

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

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.475/Coch/2018 : Asst.Year 2005-2006

NSS Karayogam Branch No.1365 Neerkunnam Alappuzha. PAN : AACAS0029A.	Vs.	The Addl.Commissioner of Income-tax, Alappuzha Range, Alappuzha.
(Appellant)		(Respondent)

Appellant by : Sri.T.M.Sreedharan
Respondent by : Smt.A.S.Bindhu, Sr.DR

Date of Hearing : 07.05.2018	Date of Pronouncement : 08.05.2019
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ORDER

Per George George K, JM

This appeal at the instance of the assessee is directed against the Commissioner of Income-tax (Appeals)'s order dated 09.07.2018. The relevant assessment year is 2005-2006.

2. The solitary issue that is raised is whether the CIT(A) is justified in confirming the penalty imposed u/s 271D of the I.T.Act.

3. Brief facts of the case are as follows:

The assessee was carrying out finance business by accepting deposits and advancing loans in cash above the permissible limit, both from members as well as from non-

members. Since the assessee had accepted cash deposits and advanced loans in cash above the permissible limit, it had violated the provisions of section 269SS of the I.T.Act. Consequently, notice dated 24.12.2007 was issued by the Assessing Officer asking the assessee to show cause why penalty u/s 271D of the I.T.Act should not be levied. After considering the explanation given by the assessee, penalty u/s 271D of the I.T.Act was imposed. On further appeal by the assessee, the penalty imposed u/s 271D of the I.T.Act was confirmed by the CIT(A) and ITAT.

4. Aggrieved, the assessee filed appeal u/s 260A of the I.T.Act before the Hon'ble High Court. The Hon'ble High Court restored the matter to the Assessing Officer to consider if there is a reasonable cause on the part of the assessee for having accepted deposits and advanced loan in cash (High Court judgment is reported in 364 ITR 81). The Assessing Officer passed order giving effect to the High Court judgment on 27.06.2014, wherein he levied penalty u/s 271D of the I.T.Act amounting to Rs.4,74,15,591. The relevant finding of the Assessing Officer in imposing penalty amounting to Rs.4,74,15,591 reads as follow:-

“(6) The arguments given by the assessee are considered one by one and these are summarized below:

(a) The provisions of section 269SS are applicable to all categories of assessee.

(b) Ignorance of law is no excuse. The provisions was introduced way back in the year 2004.

(c) The claim that the assessee comes within the exception is not correct as both the depositor and lender should have only agricultural income non taxable income. There is no evidence. The assessee had income from finance.

(d) The claim that the depositors are agriculturist, fisherman, retired persons or housewives and therefore the section is not applicable to them is misconceived. In any case the assessee could not prove this claim.

(e) The fact that the Secretary Sri. Gopalakrishnan Unnithan is only a matriculate and that he is not aware of the provisions of the Income tax Act and that he was carrying out single handedly all the operations of the (money lending business carried on by the Karayogam and whatever happened was solely due to ignorance and also because of their bonafide belief that it does not come in the purview of the IT Act 1961 does not have any force. Once a person carries on any business he is required to follow all the laws of the land. The assessee was accepting deposits of several crores during the year. In fact the High Court had in the order stated that "One of the defence was they were adopting cash system of accounting right from the beginning, which was never objected to. Therefore, they were receiving amounts remitted in cash, especially as the person who was in charge of the branch was a person with matriculation qualification, and was not well versed with the Income-tax Act. Unfortunately, an assessee which is dealing in finance activity cannot take such a stand as the assessee is expected to know the person who maintains the day-to-day administration of the society, including receipt of amounts.

(f) *The High Court had also stated in the order that "we do not find any consistency in the explanation of the appellant-assessee. What was the reasonable cause for receiving such amounts in cash in violation of the provisions of Section 269SS? Apparently several transactions are beyond and above Rs.20,000/- So far as the present controversy is concerned, as indicated by learned standing counsel for Revenue, the case which was relied upon by the Tribunal, ie. K.V.George's case, came up for consideration before this Court in I.T.A No.279/2013, wherein scope of Sections 269SS and 2710 was discussed with reference to various judgments of other High Courts and also Supreme Court. While referring to scope of Section 26955 read with Section 2710, it was clearly held that the only consideration would be what was the reasonable cause for receiving such a huge amount by way of cash or what was the reason for not receiving the loan or deposit by way of account payee cheque or demand draft a matter to be explained by the assessee. In other words, the burden is on the assessee to establish what was the reasonable cause for not receiving the loan or deposit by way of account payee cheque or a demand draft. It is not a single transaction but several transactions which have to be explained by the appellant assessee.*

(g) *Even though the assessee has been given another opportunity to prove that it had a reasonable excuse to accept the deposits in cash it was unable to state anything more than what had been stated earlier. The assessee has clearly no justification for accepting deposits in cash and there is no reasonable cause for accepting deposits during the year in cash exceeding the permissible limit.*

7) *The CIT appeal had directed the AO to verify whether any deposit was below Rs 20000/- and if so these were to be deleted. After due verification it is seen that the total deposit equal to or more than Rs*

20000/- from a depositor during the year was Rs.47415591/-, since I do not consider the explanation given by the assessee as a satisfactory explanation for not imposing penalty u/s 271D. I therefore, impose penalty of Rs.47415591/- being the amount of deposit received in violation of section 269SS of the Income tax Act.

The list of the depositors (pages 12) and the amount received ate wise forms part of this order."

5. Aggrieved by the order of the Assessing Officer, the assessee preferred an appeal to the first appellate authority. The CIT(A) after extracting the relevant portion of the High Court judgment dated 25.02.2014 in ITA No.19/2014, decided the issue against the assessee. The observation of the CIT(A) in rejecting the appeal of the assessee reads as follow:-

"4.6 Therefore, as per the directions of the Hon'ble High Court, the only consideration against the levy of penalty under section 271D of the Act is the existence of reasonable cause and the burden of proving such cause is on the Appellant. From the penalty order, it is observed that the Appellant has not proved before the Assessing Officer the existence of reasonable cause. Even in the appeal proceedings, the learned AR could only make arguments such as bonafide transaction, deposits are genuine etc. The Hon'ble High Court has clearly held that such arguments cannot absolve the Appellant from the penalty under section 271D of the Act. The learned AR could not produce any evidence to prove that there existed reasonable cause for acceptance of cash deposits. Hence, it is held that there is no merit in the grounds raised by the Appellant and therefore, the same are dismissed."

6. Aggrieved by the order of the CIT(A), the assessee has filed the present appeal before the Tribunal. The learned Counsel for the assessee strongly relied on the judgment of the Hon'ble High Court in the case of *CIT v. Shri P.K.Shamsudheen* reported in 2011(2) TMI 1188. It was contended that the transaction carried on by the assessee in finance and chitty business were found to be bonafide and genuine and as such the principle of law laid down by the Hon'ble jurisdictional High Court in the case of *CIT v. Shri P.K.Shamsudheen (supra)* is squarely applicable to the facts of the instant case. It was submitted that in the above judgment of the Hon'ble jurisdictional High Court, the assessee had furnished the source of loan and the same was accepted by the Department itself as a reasonable cause and as such no penalty can be levied u/s 271D of the I.T.Act. It was submitted that in the instant case also, the source has been proved and the violation is only technical. It was contended that there was no finding by the Department for any evasion of tax and therefore penalty u/s 271D of the I.T.Act should be deleted.

7. The learned Departmental Representative strongly supported the order of the Income-tax authorities.

8. We have heard the rival submissions and perused the material on record. The order imposing penalty u/s 271D of the I.T.Act was confirmed by the CIT(A) and the ITAT in the first round of litigation. The Hon'ble High Court restored the

matter to the A.O. on an appeal filed by the assessee u/s 260A of the I.T.Act. Therefore, the directions of the Hon'ble High Court while restoring the issue to the A.O. needs to be examined. The relevant observation of the Hon'ble High Court in restoring the case to the A.O. reads as follow:-

"7. Learned standing counsel arguing for the Revenue submits, the only defence raised by the assessee at the earliest point of time was ignorance and further contends that the ignorance of law cannot be an excuse. So far as the first appellate authority for verification of the factual situation whether the entire cash receipts, which was a subject matter of penalty were Rs. 20,000 and above or below Rs. 20,000, remanded back the matter to the Assessing Officer to verify the factual situation while proceeding with the matter afresh. In other words, there is a clear direction that all receipts below Rs. 20,000 need not be taken into consideration and only those receipts which are Rs. 20,000 and above should be taken into consideration. However, going through the orders of the Assessing Officer, the appellate authority and the Appellate Tribunal, we do not find any consistency in the explanation of the appellant-assessee. What was the reasonable cause for receiving such amounts in cash in violation of the provisions of section 269SS. Apparently, several transactions are beyond and above Rs. 20,000. One of the defences was they were adopting the cash system of accounting right from the beginning, which was never objected to. Therefore, they were receiving amounts remitted in cash, especially as the person who was in charge of the branch was a person with matriculation qualification and was not well versed with the Income-tax Act. Unfortunately, an assessee which is dealing in finance activity cannot take such a stand as the assessee is expected to know the person who maintains the day-to-day administration of the society, including the receipt of amounts. So far as the present controversy is concerned, as indicated by learned standing counsel for the Revenue, the case which was relied upon by the Tribunal, i.e., K. V. George's case, came up for consideration before this court in I. T. A. No. 279 of 2013—since reported as K. V. George v. CIT [2014] 2 ITR-OL 445 (Ker), wherein the scope of sections 269SS and 271D was discussed with reference to various judgments of other High Courts and also the Supreme Court. While referring to the scope of section 269SS read with section 271D, it was clearly held that the only consideration would be what was the reasonable cause for receiving such a huge amount by way of cash or what was the reason for not receiving the loan or deposit by way of account payee cheque or demand draft a matter to be explained by the assessee. In other words, the burden is on the assessee to establish what was the reasonable cause for not receiving the loan or deposit by way of account payee cheque or a demand draft. It is not a single transaction but several transactions which have to be explained by the appellant-assessee. Though there is no specific consistent stand as stated above on behalf of the appellant-assessee, since the matter is remitted back to the Assessing Officer for fresh consideration, so far as the factual situation whether all transactions were Rs. 20,000 and above, we are of the opinion, no

