements are drawn, there are transactions which are closely connected and hence have effect on the transactions in the subsequent financial year for example, the closing stock of a year will*

*become the opening stock for the next year. The question is whether there is dispute regarding either quantification or valuation of the closing stock, will that become a non-issue when it comes to levy of penalty just because whatever final value of closing stock is determined, it will become the opening stock of the next financial year. Similarly, there could be dispute regarding rate of depreciation on fixed assets and can it be said that whatever rate of depreciation is finally determined, the same will be a non-issue as far as penalty is concerned just because where the rate of depreciation is say, reduced for a particular year, to that extent, claim of depreciation is reduced but at the same time, closing written down value will be increase and the claim of depreciation is effectively deferred to the extent of differential in rate of depreciation.*

17. *In our view, as far as levy of penalty under section 271(1)© is concerned, what has to be seen is whether the conditions stipulated in Section 271(1)( c) are satisfied or not and it has to be examined qua each assessment year. The condition precedent for levying the penalty is the satisfaction of the AO that there is a concealment of the particulars of the income or there is furnishing of inaccurate particulars of income.’’*

Further in the case of [2008] 296 ITR (Rajasthan) High Court of Rajasthan, Madan Lal Mahaveer Prasad vs Income-tax Appellate Tribunal, the head note is as under:-

“Section 271E of the Income-tax Act, 1961 –Penalty- For failure to comply with Section 269T – Where petitioner had failed to prove that repayment of deposit of Rs. 50,000/- otherwise than by crossed cheque or bank draft was made by it for some reasonable cause but pleaded that it was a case of mere technical default and that genuineness of transaction was never really in dispute, levy of penalty on assessee was proper.’’

The relevant portion of the above order is reproduced below:-

“Having scanned the material on record, I notice that the petitioner had failed to prove the repayment or deposit of Rs. 50,000 otherwise than by crossed cheque or bank draft was made by it for some reasonable cause. In this situation the penalty under section 271E of the 1961 Act was imposed on the petitioner-firm. A look at section 269T of the 1961 Act demonstrates that no company or firm shall repay to any person any deposit otherwise than by an account payee cheque or account payee bank draft where the amount of the

deposit, or where the amount of the deposit is to be repaid together with any interest, the aggregate of the amount of the deposit and such interest is ten thousand rupees or more. Section 271E of the 1961 Act provides that if a person repays any deposit 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 deposit so repaid. In CIT v. Manoj Lalwani [2003] 260 ITR 590 (Raj) the question for consideration was whether in the facts and circumstances of that case, the Tribunal had committed illegality in deleting the penalty under section 271D. The assessee exporter in that case took the cash loan in contravention of section 269SS because he was in urgent need of money for making the time bound supplies. The Division Bench of this court under those circumstances found it as a reasonable cause for setting aside the penalty.

In the instant case, the petitioner has failed to show the reasonable cause in contravening the provisions contained in section 269T, therefore, the Income-tax Appellate Tribunal was right in passing the impugned judgment. In my opinion, this is not a fit case warranting interference under article 227 of the Constitution.’’

In view of the discussion as above and the judgement relied on, it is clear that there is a violation of the provision of section 269T, the existence of reasonable cause could not be proved and thus penalty under section 271E is correctly levied and confirmed. Ground of appeal is dismissed.’’

2.2 During the course of hearing, the ld.AR of the assessee prayed for deletion of penalty of Rs. 7,46,105/- confirmed by the ld. CIT(A) u/s 271E of the Act for which the ld.AR of the assessee filed the following written submission.

**Ground of Appeals No.1 to 1.2:**

“In all these grounds of appeal, assessee has challenged the action of ld. CIT(A) in confirming the penalty of Rs.7,46,105/- levied by ld.AO u/s 271E of the Income Tax Act, 1961.

Brief facts of the case are that assessee had taken loan from Tata Capital Ltd. an NBFC, for repayment of which, advance EMI cheques were given. However, during the year, certain cheques could not be encashed due to non availability of funds in bank. Therefore, finance company officials did not accept cheque and insisted to make payment in cash on urgent basis. Thus, the assessee had to make payment in cash due to business exigency. In fact, such plea of assessee was accepted and disallowance u/s 40A(3) was deleted by Hon'ble ITAT vide its orders dated 08.11.2017 where the Hon'ble Bench after appreciating these facts has deleted the disallowance by observing in para 5.3 at page 10 of the order as under:

*“5.3 We have heard the rival contentions, perused the material available on record. The Hon'ble High Court in the case of Anupam Tele Service Vs. ITO (supra) under the identical facts decided the issue in favour of the assessee held that payment between the assessee and the Tata Teleservice Ltd. were genuine. The Tata Teleservices Ltd. had insisted that such payments be made in cash, which Tata Teleservices Ltd. in turn assured and deposited the amount in a bank account. In the facts of the case of assessee, rigors of Section 40A(3) must be lifted. Since, the facts are identical and the assessee has demonstrated that the assessee made payment in cash at the instances of the finance company, therefore rigors of section 40A(3) must be lifted. Respectfully, following the Judgments of the Hon'ble Gujarat High Court in the case of Anupam Tele Services (supra), we direct the AO to delete the disallowance. Thus, this ground of assessee's appeal is allowed.”*

So far as levy of penalty u/s 271E is concerned, it is stated that such penalty is undoubtedly leviable on contravention of provisions of section 269T of the Act. However, each and every provision in the Act is inserted with some purpose, which is conveyed by Finance Minister in Budget speech and forms part of Memorandum explaining Finance Bill. Therefore, before invoking any provision, more particularly stringent provisions of penalty, such purpose has to be kept in mind and it cannot be applied straightway in mechanical manner, as it may result in undue hardship to assessee.

At this juncture, it is submitted that provisions of section 269T were brought on the statute by the Finance Act, 1981, with effect from, 11-7-1981. The scope and effect of inserting this section was explained by the Board in Circular No.345 dated 28 June 1982 reported in 140 ITR St. 18, which reads as under:

*“ 3. Mode of repayment of term deposits-  
Section 269T- 3.1 The Income Tax (Second amendment) Act, 1981 has inserted a new chapter XXB regarding requirement as to mode of repayment in certain cases to counteract evasion of tax..... ”*

From perusal of above, it is evident that a person should be deemed to have contravened the provisions of section 269T, only if it is proved that such contravention was with intent to evade tax as the provision has been brought on statute book to counteract the evasion of tax.

It is pertinent to note here that in the instant case, lower authorities have neither established that there was malafide intention of the assessee in paying amount in cash nor they have brought on record any material to prove that transaction has resulted in evasion of tax, more particularly when the recipient is a well known NBFC. Thus, in the present case where, though technically assessee is at fault, there is no contravention of section 269T in terms of legislative intention so as to attract rigors of section 271E of the Act. Further, imposition of penalty invariably in all the cases of cash payment exceeding specified limit, without satisfying that such act of assessee has actually resulted in “evasion of tax” would be against the spirit of law. Further before levy of penalty, authorities should have made out a case that assessee has no reasonable cause for making payment in cash in contravention to section 271E. Section 273B of the Act provides for the situation wherein, it is clarified that if assessee has reasonable cause, no penalty could be levied. The section 273B provides as under:-

**273B.** Notwithstanding anything contained in the provisions of [clause (b) of sub-section (1) of] [section 271 , section 271A, [section 271AA,] section 271B [, section 271BA ], [section 271BB,] section 271C, [section 271CA,] section 271D , **section 271E**, [section 271F, [section 271FA,] [section 271FB ,] [section 271G,] clause (c) or clause (d) of sub-section (1) or sub-section (2)

of section 272A, sub-section (1) of section 272AA] or [section 272B or] [sub-section (1) [or sub-section (1A)] of section 272BB or] [sub-section (1) of section 272BBB or] clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions **if he proves that there was reasonable cause for the said failure.**]

Regarding the judgment of Hon'ble Bench in the case of Airen Metals (ITA No. 820/JP/2016) and of Hon'ble Rajasthan High Court in Madan Lal Mahaveer Pd. Vs. ITO (296 ITR 377) as relied upon by Ld. CIT(A) while upholding the penalty u/s 271E, it is submitted that both the orders are distinguishable. Firstly, the case of M/s Airen Metals Pvt. Ltd. is in relation to penalty u/s 271(1)(c). Secondly, this decision does not in any way propound the theory that 'other factors like genuineness of transaction or tax affect would not be relevant' as sought to be observed by Ld. CIT(A). Rather in this decision the Hon'ble ITAT has held that 'argument of the assessee against the concealment penalty in relation to incorrect claim of depreciation, being revenue neutral over the years and similarly argument of not imposing penalty on unpaid liability u/s 43B on the plea that in the subsequent year same would be allowed on payment basis, is of no avail. The Hon'ble ITAT has further held that whether conditions stipulated u/s 271(1)(c) are satisfied or not are to be examined qua each assessment year. Thus ratio decendi of this decision is quite different and is not applicable in the instant case of assessee.

