IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, AM & Ms.Kavitha Rajagopal, JM

ITA No.109/Coch/2023 : Asst.Year 2012-2013
ITA No.35/Coch/2023 : Asst.Year 2012-2013

Palghat Fine Arts Society 7/411(1), Tharekkad Village Palakkad – 678 001. [PAN:AABAP8449C]	vs.	The Joint Commissioner of Income-tax, Palakkad Range, Palakkad.
(Appellant)		(Respondent)

Appellant by:	Ms.Rajalakshmy M, CA
Respondent by:	Smt.J.M.Jamuna Devi, Sr.DR

Date of Hearing:	14.02.2024
Date of Pronouncement:	10.05.2024

O R D E R

Per Sanjay Arora, AM:

This is a set of two Appeals by the Assessee, directed against the Orders dated 15.02.2021 passed by the Commissioner of Income-tax (Appeals), Income Tax Department ('CIT(A)'), confirming the levy of penalty under sections 271D and 271E of the Income-tax Act, 1961 (the Act), for assessment year (AY) 2012-2013, vide, again, separate orders of even date (25.09.2015). The 24-day delay in filing the appeals being suitably explained, the same was condoned, and the appeals admitted.

2. *The background facts and the respective cases*:

It would be relevant to recount the background facts of the case, leading to the impugned penalty/s. During the course of assessment proceedings for the relevant year, the assessee-society was observed by the Assessing Officer (AO) to have accepted cash loans from it's President (Sri. Jayapala Menon) and Secretary (Sri. P.N.Subbaraman), in excess of Rs.20,000, i.e., the threshold limit u/s.269SS of the Act, default whereof attracts penalty u.s.271D of the Act. Likewise, the former was

found to have also been repaid in cash, violating section 269T, so as to invite penalty u/s.271E. As explained, the assessee, a public charitable institution, formed primarily for the promotion of arts, music and fine arts, at Tharekkad Village, Palakkad, is run by it's governing body consisting of 11 members. It incurred debt, including term loans from Catholic Syrian Bank, for construction of an Auditorium where it's programmes are held. The assessee had been depending on it's President and Secretary for financial assistance from time to time. As the term loan was, for want of service of interest, becoming a non-performing asset (NPA), the President, ignorant of the provisions of s. 269SS, withdrew Rs.2 lakh from his saving bank account (with Punjab National Bank, Chittur) and deposited it in the loan accounts of the assessee. Similarly, the President, who had been the principal contributor of funds, when in dire need of funds; the assessee having no liquid funds, its Secretary, sharing the financial burden, paid him Rs.10 lakh. The funds were arranged by withdrawing the same from the bank account of his son, Sri.P.S. Narayanan (with Corporation Bank, Kalpathy, Palakkad). The transaction was accounted for by the assessee-society by crediting and debiting respectively the accounts of the Secretary and President. However, being otherwise than by account payee cheque or account payee bank draft, the prescribed mode for receipt or repayment of loan or deposit u/ss.269SS and 269Twhere in excess of the threshold limit of Rs. 20,000, there was a breach of the said provisions at Rs.10 lakh each. As such, penalty equal to the amount/s accepted and deposited in default of the relevant provisions, i.e., s.271D and s. 271E, for acceptance and repayment of loan/deposit thus, was levied at Rs.12 lakh and Rs.10 lakh respectively. There was nothing to show that the bank had insisted on being repaid in cash; rather, was a dubious claim. Similarly, timely help to Society's President did not bring about an emergency situation warranting a cash transaction. The assessee, as well as it's President and Secretary, all maintained bank accounts, through which the sums could be routed. No reasonable cause, saving penalty, was made out. The same were confirmed in first appeal by the ld.CIT(A), holding as:

'6. Decision
The order u/s.271D and submissions of the appellant have been carefully perused and considered. The appellant has accepted the fact that it had taken a total cash loan of Rs.12 lakhs (Rs.2 lakhs in cash from Shri Jayapala Menon, President of the Society, and Rs.10 lakhs from Sri P.N.Subbaraman, Secretary of the Society). The only issue left to be decided is whether there was "a reasonable cause" which prevented the appellant from taking these very loans through banking channels and what forced it to take such loans in cash. A careful perusal of all the facts and circumstances cited by the appellant makes it obviously clear that there was absolutely no reason for the appellant to take the loan of Rs.12 lakhs in cash. The appellant claims that it had simply withdraw cash from Sri P.N.Subbaraman and Shri Jayapala Menon's saving account and deposited the same cash in the appellant's account. The appellant has not given any evidence or any reason as to why these transactions could not have been done through banking channels i.e. by issue of cheque / draft / NEFT/ RTGS, etc. No reason has been given as to why the bank would insist on payment of cash when it could very well have accepted the payment through any of the banking channels. In any case, the appellant has not substantiated this highly dubious claim with any evidence whatsoever, that the banking authorities insisted on repayment in cash only. The very purpose of introducing Sec.269SS was to counter such cash transactions. In view of the above facts, the A.O. was rightly satisfied that this was a fit case for levy of penalty u/s.271D. The A.O's action is therefore upheld and the appellant's appeal is accordingly dismissed.'

'6. Decision
The order u/s.271E and submissions of the appellant have been carefully perused and considered. The appellant has accepted the fact that it had taken a total cash loan of Rs.10,00,000/-to SriJayapala Menon, President of the Society towards loan taken from him. The only issue left to be decided is whether there was "a reasonable cause" which prevented the appellant from repaying this very loan through banking channels and what forced it to repay such loan in cash. A careful perusal of all the facts and circumstances cited by the appellant makes it obviously clear that there was absolutely no reason for the appellant to repay the loan of Rs.10 lakhs in cash. The appellant claims that it had simply withdrawn cash from the saving bank account of Sri P.N.Subbaraman and deposit the same cash in Shri Jayapala Menon's account. The appellant has not given any evidence or any reason as to why these transactions could not have been done through banking channels i.e. by issue of cheque / draft / NEFT/ RTGS, etc. The very purpose of introducing Sec.269SS was to counter such cash transactions. In view of the above facts, the A.O. was rightly satisfied that this was a fit case for levy of penalty u/s.271E. The A.O's action is therefore upheld and the appellant's appeal is accordingly dismissed.'

3. We have heard the parties, and perused the material on record.

3.1 There has, without doubt, been violation of ss.269SS and 269T of the Act, at Rs.12 lakh and Rs.10 lakh respectively, during the relevant year. The only question, therefore, as rightly observed by the ld. CIT(A), is the existence or otherwise of a reasonable cause/s, proving which precludes penalty in terms of s.273B of the Act. Reasonable cause is principally a matter of fact (viz. *CIT v. Sahara Financial Corporation Ltd.* [2023] 456 ITR 788 (SC)). The primary facts are not disputed, with in fact the transactions being admitted and confirmed by both the President and the Secretary. Reasonable cause has not been defined under the Act, and we would therefore be required to fall on the common understanding of these words, as indeed the manner in which the expression has been read and understood by the Hon'ble Courts in the variety of fact-situations it has come up before them for elucidation Reasonable cause has received the judicial interpretation as a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of *bona fides*.

3.2 The assessee's audited accounts as at 31.03.2012, i.e., the year-end, and the two immediately preceding years (copies on record), reflects the following figures:

(Amt. in Rs. lacs)

Particulars/YE		31.03.2012		31.03.2011		31.03.2010
Fixed Assets		70.68		61.35		58.11
(including Building, at)		55.26		45.70		42.18
Other borrowings						
President	13.12		22.66		13.47	
Secretary& Ors.	26.64	39.76	6.02	28.68	6.02	19.48
Catholic Syrian Bank		44.69		43.87		48.00
Capital		(13.75)		(11.55)		(9.04)
Total		70.70		61.00		58.44

Excess of expenditure over income		4.50		2.50		3.83

It is clear from the tabulation of the different assets and liabilities; the total capital for each of the years approximating the fixed asset portfolio, that the assessee has no liquid surplus, and the entire cost of construction is met, apart from by bank borrowings, raising, similarly, loans from its' members, principally the President, which also finances in part the day to day expenditure of the society. The entire construction for the current year (Rs.12.11 lakh) has been funded by raising capital from members, including Secretary. When we highlight the lack of liquid funds, we only wish to emphasize the crucial reliance of the assessee on it's official bearers, principally the President and Secretary, for raising capital, both for capital, as well as the day-to-day, expenditure requirements of the assessee-society.

3.3 We next examine the impugned transactions w.r.t. the background facts noticed.

A. Addition for Rs.2 lakh:

The same was deposited in sums of Rs.50,000, Rs.50,000 and Rs.1,00,000 in the three bank term loan accounts on 30.12.2011, for which Ms. Rajalakshmy, the learned counsel for the assessee, would take us through the bank statements (copy on record), showing that non-payment would have led to the accounts becoming bad inasmuch as there would thus be no servicing of interest for two consecutive quarters. The exigency of the situation is borne out by the record, including the date of deposit.

B. Acceptance and repayment of Rs.10 lakh:

It is apparent from the above financials that the assessee-society is depending heavily on non-regular sources, being deposits from it's office bearers, to meet capital requirement and survive as an ongoing entity, i.e., one which is able to meet it's current liabilities. The balance-sheet reflects hardly any balance in cash or in

bank; the President and Secretary coming to it's rescue each time funds are required. Under the circumstances, when the President was in immediate need of funds, the Secretary caused the withdrawal of the required sum from the bank account of his son and paid it to the President. Copy of the bank account of Sri.P.S. Narayanan is on record, as indeed the affidavits of the President and Secretary. The assessee has by passing a book entry, passed on 10.09.2011, the date of withdrawal, only recognized it's liability to one as against the other. True, there is a technical breach of sec.269SS and 269T of the Act. So, however, there is nothing to suggest a conscious conduct of the assessee in routing the transaction in the manner done. Both the deponents have expressed their ignorance of the intricacies of the income-tax law and, for all we know, the assessee came to know of the transaction only after its conclusion thus. There is no inflow or outflow of the funds as far as the assessee is concerned leading to the violation in a technical sense. The same, in our view, qualifies to be a reasonable cause. The same, it may be appreciated, is not an abstract phenomenon, but one that impinges on the day to day working of a person. There is nothing to suggest that the President and Secretary were, in doing so, aware of causing a breach of the provisions of law inasmuch as for them it was only a matter of sharing the burden together. As we see it, it is a case of mix-up of identities, i.e., their acting in official capacity, i.e., as office bearers or members, in which they had lent monies to the assessee, and as individuals, in which they exchanged money, one sharing the burden, for the cause of the society, which had no money to repay, with another. As explained in *Saroj Aggarwal v. CIT* [1985] 156 ITR 497 (SC):

'*Facts must be viewed in natural perspective, having regard to the compulsions of the circumstances of the case. Where it is possible to draw two inferences from the facts and where there is no evidence of any dishonest or improper motive on the part of the assessee, it would lead to equity and justice. Too hyper technical or legalistic approach should be avoided in looking at a provision which must be equitably interpreted and justly administered*.'

In our clear view, there is, therefore, a reasonable cause attending the breach u/ss.269SS / 269T *qua* the transaction of Rs.10 lakh as well. The Revenue has, in our

view, not been reasonable in invoking and applying the relevant provisions in the instant case in the absence of whisper of a doubt as to the *bona fides* of the conduct. One is in this context reminded of the observations by the Apex Court in *Pannalal Binjraj vs. Union of India* AIR 1957 SC 397, holding as:

'A humane and considerate administration of the relevant provisions of the Income Tax Act would go a long way in allaying the apprehensions of the assesses, and if that is done in the true spirit, no assessee will be in a position to charge the Revenue with administering the provisions of the Act with "an evil eye and unequal hand".'

4. We, for the reasons and findings afore-stated, find reasonable cause exhibited by the assessee *qua* both the impugned defaults, saving penalty u/ss. 271D/E of the Act. The same are accordingly directed for deletion. We decide accordingly.

5. In the result, the appeals are allowed.

Order pronounced on May 10, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Kavitha Rajagopal)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: May 10, 2024

Copy to:

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

By Order

Assistant Registrar
ITAT, Cochin