IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA Nos. 248 & 249/Coch/2020
(Assessment Year: 2015-16)

The Karannur Service Co-op. Bank Ltd. Elathur P.O., Kozhikode 673303 [PAN:AABAK9507A] (Appellant)	vs.	The Income Tax Officer Ward 1(2), Kozhikode (Respondent)

Appellant by: Shri P. Raghunathan, Advocate
Respondent by: Sh. Sanjith K. Das, CIT-DR

Date of Hearing: 18.08.2023
Date of Pronouncement: 16.11.2023

O R D E R

Per Bench

This is a set of two Appeals by the Assessee, a service co-operative bank under the Kerala Co-operative Societies Act, 1969 ('Kerala Act'), agitating the confirmation of penalty under sections 271D and 271E of the Income Tax Act, 1961 (hereinafter 'the Act'), by the Commissioner of Income Tax (Appeals), Kozhikode [CIT(A)] vide his separate orders dated 19.03.2020 and 20.03.2020 respectively, levied by the Joint Commissioner of Income Tax, Kozhikode (Jt. CIT) (vide separate orders dated 26.07.2018) for Assessment Year (AY) 2015-16.

2.1 The background facts of the case are that the assessment for the relevant year was completed u/s.143(3) of the Act on 13.12.2017 by the Assessing Officer (AO), being the Income Tax Officer, Ward 1(2), Kozhikode, denying the assessee deduction u/s. 80P(1) r/ws. 80P(2)(a)(i) of the Act, claimed on it's entire income of Rs.80.69 lakhs, adding another Rs.31.10 lakhs *qua* inadmissible provisions. The basis for the same, accepting the assessee's claim of being a primary agricultural society under the

Kerala Act, was absence of mutuality; the assessee also admitting nominal members who have no right to vote; participate in the surplus; right to be part of management, etc., with the assessment order discussing in detail the rights of each of the four (A,B,C, & D) category of members, of whom only category 'A' members had the relevant rights and, accordingly, regarded by him as real members. Reliance was placed by him on *The Citizen Co-operative Society Ltd. v. Asst. CIT*[2017] 397 ITR 1 (SC), extracting from para 26 thereof, whereat the Hon'ble Court noticed the detailed discussion by the assessing authority *qua* mutuality. Violation of sections 269SS and 269T of the Act, proscribing acceptance as well as repayment of loans and deposits other than by way of account payee cheque or account payee bank draft or electronic clearing system through a bank account, where the sum is at Rs.20,000 or more, liable for penalty u/s. 271D &271E of the Act respectively, were noticed by him, and the matter referred by him to the Jt. CIT, i.e., the competent authority under the Act to levy the said penalty.

2.2 The assessee, on being show-caused in the matter by the Jt. CIT, took various pleas in defence, viz. of it being a bank or para-bank; the loans and advances accepted and repaid being of it's members, who are it's shareholders; money being its stock-in-trade; the transactions being *bona fide* and undertaken in the ordinary course of it's business; transactions having been accepted in the past, etc., besides as to limitation, both, before him, as well as in the appellate proceedings, each of which were considered and found untenable. Aggrieved, the assessee is in second appeal.

3. Before us, the matter was heard at length; the assessee's case, as made out by Shri Raghunathan, the learned counsel for the assessee, falling under two limbs, i.e.,

(a) Limitation u/s. 275(1)(c) of the Act; and

(b) Reasonable cause u/s. 273B of the Act.

4. We have heard the parties, and perused the material on record. We shall take up each of the assessee's principal objections in seriatim.

4.1 The assessee's case *qua* limitation was as:

(i) penalty being caused to be initiated on 13.12.2017, the first limb of section 275(1)(c) of the Act shall yield the limitation date as 31.03.2018.

(ii) the second would be six months after 31.12.2017, i.e., the end of the month in which the penalty proceedings were caused to be initiated, or30.06.2018.

The later of the two dates, i.e., 30/6/2018, would be the limitation date. The penalty order/s dated 26.07.2018 is thus barred by time. The decision by the Hon'ble High Court in *Grihalakshmi Visions vs. Addl. CIT*[2015]379 ITR 100 (Ker), holding that initiation of penalty could only be by a competent authority and, thus, only upon the issue of notice u/s. 274 of the Act by the Jt. CIT, i.e., on 02.01.2018 (in the instant case), so that the limitation shall expire on 31.7.2018, cannot be regarded as good law in view of the decision in *CIT vs. Hissaria Bros.*[2016] 386 ITR 719 (SC), upholding the decision reported at [2007] 291 ITR 244 (Raj), para 9 whereof, reading as under, was referred to:

> "9. The Tribunal found on the question of limitation that the order of penalty should have been passed within 6 months from the end of the month in which the assessment was completed. On this premise, it was held that since all the penalty orders were passed beyond 6 months from the end of the month in which assessments were completed, the penalty orders were barred by time. It did not agree with the contention of the Revenue that the limitation for completing the penalty proceedings was governed by Section 275(1)(a) and not by Section 275(1)(c) because the assessment proceedings for each of the assessment years in question have been subjected to appeal. The Tribunal opined that since the penalty proceedings are independent of the assessment proceedings, the filing of the appeal against the assessment orders during the course of which penalty proceedings were initiated was irrelevant."

He would then take us through the order by the Hon'ble Apex Court confirming the same, which reads as under: -

> "On perusing the judgment of the High Court, it is found that penalty imposed on the respondent herein was also set aside on the ground that the provisions of Section 271-D and 271-E of the Income Tax Act were invoked after six months of limitation and, therefore, such penalty could not have been imposed. Since the outcome of the judgment of the High Court can be sustained on this aspect alone, it is not even necessary to go into other aspects. Leaving the other questions of law open, the appeal is dismissed. There shall be no order as to costs."

Our attention was drawn by him to the words deployed by the statue: "action for imposition of penalty has been/is initiated" in section 275(1)(c) of the Act. Shri Das, the ld. CIT-DR, would submit that the decision in *Hissaria Bros*. (supra) did not involve interpretation of section 275(1)(c) of the Act at all, and the controversy involved; the assessment orders having been appealed by the assessee, was whether clause (a) or (c) of section 275(1) shall apply, and the Hon'ble Court confirming the order by the Tribunal, held it to be clause (c) inasmuch as the assessment and penalty proceedings were separate and independent proceedings. The facts in that case were entirely different as the notice/s u/s.274 of the Act by the Jt. CIT was issued years after the matter was referred to him by the AO in view of the assessee being in appeal.

4.2 Section 275 of the Act reads as under: -

"**275.** (1) No order imposing a penalty under this Chapter shall be passed—

(*a*) in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever period expires later :

Provided that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever is later;

(*b*) in a case where the relevant assessment or other order is the subject-matter of revision under section 263 or section 264, after the expiry of six months from the end of the month in which such order of revision is passed;

(*c*) in any other case, after the expiry of the financial year in which the proceedings, in the course of which *action for the imposition of penalty has been initiated*, are completed,

or six months from the end of the month in which *action for imposition of penalty is initiated*, whichever period expires later.

(1A) ….

Explanation.—In computing the period of limitation for the purposes of this section,—

(*i*) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;

(*ii*) any period during which the immunity granted under section 245H remained in force; and

(*iii*) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court,

shall be excluded." (emphasis, supplied)

4.3 We have carefully perused the cited decisions; it being made clear to us, on asking, by the parties, that no further guidance by way of decisions by the higher courts was available. In *Grihalakshmi Visions* (supra) the issue was the date of initiation of the penalty u/s. 275(1)(c) of the Act. That is, is predicated on the applicability of the said provision. The AO's observations, per assessment order dated 06/11/2007, in that case, reproduced at para 8 of the judgement, read as under:

"Since the assessee has violated the provisions of section 269SS and section 269T of the Income-tax Act by accepting and repaying loans exceeding Rs. 20,000 aggregating and otherwise at any point of time, as given above, penalty provisions of section 271D and section 271E of the Income-tax Act are attracted. Accordingly, initiated penalty proceedings under section 271D and section 271E."

This was followed by notice u/s. 274 of the Act by the Jt. CIT, show causing the assessee in the matter, on 28.3.2008. The penalty order was passed by him on 29.7.2008. The issue arising therefore was whether the penalty was initiated on the passing of assessment order on 06.11.2007, or on the issue of notice u/s. 274 of the Act on 28.3.2008. The Hon'ble Court held that penalty could only be initiated on issue of notice by the Jt. CIT, i.e., the competent authority, who only could initiate penalty proceedings. This, representing the ratio of the decision, is stated at para 10 of the Judgement, with para 11 conveying its decision, reading as under: -

"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

> November 6, 2007, the penalty order passed by the Joint Commissioner on July 29, 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)."

4.4 How, we wonder, could that be either disputed, or held as not good law; it being admitted position before us that the Joint/Addl. CIT only is competent to levy penalty (u/ss. 271D/E of the Act) and, thus, initiate penalty there-under by issue of notice u/s. 274 of the Act; with, further, there being nothing in the decision in *Hissaria Bros* (supra), i.e., both by the Hon'ble High Court and the Hon'ble Apex Court, to contradict it? True, the words employed by the statute, and which are to be read meaningfully, and sought to be given effect to, are: 'action for the imposition of penalty has been/is initiated', and not 'penalty initiated', as emphasised by Shri Raghunathan before us. We agree. The relevant date, therefore, is neither the date of assessment order, as contended by the appellant in *Grihalakshmi Visions* (supra), or the date of initiation of penalty proceedings by issue of notice under section 274 – which though can only be by a competent authority, as contended by the Revenue in that case. But the date on which action for imposition of penalty stands initiated. This action is to be understood as the date on which reference is made to the competent authority for initiation of penalty proceedings. In the instant case/s, this is on 01.01.2008, vide letter No. F. KKD/Ward-1(2)/AABAK950A/2017-18 (pg. 1 of the penalty orders). The limitation period would thus be up to 31.07.2008, being the later of 31.3.2008 and 31.7.2008. The penalty orders are thus not barred by time, i.e., going by the assessee's own case as made out, and we admit with merit.

4.5 Further, it is nobody's case, nor could possibly be, that reference to the Jt. CIT by the AO on 01.01.2008, being after the completion of the assessment proceedings on passing the assessment order and issue of demand notice on 13/12/2017,is not valid in law inasmuch as it was after 13.12.2017. It is only on this reference, containing his observations and comments, that the competent authority, applying his

mind thereto, decides to either initiate penalty proceedings – which only he is in law competent to (ss. 271D(2)/271E(2) of the Act), or not. In a given case, the Joint/Addl. CIT may himself be the AO, in which case he, noticing and recording violation of sections 269SS/T, may, accordingly, propose to initiate penalty, in which case that would be the relevant proceedings. Why, in a given case, penalty proceedings may be initiated at the instance of the first appellate authority. The date of assessment order may thus not be relevant. Shri Raghunathan would before us seek to bolster his case by arguing that the Jt. CIT may well 'sleep' over the matter, issuing notice u/s.274, in an extreme case, after years, indefinitely postponing the proceedings, and, which cannot be the intent of the Legislature. While this may be a possibility, even if remote, we do not think it necessary to, given the clear language of the provision, seek to decipher or probe the rationale behind prescribing the time of 'action for initiation of penalty' in its wisdom by the Legislature as against that of 'initiation of penalty', which could well have been so stated had that been the legislative intent. The words 'action for imposition of penalty has been/is initiated', in s. 275(1)(c),could only be on the reference to the competent authority in the matter, i.e., proposing initiation of penalty u/s. 271D/E of the Act, in collateral proceedings. The 'sleep over' would, rather, defeat the levy of penalty inasmuch as action for the imposition of penalty precedes the date of its initiation.

4.6 Coming to the decision in *Hissaria Bros*. (supra), in the facts of that case, the assessee having appealed against the assessment, notice u/s.274 of the Act for relevant year by the Jt. CIT, was after only 4 years of the reference to him by the AO. The Hon'ble Court was, accordingly, called upon to decide whether clause (a) or (c) of section 275(1) of the Act, as being contended by the assessee and the Revenue respectively, applied. The Hon'ble Court traversed the legislative history of section 275, discussing the relevance of each of the limbs, i.e., (a), (b) and (c) of section 275(1) of the Act. While clauses (a) and (b) relate to penalties where the relevant

assessment is subject to appeal and revision proceedings respectively, the residuary clause (c)is for a case not falling under either.

4.7 Though the assessment for the relevant years, i.e., *qua* penalty u/ss. 271D/E of the Act, as explained, may be in appeal, levy of penalty is independent thereof and, in fact, not linked with the assessment proceedings, as is the case of penalty u/s.271(1)(c) of the Act, where it is inextricably linked with the quantum proceedings, which may be subject matter of appeal/revision, necessitating keeping in abeyance the penalty proceedings, which otherwise would cause avoidable and genuine hardship, besides duplication of work. Reference in this context be made to paras 22 to 37 (pgs. 253 to 257) of the Reports, concluding at para 38 (pages 253 to 258), holding that penalty under reference falls under section 275(1)(c) of the Act.

4.8 The issue, thus, before the Hon'ble High Court was the limb, (a) or (c), of section 275(1) of the Act, where-under the time limitation *qua* the penalty under appeal would fall. Contrast this with para 11of the decision in *Grihalakshmi Visions* (supra). There is no reference, nay whisper, therein, as indeed in the instant case, to section 275(1)(a) of the Act; it being an admitted position that the time limit fell neither under clause (a) or (b) of s. 275(1), but u/c.(c) only. This is as, though a subject matter of appeal, the fate of the assessment proceedings has no bearing on the penalty proceedings, relevance of which, where so, is only of the default having come to notice in that proceedings, so that penalty proceedings, which are separate and independent, were required to be initiated. That is, the issue in *Hissaria Bros.* (supra) – which arose principally due to a time lag of months between reference by the AO to the Jt. CIT and the notice u/s.274 by the latter, and decided by the Hon'ble Court, is the clause of sec. 275(1) applicable where the relevant assessment is under appeal. The Hon'ble Court, in ratio, held that it is only where the appellate proceeding has a bearing on the penalty proceedings, that clause (a) of section 275(1) of the Act apply. No such relevance was found in the case of penalty under sections 271D/E of the Act.

This represents the ratio of the said decision, also apparent from a reading of para 9 of the decision in *Hissaria Bros.* (supra), extracted hereinbefore (at para 4.1). As apparent, there is no interface between the decisions in *Grihalakshmi Visions* (supra) and *Hissaria Bros.* (supra). Approval of the latter by the Hon'ble Apex Court, which though is without any statement of law, would thus be to no consequence.

4.9 It is the ratio of a decision that is binding. Further, as is well-settled, a decision is an authority for what it actually decides, and not for what may logically flow from the observations made therein, reiterated once again by the Apex Court in *Maviyali Service Cooperative Bank v. CIT* [2021] 431 ITR 1 (SC). Reference therein is also made to the decision in *State of Orissa v. Sudhanshu Sekhar Misra* [1968] 2 SCR 15 for the proposition that a decision must be read as applicable to the facts proved or assumed to be proved, and the generality of the expressions are not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which the expressions are to be found. A decision, thus, cannot be viewed divorced from its background facts and the context in which it is rendered. The cited decisions would thus be of little assistance to the parties.

We may here hasten to add that despite our clear view, we would have yet readily adopted the decision in *Grihalakshmi Visions* (supra), if we discerned any inconsistency between the same and that expressed by the Hon'ble jurisdictional High Court which, as afore-noted, has only opined on the initiation of penalty, i.e., as being on the issue of notice u/s.274 inasmuch as the same could only be by the competent authority. Why, it, at para 10 of it’s decision, clarifies that the statement in the assessment order that penalty u/ss.271D/E is being initiated is of no consequence.

4.10 The assessee, for the reasons afore-stated, fails in it’s challenge on limitation. We decide accordingly.

5.1 We next consider the assessee’s case as regards ‘reasonable cause’ u/s. 273B. We have given our careful consideration to the matter, which may have implications

beyond the instant case, the financial impact of which, at an aggregate of Rs. 231.24 cr., also emphasised by Shri Raghunath, is not insubstantial. The default being admitted, reference to the enhanced limit of Rs. 2 lakhs, up from Rs. 20,000, in sections 269SS/T, for a PACS, w.e.f. the previous year commencing 01.04.2023, as pointed out by Shri Das, so made, as explained by him, with a view to provide relief to the low income groups in rural areas and facilitate easier conditions of business operations in such areas, may not add any further strength to the Revenue's case; the burden to prove reasonable cause being in any case on the assessee.

5.2 In our view, looking at the entirety of the facts and circumstances, the assessee deserves to succeed in the conspectus of it's case. It, though registered as a PACS, is, for all practical purposes in the business of banking; the nature of business specified in the assessment order itself being 'banking business'. The two essential ingredients of the business of banking, defined u/s. 5(b) of the Banking Regulation Act, 1949 (BRA), are acceptance of deposits from public for lending thereto, acting thus as a financial intermediary, or for investment. The assessee is involved in both, i.e., borrowing, through acceptance of deposits, as well as lending, with the only difference that the members of the public are entitled to deposit their monies as well as borrow monies on becoming nominal members by paying a nominal sum upon filling an application form, permitted by it's governing Act and bye-laws. It is this that led to the denial of deduction u/s. 80P in assessment, as indeed by the Tribunal, whose order was confirmed by the Hon'ble High Court in *The Citizen CSL* (supra). And which found resonance with the Hon'ble Apex Court, with it finding that nominal members are not the real members, so that in dealing therewith the appellant-society was dealing with members of the public, even as underlined by the AO, whose order, in the relevant part, stands extracted by it at para 26 of it's Judgement. For our purposes, it would suffice to bring out the Revenue's case, accepted throughout, by reproducing the following lines from the said order:

'It is found, as a matter of fact, that the depositors and borrowers are quite distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well.'

This, in fact, has been referred to time and again, and is the constant refrain of the Revenue in all such cases, and not without merit inasmuch as it is a matter of fact, borne out both by conduct and record, that cooperative societies, though registered as a PACS, are so only in name; their agricultural lending being negligible, and being primarily in the business of banking, albeit without licence from RBI. And, further, are not PACSs – which are outside the purview of BRA, both in terms of its definition there-under as well as the Kerala Act. *This factual position, i.e., acceptance of deposits from it's customers, drawn from members of the public, upon being enrolled as members, including nominal, and repayment thereto, would not stand altered when it comes to sections 269SS/T of the Act.* That the same was found not relevant for the deduction u/s. 80P by the Hon'ble Apex Court in *Maviyali SCB*(supra), so that it may not bar deduction there-under, is a different matter. The eligibility to deduction u/s. 80P, which is to be per the language of the provision, may not be confused with the assessee being, or not being, a PACS, which status was found irrelevant in *Mavilai SCB* (supra) as long as the assessee is a cooperative-society dealing with it's members, which includes nominal members as well (under the Kerala Act).

5.3 True, the assessee, as indeed other such-like societies, do not have a licence from the RBI. That, however, would only mean that they operate outside the banking regulatory system, administered by it. That is, they do not file returns, or otherwise comply with the instructions of RBI, i.e., operate outside it's administrative control. That, however, has little bearing on it's activity as a financial intermediary, dealing through its different branches with members of the public enrolled as it's members. Rather, as again noticed by the Hon'ble Courts, as in *The Citizen SCB* (supra) and *Mavilai SCB* (supra), they may, and under the provisions of the Kerala Act (s.

59),deal with non-members as well and, as explained by them, with the only consequence that income from such transactions would be ineligible for deduction u/s. 80P. That is, they deal with non-members as well, attracting no disqualification with regard to the status except the eligibility of such income for the benefit of being tax-exempt under the Act. Further, the depositors, as clarified during the hearing, on a query by the Bench, are also offered cheque facility. Though not a member of the clearing house, the cheques are, as explained, in turn, en-cashed through an instrument issued by the District Co-operative Bank, with which the assessee-society maintains a current (deposit) account. That is, a way stands devised to, circumventing the administrative control, provide this facility to the customers as well. All systems are thus in place to facilitate the activity of a financial intermediary, at par with the commercial banks. We have already stated of it operating for all intents and purposes as a bank without licence, i.e., a para-bank. The members of the public perceive it,*as does the Revenue*, and indeed it itself, as a Bank. *The question therefore is if such an Institution could be penalized when it, and surely technically mistakenly, accepts deposits from its members and repays them, in cash*? Why, as indeed non-members; the only debility being that the corresponding income would be taxable. Raising again the same larger question of thus in effect dealing with public at large. We may here clarify that the actual dealing with non-members, which may well be asserted as absent in view of the claim for deduction u/s. 80-P for the relevant year extending to the entire business income, is not relevant, but the legal competence to do so (*Delhi Stock Exchange Association Ltd. v. CIT* [1997] 225 ITR 235 (SC)).This, further, brings us to examine if there is a restriction on the area of it's operations. The assessee is operating with 9 branches in the district of Kozhikode. The restriction on the area of it's operations, i.e., to village panchayat or a municipality, being applicable only to societies registered after the commencement of the Kerala Act (s. 2(oa)) by the Kerala Co-operative (Amendment) Act, 1999is, thus, also not applicable to the assessee.

5.4 The cumulative effect of all this, the prime proof of which is the conduct of it's business by the assessee, is that it acts as, and is, for all intents and purposes, a bank, albeit without licence from the RBI; the most important element of which, from the stand-point of penalty, is it being perceived as so by the members of the public dealing with it, as indeed it – not catering to a closed group, projecting itself as such. Now, when a person maintaining a saving or current account with it, claims repayment, he does so in the same manner as another person does, similarly, *qua* his deposit with a scheduled or co-operative bank, both public institutions acting in the regular course of the business as financial intermediaries. It is not a question of money being the assessee's stock-in-trade; it being so for a money lender or a finance company as well, but of the deposit with a bank, which itself is regarded as money, and which explains the exclusion thereof from acceptance and repayment of deposits in legal tender. Similarly, a depositor may instruct the assessee to, in repayment of its fixed deposit, credit his saving or current account with it. And which, again, where otherwise than per an account payee cheque or bank draft, would transgress section 269T of the Act. *In sum, they operate as and have all the trappings of a bank, which in fact has been the constant refrain and stand of the Revenue in denying deduction u/s.80P – irrelevant for our purpose, thereto, so that the defaults under reference have occurred in acting in their normal course of business.* That is, the law, while allowing it to function in the manner it does, yet penalizes it for doing so.

5.5 The impugned transactions have necessarily to be viewed in this context and background. It is again this finding that guides and informs the order by the Tribunal in deleting the penalty u/ss. 271D/E, noticed by the Apex Court in *The Citizen CSL* (supra), reproducing therefrom at para 7 (pg. 7) and, further, relied upon by the first appellate authority in denying deduction u/s. 80-P,emphasized by the Hon'ble Court by reproducing paras 22 to 24 of his order, again at pg. 7 of it's Judgment. Para 23, which we consider as most striking, reads as under:

‘23. *The society is carrying on the banking business and for all practical purpose it acts like a co-operative bank.* The Income-tax Appellate Tribunal observed that the society is governed by the Banking Regulation Act. Therefore, the society being a co-op. bank providing banking facilities to members is not eligible to claim the deduction under section 80P(2)(a)(i) after the introduction of sub-section (4) of section 80P.’ (emphasis, ours)

We may though clarify that the assessee, in our clear view, in accepting deposits from it’s members, or lending thereto or otherwise to non-members, in cash, is acting within the frame-work of law, i.e., legally. This is relevant as it is impermissible in law for one to take advantage of it’s own wrong (*B.M. Malani v. CIT*[2008] 306 ITR 196 (SC)). Even as observed by the Tribunal in *Santimadom Herbal City Trust v. Asst. CIT* (in ITA Nos. 920, 921/Coch/2022, dated 14/11/2023), one violation of law cannot be a justification for violating another law. The Apex Court in *CIT v. Prakash Chand Lunia v. CIT* [2023] 454 ITR 61 (SC) again clarified, with reference to it’s earlier decisions, this aspect in the context of deductibility of expenditure of an illegal business (also refer *Apex Laboratories (P.) Ltd. v. Dy. CIT* [2022] 442 ITR 1 (SC)). We are, with respect, therefore not in agreement with the Tribunal in *The Citizen CSL* (supra) to the extent it states that violation of BRA has no bearing on the penalty u/ss. 271D/E. A reasonable cause, sure, essentially a matter of fact, has to have it’s genesis in a *bona fide* conduct, which cannot, without sufficient justification, be ascribed to illegality.

5.6 The assessee-society, though registered as a PACS under the Kerala Act, is legally dealing with members and non-members, i.e., public at large, without restriction as to area, i.e., at par with a commercial or cooperative bank, excluded from the ambit of ss. 269SS/T. In our view there is thus a reasonable cause for the assessee, who has a past history of operating in such a manner, being so for over three decades post 30.06.1984, i.e., since when sections 269SS/T of the Act are on the statute, for having violated the said provisions, and is thus not liable to penalty under sections 271D/E of the Act in terms of s. 273B. We may also clarify; the same having

also been duly considered and factored into our decision, that no doubt at any stage, including before us, has been expressed by the Revenue as regards the maintenance of proper records, including *qua* KYC, by the assessee. This is as, where so, this would have warranted remanding the matter back to identify such suspected cases inasmuch as there could be a transgression of the provisions of the PMLA, with the assessee using it's status, reach and clout as a bank to deal in illicit money or otherwise with customers without proper antecedents. We decide accordingly.

6. In the result, the appeals by the assessee are allowed.

Order pronounced on November 16, 2023 under Rule 34 of The Income Tax(Appellate Tribunal) Rules, 1963.

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: November 16, 2023

NB: This is the copy of the order dated 16/11/2023, duly corrected for the errors listed in corrigendum order dated 30/11/2023.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The CIT-DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin

n.p.

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA Nos. 248 & 249/Coch/2020
(Assessment Year: 2015-16)

The Karannur Service Co-op. Bank Ltd. Elathur P.O., Kozhikode 673303 [PAN:AABAK9507A] (Appellant)	vs.	The Income Tax Officer Ward 1(2), Kozhikode (Respondent)

CORRIGENDUM

Order under section 254(1) of the Income Tax Act, 1961 ('the Act') in the captioned appeal was passed on 16.11.2023. It is, however, found that there have occurred certain typing errors and omissions in the said order, which are, therefore, sought to be rectified through this corrigendum order. The same being only correction of those errors, do not therefore *per se* cause any prejudice to either party. The details are as under:

1. Para 4.3 (page 5): The date "06.11.2017" be read as "06.11.2007".

2. Para 4.5 (page 7):

(a) a 'coma' (,) be read after the words "269SS/T".

(b) an apostrophe (') be inserted after the words "has been/is" in the third last line of the para.

(c) the following sentence be read at the end of the para:
The 'sleep over' would, rather, defeat the levy of penalty inasmuch as action for The imposition of penalty precedes the date of its initiation.

3. Para 4.9 (page 9): The last sentence of this para, i.e., beginning with the words "The assessee, for the reasons..." be marked as a separate para number '4.10'.

4. Para 5.2 (page 10):

(a). The word “for” be read between the words ‘or’ and ‘investment’ in line 7 of the para.
(b) A coma (,)after the words “Hon'ble High Court” at line 13 of the para be omitted.

5. Para 5.3 (page 12):The word ‘that’ be read between the words “clarify” and “the actual dealing”.

6. Para 5.4 (page 13): A coma(,) be read after the words “both public institutions” in line 8 of the para.

7. Para 5.5 (page 14): The words ‘(also refer *Apex Laboratories (P.) Ltd. v. Dy. CIT* [2022] 442 ITR 1 (SC))’be read after the words “an illegal business”.

8. Para 5.6 (page 14):

a). The word ‘*qua*’ be read between the words “including” and “KYC” at line 11.

b). the comma (,) after the words “suspected cases”, be omitted.

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: November 30, 2023
Devada G*
Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The CIT-DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Shri Manomohan Das, Judicial Member

ITA Nos. 248 & 249/Coch/2020
(Assessment Year: 2015-16)

The Karannur Service Co-op. Bank Ltd. Elathur P.O., Kozhikode 673303 [PAN:AABAK9507A] (Appellant)	vs.	The Income Tax Officer Ward 1(2), Kozhikode (Respondent)

Appellant by: Shri P. Raghunathan, Advocate
Respondent by: Sh. Sanjith K. Das, CIT-DR

Date of Hearing: 18.08.2023
Date of Pronouncement:16.11.2023

O R D E R

Per Bench

This is a set of two Appeals by the Assessee, a service co-operative bank under the Kerala Co-operative Societies Act, 1969 ('Kerala Act'), agitating the confirmation of penalty under sections 271D and 271E of the Income Tax Act, 1961 (hereinafter 'the Act'), by the Commissioner of Income Tax (Appeals), Kozhikode [CIT(A)] vide his separate orders dated 19.03.2020 and 20.03.2020 respectively, levied by the Joint Commissioner of Income Tax, Kozhikode (Jt. CIT) (vide separate orders dated 26.07.2018) for Assessment Year (AY) 2015-16.

2.1 The background facts of the case are that the assessment for the relevant year was completed u/s.143(3) of the Act on 13.12.2017 by the Assessing Officer (AO), being the Income Tax Officer, Ward 1(2), Kozhikode, denying the assessee deduction u/s. 80P(1) r/w.s. 80P(2)(a)(i) of the Act, claimed on it's entire income of Rs.80.69 lakhs, adding another Rs.31.10 lakhs *qua* inadmissible provisions. The basis for the

same, accepting the assessee's claim of being a primary agricultural society under the Kerala Act, was absence of mutuality; the assessee also admitting nominal members who have no right to vote; participate in the surplus; right to be part of management, etc., with the assessment order discussing in detail the rights of each of the four (A,B,C, & D) category of members, of whom only category 'A' members had the relevant rights and, accordingly, regarded by him as real members. Reliance was placed by him on *The Citizen Co-operative Society Ltd. v. Asst. CIT*[2017] 397 ITR 1 (SC), extracting from para 26 thereof, whereat the Hon'ble Court noticed the detailed discussion by the assessing authority *qua* mutuality. Violation of sections 269SS and 269T of the Act, proscribing acceptance as well as repayment of loans and deposits other than by way of account payee cheque or account payee bank draft or electronic clearing system through a bank account, where the sum is at Rs.20,000 or more, liable for penalty u/s. 271D &271E of the Act respectively, were noticed by him, and the matter referred by him to the Jt. CIT, i.e., the competent authority under the Act to levy the said penalty.

2.2 The assessee, on being show-caused in the matter by the Jt. CIT, took various pleas in defence, viz. of it being a bank or para-bank; the loans and advances accepted and repaid being of it's members, who are it's shareholders; money being its stock-in-trade; the transactions being *bona fide* and undertaken in the ordinary course of it's business; transactions having been accepted in the past, etc., besides as to limitation, both, before him, as well as in the appellate proceedings, each of which were considered and found untenable. Aggrieved, the assessee is in second appeal.

3. Before us, the matter was heard at length; the assessee's case, as made out by Shri Raghunathan, the learned counsel for the assessee, falling under two limbs, i.e.,

(a) Limitation u/s. 275(1)(c) of the Act; and

(b) Reasonable cause u/s. 273B of the Act.

4. We have heard the parties, and perused the material on record. We shall take up each of the assessee's principal objections in seriatim.

4.1 The assessee's case *qua* limitation was as:

(i) penalty being caused to be initiated on 13.12.2017, the first limb of section 275(1)(c) of the Act shall yield the limitation date as 31.03.2018.

(ii) the second would be six months after 31.12.2017, i.e., the end of the month in which the penalty proceedings were caused to be initiated, or30.06.2018.

The later of the two dates, i.e., 30/6/2018, would be the limitation date. The penalty order/s dated 26.07.2018 is thus barred by time. The decision by the Hon'ble High Court in *Grihalakshmi Visions vs. Addl. CIT*[2015]379 ITR 100 (Ker), holding that initiation of penalty could only be by a competent authority and, thus, only upon the issue of notice u/s. 274 of the Act by the Jt. CIT, i.e., on 02.01.2018 (in the instant case), so that the limitation shall expire on 31.7.2018, cannot be regarded as good law in view of the decision in *CIT vs. Hissaria Bros.*[2016] 386 ITR 719 (SC), upholding the decision reported at [2007] 291 ITR 244 (Raj), para 9 whereof, reading as under, was referred to:

> "9. The Tribunal found on the question of limitation that the order of penalty should have been passed within 6 months from the end of the month in which the assessment was completed. On this premise, it was held that since all the penalty orders were passed beyond 6 months from the end of the month in which assessments were completed, the penalty orders were barred by time. It did not agree with the contention of the Revenue that the limitation for completing the penalty proceedings was governed by Section 275(1)(a) and not by Section 275(1)(c) because the assessment proceedings for each of the assessment years in question have been subjected to appeal. The Tribunal opined that since the penalty proceedings are independent of the assessment proceedings, the filing of the appeal against the assessment orders during the course of which penalty proceedings were initiated was irrelevant."

He would then take us through the order by the Hon'ble Apex Court confirming the same, which reads as under: -

> "On perusing the judgment of the High Court, it is found that penalty imposed on the respondent herein was also set aside on the ground that the provisions of Section 271-D and 271-E of the Income Tax Act were invoked after six months

> of limitation and, therefore, such penalty could not have been imposed. Since the outcome of the judgment of the High Court can be sustained on this aspect alone, it is not even necessary to go into other aspects. Leaving the other questions of law open, the appeal is dismissed. There shall be no order as to costs."

Our attention was drawn by him to the words deployed by the statue: "action for imposition of penalty has been/is initiated" in section 275(1)(c) of the Act. Shri Das, the ld. CIT-DR, would submit that the decision in *Hissaria Bros.* (supra) did not involve interpretation of section 275(1)(c) of the Act at all, and the controversy involved; the assessment orders having been appealed by the assessee, was whether clause (a) or (c) of section 275(1) shall apply, and the Hon'ble Court confirming the order by the Tribunal, held it to be clause (c) inasmuch as the assessment and penalty proceedings were separate and independent proceedings. The facts in that case were entirely different as the notice/s u/s.274 of the Act by the Jt. CIT was issued years after the matter was referred to him by the AO in view of the assessee being in appeal.

4.2 Section 275 of the Act reads as under: -

"**275.** (1) No order imposing a penalty under this Chapter shall be passed—

(*a*) in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A or an appeal to the Appellate Tribunal under section 253, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which the order of the Commissioner (Appeals) or, as the case may be, the Appellate Tribunal is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever period expires later :

Provided that in a case where the relevant assessment or other order is the subject-matter of an appeal to the Commissioner (Appeals) under section 246 or section 246A, and the Commissioner (Appeals) passes the order on or after the 1st day of June, 2003 disposing of such appeal, an order imposing penalty shall be passed before the expiry of the financial year in which the proceedings, in the course of which action for imposition of penalty has been initiated, are completed, or within one year from the end of the financial year in which the order of the Commissioner (Appeals) is received by the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner, whichever is later;

(*b*) in a case where the relevant assessment or other order is the subject-matter of revision under section 263 or section 264, after the expiry of six months from the end of the month in which such order of revision is passed;

(*c*) in any other case, after the expiry of the financial year in which the proceedings, in the course of which *action for the imposition of penalty has been initiated*, are completed, or six months from the end of the month in which *action for imposition of penalty is initiated*, whichever period expires later.

(1A) ….

Explanation.—In computing the period of limitation for the purposes of this section,—

(*i*) the time taken in giving an opportunity to the assessee to be reheard under the proviso to section 129;

(*ii*) any period during which the immunity granted under section 245H remained in force; and

(*iii*) any period during which a proceeding under this Chapter for the levy of penalty is stayed by an order or injunction of any court,

shall be excluded." (emphasis, supplied)

4.3 We have carefully perused the cited decisions; it being made clear to us, on asking, by the parties, that no further guidance by way of decisions by the higher courts was available. In *Grihalakshmi Visions* (supra) the issue was the date of initiation of the penalty u/s. 275(1)(c) of the Act. That is, is predicated on the applicability of the said provision. The AO's observations, per assessment order dated 06/11/2017, in that case, reproduced at para 8 of the judgement, read as under:

> "Since the assessee has violated the provisions of section 269SS and section 269T of the Income-tax Act by accepting and repaying loans exceeding Rs. 20,000 aggregating and otherwise at any point of time, as given above, penalty provisions of section 271D and section 271E of the Income-tax Act are attracted. Accordingly, initiated penalty proceedings under section 271D and section 271E."

This was followed by notice u/s. 274 of the Act by the Jt. CIT, show causing the assessee in the matter, on 28.3.2008. The penalty order was passed by him on 29.7.2008. The issue arising therefore was whether the penalty was initiated on the passing of assessment order on 06.11.2007, or on the issue of notice u/s. 274 of the Act on 28.3.2008. The Hon'ble Court held that penalty could only be initiated on issue of notice by the Jt. CIT, i.e., the competent authority, who only could initiate

penalty proceedings. This, representing the ratio of the decision, is stated at para 10 of the Judgement, with para 11 conveying its decision, reading as under: -

> "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 November 6, 2007, the penalty order passed by the Joint Commissioner on July 29, 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)."

4.4 How, we wonder, could that be either disputed, or held as not good law; it being admitted position before us that the Joint/Addl. CIT only is competent to levy penalty (u/ss. 271D/E of the Act) and, thus, initiate penalty there-under by issue of notice u/s. 274 of the Act; with, further, there being nothing in the decision in *Hissaria Bros* (supra), i.e., both by the Hon'ble High Court and the Hon'ble Apex Court, to contradict it? True, the words employed by the statute, and which are to be read meaningfully, and sought to be given effect to, are: 'action for the imposition of penalty has been/is initiated', and not 'penalty initiated', as emphasised by Shri Raghunathan before us. We agree. The relevant date, therefore, is neither the date of assessment order, as contended by the appellant in *Grihalakshmi Visions* (supra), or the date of initiation of penalty proceedings by issue of notice under section 274 – which though can only be by a competent authority, as contended by the Revenue in that case. But the date on which action for imposition of penalty stands initiated. This action is to be understood as the date on which reference is made to the competent authority for initiation of penalty proceedings. In the instant case/s, this is on 01.01.2008, vide letter No. F. KKD/Ward-1(2)/AABAK950A/2017-18 (pg. 1 of the penalty orders). The limitation period would thus be up to 31.07.2008, being the later of 31.3.2008 and 31.7.2008. The penalty orders are thus not barred by time, i.e., going by the assessee's own case as made out, and we admit with merit.

4.5 Further, it is nobody's case, nor could possibly be, that reference to the Jt. CIT by the AO on 01.01.2008, being after the completion of the assessment proceedings

on passing the assessment order and issue of demand notice on 13/12/2017,is not valid in law inasmuch as it was after 13.12.2017. It is only on this reference, containing his observations and comments, that the competent authority, applying his mind thereto, decides to either initiate penalty proceedings – which only he is in law competent to (ss. 271D(2)/271E(2) of the Act), or not. In a given case, the Joint/Addl. CIT may himself be the AO, in which case he, noticing and recording violation of sections 269SS/T may, accordingly, propose to initiate penalty, in which case that would be the relevant proceedings. Why, in a given case, penalty proceedings may be initiated at the instance of the first appellate authority. The date of assessment order may thus not be relevant. Shri Raghunathan would before us seek to bolster his case by arguing that the Jt. CIT may well 'sleep' over the matter, issuing notice u/s.274, in an extreme case, after years, indefinitely postponing the proceedings, and, which cannot be the intent of the Legislature. While this may be a possibility, even if remote, we do not think it necessary to, given the clear language of the provision, seek to decipher or probe the rationale behind prescribing the time of 'action for initiation of penalty' in its wisdom by the Legislature as against that of 'initiation of penalty', which could well have been so stated had that been the legislative intent. The words 'action for imposition of penalty has been/is initiated, in s. 275(1)(c),could only be on the reference to the competent authority in the matter, i.e., proposing initiation of penalty u/s. 271D/E of the Act, in collateral proceedings.

4.6 Coming to the decision in *Hissaria Bros.* (supra), in the facts of that case, the assessee having appealed against the assessment, notice u/s.274 of the Act for relevant year by the Jt. CIT, was after only 4 years of the reference to him by the AO. The Hon'ble Court was, accordingly, called upon to decide whether clause (a) or (c) of section 275(1) of the Act, as being contended by the assessee and the Revenue respectively, applied. The Hon'ble Court traversed the legislative history of section 275, discussing the relevance of each of the limbs, i.e., (a), (b) and (c) of section 275(1) of the Act. While clauses (a) and (b) relate to penalties where the relevant

assessment is subject to appeal and revision proceedings respectively, the residuary clause (c)is for a case not falling under either.

4.7 Though the assessment for the relevant years, i.e., *qua* penalty u/ss. 271D/E of the Act, as explained, may be in appeal, levy of penalty is independent thereof and, in fact, not linked with the assessment proceedings, as is the case of penalty u/s.271(1)(c) of the Act, where it is inextricably linked with the quantum proceedings, which may be subject matter of appeal/revision, necessitating keeping in abeyance the penalty proceedings, which otherwise would cause avoidable and genuine hardship, besides duplication of work. Reference in this context be made to paras 22 to 37 (pgs. 253 to 257) of the Reports, concluding at para 38 (pages 253 to 258), holding that penalty under reference falls under section 275(1)(c) of the Act.

4.8 The issue, thus, before the Hon'ble High Court was the limb, (a) or (c), of section 275(1) of the Act, where-under the time limitation *qua* the penalty under appeal would fall. Contrast this with para 11of the decision in *Grihalakshmi Visions* (supra). There is no reference, nay whisper, therein, as indeed in the instant case, to section 275(1)(a) of the Act; it being an admitted position that the time limit fell neither under clause (a) or (b) of s. 275(1), but u/c.(c) only. This is as, though a subject matter of appeal, the fate of the assessment proceedings has no bearing on the penalty proceedings, relevance of which, where so, is only of the default having come to notice in that proceedings, so that penalty proceedings, which are separate and independent, were required to be initiated. That is, the issue in *Hissaria Bros.* (supra) – which arose principally due to a time lag of months between reference by the AO to the Jt. CIT and the notice u/s.274 by the latter, and decided by the Hon'ble Court, is the clause of sec. 275(1) applicable where the relevant assessment is under appeal. The Hon'ble Court, in ratio, held that it is only where the appellate proceeding has a bearing on the penalty proceedings, that clause (a) of section 275(1) of the Act apply. No such relevance was found in the case of penalty under sections 271D/E of the Act.

This represents the ratio of the said decision, also apparent from a reading of para 9 of the decision in *Hissaria Bros.* (supra), extracted hereinbefore (at para 4.1). As apparent, there is no interface between the decisions in *Grihalakshmi Visions* (supra) and *Hissaria Bros.* (supra). Approval of the latter by the Hon'ble Apex Court, which though is without any statement of law, would thus be to no consequence.

4.9 It is the ratio of a decision that is binding. Further, as is well-settled, a decision is an authority for what it actually decides, and not for what may logically flow from the observations made therein, reiterated once again by the Apex Court in *Mavilai Service Cooperative Bank v. CIT* [2021] 431 ITR 1 (SC). Reference therein is also made to the decision in *State of Orissa v. Sudhanshu Sekhar Misra* [1968] 2 SCR 15 for the proposition that a decision must be read as applicable to the facts proved or assumed to be proved, and the generality of the expressions are not intended to be exposition of the whole law, but governed and qualified by the particular facts of the case in which the expressions are to be found. A decision, thus, cannot be viewed divorced from its background facts and the context in which it is rendered. The cited decisions would thus be of little assistance to the parties.

We may here hasten to add that despite our clear view, we would have yet readily adopted the decision in *Grihalakshmi Visions* (supra), if we discerned any inconsistency between the same and that expressed by the Hon'ble jurisdictional High Court which, as afore-noted, has only opined on the initiation of penalty, i.e., as being on the issue of notice u/s.274 inasmuch as the same could only be by the competent authority. Why, it, at para 10 of it’s decision, clarifies that the statement in the assessment order that penalty u/ss.271D/E is being initiated is of no consequence.

The assessee, for the reasons afore-stated, fails in it’s challenge on limitation. We decide accordingly.

5.1 We next consider the assessee’s case as regards ‘reasonable cause’ u/s. 273B. We have given our careful consideration to the matter, which may have implications

beyond the instant case, the financial impact of which, at an aggregate of Rs. 231.24 cr., also emphasised by Shri Raghunath, is not insubstantial. The default being admitted, reference to the enhanced limit of Rs. 2 lakhs, up from Rs. 20,000, in sections 269SS/T, for a PACS, w.e.f. the previous year commencing 01.04.2023, as pointed out by Shri Das, so made, as explained by him, with a view to provide relief to the low income groups in rural areas and facilitate easier conditions of business operations in such areas, may not add any further strength to the Revenue's case; the burden to prove reasonable cause being in any case on the assessee.

5.2 In our view, looking at the entirety of the facts and circumstances, the assessee deserves to succeed in the conspectus of it's case. It, though registered as a PACS, is, for all practical purposes in the business of banking; the nature of business specified in the assessment order itself being 'banking business'. The two essential ingredients of the business of banking, defined u/s. 5(b) of the Banking Regulation Act, 1949 (BRA), are acceptance of deposits from public for lending thereto, acting thus as a financial intermediary, or investment. The assessee is involved in both, i.e., borrowing, through acceptance of deposits, as well as lending, with the only difference that the members of the public are entitled to deposit their monies as well as borrow monies on becoming nominal members by paying a nominal sum upon filling an application form, permitted by it's governing Act and bye-laws. It is this that led to the denial of deduction u/s. 80P in assessment, as indeed by the Tribunal, whose order was confirmed by the Hon'ble High Court, in *The Citizen CSL* (supra). And which found resonance with the Hon'ble Apex Court, with it finding that nominal members are not the real members, so that in dealing therewith the appellant-society was dealing with members of the public, even as underlined by the AO, whose order, in the relevant part, stands extracted by it at para 26 of it's Judgement. For our purposes, it would suffice to bring out the Revenue's case, accepted throughout, by reproducing the following lines from the said order:

'It is found, as a matter of fact, that the depositors and borrowers are quite distinct. In reality, such activity of the appellant is that of finance business and cannot be termed as co-operative society. It is also found that the appellant is engaged in the activity of granting loans to general public as well.'

This, in fact, has been referred to time and again, and is the constant refrain of the Revenue in all such cases, and not without merit inasmuch as it is a matter of fact, borne out both by conduct and record, that cooperative societies, though registered as a PACS, are so only in name; their agricultural lending being negligible, and being primarily in the business of banking, albeit without licence from RBI. And, further, are not PACSs – which are outside the purview of BRA, both in terms of its definition there-under as well as the Kerala Act. *This factual position, i.e., acceptance of deposits from it's customers, drawn from members of the public, upon being enrolled as members, including nominal, and repayment thereto, would not stand altered when it comes to sections 269SS/T of the Act.* That the same was found not relevant for the deduction u/s. 80P by the Hon'ble Apex Court in *Mavilai SCB*(supra), so that it may not bar deduction there-under, is a different matter. The eligibility to deduction u/s. 80P, which is to be per the language of the provision, may not be confused with the assessee being, or not being, a PACS, which status was found irrelevant in *Maviyali SCB* (supra) as long as the assessee is a cooperative-society dealing with it's members, which includes nominal members as well (under the Kerala Act).

5.3 True, the assessee, as indeed other such-like societies, do not have a licence from the RBI. That, however, would only mean that they operate outside the banking regulatory system, administered by it. That is, they do not file returns, or otherwise comply with the instructions of RBI, i.e., operate outside it's administrative control. That, however, has little bearing on it's activity as a financial intermediary, dealing through its different branches with members of the public enrolled as it's members. Rather, as again noticed by the Hon'ble Courts, as in *The Citizen SCB* (supra) and *Mavilai SCB* (supra), they may, and under the provisions of the Kerala Act (s.

59),deal with non-members as well and, as explained by them, with the only consequence that income from such transactions would be ineligible for deduction u/s. 80P. That is, they deal with non-members as well, attracting no disqualification with regard to the status except the eligibility of such income for the benefit of being tax-exempt under the Act. Further, the depositors, as clarified during the hearing, on a query by the Bench, are also offered cheque facility. Though not a member of the clearing house, the cheques are, as explained, in turn, en-cashed through an instrument issued by the District Co-operative Bank, with which the assessee-society maintains a current (deposit) account. That is, a way stands devised to, circumventing the administrative control, provide this facility to the customers as well. All systems are thus in place to facilitate the activity of a financial intermediary, at par with the commercial banks. We have already stated of it operating for all intents and purposes as a bank without licence, i.e., a para-bank. The members of the public perceive it,*as does the Revenue,* and indeed it itself, as a Bank. *The question therefore is if such an Institution could be penalized when it, and surely technically mistakenly, accepts deposits from its members and repays them, in cash*? Why, as indeed non-members; the only debility being that the corresponding income would be taxable. Raising again the same larger question of thus in effect dealing with public at large. We may here clarify the actual dealing with non-members, which may well be asserted as absent in view of the claim for deduction u/s. 80-P for the relevant year extending to the entire business income, is not relevant, but the legal competence to do so (*Delhi Stock Exchange Association Ltd. v. CIT* [1997] 225 ITR 235 (SC)).This, further, brings us to examine if there is a restriction on the area of it's operations. The assessee is operating with 9 branches in the district of Kozhikode. The restriction on the area of it's operations, i.e., to village panchayat or a municipality, being applicable only to societies registered after the commencement of the Kerala Act (s. 2(oa)) by the Kerala Co-operative (Amendment) Act, 1999is, thus, also not applicable to the assessee.

5.4 The cumulative effect of all this, the prime proof of which is the conduct of it's business by the assessee, is that it acts as, and is, for all intents and purposes, a bank, albeit without licence from the RBI; the most important element of which, from the stand-point of penalty, is it being perceived as so by the members of the public dealing with it, as indeed it – not catering to a closed group, projecting itself as such. Now, when a person maintaining a saving or current account with it, claims repayment, he does so in the same manner as another person does, similarly, *qua* his deposit with a scheduled or co-operative bank, both public institutions acting in the regular course of the business as financial intermediaries. It is not a question of money being the assessee's stock-in-trade; it being so for a money lender or a finance company as well, but of the deposit with a bank, which itself is regarded as money, and which explains the exclusion thereof from acceptance and repayment of deposits in legal tender. Similarly, a depositor may instruct the assessee to, in repayment of its fixed deposit, credit his saving or current account with it. And which, again, where otherwise than per an account payee cheque or bank draft, would transgress section 269T of the Act. *In sum, they operate as and have all the trappings of a bank, which in fact has been the constant refrain and stand of the Revenue in denying deduction u/s.80P – irrelevant for our purpose, thereto, so that the defaults under reference have occurred in acting in their normal course of business.* That is, the law, while allowing it to function in the manner it does, yet penalizes it for doing so.

5.5 The impugned transactions have necessarily to be viewed in this context and background. It is again this finding that guides and informs the order by the Tribunal in deleting the penalty u/ss. 271D/E, noticed by the Apex Court in *The Citizen CSL* (supra), reproducing therefrom at para 7 (pg. 7) and, further, relied upon by the first appellate authority in denying deduction u/s. 80-P,emphasized by the Hon'ble Court by reproducing paras 22 to 24 of his order, again at pg. 7 of it's Judgment. Para 23, which we consider as most striking, reads as under:

’23. *The society is carrying on the banking business and for all practical purpose it acts like a co-operative bank.* The Income-tax Appellate Tribunal observed that the society is governed by the Banking Regulation Act. Therefore, the society being a co-op. bank providing banking facilities to members is not eligible to claim the deduction under section 80P(2)(a)(i) after the introduction of sub-section (4) of section 80P.’ (emphasis, ours)

We may though clarify that the assessee, in our clear view, in accepting deposits from it’s members, or lending thereto or otherwise to non-members, in cash, is acting within the frame-work of law, i.e., legally. This is relevant as it is impermissible in law for one to take advantage of it’s own wrong (*B.M. Malani v. CIT*[2008] 306 ITR 196 (SC)). Even as observed by the Tribunal in *Santimadom Herbal City Trust v. Asst. CIT* (in ITA Nos. 920, 921/Coch/2022, dated 14/11/2023), one violation of law cannot be a justification for violating another law. The Apex Court in *CIT v. Prakash Chand Lunia v. CIT* [2023] 454 ITR 61 (SC) again clarified, with reference to it’s earlier decisions, this aspect in the context of deductibility of expenditure of an illegal business. We are, with respect, therefore not in agreement with the Tribunal in *The Citizen CSL* (supra) to the extent it states that violation of BRA has no bearing on the penalty u/ss. 271D/E. A reasonable cause, sure, essentially a matter of fact, has to have it’s genesis in a *bona fide* conduct, which cannot, without sufficient justification, be ascribed to illegality.

5.6 The assessee-society, though registered as a PACS under the Kerala Act, is legally dealing with members and non-members, i.e., public at large, without restriction as to area, i.e., at par with a commercial or cooperative bank, excluded from the ambit of ss. 269SS/T. In our view there is thus a reasonable cause for the assessee, who has a past history of operating in such a manner, being so for over three decades post 30.06.1984, i.e., since when sections 269SS/T of the Act are on the statute, for having violated the said provisions, and is thus not liable to penalty under sections 271D/E of the Act in terms of s. 273B. We may also clarify; the same having also been duly considered and factored into our decision, that no doubt at any stage,

including before us, has been expressed by the Revenue as regards the maintenance of proper records, including KYC, by the assessee. This is as, where so, this would have warranted remanding the matter back to identify such suspected cases, inasmuch as there could be a transgression of the provisions of the PMLA, with the assessee using it's status, reach and clout as a bank to deal in illicit money or otherwise with customers without proper antecedents. We decide accordingly.

6. In the result, the appeals by the assessee are allowed.

Order pronounced on November 16, 2023 under Rule 34 of The Income Tax(Appellate Tribunal) Rules, 1963.

Sd/-	Sd/-
(Manomohan Das)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: November 16, 2023

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The CIT-DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin

n.p.