The another case referred by Ld. CIT(A) is of Madan Lal Mahaveer Prasad. In this reported case, the Hon'ble Court has specifically observed that assessee has failed to show the reasonable cause in contravening the provisions of section 269T and therefore ITAT was right in passing the impugned judgment. In the same judgment the Hon'ble Court has also referred to the decision in the case of CIT Vs. Manoj Lalwani (2003) 260 ITR 590 (Raj.) and has observed that in that case the division bench of this court found the circumstances of urgent need of fund as a reasonable cause for setting aside the penalty.

Thus in the cited case referred by Ld. CIT(A) the assessee failed to show the reasonable cause. Whereas in the instant case of assessee as

has been held by Hon'ble ITAT also, payments of EMI were made to Tata Capital Ltd. in cash under exceptional circumstance on their insistence to pay immediately as the cheque of the assessee so presented by them got dishonored. This certainly constitute reasonable cause, as already held by Hon'ble ITAT while deleting the disallowance u/s 40A(3). Accordingly, it will be a reasonable cause for the purpose of levy of penalty u/s 271E. It is thus submitted that reliance on these judgments so placed by Ld. CIT(A) is totally misplaced and deserves to be ignored.

In the present case, no unaccounted for money is involved and the immediate source of cash was duly explained which was not doubted by Ld. AO. When no unaccounted for money was involved in the transaction, levy of penalty u/s 271E on such transaction is not in the spirit of legislation and is not in accordance with the intent and purpose for which it was introduced in the statute book. The provisions of Section 269SS / 269T were brought on statute book to counter evasion of tax in certain cases, as clearly stated in the heading of Chapter XXB which reads 'Requirement as to mode of acceptance, payment or repayment in certain cases to counteract evasion of tax.' Legislative intention in bringing Section 269SS / 269T was to avoid certain circumstances of tax evasion, whereby huge transactions are made outside the books of account by way of cash. This intention is also clear from CBDT Circular No. 387, that if some unaccounted money was involved then the provisions of section 271D / 271E becomes applicable and in the case of the assessee, there is no dispute whatsoever about the source of money (which is from accounted sources and fully explained) and genuineness of transaction. In such a case, therefore, it will be highly technical to hold that there is any default as contemplated under Section 271E.

In this regard, reliance is placed on the judgment of the Supreme Court in the case of [Hindustan Steel Ltd. v. State of Orissa](#) reported in [1972] 083 ITR 0026 (SC) wherein it has been held that penalty is not to be imposed merely because it is lawful to do so and that it should not be imposed if there is only a technical or venial breach of law.

The Hon'ble Gauhati Bench of ITAT in the case of Addl. CIT Vs. Smt. Prahati Baruah reported in(2003) 133 Taxman 74 is also of the same view and held as under:

*The introduction of section 269T and section 271E in the statute is to prevent proliferation of black / unaccounted money deposited with banks and other persons by introducing the system of repayment through account payee cheques and drafts and, thus, to ensure that the identity of the payee is established. Where the identity of the lender to whom repayment had been made was known to the department and the genuineness of the loan transaction was not in doubt, it could not be said that the breach of law, if any, was deliberate and the default, if any, could be said to be a technical default for which no penalty would be leviable.*

It is further submitted that these transactions were not made with the intention to evade tax or to conceal any income. At the most, it is a case of negligence, but a negligent person does not have any intention or *mensrea* to purposely violate any provision of law so as to be visited with stringent punishment of heavy penalty. The Hon'ble Supreme Court in the case of CIT v. J.H. Gotla (1985) reported in 156 ITR 323 has held “*that where the plain literal interpretation of a statutory provision produces a manifestly unjust result which could never have been intended by the legislature, the Court might modify the language used by the legislature so as to achieve the intention of the legislature and produce a rational result.*”

It is worthwhile to mention that a harmonious construction of the relevant provisions of Sections 271B, 271E and 273B clearly reveals that the use of the expression 'shall be liable to pay' in Sections 271D and 271E and the provisions of Section 273B providing that no penalty would be leviable if the person concerned proves that there was reasonable cause for the said failure, clearly indicate that these provisions give a discretion to the authorities to impose the penalty or not to impose the penalty. Such discretion has to be exercised with wisdom and in a just and fair manner having regard to the entire relevant facts and material existing on records.

It is further submitted that the provisions dealing with penalty must be strictly construed. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding and penalty will not ordinarily be imposed unless the party either acted deliberately in defiance of law or was guilty of conduct, contumacious or dishonest or acted in conscious disregard of his obligation. Penalty will also not be imposed merely because it is lawful to do so. Even if a minimum penalty is prescribed, the authority competent to impose penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where

the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

Section 269T lays down the mode repayment of loans and deposits. Section 271E deals with imposition of penalty for failure to comply with the provisions of section 269T. Section 273B provides that no penalty shall be imposed if the assessee proves that there was reasonable cause for the said failure. The words “reasonable cause” has not been defined under the Act but they could receive the same interpretation which is given to the expression “sufficient cause”. Therefore, in the context of the penalty provisions, the words “reasonable cause” would mean a cause which is beyond the control of the assessee. “Reasonable cause” obviously means a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fides. Before imposition of penalty under section 271E, the Assessing Officer must be satisfied, not arbitrarily but judiciously, that the assessee has without reasonable cause failed to comply with the provisions.

Thus in the circumstances of the case and also on the facts it is submitted that there was neither any malafide intention on the part of the assessee in making payment of EMI in cash nor genuineness of transaction was doubted by the authorities, the penalty as imposed u/s 271E merely on technical mistake committed by the assessee, which had not resulted in any loss of revenue, is harsh and deserves to be not sustainable in law, thus the same be kindly directed to be deleted.

In this regard, reliance is placed on:

**(i) CIT Vs. Manoj Lalwani (2003) 260 ITR 590 (Raj.):**

In this case Hon’ble Rajasthan High Court has held that urgent need for taking the cash constitute reasonable cause and therefore penalty u/s 271D is not imposable. Same ratio would apply in penalty u/s 271E. Hon’ble Court has observed as under:

*“In the present case the Tribunal has found that the assessee is an exporter and was in urgent need of the money for complying with the time bound supplies and, therefore, he took a loan of Rs. 2,50,000/- (Rs. two lac fifty thousand) from his brother-in- law Mukesh Manwani. Out of the loan so taken, an amount of Rs. 2,45,000/- (Rs. two lac forty-five thousand) was immediately deposited in the Bank, which indicates that the amount of loan, in fact, was received by him from Mukesh Manwani. It was only to meet the emergent need of time bound supplies; the loan*

*was taken as he did not have sufficient time and funds and, that there was no intention to violate the provision of [Section 269SS](#) of the Act of 1961. The Tribunal, in these circumstances, has arrived at a conclusion that the cash loan was taken by the assessee in the exceptional circumstances and that it is a case of reasonable cause, as a consequence thereof set aside the penalty imposed by the revenue authorities. As we have already held that on a reasonable cause being shown, the assessing authority has jurisdiction not to impose the penalty and, therefore, in our opinion, the Tribunal has acted in accordance with the law in waiving the penalty imposed on the assessee by the revenue authorities.*

*In view of the aforesaid, the questions are answered in favour of the assessee. The appeal is dismissed.”*

(ii) **[2008] 301 ITR 328 (Guj) CIT v. Bombay Conductors & Electricals Ltd.**

Penalty – Deposits in cash in excess of specified limit – Effect of section 273B – Reasonable explanation for such deposits – Penalty cannot be imposed – Purchase of goods – Balance due adjusted by book entries – No intention to evade tax – Penalty could not be imposed – Income Tax Act, 1961, ss. 269SS, 271D, 273B.

(iii) **[2006] 283 ITR 113 (Del) DIT(Exemp.) Vs. All India Deaf & Dumb Society**

Penalty – Loans in cash exceeding specified limit – Finding that there was no intent to violate law – Cancellation of penalty – Valid – Income Tax Act, 1961, ss. 271D, 271E.

(iv) **Hyderabad Bench** of the Tribunal in case of **Industrial Enterprises v. Dy. CIT (2000) 73 ITD 252 (Hyd)** in para 17.2 of its order held as under:

*"Provisions of section 269SS were brought in the statute book to counter the evasion of tax in certain cases, as clearly stated in the heading of Chapter XX -B of the Income Tax Act, 1961, which reads requirement as to mode of acceptance, payment or repayment in certain cases to counteract evasion of tax legislative. Intention in bringing section 269SS in the Income Tax Act was to avoid certain circumstances to tax evasion, whereby huge transactions are made outside the books of account by way of cash. As far as the case on hand before us is concerned, there is no case against the assessee-*

*firm that these transactions had anything to do with evasion of tax or concealment of income. As rightly pointed out by the Commissioner (Appeals) himself, it may be a case of negligence. But a negligent person does not have any intention or mensrea to purposely violate any provision of law, so as to be visited with stringent punishment of heavy penalty.*

- (v) Similarly Hyderabad Bench in another case namely **Dillu Line Enterprises (P) Ltd v. Addl. CIT (2002) 80 ITD 484 (Hyd)**, has held penalty u/s 269D (which is akin to 269T) not leviable and observed as under:

*"We find force in the argument of the learned counsel for the assessee that the **object of the provisions being unearthing of unaccounted money, is not applicable to any transaction which is done in an open manner, which is genuine and in which no unaccounted money is involved. Mere technical breach of the provisions, while the transactions are held to be genuine, do not attract the provisions of section 269SS.** It is not the case of the revenue that the amounts involved were unaccounted transaction. **It is an undisputed fact that the transactions are genuine.** The Chapter XX-B and section 269SS begins with the heading-Requirement as to mode of acceptance, payment or repayment in certain cases to counteract evasion of tax. The term 'certain' used therein, when read along with the legislative intent of curbing tax evasion, clearly means that all loans are not attracted. This section attracts only 'certain' loans that are brought in by the taxpayer to explain away his unexplained cash or unaccounted deposit. **This section is definitely not intended to penalize genuine transactions, where no tax. evasion is involved.** It is well settled that the headings preferred to sections or set of sections in some modern statutes are regarded as 'preambles' to those sections. This view was approved by Farewell I.J. in *Fletcher v. Birkenhead Corpn. (1907) 1 KB 205*".*

- (vi) Hon'ble **Jabalpur bench of Tribunal** in the case of **Mahesh Prasad Soni vs Addl CIT** reported in **(2004) 86 TTJ 815 (Jab- Trib)** has held that :-

“ ....

- 10. Keeping in view the intent of the legislature behind enacting the above sections, we hold that the loans/deposits brought in by*

*the assessee were not to explain his unaccounted cash, and, therefore, the question of violating the provisions of section 269SS/269T did not arise. We may mention here that even there is no suggestion from the revenue that by way of accepting loans and deposits in cash, the assessee has introduced his unaccounted cash in the garb of loans.”*

(vii) **Chandigarh Bench of the Tribunal** in the' case of **Income Tax Officer v. Rajendra Trading Co. (1994) 48 ITD 210 (Chd)** while cancelling the penalty under Section 271 D had observed as under:

*"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi criminal proceedings and penalty will not ordinarily be imposed unless the party is obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute."*

(viii) **Hon'ble Kolkata ITAT** after relying above cited pronouncements vide order dated 08.04.2016 in the case of **S. R. Associated Construction Co ... vs Assessee in ITA Nos.209 & 210/Kol/2013** has held that:

*"4.6. From the totality of the facts and circumstances of the case, we are convinced that there is no case for invoking the provisions of section 269T of the Act and hence the penalty levied u/s 271E for violation of section 269T of the Act thereon is quashed herewith. Accordingly the appeal of the assessee in ITA No. 209/Kol/2013 is allowed."*

In view of above, it is requested before Hon'ble bench that penalty of Rs.7,46,105/ deserves to be deleted. “

2.3 On the other hand, the ld. DR supported the orders of the authorities below.

2.4 We have heard the rival contentions and perused the materials available on record. Brief facts of the case are that AO during the course of assessment proceeding found that the assessee Shri Neeraj Purohit had repaid certain ‘‘loans or deposits’’ to M/s. Tata Capital Ltd. falling under section 269T of the Act as the same was repaid otherwise than a mode u/s 269T. The details of such amount is as under:-

S.N.	Date	Amount
1.	31-07-2012	4,58,000/-
2.	30-06-2012	63,283/-
3.	30-09-2012	63,383/-
4.	30-06-2012	1,61,539/-
	Total	7,46,105/-

It is thus noted that the assessee has made cash payment to M/s. Tata Capital Ltd. which is the violation of provisions of Section 269T as the loan was repaid in mode otherwise than account payee cheque or account payee demand draft. The AO vide letter dated 12-04-2016 had referred the mater to the JCIT for initiation of penalty u/s 271E of the Act as assessee has repaid loan in cash which is a clear violation of provision of Section 269T of the Act. Thus the Notice dated 13-04-2016 u/s 274 r.w.s.271E of the Act was issued and served upon the assessee. The

assessee was asked to show cause as to why penalty should not be levied u/s 271E of the Act in this case. The Id.AR of the assessee submitted following reply before the JCIT.

“the assessee has taken finance from Tata Capital Ltd on 4 different assets for which post dated cheques/ standing instructions were given to the bank. The monthly EMI of four different loans was as under:-

Asset financed	Monthly EMI
Truck No. 0845	63,383/-
Truck No. 0846	63,283/-
Tata Hitachi Ex-210	1,61,539/-
Excavator Loader	4,58,000/-
Total EMI's	7,46,105/-

The facts are given to just state that of these 48 monthly EMI's only 4 EMI's were returned by the bank due to insufficient balance in the bank account. In the instant case, the financier M/s. Tata Capital Ltd insisted for repayment of balanced EMI in cash. The assessee could have issued another cheque but they insisted for payment in cash only, therefore, the assessee made payment of bounced EMI's in cash and the company issue a receipt of cash payment.

The transactions between the bona fide in nature. Further, it is also clear that there is no allegation of tax evasion in respect of such transactions by the assessee. The cash book, ledger and copies of accounts were produced before the AO and the same were examined through test check by him.

The provisions of sec 269SS and 269 T found place in the statute book only to counter the evasion of taxes. Further no doubt is expressed by the AO about the source of cash used for repayment of loan, or about the genuineness of the transaction. Under the circumstances, penalty u/s 271E is not attracted on the facts of this case. If the genuineness of the loan or deposit was accepted as those, no question of levy of penalty arises.”

The JCIT, Range-4, Jaipur took into consideration the submissions of the assessee but she was not convinced with the submissions of the assessee and thus levied the penalty of Rs. 7,46,105/- by observing as under:-

*“4. In view of the above facts and legal precedence, I am satisfied that assessee has contravened provision of section 269T of I.T. Act, 1961. Thus penalty u/s 271E of Rs. 7,46,105/- i.e. equal to the amount of loan/deposit repaid is hereby levied.”*

In first appeal, the Id. CIT(A) has confirmed the penalty of Rs. 7,46,105/- u/s 271E of the Act. We have taken into consideration the orders of the lower authorities including the written submission of the assessee. In assessee's own case, the addition made by invoking the provisions of section 40A(3) have been deleted by ITAT while ITA No.1037/JP/2016 vide order dated 8-11-2017. This fact regarding insisting upon cash payment by Tata Teleservices Ltd. is well established. We find that the assessee could substantiate reasonable cause in controverting the provisions of Section 269T of the Act as the assessee had mentioned that the lender had insisted upon the assessee to make the payment in cash. It is noted that the assessee has filed the evidence or proof before the lower authorities to establish that the lender had insisted upon the assessee to make the payment in cash or the party was in urgent need of money. The

assessee proved that there was reasonable cause for repayment of the loan in cash to M/s. Tata Capital Ltd. Looking into facts and circumstances and the case laws cited by both the parties (supra), the Ground No. 1 to 1.2 of the assessee are allowed.

3.0 In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 20-07-2018.

Sd/-  
( विजय पाल राव )  
(Vijay Pal Rao)  
न्यायिक सदस्य /Judicial Member

Sd/-  
(भागचन्द)  
(Bhagchand)  
लेखा सदस्य/Accountant Member

जयपुर /Jaipur  
दिनांक /Dated:- 20 /07/ 2018

\*Mishra

आदेश की प्रतिलिपि अग्रेषित /Copy of the order forwarded to:

1. अपीलार्थी /The Appellant- Shri Neeraj Purohit, Jaipur
2. प्रत्यर्थी / The Respondent- The JCIT, Range-4, Jaipur
3. आयकर आयुक्त(अपील) / CIT(A).
4. आयकर आयुक्त / CIT,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर /DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No.109 /JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Assistant. Registrar