

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ C ” BENCH: BANGALORE

**BEFORE SHRI B.R. BASKARAN, ACCOUNTANT MEMBER AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA Nos.1882 & 1883/Bang/2019
(Assessment Years : 2015-16 & 16-17)

Shri T.R. Amar,
Prop. Tumakur Pipe Traders,
Near Jain Temple, M G Road,
Tumakuru-572101

....Appellant

ITA No.1884/Bang/2019
(Assessment Year : 2015-16)

Smt. Sharmila Chavan,
Om Sai Palace, 3rd Cross,
Shankarapuram, Tumakuru-572 101

....Appellant.

Vs.

Assistant Commissioner of Income Tax,
Tumakur Range, Tumakuru.

.....Respondent.

Assessee By:	Shri H. Guruswamy, ITP.
Revenue By:	Smt. R. Premi, JCIT (D.R)

Date of Hearing :	19.03.2020.
Date of Pronouncement :	29.05.2020.

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The appeals are filed by the assesses against separate orders of Commissioner of Income Tax (Appeals)-7, Bengaluru passed under Section 271E and 250 of the

Income Tax Act, 1961 (in short 'the Act'). Since all these appeals have common and identical issues, they are clubbed and heard together and consolidated order is passed.

2. For the sake of convenience, we shall take up ITA No.1882/Bang/2019 and facts narrated therein. The assessee has raised the following grounds of appeal :

Grounds of Appeal	Tax effect relating to each Ground of appeal (see note below)
1. The impugned Appellate order dated: 02-08-2019 passed by the Ld. CIT(A), Bangalore-7 is opposed to law, facts and circumstances of the case.	
2. The Ld. CIT(A) has erred in confirming the penalty of Rs. 45,00,000/- u/s. 271E of the Act without appreciating the fact that the penalty so levied was barred by limitation	45,00,000/-
3. Without prejudice to the ground No. 2, the Appellant submits that the Ld. CIT(A) has erred in confirming the penalty without appreciating the fact that the penalty proceedings u/s. 271E of the Act were not initiated in the course of the Assessment Proceedings.	Same as above
4. The Ld. CIT(A) has erred in not appreciating the fact that there was no payer and payee relationship as regards the repayment of loan by cash in view of the principles of mutuality.	Same as above
5. The Ld. CIT(A) has erred in holding that the society and the Appellant are two distinct and separate entities without appreciating the fact that the society and the Appellant constitute a single entity.	Same as above
6. The Ld. CIT(A) has erred in not appreciating the explanation offered before the JCIT, that he was under bonofide belief that the society carried on the Banking Activities.	Same as above
7. The Ld. CIT(A) ought to have held that the society extended credit facilities to its members and therefore the society is a Bank as per part 5 of the Banking Regulation Act.	Same as above
8. The Ld. CIT(A) ought to have held that the Appellant has not engaged in money laundering but the repayment of loan by cash was genuine transaction	Same as above
9. The Appellant craves leave to add, alter, amend and delete any of the grounds at the time of hearing.	
Total tax effect (see note below)	Rs. 45,00,000/-

11	Whether there is any delay in filing of appeal <i>(if yes, please attach application seeking condonation of delay)</i>			No
12	Details of Appeal Fees Paid			
	BSR Code	Date of payment	Sl. No.	Amount
	0510308	26/08/2019	40612	500/-

3. The Brief facts of the case are that the assessee is a proprietor of Tumkur Pipe Traders and filed the Return of Income for the Asst Year 2015-16 on 8.3.2016 with total income of Rs.3,65,440/-. Survey operations under Section 133A of the Act were conducted in the business premises of the assessee and the assessment was reopened under Section 147 of the Act. The Assessing Officer found that the assessee has made investments in immovable property and sources were called for. The assessee has availed loan from Panduranga Credit Co-operative Society Ltd., Tumkur and the loan was repaid in F.Y. 2014-15 by cash aggregating to Rs.55 lakhs. In the Reassessment proceedings LdAr appeared from time to time and submitted the details and financial Statements. On verification the Assessing Officer, found errors and omissions in the statements and the assessee could not explain or reconciled the same, therefore additional income of Rs7,75,000/- was offered by the assessee and Assessed the total income of Rs.11,40,440 and passed the order under Section 143(3) r.w.s. 147 of the Act. Subsequently, the Assessing Officer initiated penalty proceedings under Section 271E of the Act. In the course of penalty proceedings, the Assessing Officer find that the Assessee has availed Rs45lakhs loan from Panduranga Credit Co-operative Society Ltd Tumkur and

was repaid in the F.Y. 2014-15 in cash contravening the provisions of Section 269T of the Act. The assessee has filed written submissions on 5.3.2018 and explained the reasons for repayment in cash referred at pages 2 to 4 of the penalty order. Since the Assessing Officer has to verify the loan repayment by the assessee whether by cash or not, made enquiries under the provisions of Section 131(1d) with Panduranga Credit Co-operative Society Ltd Tumkur. The enquiry report was submitted on 23.07.2018 where a statement of Mr. K.R. Hanumantha Rao, Manager of Panduranga Credit Co-operative Society Ltd., Tumkur was recorded. The manager accepted that the loan was repaid in cash directly into the loan account by the assessee. Subsequently, the learned Authorized Representative filed submissions and explained that the above loan was obtained from financial institutions on the firm belief that it is at par with any other Banks and the provisions of Section 269T of the Act shall not be applicable. The Assessing Officer was not satisfied with the explanations and relied on the statement of the Manager of Panduranga Credit Co-operative Society Ltd.Tumkur and observed that there is violation of provisions of Section 269T of the Act and levied the penalty and passed the order under Section 271E of the Act dt.30.08.2018. Aggrieved by the order, the assessee has filed an appeal with the CIT (Appeals). The CIT (Appeals),considering the grounds of appeal, submissions of the assessee, the findings of the Assessing Officer concurred with the action of the Assessing

Officer in levying the penalty and dismissed the appeal. Aggrieved by the order of CIT (Appeals), the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the learned Authorized Representative submitted that the CIT (Appeals) has erred in confirming the penalty under Section 271E of the Act. Further the explanations in the penalty proceedings are overlooked and the benefit of cross examination of Manager of Panduranga Credit Co-operative Society Ltd was not provided to the assessee nor enquiry report. He emphasized that the Members of the cooperative society are following similar custom of depositing directly cash into the loan account and the assessee is not an exception. Further the assessee was deprived an opportunity to cross examine the Manager, whose statement was considered for levying the penalty and prayed for an opportunity to cross examine the Manager of the society and allow the assessee appeal. Contra, the learned Departmental Representative relied on the orders of the CIT (Appeals).

5. We heard the rival contentions and perused the material on record. Prima facie, the sole disputed issue, being levy of penalty under Section 271E of the Act. The Id. AR's contention that the assessee is a member of Panduranga Credit Co-operative Society Ltd. and has obtained loan from the Society, and the loan was repaid in cash directly to the loan account in cash during F.Y. 2014-15. The assessment was completed under Section 143(3) r.w.s. 147 of the Act and there

was no grievance in respect of source of deposits of cash in loan account of the assessee, but the A O made addition in respect of cash credit under Section 68 of the Act for omission of income. The assessee has filed explanations for repayment of loan of Rs.30lakhs and Rs.15 lakhs in the F.Ys 2014-15 and 2015-16 respectively, and repaid the loan by cash deposits directly into the loan account which the Assessing Officer find, the contravention of provisions of section 269T of the Act. Further it was contended that the repayment of loan in cash covered under clause (ii) of Second Proviso to Section 269T of the Act, where the repayment of any loan in cash taken from any co-operative bank, does not come under the purview of provisions of Section 269T of the Act. In the penalty proceedings, the Assessing Officer observed that the loan repayment was done in cash and was confirm in enquiry conducted under provisions of Section 131(1d) of the Act and the enquiry report was submitted on 23.07.2018 to the Addl. CIT, Tumkur, where statement of Mr. K.R. Hanumantha Rao, Manager of Panduranga Credit Co-operative Society Ltd was also recorded and he accepted the fact that the loan was repaid in cash directly to the loan account. Based on the enquiry report, the Assessing Officer has levied the penalty under Section 271E of the Act. The Id. AR's contention that the enquiry report was used against the assessee for levy of penalty and the copy of enquiry report was not provided to the assessee to defend his case. Further it is customary or a tradition followed by the Members of

the co-operative society to deposit the cash directly in the loan account and the assessee is not an exception. The learned Authorized Representative prayed for cross examination of the Manager of the Society on whose statement/ deposition, the Assessing Officer has relied and levied penalty. We considering the facts and circumstances and principles of natural justice are of the opinion that the assessee should be provided an opportunity to defend his case and evidences collected against him relied by the AO in the proceedings. Therefore, in the interest of substantial justice, we provide opportunity to the assessee to cross examine the Manager of Panduranga Credit Co-operative Society Ltd. Accordingly, we set aside the order of the CIT(Appeals) and restore the entire disputed issue to the file of the Assessing Officer to adjudicate afresh on merits in the penalty proceedings and the assessee should be provided adequate opportunity of hearing to substantiate the case and cross examine the manager of the society and the assessee should cooperate in submitting the information and details at the earliest and allow the grounds of appeal of the assessee for statistical purpose.

6. Similarly, in Appeals ITA Nos.1883 & 1884/Bang/2019, the facts are identical, to the ITA No.1882/Bang/2019 and the decision taken in this case is equally applicable. Accordingly, the order of the CIT (Appeals) is set aside and restore

the disputed issues to the file of Assessing Officer with similar directions and allow the grounds of appeal of assessee for statistical purposes

7. In the result, the assessee's appeals in ITA Nos.1882 to 1884/Bang/2019 are allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(B.R. BASKARAN)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 29.05.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore