IN THE INCOME TAX APPELLATE TRIBUNAL,
DELHI BENCH: 'G', NEW DELHI

BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI O.P. KANT, ACCOUNTANT MEMBER

ITA Nos.1370 & 1371/Del./2019
Assessment Year: 2014-15

The Mamurpur Co-operative Thrift and Credit Society Ltd., 1529/1, Mamurpur, Narela, New Delhi	**Vs.**	Addl. CIT, Range-38, New Delhi
PAN :AABAT6130B		
(Appellant)		**(Respondent)**

Appellant by	Shri C.S. Agarwal, Sr. Adv. Shri R.P. Mall, Adv.
Respondent by	Shri Saras Kumar, Sr. DR

Date of hearing	21.08.2020
Date of pronouncement	10.09.2020

ORDER

PER O.P. KANT, AM:

These two appeals by the assessee are directed against two separate orders, both dated 21/12/2018 passed by the learned CIT(Appeals)-13, New Delhi [in short 'the learned CIT(A)'] in relation to penalty levied by the Learned Additional Commissioner of Income Tax, Range 38, New Delhi under section 271D and 271E of the Income-tax Act, 1961 (in short 'the Act') for violation of provision of section 269SS and 269T respectively.

2. The grounds raised in both the appeals are reproduced as under:

Grounds of appeal raised in ITA No. 1370/Del./2019

1. *The order passed by Id. CIT(Appeal) as well as Ld. AO are bad in law and against the facts of the case.*
2. *That the ld. AO erred in invoking provisions of section 269SS of the Income Tax Act.*
3. *That the Ld. CIT(A) erred in sustaining the penalty u/s 271D of the Income Tax Act made by the Ld. AO amounting Rs. 36,45,841/-.*
4. *That the Ld. CIT(A) erred in approving the penalty order u/s 271D of the Act, without appreciating the facts of the case and submission made before him.*
5. *That the Ld. CIT(A) erred in approving the penalty order u/s 271D of the Act, without appreciating the fact that Ld. AO was incorrect and unjustified in holding that there was no reasonable cause for not complying with the provision of section 269SS.*
6. *That the Ld. CIT(A)erred in maintaining the penalty order passed u/s 271D of the Income Tax Act, when the said order was time barred by limitation of time.*
7. *That the ld. CIT(A) and Ld. AO also erred in not following various judgments of High Court and ITAT.*
8. *That the appellant carves leave to add, alter, modify or delete any of the ground of appeal.*

Grounds of appeal raised in ITA No.1371/Del./2019

1. *The appellant is the co-operative society registered under the co-operative societies act and is engaged in carrying on the business of providing credit facilities to its members.*
2. *The case was selected for scrutiny under CASS later notice u/s 143(2) was issued which was duly complied from time to time.*
3. *The case of the appellant was assessed by the Id. AO by passing assessment order u/s 143(3) of the Act dated 26.12.2016 amounting Rs. 1,03,830/-*
4. *The Additional Commissioner of Income-tax issued a show cause notice dated 22-09-2017 u/s 27IE of the Act and levied penalty of Rs.2,06,82,566/- u/s.271E of the Act for violation of provisions of sec.269T.*
5. *Aggrieved by the order of the ld.CIT (Appeals) and Ld. AO, this appeal has been preferred to get justice.*

3. Briefly stated facts of the case are that the assessee is a cooperative society registered under the Cooperative Society Act and engaged in carrying on the business of providing credit facilities to its members. For the year under consideration, the assessee filed return of income on 01/11/2014 declaring nil income after claiming deduction under section 80P of the Act. The return of income filed by the assessee was selected for scrutiny assessment. The scrutiny assessment under section 143(3) of the Act was completed on 26/12/2016 at total income of ₹ 1,03,830/-in the status of Association of persons (AOP). Thereafter, learned Additional Commissioner of Income Tax levied penalty of ₹ 36,45,841/- vide order dated 28/11/2017 under section 271D of the Act, for accepting cash deposits exceeding ₹20,000 in contravention to the provisions of section 269SS of the Act. He also levied penalty under section 271E in order dated 28/11/2017 amounting to ₹ 2,06,82,566/-for repayment of loans and deposits in cash exceeding ₹ 20,000 in contravention of the provision of section 269T of the Act. On further appeals by the assessee against these orders, the Learned CIT(A) upheld the finding of the Learned Additional CIT in both appeals. Aggrieved, the assessee is before the Tribunal challenging the confirmation of the penalties by the learned CIT(A).

4. Before us, the learned Senior Counsel of the assessee filed a consent for willingness to argue the cases through video conferencing. In hearing dated 10/08/2020, both the parties agreed to argue the cases through videoconferencing on 17/08/2020. Accordingly, both the parties have been heard from

17/08/2020 to 19/08/2020. The learned Counsel of the assessee filed a paper-book containing pages 1 to 234, case law paper-books and other documents physically as well as electronically on various dates.

5. The Learned Senior Counsel of the assessee referred to Ground 1 of the appeals and submitted that the orders imposing penalty under section 271D and 271E of the Act are non-est, bad in law and without jurisdiction. He , at the outset, referred to the order of the assessment dated 26/12/2016 (placed on page 34 to 39 of the paper book) to show that there is no initiation /satisfaction in the order of the assessment to levy penalty under section 271D/271E of the Act and as such in absence of any satisfaction for violation of the provision of the 269SS as well as 269T having been recorded by the learned Assessing Officer in the order of the assessment, the penalties levied by the learned Additional CIT are without jurisdiction .

6. The learned DR interrupted and objected that the ground raised by the assessee is general in nature and no specific ground of satisfaction to be required by the Assessing Officer for initiating penalty, has been raised by the assessee before the Tribunal in appeal memo. He further submitted that this issue has been raised for the first time before the Tribunal, and thus, it should have been raised by way of additional ground only. The learned Counsel of the assessee repelled the averment of the Ld. DR and submitted that though no specific ground has been raised in the memo of the appeal, yet the assessee is entitled to urge and argue a ground by raising the same orally. In support of his contention

he relied on the decision of the Hon'ble Punjab and Haryana High Court in the case of VMT Spinning Company Limited reported in 389 ITR 326. In the case of VMT Spinning Company Limited (supra) the Hon'ble High Court gone through the Rule 11 and 29 of the ITAT Rules and held as under:

> *"In our view Rule 11 in fact supports the assessee and not the department.*
>
> *Rule 11 infact confers wide powers on the Tribunal, although it requires a party to seek the leave of the Tribunal. It does not require the same to be in writing. It merely states that the appellant shall not, except by leave of the Tribunal, urge or be heard in support of any ground not set forth in the memorandum of appeal. In a fit case it is always open to the Tribunal to permit an appellant to raise an additional ground not set forth in the memorandum of appeal. The safeguard is in the proviso to Rule 11 itself. The proviso states that the Tribunal shall not rest its decision on any other ground unless the party who may be affected thereby has had a sufficient opportunity of being heard on that ground. Thus even if it is a pure question of law, the Tribunal cannot consider an additional ground without affording the other side an opportunity of being heard. We venture to state that even in the absence of the proviso it would be incumbent upon the Tribunal to afford a party an opportunity of meeting an additional point raised before it.*
>
> *Moreover, even though Rule 11 requires an appellant to seek the leave of the Tribunal, it does not confine the Tribunal to a consideration of the grounds set forth in the memorandum of appeal or even the grounds taken by the leave of the Tribunal. In other words the Tribunal can decide the appeal on a ground neither taken in the memorandum of appeal nor by its leave. The only requirement is that the Tribunal cannot rest its decision on any other ground unless the party who may be affected has had sufficient opportunity of being heard on that ground."*

7. In view of the above decision, the issue raised by the learned Counsel of the assessee by way of the oral submission was admitted and the Learned DR was given sufficient opportunity to

respond the issue raised by the learned Counsel of the assessee. Both the parties were heard at length on this issue.

8. On the issue of recording satisfaction by the Assessing Officer for initiating penalty proceedings, the Learned Senior Counsel has cited number of decisions, but relied mainly on decision of the Hon'ble Supreme Court in the case of CIT vs. Jai Laxmi Rice Mils (379 ITR 521) and the decision of the Tribunal Delhi bench in the case of Narsi Iron and Steels P Ltd (ITA No. 2866/Del/2013).

9. In the case of Jai Laxmi Rice Mills (supra), while framing the assessment, the Assessing Officer observed that the assessee had contravened the provisions of Sec. 269T of the Act and because of this the Assessing Officer was satisfied that penalty proceedings Under Sec. 271E of the Act were to be initiated. The original assessment order was set aside by the Learned CIT(A) for passing a fresh assessment order de novo. The factual matrix and the question of law involved has been summarised by The Hon'ble Supreme Court as under:

> *"After remand, the Assessing Officer passed a fresh assessment order. In this assessment order, however, no satisfaction regarding initiation of penalty proceedings Under Sec. 271E of the Act was recorded. It so happened that on the basis of the original assessment order dated February 26, 1996, show -cause notice was given to the Assessee and it resulted in passing the penalty order dated September 23, 1996. Thus, this penalty order was passed before the appeal of the Assessee against the original assessment order was heard and allowed thereby setting aside the assessment order itself. It is in this backdrop, a question has arisen as to whether the penalty order, which was passed on the basis of the original assessment order and when that assessment order had been set aside, could still survive.*

The Tribunal as well as the High Court has held that it could not be so for the simple reason that when the original assessment order itself was set aside, the satisfaction recorded therein for the purpose of initiation of the penalty proceeding Under Sec. 271E would also not survive. This, according to us, is the correct proposition of law stated by the High Court in the impugned order.
As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under Section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, insofar as penalty under Section 271E is concerned, it was without any satisfaction and, therefore, no such penalty could be levied."

10. In the case of ACIT vs. Narsi Iron and Steel P Ltd (supra), the Tribunal observed that in the order of the assessment, there was no initiation/satisfaction, however, subsequent to the order of the assessment, by way of an order sheet, satisfaction had been recorded and penalty was initiated. The Tribunal, following the judgement of the Hon'ble Supreme Court in the case of Jai Laxmi Mills (supra) held that such a course is not permissible. The learned Counsel submitted that in the instant case there was not even a whisper in the order of the assessment regarding any violation under section 269SS/269T of the Act. The Learned Counsel also relied on following decisions:

a) Shri T. Shiju Vs. JCIT (ITA No. 2829/Chny/2018) (see Page 11-15 of PB)
b) Smt. S.B. Patil Vs. JCIT (ITA No.1053 & 1054/Bng./2014) files on 01.07.2020
c) M/s. KS Chawla & Sons vs. JCIT filed on 01.07.2020

11. On the contrary, the learned DR submitted that during assessment proceeding, the Assessing Officer raised query of violation of the provision of section 269SS and the assessee duly responded. He referred to submission of the assessee dated

13/12/2016 filed before the Assessing Officer. He submitted a copy of said reply of the assessee dated 13/12/2016 before us. On perusal of the said reply, it is found that the assessee filed detail of loan/deposits taken exceeding ₹ 20,000 during the year and submitted that provisions of section 269SS was not applicable in the case of the assessee as it was a cooperative bank within the meaning of Part V of Banking Regulation Act, 1949.

12. The learned DR further submitted that the fact of raising query during assessment proceeding of any violation under section 269SS/269T of the Act is also clear from the submission of the assessee filed before the Learned CIT(A). The Ld. CIT(A) has summarized submission of the assessee on page 4 of both the impugned orders. In the said submissions, the assessee submitted that with reference to the provisions of section 273B of the Act, the learned Assessing Officer did not consider to it necessary to refer the matter under section 271D or 271E to the Additional Commissioner of Income Tax. Thus, according to the learned DR, it is an admitted fact that the issue of violation of section 269SS and 269T was raised during assessment proceeding and duly replied by the assessee but the assessee wrongly presumed that the Assessing Officer accepted the explanation of the reasonable cause of the failure in terms of section 273B of the Act, as no such information of accepting the explanation of the assessee in terms of section 273B was intimated to the assessee.

13. Thirdly, the learned DR submitted that the Learned CIT(A) himself perused the assessment record wherein the AO referred

for initiation of action under section 271D/271E in the relevant assessment year. The learned Counsel of the assessee, however, in the rejoinder submitted that this finding of the Learned CIT(A), was wholly misconceived, unsupported by evidence and no evidence on record. Whereas, in support of the contention that the Assessing Officer recorded satisfaction on violation of the provisions of the section 269SS and 269T of the Act, the learned DR filed a copy of the letter dated 26/12/2016 of the Assessing Officer, addressed to the Joint Commissioner of Income Tax, Range 38, New Delhi. This letter has been issued on 26/12/2016 along with the issue of the assessment order on same date.

14. The learned DR submitted that in the case, existence of satisfaction is evident from reference by the Assessing Officer vide letter dated 26/12/2016 to the Addl. CIT for considering levy of penalty. He submitted that there was no specific requirement of the law that satisfaction on the violation of the section 269SS and section 269T are to be recorded only in the assessment order and according to him, it is sufficient if same is recorded during the course of the assessment proceeding. He submitted that in the case of Jai Laxmi Mills (supra) the main issue was when the original assessment order was set aside, can penalty could be levied on the satisfaction recorded in original assessment order as there was no satisfaction was recorded in the fresh assessment proceedings. According to him, in the said case, the satisfaction was not recorded by the Assessing Officer, who passed the fresh assessment order and issue was not that the satisfaction was to be recorded only in the assessment order. He submitted that in

the case of Narsi Iron and Steel P Ltd. (supra), the satisfaction was recorded after the passing of the assessment order and therefore, the said case is distinguishable on facts.

15. The second issue which was raised by the learned Senior Counsel is that no notice under section 271D or 271E of the Act has been issued by the Assessing Officer and the only notice which was issued was in respect of 271(1)(c) of the Act, which is a specific notice for an alleged default. According to him, there was no initiation of the proceeding under section 271D or 271E of the Act by the AO. The learned Counsel submitted that finding of the Ld. CIT(A) in his order at page 19 that the AO was not authorized to initial penalty proceeding, is misconceived in law and contrary to the judgment of the Hon'ble Supreme Court in the case of CIT vs Jai Laxmi Rice Mills (supra).

16. The learned DR supported the finding of the Learned CIT(A). He also referred to the decision of the Hon'ble Madhya Predesh High Court in the case of Nitin Agrawal Vs JCIT reported in 412 ITR 309, wherein it is held that the DCIT is not competent for initiation of the penalty proceedings under section 271D of the Act. The relevant para preferred by him is reproduced as under:

> *"6. From the pleadings made in the writ petition, it is also an admitted fact that the Deputy Commissioner of Income Tax was not competent authority in initiation of penalty proceeding under Section 271-D and 271-E of the Income Tax Act. The first notice under Section 271-D / 271-E read with Section 274 of the Income Tax Act have been issued by the Joint Director of Commissioner of Income Tax on 22.9.2017. Thus, the penalty proceedings under Section 271-D and 271-E have been initiated w.e.f. 22.9.2017.*
>
> *7. Section 275(1) (C) of the Income Tax Act, 1961 provides that penalty can be levied only before completion of financial year in*

which assessment order was passed or six months from the end of month in which penalty proceeding is initiated, which ever period expired later. The stand of the respondent is that the show cause notice dated 20.12.2016, issued during the assessment proceedings by the Deputy Commissioner Income Tax, Indore, cannot be termed as notice under Section 271-D / 271-E of the Income Tax Act, in regard to initiation of penal proceeding under the aforesaid provision they Deputy Commissioner has no jurisdiction under this provision. The penalty under the aforesaid is independent from the assessment proceedings and both proceedings cannot be mixed up. The Deputy Commissioner of Income Tax, on the basis of Assessment Order, in the case of the petitioner under Section 153 A read with Section 143(3) of the Income Tax Act on 20.12.2016, referred the case to the respondent for initiation of penalty proceeding under Section 271-D and 271-E of the Act in Assessment Year 2009-10 and 2011, vide letter dated 27.4.2017, on receiving the information from the office by the Deputy Commissioner of Income Tax, the respondent issued first notice under Section 271-D and 271-E on 22.9.2017 to the petitioner. Hence, the penalty proceeding has been initiated w.e.f. 22.9.2017, which is getting barred on 31.3.2018. The Deputy Commissioner of Income Tax is not empowered to pass the order under Section 271-D and 271-E read with Section 275 of the Income Tax Act.

8. It is only Joint Commissioner of Income Tax who is empowered to initiate as well as impose the penalty under Section 271-D or 271-E of the Income Tax Act. Thus, the limitation period of six months to be reckoned from the end of month of initiation of the penalty proceeding by the Joint Commissioner of Income Tax and not from the date of assessment order.

9. Learned Senior counsel for the petitioner has drawn our attention to the contents of notice dated 20.12.2016, issued by the Deputy Commissioner of Income Tax during the assessment proceedings and Section 274, 269-SS, 269-T, 271- D, 274-E and 275 of the Income Tax Act and submitted that the limitation for initiation of penalty proceeding for imposition of penalty under Section 271D, 271E of the Income Tax Act start from 20.12.2016 and under Section 275(1) (C), the limitation of six months start from 20.12.2016. The second notice issued on 22.9.2017 is barred by time and the learned Joint Commissioner of Income Tax had no jurisdiction to issue the same. To support the aforesaid, he has placed reliance on the decision of the Calcutta High Court in the case of CIT Central - III V/s. Narayani& Sons (P) Ltd. reported as (CALHC) (2016) 289 CTR (Cal) 301 , decision of the Delhi High Court in the case of Commissioner of Income Tax -VI V/s. Worldwide Township Projects Ltd., 2014 (269) CTR 444 (Delhi), in the case of PCIT V/s. JKD Capital & Fin lease Ltd. (2015) 378ITR 640 (Del) , Commissinoer of

Income Tax (Central) - 2 V/s. Mahesh Wood Products Pvt. Ltd., (2017) 394 ITR 312 (Delhi) , the decision of the Apex Court in the case of Commissioner of Income Tax V/s. Hissaria Brothers, (2016) 386 ITR 719 (SC), and the decision of Delhi High court in the case of CIT V/s. JKD Capital &Finlease Ltd., (2015) 378 ITR 640 (Del).

10. He also placed reliance on the decision of the Rajasthan High court in the case of Commissioner of Income Tax V/s. Jitendra Singh Rathore, 2013 (352) ITR 327 (Raj), Grihalakshmi Vision V/s. The Additional Commissioner of Income Tax, 2015 379 UR 100 (Ker), Income Tax Officer V/s. RamkishoreRewaram Tada, 2006 202 CTR (MP) 404 and the decision of the Supreme Court in the case of Commissioner of Income-tax$_f$ Panchkula V/s. Jai Laxmi Rice Mills Ambala City, 2015 (64) taxmann.com 75 (SC) and submitted that under Section 275(1)(C), the starting point would be "initiation of penalty proceedings". In the case of CIT$_f$ Central - III V/s. Narayani& Sons (P) Ltd (supra) the assessment was completed on 26.12.2006 under Section 153A/143(3) of the Income Tax Act. After passing of assessment order on the same date, ie, 26.12.2016 itself, the Assessing Officer issued a notice for imposition of penalty under Section 271(D)(1), of the Income Tax Act. The Division Bench of Calcutta High Court relied on the judgment of Rajasthan High Court in the case of Commissioner of Income Tax V/s. Jitendra Singh Rathore, (supra) has held that the Assessing Officer issued a notice dated 26.12.2006 on assessee, for imposition of penalty under Section 271(D) and thereafter, he referred the matter to the Additional Commissioner for necessary action. The Additional Commissioner issued the assessee a fresh notice dated 26.7.2007 and by order dated 21.9.2007, the learned Additional Commissioner levied penalty under Section 271 (D) of the Income Tax Act and held that the period of limitation commenced on 26.12.2006, when notice under Section 271(D) was issued by the Assessing Officer and, therefore, the order passed on 21.9.2007 was hit by limitation. Reading of these judgments shows that these cases were decided on the documents, which were available before the court. In all those matters, the notice was issued by the Assessing Officer on the date of which the assessing order was passed or after passing of the assessment order. In the present case, the Assessing Officer issued show cause to the petitioner under Section 269- SS and 269(2) of the Income Tax Act to examine vide show cause notice dated 20.12.2016, ie., during the pendency of the assessment proceedings to examine the violation of these provisions of the Income Tax Act. No notice under Section 270-D or 279-E read with Section 279 of the Income Tax Act was ever issued by the Assessing Officer. The petitioner was wrongly attempted to establish the show cause notice dated 20.12.2016 as a legal notice under Section 271-D / 271-E read with Section 274 of the Income Tax Act.

11. Section 271-D and 271-E provide that levy of penalty in contravention of Section 269-SS and 269-T, as per subsection^) to both these sections in penalty imposition under sub-section (1) of these provisions shall be imposed by the Joint Commissioner of Income Tax. From the statutory provision, it is clear that the competent authority to levy the penalty is Joint Commissioner, therefore, only the Joint Commissioner can initiate proceeding for levy of penalty.

12. Insofar as the judgment of the Apex Court in D.M.Manasvi V/s. Commissioner of Income Tax, Gujarat II, [1972] 86 ITR 557 is concerned, that was a case, where penalty was levied under Section 271(1)(C) and as is evident from the provision itself, the proceedings under that Section are to be initiated on the basis of the satisfaction of the officers mentioned therein including the Assessing Officer. Unlike the provisions of Section 271(1)(c), under the provisions of Section 271D and E, the exclusive authority is conferred on the Joint Commissioner. Therefore, the principles laid down in the judgment of the Apex Court cannot be called in aid to impugned the present action. Therefore, the first contention raised by the learned counsel for the assessee deserves to be rejected and we do so.

13. Considering the aforesaid, we are of the view that first show cause notice, without initiating proceedings for imposition of penalty under Section 271-D (was issued on 22.9.2017). It is also well settled that a penalty under this provision is independent under assessment. The action inviting imposition of penalty is granting of loans above the prescribed limitation otherwise then through banking channels and as such infringement of Section 269-SS of the Income Tax Act is not related to the income that may be assessed or finally adjudicated. We find no force on the contention advanced by the learned Senior counsel for the petitioner. The writ petition has no merit and is, accordingly, dismissed. No costs."

17. The learned DR also referred to the decision of the Hon'ble Kerela High Court in the case of GRIHLAKSHMI Vision Vs ADDL CIT reported in 379 ITR 100 (Ker), wherein it is held as under:

"10. Question to be considered is whether proceedings for levy of penalty, are initiated with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with the issuance of the notice issued by the Joint Commissioner. From statutory provision, it is clear that the competent authority to levy penalty being the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty. Such

initiation of proceedings could not have been done by the Assessing Officer. The statement in the assessment order that the proceedings under Section 271D and E are initiated is inconsequential. On the other hand, if the assessment order is taken as the initiation of penalty proceedings, such initiation is by an authority who is incompetent and the proceedings thereafter would be proceedings without jurisdiction. If that be so, the initiation of the penalty proceedings is only with the issuance of the notice issued by the Joint Commissioner to the assessee to which he has filed his reply.

11. The only case of the assessee is that if the period of limitation prescribed in Section 271(1)(c) is reckoned from the date of the assessment order dated 6.11.2007, the penalty order passed by the Joint Commissioner on 29.7.2008 is beyond the time permitted in the above section. As we have already held, the initiation of the penalty proceedings is not by the Assessing Officer but by the Joint Commissioner and if that be so, the order levying penalty passed by the Joint Commissioner is within the time prescribed in Section 275(1)(c).

12. Insofar as the judgment of the Apex Court in D.M.Manasvi v. Commissioner of Income Tax, Gujarat II [1972] 86 ITR 557is concerned, that was a case where penalty was levied under Section 271(1)(c) and as is evident from the provision itself, the proceedings under that Section are to be initiated on the basis of the satisfaction of the officers mentioned therein including the Assessing Officer. Unlike the provisions of Section 271(1)(c), under the provisions of Section 271D and E, the exclusive authority is conferred on the Joint Commissioner. Therefore, the principles laid down in the judgment of the Apex Court cannot be called in aid to impugn the concurrent findings of the lower authorities. Therefore, the first contention raised by the learned counsel for the assessee deserves to be rejected and we do so."

18. In support of ground No. 2 the learned Counsel submitted that provision of section 269SS and 269T are not attracted in the case of the assessee. The learned Counsel submitted that the assessee neither takes any loan nor accepts any deposits, nor it has so done even during the financial year concerned. He submitted that assessee society is a cooperative society and its sole object is to promote the economic interest of its members. He submitted that during the course of its activities, the members,

however, in order to earn interest, voluntarily deposits in the running accounts, their surplus funds, which is highly meagre, which sums assessee further invest on which earns interest. At times of the needs, such members also overdraw from their accounts when needed on which such members suffer interest. The credits appearing in the members account was not deposited within the meaning of section 269SS as there existed no relationship of depositer and depository in law but the amounts standing to the credit of the members represents mere credit balances and as such the relationship between the assessee and the society was that of a creditor and debtor. He submitted that mere fact that the assessee was a debtor does not mean that it has taken loan or accepted any deposit. The Learned Counsel referred to 34 sheets of "receipts and outgoing" from the members recorded in the books of accounts of the assessee.

19. The learned Counsel further submitted the bye-laws of the society i.e. bye-law XI merely authorizes the society to accept compulsory deposits of Rs.50/- per month (which has now been increased to Rs.300/- per month). A Copy of Bye-laws have been placed at pages 1 -10 of paper book and Bye-law XI is at Page 7 of Paper Book. Thus in view of the fact, there is no provisions in the bye-laws of the society, the allegation that the assessee has accepted any deposits is untenable, since it is the beyond the scope of its object. It is submitted the Hon'ble Supreme Court in the case of CIT vs. Bajpur Co-operative Sugar Factory Ltd. reported in 172 ITR 321 have held that, the credits appearing in the account of its customers, cannot be regarded as deposit

within the meaning of "deposit", despite the fact such amounts were reflected in the accounts as deposits. A copy of the aforesaid judgment is placed at pages 74 - 83 of Paper book. In this very judgment it was held that in the absence of any bye-law, empowering the society to receive deposits, the amounts of credits in the account of its customers cannot be held to be a deposit. It is thus submitted the findings of the learned Addl. CIT is wholly erroneous in law and is also in conflict with its own stand in the preceding and later assessment year.

20. It is further submitted that the appellant at para 11.3 at page 12 of its written submissions had also submitted that clause (iii) of the Explanation to section 269T of the Act specifically provides that 'loan or deposit' means any loan or deposit of money which is repayable after notice or repayable after a period. In the instant case it is submitted, there is a complete absence of any such stipulation of the deposits made by the members and there is also no agreement in this behalf between the assessee and the depositor that the amount is 'repayable' after notice or is repayable after a period. On the contrary the members could withdraw from their credit balance of the sums deposited, whenever such members desires, upon the availability of funds with the society. It is thus submitted that the amounts deposited by the members in their running account per-se is not deposit within the meaning of section 269SS of the Act since the definition of the deposit will have same character as is given in section 269T of the Act. It is further submitted that the appellant in its written submission had also relied on the judgment of Allahabad High Court in the case of CIT vs. Atul Engineering

Udyog reported in 228 Taxman 295, wherein in para 13, the Hon'ble High Court had explained the legal meaning of the word 'deposit'.

21. The learned counsel thus submits that the findings of Addl. CIT at Pg. 2 of his order that the assessee has contravened the provisions of section 269SS of the Act by accepting cash deposits of Rs.306,45,841/- is erroneous both on facts and in law and is based on no material. It is submitted that the learned AO on the contrary has impliedly held that the assessee has not violated any such provision, since he has recorded no satisfaction nor had issued even any show cause notice. It is submitted that any or every credit in an account automatically does not attains a character of acceptance of a deposit. Needless to re-emphasis that, neither in any preceding 10 years nor even in later years any such sum has been held by the authorities to be acceptance of deposits, despite the fact that similarly such sums were being credited in the accounts of depositors in their running account.

22. Learned DR on the other and relied on the order of the lower authorities to hold that amount in question were deposit/loan and repayment of loan/deposit. The learned DR relied on the decision of the Hon'ble Kerela High Court in the case of Grihlakshmi Vision (supra) wherein the money received from the partners/sister concern was also held in the nature of the loan or deposit, as under:

> *"15. The third contention that was raised by the assessee was that if money is taken from partners or sister concerns, it could not be treated as loans or deposits. In support of this contention, counsel for the assessee relied on judgments in* Commissioner of Income Tax v. T.Perumal (Indul.) [2015] 370 ITR 313 (Mad) and

> Commissioner of Income Tax v. Muthoot Financiers and another [2015] 371 ITR 408 (Delhi).*Reading of these judgments show that these cases were decided on the basis of the documents that were available before the Court. On the other hand, insofar as these cases are concerned, though it is the admitted case that amounts were received from partners and other sister concerns of the assessee and were repaid, there is no material whatsoever to infer that these receipts were anything other than loans or deposits. There is no law that every receipt from a partner or a sister concern cannot, in all circumstances, be treated as a loan or deposit. On the other hand, the nature of the receipt would depend upon the agreement between the parties and the evidence that is produced. As we have already stated, there is no material whatsoever to accept the case of the assessee that these are loan or deposit. In such circumstances, the findings of the Assessing Officer confirmed by the Appellate Commissioner and the Tribunal that it was a loan or deposit that was received by the assessee also has to be upheld and we do so.*

23. In support of the ground that said order was barred by limitation of the time, the learned Senior Counsel of the assessee relied on the decision of the Hon'ble Rajasthan High Court in the case of CIT Vs Hisaria Bros. reported in 291 ITR 244. He submitted that from the finding in para 30 of the judgment of the Hon'ble High Court is clear enough which establishes beyond doubt that the proceeding for levy of penalty had to be initiated before the completion of the assessment and had to be completed within the time, provided under section 275(1)(c) of the Act. He submitted that in the instant case the assessment has been framed on 26/12/2016, whereas the penalty has been imposed by the Addl. CIT on 28/11/2017, when he had merely issued notice of hearing dated 12/09/2017, which is not amounting to initiation of any proceedings. As period of the six-month is to be reckoned from 26/12/2016, the period of the levy of penalty expired on 30/06/2017. According to the learned Counsel, the penalty could have been imposed before the end of the financial

year i.e. 31/03/2017 or 30/06/2017, whichever was later and not thereafter.

24. The learned DR, on the other hand, submitted that penalty under the provisions of section 271D and 271E is independent of assessment. He submitted that action inviting levy of penalty for accepting loans/deposits or repayment thereof above the prescribed limit otherwise then banking channel, is not related to the income that would be finally adjudicated. He submitted that Hon'ble Madhya Pradesh High Court in the case of Nitin Agrwal (supra) considered the decision of the Hon'ble Rajasthan High Court in the case of Hisara Brothers (supra) and the SLP filed against the same which has been dismissed by the Hon'ble Apex Court as reported in 386 ITR 719(SC), and thereafter held that competent authority to levy the penalty section 271D and 271D is the Joint/Additional Commissioner of the Income-tax and thus limitation expires after expiry of six-month from the end of the financial year in which the proceedings, in the course of which action for imposition of the penalty has been initiated are completed or the six-month from the end of the month in which the penalty initiated by the joint/additional Commissioner of the income tax, whichever period expires later.

25. The Learned Counsel in support of ground No. 5 submitted that the assessee was under bonafide belief that amounts deposited and withdrawn by the member were not in contravention of section 269SS and 269T of the Act. He submitted that Revenue in the preceding or later years, had never alleged that the amount credited to the accounts of the member

was a sum accepted by the assessee as deposit or an amount received as loan. Thus, there was a reasonable cause when the assessee held in view that it had neither accepted the deposit nor had repaid any loan. The assessee has also placed before us the complete ledger account of the member in the preceding and later assessment years, wherein similar amounts reflected as credits in cash. In fact, even the statutory auditor (Tax Auditor) had never made any adverse comment in their report as they were also of the belief that the assessee had not accepted any deposit so as to attract violation of provision of section 269SS/269T of the Act.

26. He further submitted that in the interest of the justice no penalty should be levied as assessee was under bonafide belief that it has not accepted any deposits nor has it repaid any loans or deposit in violation of the statutory provisions.

27. He further submitted that it is well settled proposition of law that no penalty is leviable for a technical or venial breach of statutory provision unless by such a breach any hidden agenda is sought to be achieved. The learned counsel referred the judgment of Apex Court in the case of Hindustan Steel Ltd. vs. State of Orissa, reported in 83 ITR 26. In the aforesaid judgment their Lordships at page 29 had observed as under:

> *"Under the Act penalty may be imposed for failure to register as a dealer : section 9(1), read with section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. 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 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. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. 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. Those in charge of the affairs of the company in failing to register the company as a dealer acted in the honest and genuine belief that the company was not a dealer. Granting that they erred, no case for imposing penalty was made out. (Emphasis supplied)*

The learned counsel submitted that, in this case, there being no such allegation, the penalties levied be directed to be cancelled.

28. Lastly it is re-emphasized and without prejudice that the assessee was labouring under misconception of law, as it was of the opinion that the amounts credited is not an acceptance of a deposit or was any return of loan or deposit, when amounts were withdrawn by the members. It is submitted thus there being a reasonable cause, no penalty could have been levied, as is provided u/s 273B of the Act. Further it is submitted that it is well settled rule of law that ignorance of law is an excuse. In fact, there is no concept that ignorance of law is no excuse as has been held by the Apex Court in the case of Motilal Padampat Sugar Mills Co. Vs. State of Uttar Pradesh & Others, 118 ITR 326 at Pg. 329 (SC).