prejudice would be caused to the Revenue if an opportunity is given to the appellant- assessee to explain such transactions which are Rs. 20,000 and above. After giving an opportunity to the appellant- assessee, the Assessing Officer shall proceed with the matter and decide the controversial issue either accepting or rejecting the explanation depending upon the nature of the explanation."

8.1 From the above judgment of the Hon'ble High Court, it is clear that the assessee has to prove, that there was reasonable cause as mandated u/s 273B of the I.T.Act for receiving huge deposits in cash and not by way of account payee cheque or demand draft. The burden of proving that there was reasonable cause is on the assessee. The CIT(A) had categorically found that the assessee has not proved any reasonable cause as mandated u/s 273B of the I.T.Act for exonerating the imposition of penalty u/s 271D of the I.T.Act.

8.2 Before the Tribunal, the plea of the assessee is only to the effect that the management of the assessee was not aware of the penal provisions. Further, it was contended that there was no intention of evading tax or introduction of black money in the business by accepting deposits or repayment of loan in cash. Therefore, it was submitted that the imposition of penalty u/s 271D of the I.T.Act is bad in law in view of the judgment of the Hon'ble jurisdictional High Court in the case of *CIT v. Shri P.K.Shamsudheen (supra)*.

8.3 However, we find the latest judgment dated 8th March, 2019 of the Hon'ble jurisdictional High Court in the case of *Listin Stephen v. DCIT* in ITA No.196 of 2014 had considered the judicial precedents on the issue including the judgment

relied on by the assessee in the case of *CIT v. Shri P.K.Shamsudheen (supra)* and decided the issue in favour of the Revenue. The Hon'ble jurisdictional High Court in the case of *Listin Stephen v. DCIT (supra)* had categorically held that only the reasonable cause to be explained by the assessee is that what was the compelling circumstances for accepting the deposits or repayment of loan in cash and not by way of account payee cheque or demand draft. The relevant finding of the Hon'ble jurisdictional High Court *Listin Stephen v. DCIT (supra)* reads as follow:-

"14. The principle emerging from the precedents cited above is that, the reasonable cause contemplated under Section 273B should be a reasonable cause as to why or what was the reason which compelled the assessee to accept the loans or deposits in cash. In other words, it should be proved that there existed reasonable and acceptable cause for not accepting the loans or deposits through crossed cheques or demand drafts. When analysed based on the dictum as mentioned above, none of the facts contended or proved by the appellant will constitute a valid explanation or reasonable cause coming within the purview of Section 273B. The mere proof that the loans were repaid through cheques drawn in the name of the lender or that there was no attempt to induct black money into the business, itself cannot be considered as a reasonable cause or as a compelling circumstance under which the mandate of Section 269SS can be violated. It cannot be termed as a reasonable cause contemplated under Section 273B to condone the violation. Hence, we are of the opinion that, the appellant has not succeeded in bringing the case within the ambit of Section 273B, warranting exoneration from imposition of penalty under Section 271D.

8.4 In the instant case, the assessee was unable to prove that there was the compelling circumstance for accepting the deposits in cash. In the absence of such explanation by the assessee, going by the judgment of the Hon'ble jurisdictional High Court in the case of *Listin Stephen v. DCIT (supra)*, we hold that there is no reasonable cause as mandated u/s 273B of the I.T.Act. Therefore, we confirm the penalty imposed u/s 271D of the I.T.Act. It is ordered accordingly.

9. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on this 08th day of May, 2019.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Cochin ; Dated : 08th May, 2019.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A)-Kottayam
4. The Pr.CIT - Kottayam.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin