आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में।
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

(Through Virtual Court)

BEFORE SHRI WASEEM AHMED, AM
AND SHRI S. S. VISWANETHRA RAVI, JM

आयकर अपील सं. / ITA No.946/PUN/2017

निर्धारण वर्ष / Assessment Year : 2012-13

Bapujibuwa Nagari Sahakari Pat Sanstha Maryadit,
S.No.10/2, Dagadu Patil Nagar,
Thergaon, Pune – 411033. .....अपीलार्थी / Appellant

PAN : AAAAB8597J.

बनाम / V/s.

The Joint Commissioner of Income Tax,
Range – 9, Pune. .....प्रत्यर्थी / Respondent

Assessee by : Smt. Deepa Khare.

Revenue by : Shri Vitthal Bhosale.

सुनवाई की तारीख / Date of Hearing : 16.02.2021
घोषणा की तारीख / Date of Pronouncement : 17.02.2021

आदेश / ORDER

PER WASEEM AHMED, AM:

The appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals) – 9, Pune dated 24.02.2017 for the assessment year 2012-13.

2. The only issue raised by the assessee is that the learned CIT(A) erred in confirming the penalty amounting to ₹67,52,000/- levied by the AO under section 271D of the Act.

3. The facts in brief are that the assessee in the present case is a co-operative society and is engaged in the activity of providing credit facilities to members. The assessee in the year under consideration has accepted

fixed deposits in cash from its members exceeding ₹20,000 which was prohibited under section 269SS of the Act. The assessee has accepted such amount in cash for ₹ 67,52,000/- only. On question by the AO the assessee vide letter dated 06.04.2015 submitted that it was under the bona-fide belief that its activities are banking activities and the provisions of Section 269SS do not apply to the bank. It was also pointed out by the assessee that on realizing its fault, it has immediately stopped accepting the deposits in cash.

4. The assessee also contended that its managing committee does not possess the necessary qualification as well as the knowledge of the provisions of the Income Tax Act. Thus, it has committed a mistake under the bonafide belief.

5. The assessee, likewise, also pointed out that there was the scrutiny assessment for the assessment year 2009-10 but there was no such mistake pointed out by the AO during the assessment proceedings. This was also the reason for gaining the bona-fide belief that the assessee was outside the purview of the provisions 269SS of the Act.

6. The assessee further contended that the ITAT in various cases involving identical facts and circumstances have deleted the penalty imposed under section 271D of the Act. The assessee in support of its contention placed its reliance on various orders. Thus, it was prayed by the assessee to drop the penalty proceedings initiated under section 271D of the Act.

7. However, the AO found that the assessee has been claiming deduction under section 80P of the Act for the last several years which is available to a co-operative society and not to the co-operative bank. Thus, the assessee was aware that its activities are not at par with the bank.

Accordingly, it cannot be said that the assessee has accepted cash as deposits exceeding ₹20,000/- under the bona-fide belief. Similarly, the assessee itself has admitted that the AO in the assessment proceedings for the assessment year 2009-10 has not pointed out that the assessee was contravening the provisions of section 269SS of the Act. As such the assessee was the habitual defaulter for the provisions of section 269SS of the Act. In view of the above, the AO disregarded the contention of the assessee and held guilty for contravening the provisions of section 269SS of the Act. Thus, the AO levied the penalty for an amount of ₹67,52,200/- under the provisions of section 271D of the Act.

8. Aggrieved with the order of AO, the assessee preferred an appeal to the learned CIT(A).

9. The assessee before the learned CIT(A) reiterated its contention as made before the AO during the assessment proceedings. However, the learned CIT(A) confirmed the order of the AO by observing as under:

> "6.....
>
> *It is observed that the society was registered long back in 1997-98 vide registration No.P.A.N. / P.N.A.(3)/R/R.S.R/C.R.1469/1997-98. Thus, the society is quite old and it was also subjected to scrutiny earlier in A.Y. 2009-10. The argument taken by the Ld.A.R. now were already taken before the AO during the assessment proceedings which have been addressed and rebutted by the AO in penalty order itself as reproduced above.*
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> *Thus, the facts of the present case are clearly distinguishable from those of the case laws relied upon by the appellant and accordingly the ratios of the decisions of the Hon'ble jurisdictional I TAT, Pune and jurisdictional High Court as cited by the appellant in its reply reproduced in para 4 above, are not applicable. Accordingly, penalty levied by the AO is confirmed and appeal is dismissed."*

10. Being aggrieved by the order of the learned CIT(A), the assessee is in appeal before us.

11. The learned AR before us filed a paper book running from pages 1 to 47 and submitted that the assessee has accepted the deposits in cash

exceeding ₹20,000/- in contravention to the provisions of section 269SS of the Act under the bona-fide belief. As such, the assessee was under the impression that its activities are banking activities and therefore, the provisions of section 269SS of the Act are not applicable to it. The learned AR also contended that on realizing the mistake for accepting the deposits in cash, the assessee immediately has passed the resolution dated 22.04.2015 for not accepting the deposits in cash which is placed on pages 29 to 38 of the paper book. It was also pointed out that the resolution was passed prior to the date of penalty order i.e. dated 27.04.2015.

12. The learned AR also furnished the affidavit of Shri Govind Gopal Barne, the Chairman of the Society wherein it was contended that the mistake was committed by the assessee first time under the bona-fide belief. Accordingly, the assessee sought the immunity from the penalty under the provisions of section 273B of the Act. The learned AR in support of his contention, filed various orders of the Tribunal's, Hon'ble Courts which are available in the paper book.

13. On the other hand, the learned DR before us, vehemently supported the order of the authorities below and also filed the copies of the orders of the Tribunals and Hon'ble Courts vide letter dated 07.10.2020 which are placed on record.

14. The learned DR further also made a written submission vide letter dated 28.01.2021. The relevant extract of the submission is reproduced as under:

> *"5. In connection with the aforesaid submission, the attention of the Hon'ble Bench is drawn to the decision of the Hon'ble Bombay High Court in ITA No. 156 of 2009 dated 18.03.2009 in the case of Mis. Bandhkam Khate Sevakanchi Sahakari Patsnstha Maryadit which is at Page 25 of the paper book filed by the assessee. The order of the Hon 'ble Bombay High Court reads as under :-*

"In respect of the similar Cooperative society, we have dismissed the appeal and we have taken a note that after the position of Law was brought to their notice, they have started accepting the money by cheque. Considering the above, there is no merit in this appeal which is accordingly dismissed."

6. In the light of the aforesaid order of the Hon'ble Bombay High Court dated 18.03.2009, the law was clearly laid down in FY 2008-2009 that the acceptance of cash deposits by Cooperative societies from members was prohibited under section 269SS of the Income Tax Act, 1961. Hence the assessee in the instant case cannot justify the continued acceptance of cash deposits in the FY 2011-2012 relevant to the A.Y. 2012-2013 on the ground that it was under a bonafide belief that it was engaged in banking business and provisions of section 269SS and 269T were not applicable to it.

7. The Hon'ble Bombay High Court has in the case of CIT v. Ajitnath Hi-tech Builders P Ltd. (2019) 412 ITR 316 (Bombay) held that prior to its order dated 12.06.2012 in the case of Triumph International Finance (I) Ltd. (2012) 22 taxman.com 138 (Bombay) holding that loan I deposit repaid by merely debiting account through journal entry contravened the provisions of section 269T, there were decisions of various benches of tribunal and a delhi high court decision which held that payment by journal entry would not fall foul of section 269SS and, hence, prior to the decision dated 12.06.2012 there was reasonable cause for assessees to receive deposit I loan through journal entries. Applying the said rational, there is no reasonable cause for any cooperative society to accepts deposits in cash after the decision of the Hon'ble Bombay High Court dated 18.03.2009 in ITA No. 156 of 2009 in the case of Mis. Bandhkam Khate Sevakanchi Sahakari Patsnstha Maryadit. Hence the acceptance of deposits in cash by the assessee Mis. Bapujibuwa Nagari Sahakari Pat Sanstha Maryadit during the previous year relevant to the A. Y. 2012-2013 is a clear violation of the. provisions of section 269SS of the Income Tax Act, 1961 and the levy of penalty u/s 271D is perfectly justified and there is no reasonable cause as made out by the assessee."

15. The learned AR in her rejoinder submitted that the ratio laid down by the Hon'ble Court cited by the learned DR are distinguishable from the facts of the present case.

16. We have heard the rival contentions of both the parties and perused the materials available on record. In the present case, the dispute revolves around the provisions of Sec. 269SS of the Act. The provisions of section prohibit an assessee to accept from any other person any loan or deposit exceeding Rs.20,000/- or more otherwise than by an account payee cheques or an account payee bank draft. In the present case, the assessee being the co-operative bank has accepted deposits in cash exceeding ₹20,000/- from its members which was prohibited under the provisions of section 269SS of the Act. The assessee did not dispute the applicability of the provisions of section 269AA but contended that the mistake was

committed under the bona-fide belief and thus, sought the immunity under the provisions of section 273B of the Act.

17. The provisions of section 273B of the Act prescribes that penalty shall not be imposable for any failure referred to in Sec.271D of the Act, if the assessee proves that there was reasonable cause for such failure. Therefore, in the instant case, what is required to be examined is as to whether the assessee had a reasonable cause for its failure to comply with the provisions of Sec. 269SS r.w.s. 271D of the Act. Admittedly, it was first mistake committed by the assessee in the year under consideration as evident from the affidavit filed by it. Further, the Revenue in the assessment framed under section 143(3) of the Act for the assessment year 2008-09 has not pointed out to the assessee for the contravention of the provisions of section 269SS of the Act. All these contentions of the assessee have not been controverted by the authorities below. Accordingly, we can draw an inference that the assessee has accepted the cash as deposits exceeding ₹20,000/- under the bona-fide belief. In holding so, we draw support and guidance from the order of this Tribunal in the case of Ratnagiri Jilha Gramsevak Vs. ACIT in ITA No.1348/PN/2014 dated 20.08.2014 wherein it was held as under:

> *"7. We have considered the rival arguments made by both the sides. It is an admitted fact that the assessee Pat Sanstha has accepted deposits exceeding Rs.20,000/- in cash in contravention of the provisions of section 269SS for which penalty of Rs.10,95,000/- has been levied by the Addl.CIT which has been upheld by the CIT(A). It is the contention of the Ld. Counsel for the assessee that such contravention of law was under bonafide belief and after the same was brought to its notice the assessee Pat Sanstha has stopped accepting any deposit or repayment of the same by cash. We find an identical issue had come up before the Tribunal in a group of cases namely Chiplun Taluka Nagari Pat Sanstha Ltd. and others vide ITA Nos. 666 to 671/PN/2009 and ITA No.710/PN/2009 order dated 30-06-2009. We find the Tribunal cancelled the penalty so levied u/s.271D of the I.T. Act by observing as under :*
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> > *4. Similar issue came up for consideration before a co-ordinate Bench of this Tribunal in the case of Vishal Purandar Nagari Sahakari Pat Sanstha Maryadit in I.T.A. No. 1290/PN/2008 wherein vide its order dated22-12-2008 this Bench of the Tribunal had upheld the grievance of the assessee by observing and concluding as under:*

4. The basic thrust of assessee's submissions before us is that the assessee was, until pointed out by the Assessing Officer in the assessment proceedings, was of the bonafide opinion that the provisions of Section 269 SS do not apply on the credit cooperative societies. He invites our attention to the fact that even the tax auditor, who is a qualified professional, did not point out any non-compliance with the provisions of Section 269SS even though there is a specific disclosure requirement in respect of the same. Our attention is also invited to the fact that this violation of section 269 SS took place in the cases of a very large number of credit cooperative society which, by itself, would show that there was a widespread, even if erroneous, belief that the provisions of Section 269SS did not apply to the credit cooperative societies. Learned counsel then cites CBDT circular dated 25th March 2004 which is takes note of the fact that, in the cases of credit cooperative societies, " the penalties under section 271D and 271E of the Income Tax Act are being imposed in a large number of cases without appreciating the genuine difficulties faced by them in complying with these provisions" and advises the field officers that "penalties under section 271D and 271E for violations of the provisions of Section 269SS and 269T, respectively, should not be indiscriminately imposed" and "the provisions of Section 273B should be kept in view before imposing 8 penalties". Learned counsel submits that the business of the credit cooperative society, though admittedly distinct from that of a bank, is somewhat akin to the cooperative banks as, for all practical purposes, the business consists of accepting deposits from members and giving advances to the members. It was thus quite possible for these societies to bonafide believe that concessions available to the banking institutions would indeed be available to these institutions. It is further submitted that these credit cooperative societies are run and managed by elected representatives who are not necessarily highly qualified or business people. Even the professionals working for these institutions have bonafide believed that the provisions of Section 269SS are not applicable, as evident from the tax audit reports, and, therefore, it is futile to expect that the management of these credit cooperative societies will necessarily be well equipped with legal knowledge. In any event, as pointed out by the learned counsel, Chairman of the assessee society has given an affidavit to the effect that until it was so pointed out by the Assessing Officer, he was not aware about the applicability of, inter alia, Section 269SS on the assessee cooperative society. Learned counsel also invites our attention to several decisions passed by the coordinate benches which, relying upon the Hon'ble Supreme Court decision in the case of Motilal Padmapat Sugar Mills Ltd Vs State of Uttar Pradesh (118 ITR 326), upheld the ignorance of law as a reasonable cause for non compliance with the provisions of Section 269SS. Learned counsel thus urges us to delete the penalty on the ground that the assessee was not aware about the legal requirements under section 269 SS and thus he was of the bonafide belief that there is no violation of law in accepting cash deposits and making cash payments. Learned counsel submits that this bonafide belief, on the facts of the case, is a reasonable cause for the purposes of section 273 B. Learned counsel has also addressed us on some other peripheral legal issues, but, for the time being, we see no need to deal with the same. Learned Departmental Representative, on the other hand, objects to this submission mainly on the ground that there is no material on record to evidence the assessee's claim of bonafide belief. He vehemently submits that a bland statement about bonafide belief cannot suffice; it must be backed by some material and evidence. It is also his contention that post Dharmendra Textile decision by the Hon'ble Supreme Court, which holds penalty under section 271(1)(c) to be a civil liability, the concept of bonafide belief, which can at best be a reasonable cause for non compliance, is redundant in the context of

penalties under the Income Tax Act, 1961. By way of a written note, he further submits that "ignorance of law and absence of men's rea is a defence only in respect of individuals and group of individuals, and it has no application in the context of juridical persons like body incorporate". It is his contention that the assessee before us is a co-operative society which is "managed by duly elected members with the help of professional executives, and, therefore, plea of ignorance of law s not available at all". It is also contended that "the maxim ignorance of law is no excuse is spelt and subsequent judicial explanation making exceptions to the extent everybody is not supposed to know the law' were dealing with cases of individuals or body of individuals". He further adds that "reference to any case law index would show a number of penalties levied under section 271 D and 271 E have been confirmed for not showing reasonable that "if ignorance of law is accepted, it will be putting a premium on persons knowing the law and render penal provisions otiose and should be avoided". Learned Departmental Representative has painstakingly taken us through a number of judicial precedents dealing with the matters relating to penalties. On the strength of, inter alia, these submissions, he urges us to confirm the order of the authorities below and decline to interfere in the matter.

5. We have heard the rival contentions at considerable length. We have also perused the material on record and duly considered factual matrix of the case as also the applicable legal position.

6. The assessee, as we have noted earlier, is a credit cooperative society, -

pat sansthan', as it is known in the vernacular language. These pat sansthans are quite a common phenomenon in this part of the country and they render services, which are somewhat close to the services usually rendered by the cooperative banks, in the sense they accept deposits from the members and give loans to the members. These institutions usually work at the level of talukas and moffusil towns. There is no doubt that these are not banks and are not permitted to carry out the banking business, but it is also true that there is a fair degree of similarity in the services rendered by these credit cooperative societies and cooperative banks. In these circumstances, the bonafides of assessee's belief for being entitled to the same treatment as banking institutions cannot be rejected outright. This is surely an incorrect view, but when an authority is examining an explanation in the context of a penalty proceedings, all that the authority has to see is whether or not such an explanation stands the preponderance of probabilities, and whether there are any inconsistencies or fallacies in such an explanation which demonstrate that the explanation is a make believe story.

7. The question whether or not the legal position adopted by the assessee is correct or not cannot be the only basis on which penalty matters are decided, or else there is no need for any hearing once the lapse on the part of the assessee is established, nor can section 273 B have any relevance in such a situation. It is important to bear in mind that section 273 B comes into play when the assessee has committed a lapse but the assessee can demonstrate that there was reasonable cause for having committed that lapse. The facts relating to the factors leading to a lapse can only be known to the persons committing that lapse are best in the knowledge of person committing the lapse, and, therefore, the onus on him to elaborate the same. However, it is inherently impossible for anyone to substantiate, with cogent evidence and material – as being insisted by the learned Departmental Representative, something like a bonafide, which is a state of mind. All that can be done in such as situation is to explain the circumstances and factors leading to such a belief, and, in our considered view,

8. The other aspect of the matter is whether or not ignorance of law can be an acceptable explanation, and whether such an explanation can be acceptable for individuals or groups of individuals alone - and not juridical persons. This issue is now well settled by the Hon'ble Supreme Court in the case of Motilal Padmapat Sugar Mills (supra) wherein Their Lordships have observed that " ...it must be remembered that there is no presumption that everyone is presumed to know the law. It is often said that everyone is presumed to know the law, but that is not a correct statement; there is no such maxim known to law", and interestingly these observations were made in the context of an artificial juridical person, i.e. a company. Referring to these observations of the Hon'ble Supreme Court, a co ordinate bench of this Tribunal, in the case of Sudershan Auto and General Finance Vs CIT (60 ITD 177), observed as follows"

"The ignorance of law may or may not constitute a valid excuse for justifying with a provision of the statute. It will depend upon the nature of default. If it is merely technical or venial breach, no penalty would be impossible because the levy of penalty would necessarily implies existence of some guilty intention on the part of the defaulter or the offender. In order to determine the existence or absence of guilty intention on the part of the assessee, one will have to consider all the surrounding facts and circumstances. Whether by committing default of non compliance with a statutory provision of law, an assessee has derived benefit, gain or advantage, whether by such a default or non compliance the assessee has defrauded the Revenue or caused any loss to the revenue ? These are some of the factors which will have to seriously considered before considering the fact as to whether ignorance of law on the part of the assessee or his consultant can constitute valid excuse or reasonable cause for the purpose of Section 273B....."

9. We are in respectful agreement with the views so stated by the co ordinate bench. Viewed in this perspective and bearing in mind entirety of the case, as also the fact that the Assessing Officer has in some of the cases accepted the same explanation in the other years, we are of the considered view that the explanation of the assessee deserves to be accepted. It was a widespread, even if erroneous, belief that the provisions of Section 269 SS do not apply to the credit cooperative societies, and it is also evident from the fact that even the CBDT has taken notice of imposition of resultant penalties in large number of cases, and issued a circular highlighting that these penalties should not be imposed indiscriminately and without considering the scheme of Section 273 B. Such a widespread belief, by itself, can be viewed as a reasonable cause for assessee's bonafide belief.

10. Having said that, we may also add that it is not a case where even after the assessee after having come ' to know of the correct legal position due to income tax department's action against him continues to follow the same practice. Once the assessee comes to know as to what is the correct legal position or at least the revenue's stand on that issue, there is no question of his having bonafide but incorrect belief about the legal position. That is a different situation and we are not at all concerned with such a situation in the present case. This decision cannot have any precedence value in such a situation.

11. With the aforesaid caveat, we uphold the grievance of the assessee and direct the Assessing Officer to delete the impugned penalty. The assessee gets the relief accordingly.

5. We see no reason to deviate from the view already taken by the co-ordinate Bench in the case of Vishal Purandar Nagari Sah. pat Sanstha Maryadit (supra) and uphold the grievance of the assessees directing the Assessing Officer to delete the impugned penalties in respect of all the assessees before us. The assessees get the relief accordingly.

6. The view so taken by us in earlier cases have been confirmed by the Hon'ble jurisdictional High Court vide judgment dated 18-3-2009 in the case

of CIT Vs Bandhkam Khate Sevakanchi Sahakari Patsanstha Maryadit wherein Their Lordships have held that after position of law is brought to the notice of the assessee the assessee has started taking money by cheque, in such a situation Tribunal's cancelling penalty u/s.271D and 271E does not call for any inference. In the present cases 11 assessees have given affidavits to that effect. Keeping this in view also the penalties indeed deserve to be deleted".

7.1 Similar view has been taken by the Tribunal in various other decisions filed in the paper book by the Ld. Counsel for the assessee. We find when in one of the cases the Revenue filed an appeal before the Hon'ble High Court, the High Court in the case of CIT Vs. Bandhkam Khate Sevakanchi Sahakari Pat Sanstha vide ITA No.156 of 2009 order dated 18-03-2009 has dismissed the appeal filed by the Revenue by observing as under :

> *"PC : In respect of the similar cooperative society, we have dismissed the appeal and we have taken a note that after the position of Law was brought to their notice, they have started accepting the money by cheque. Considering the above, there is no merit in this appeal which is accordingly dismissed".*

7.2 The submission of the assessee before the Addl.CIT that it has stopped accepting or repaying the deposits in cash after the law was brought to its notice could not be controverted by the Ld. Departmental Representative. In view of the consistent decision of the Tribunal in various cases where penalty levied u/s.271D has been directed to be deleted and further considering the fact that the CIT(A) himself in various identical cases has deleted the penalty levied u/s.271D for which the Revenue has not filed any appeal before the Tribunal, therefore, we are of the considered opinion that it is not a fit case for levy of penalty u/s.271D of the I.T. Act. We, therefore, set-aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied u/s.271D of the I.T .Act."

18. At the time of hearing, the learned DR has placed reliance on various judgments which are not being reproduced here for the sake of brevity and convenience but suffice to say that the transactions in question are genuine and bona-fide which were undertaken during the regular course of its business. Accordingly, in the light of above discussion, it can be inferred that there was the reasonable cause for non-compliance of the provisions of section 269SS of the Act.

19. The expression 'reasonable cause' has to be considered pragmatically and if the facts of the present case are examined keeping this legislative spirit in mind, we find that there were enough circumstances to show that the assessee company had acquired bona-fide belief that its activities are at par with the bank.

20. After considering the totality of circumstances, namely, the bona-fide belief of the assessee that the transactions were exempted from the requirements of Sec.269SS of the Act and, there being no material to show that the transactions have been carried out with any intention to avoid or evade taxes, in our opinion, the assessee has been successful in showing that there was a reasonable cause for his failure to comply with the provisions of Sec.269SS of the Act. Accordingly, the order of the learned CIT(A) is set aside and the AO is directed to delete the penalty imposed under Sec. 271D of the Act.

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

Order pronounced on this the 17th day of February, 2021

Sd/-	**Sd/-**
(S. S. VISWANETHRA RAVI)	**(WASEEM AHMED)**
न्यायिक सदस्य/JUDICIAL MEMBER	**लेखा सदस्य/ACCOUNTANT MEMBER**

पुणे / Pune; दिनांक / Dated : 17th February, 2021.
Dragon

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(Appeals)-9, Pune.
4. The Pr.CIT-5, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **"बी"** बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.