29. The learned DR, on the other hand, relied on the order of the Learned CIT(A) to support that no reasonable cause under section 273B exist in the case of the assessee.

30. We have heard rival submission of the parties on various issues raised before us and also perused the relevant material on record. First of all, we would like to adjudicate on the ground No. 5 related to whether reasonable cause for not complying with the provision of section 269SS or 269T exist in the case of the assessee. Before the learned Additional Commissioner of Income-tax, no reply was filed on behalf of the assessee and he held that there was no reasonable because for not complying with the provisions of the 269SS/269T. Before the Ld. CIT(A), the assessee contended that the society is situated in the remote area which is known as Narela Village and most of the members are illiterate, not aware of the provisions of the law. It was submitted that alleged loan or deposit was bonafide transactions. After considering the submission of the assessee, the Learned CIT(A) held that there was no reasonable cause in failure to comply the provisions of the section 269SS/269T. The relevant finding in the impugned order relating to penalty under section 271D is reproduced as under:

> *"4.9 This was with reference to reasonable cause under section 273B. In the referred case the facts were totally different since it pertained to construction work for which bank OD limit had already been taken to the full and cash transaction became a ground for reasonable cause.*
>
> *The appellant has also made reference to the following two cases quoted by the AO:*
>
> 1. *The Allahabad High Court : Mahak Singh Vs. Commissioner of Income Tax*
>
> 2. *Delhi High Court: Commissioner of Income Tax vs. M/s Samora Hotels P. Ltd.*

The AO referred to these cases only to bring out instances where section 273B was applicable. The appellant did not get covered by such situations so as to get the protection of this provision.

In one of the grounds of appeal the appellant has relied upon the ruling in the case of Farrukahabad Investment India Limited. The facts in this case are also distinguishable. It is a case of a non banking financial company as opposed to the assessee who is a cooperative society. There were other technical issues of limitation reinitiation of proceedings etc which are not there in the present case. In fact the Hon'ble Court has concluded that "we are not going into the merits of the other submissions".

Reference made to the above citations brings out that they are distinguishable on facts hence not applicable in the case of the appellant.

4.10 Perusal of the assessment record shows that when the AO during assessment proceedings specifically asked for details pertaining to transactions (loans/deposits) in excess of Rs. 20,000/- the Appellant stated that provisions do not apply as in the case of a Cooperative bank.

This argument has already been discussed earlier.

4.11 Finally the appellant has also said that they were under the bonafide belief that they did not have to follow this provision. This argument also carries no weight. The appellant claims to be a society established in the year 1989 which was over 25 years old at the time of filing the return of the relevant assessment year. The society has been dealing in financial, monetary and banking matters, complying with various rules laws and statutes, also guided and represented by legal and accounting professionals at various forums. Hence ignorance of law /rules is no alibi for the appellant assessee."

30.1 Before us, the Learned Counsel has submitted that the assessee is in existence for last many years and filing return of income but no such penalty has been levied in the case of the assessee and it is for the first time violation of the section 269SS/269T has been pointed out in the case of the assessee. He also mentioned that even the TAX Auditor has not made any remark in their Tax Audit Reports regarding violation of section

269SS or 269T in the instant year or in the earlier years. It is claimed by the Learned Counsel that in view of the past history of the case, the assessee was under bonafide belief that alleged loan or deposit accepted or repayment thereof was not in violation of section 269SS or 269T. It has been also emphasized that the society is operating in rural area and depositors are illiterate persons. In our opinion, belief on the part of the assessee in view of the past history of the case that deposit/repayment by its members in cash is bonafide belief. Moreover, the learned DR has not controverted the factual finding of the Learned Counsel of the assessee that in subsequent years also no penalty has been initiated/levied in the case of the assessee under section 271D/271E. In the case of CIT Vs Lokhpal Film Exchange (Cinema) (2008), 304 ITR 172, the Hon'ble High Court held that the assessee had acted bonafidely and its plea that *inter se* transaction between the partners and the firm were not governed by the provision of section 269SS/269T, was a reasonable explanation and no penalty could be imposed. In view of the above, we are of the opinion that considering the bonafide and genuine transaction, reasonable cause in terms of section 273B of the Act, exist in the case of the assessee for not complying with the provision of section 269SS and 269T and, therefore, we cancel the penalty levied in terms of section 271D and 271E of the Act.

30.2 Since we have already cancelled the penalty, the other grounds raised by the Learned Counsel of the assessee are rendered merely academic and we are not adjudicating upon the same.

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

Order pronounced in the open court on 10th September, 2020.

Sd/-	***Sd/-***
(H.S. SIDHU)	**(O.P. KANT)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Dated: 10th September, 2020.
RK/-(D.T.D.S.)
Copy forwarded to:
1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi