

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**NAGPUR BENCH, NAGPUR**

**BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND**  
**SHRI K.M. ROY, ACCOUNTANT, MEMBER**

**ITA no.250/Nag./2018**  
(Assessment Year : 2013-14)

Income Tax Officer  
Ward-4, Amravati

..... Appellant

v/s

Shri Mahesh Shankar Sorate  
Daryapur, Distt. Amravati  
PAN – AGYPS5409D

..... Respondent

Assessee by : Shri Manoj G. Moryani  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 10/07/2024

Date of Order – 29/07/2024

**ORDER**

**PER V. DURGA RAO, J.M.**

The present appeal has been filed by the Revenue challenging the impugned order dated 07/08/2018, passed by the learned Commissioner of Income Tax (Appeals)-1, Nagpur, [*learned CIT(A)*], for the assessment year 2013-14.

2. In its appeal, the assessee has raised following grounds:-

*"1. Whether on the facts and in the circumstances of the case and in law, the CIT(Appeals) erred in deleting the penalty of Rs.85,76,380/- U/s.271E holding that there was business exigency forcing the assessee to repayment of cash loans overlooking the facts that the assessee has several bank accounts and it was possible to repay the loans without contravention of legal provisions.*

*2. Whether on the facts and in the circumstances of the case and in law, the CIT(Appeals) erred in holding that there are not any unaccounted transactions*

*and that the said transactions were made only for meeting the business exigency, overlooking the fact that penalty U/s.271E is liable irrespective of the fact that whether the transaction is recorded or unrecorded.*

*3. Whether the Ld.CIT(Appeals) was correct to hold that assessee did not have access to banking channels being stationed at Rewasa Village overlooking the fact that assessee's business premises is hardly 5-6 kms away from city and he had many bank accounts operational during the previous year.*

*4. Any other ground which may be raised with the permission of Hon'ble ITAT."*

3. Facts in brief are that the assessee is an individual is engaged in the business of Petrol Pump and authorised dealer of Indian Oil Petroleum Company. For the year under consideration, the assessee filed his return of income on 30/09/2013, declaring total income of ₹ 4,32,460. The Assessing Officer completed the assessment under section 143(3) of the Income Tax Act, 1961 (*"the Act"*) determining total income at ₹ 5,08,100. No penalty proceedings were initiated while completing the assessment under section 143(3) of the Act. Subsequently, the learned Jt. Commissioner of Income Tax, Amravati Range, (*"the JCIT"*), issued notice seeking explanation from the assessee. The Assessing Officer also issued a show cause notice on 23/01/2017. In response to the above notices, the assessee filed written submissions on 08/02/2017, which is reproduced below:–

*"That assessee required fund for his business and he acquired fund from Mr. T.B. Bagadai at on commission basis as Mr. T.B. Bagadi dealt as commission agent. And looking to the distance from Amravati to Rewsa and when there is no bank facility available at nearby to the assessee, hence all the transaction of transfer of fund made by cash through online cash deposit facility of bank and simultaneously received some cash fund through online cash deposit facility. And to avail this facility the assessee also paid the commission to the bank during the year.*

*2 That all the transaction of credit and debit of both parties are properly accounted in their books of account and they have no intention to violate the provision of section 26955 of the I.T. Act. And it also cannot be said that both*

parties make such online cash transaction deliberately when they both belong to different place and bank facility available very far.

3 And when the assessee paid the commission to the Bank to avail such online cash deposit facility it deemed to be that assessee not violated the provision of sec. 269T of I.T. Act and never seems to want to violate the provision of sec. 269T when all the transaction properly accounted in his books of account and it is all for merely to avail such bank facility to deposit cash directly in A/c. and it can be looking clear after perusal of Bank pay in slip.

4. That it is therefore requested your Honour, the proceeding initiated under sec. 269T of the I.T. Act may kindly be dropped.”

4. The learned JCIT, considering the reply filed by the assessee, passed the penalty order dated 31/03/2017, under section 271E of the Act levying penalty of ₹ 85,76,380. In the penalty order, learned JCIT stated that the assessee had repaid the loans / deposits otherwise than by way of Account Payee Cheque or Account Payee Demand Draft from the following persons totalling to ₹ 85,76,380.

Sl. No.	Name of the Party	Amount of Loans repaid	Mode	Date of repayment
1.	Shri T.B. Gagdi	2,00,000	Cash	16.04.2012
2.	- do -	90,000	Cash	19.04.2012
3.	- do -	51,800	Cash	02.05.2012
4.	- do -	1,75,000	Cash	02.05.2012
5.	- do -	1,50,000	Cash	02.05.2012
6.	- do -	1,80,000	Cash	03.05.2012
7.	- do -	40,000	Cash	04.05.2012
8.	- do -	60,000	Cash	04.05.2012
9.	- do -	1,60,000	Cash	05.05.2012
10.	- do -	3,30,000	Cash	07.05.2012
11.	- do -	1,77,000	Cash	10.05.2012
12.	Shri T.B. Bagdi	55,000	Cash	12.05.2012
13.	- do -	2,65,000	Cash	12.05.2012
14.	- do -	2,27,000	Cash	14.05.2012
15.	- do -	2,20,000	Cash	19.05.2012
16.	- do -	80,000	Cash	21.05.2012

17.	- do -	1,31,000	Cash	22.05.2012
18.	- do -	2,46,000	Cash	23.05.2012
19.	- do -	52,000	Cash	26.05.2012
20.	- do -	45,000	Cash	26.05.2012
21.	- do -	1,76,000	Cash	30.05.2012
22.	- do -	3,80,000	Cash	31.05.2012
23.	- do -	1,53,000	Cash	01.06.2012
24.	- do -	2,50,000	Cash	04.06.2012
25.	- do -	1,90,000	Cash	04.06.2012
26.	- do -	1,01,500	Cash	04.06.2012
27.	- do -	1,07,000	Cash	08.06.2012
28.	- do -	3,00,000	Cash	09.06.2012
29.	- do -	2,00,000	Cash	09.06.2012
30.	- do -	1,00,000	Cash	09.06.2012
31.	- do -	3,50,000	Cash	14.06.2012
32.	- do -	1,00,000	Cash	22.09.2012
33.	- do -	2,00,000	Cash	22.06.2012
34.	- do -	2,00,000	Cash	29.06.2012
35.	- do -	95,000	Cash	29.06.2012
36.	- do -	90,000	Cash	05.07.2012
37.	- do -	1,30,000	Cash	06.07.2012
38.	- do -	1,98,080	Cash	26.07.2012
39.	- do -	52,000	Cash	01.08.2012
40.	- do -	1,35,000	Cash	10.08.2012
41.	- do -	1,14,000	Cash	11.08.2012
42.	- do -	2,50,000	Cash	21.08.2012
43.	- do -	50,000	Cash	23.08.2012
44.	- do -	3,50,000	Cash	23.09.2012
45.	- do -	2,00,000	Cash	04.10.2012
46.	- do -	110,000	Cash	11.10.2012
47.	- do -	1,50,000	Cash	13.10.2012
48.	- do -	1,00,000	Cash	22.11.2012
49.	- do -	3,00,000	Cash	16.11.2012
50.	- do -	30,000	Cash	17.11.2012
51.	- do -	3,00,000	Cash	24.11.2012
52.	- do -	80,000	Cash	01.12.2012
53.	- do -	1,00,000	Cash	30.01.2013
Total		85,76,380		

5. On a perusal of the above chart, the learned JCIT noted that the assessee repaid the loan by cash exceeding ₹ 20,000, which is other than by way of Account Payee Cheque or Account Payee Demand Draft hence, it is in contravention to the provisions of section 269T of the Act. Accordingly, the learned JCIT levied penalty under section 271E of the Act. Aggrieved, the assessee carried the matter in appeal before the first appellate authority.

6. The case of the assessee before the learned CIT(A) is that, the assessee is in the business of selling petrol and the money received against sale of petrol were in the form of cash and the same were deposited in his bank account. The said money is withdrawn from the bank account and payment is made to the Commission Agent and hence, there is no violation of provisions of section 269T of the Act. Therefore, penalty under section 271E of the Act cannot be levied. The learned CIT(A) by considering the explanation of the assessee deleted the addition made by the Assessing Officer. While deleting the penalty, the observations of the learned CIT(A) were as under:-

*"7.3 I have also examined the bank account of the appellant held in the Itwara Branch at Amravati. It is observed that this bank branch is not in the appellant's place of business which is a village located outside Amravati. The appellant made cash sales of petrol/ diesel which is a fact of all such petrol pump business. These cash sales are recorded in the appellant's books, and held as cash in hand- which were later deposited in appellant's bank account and which were directly deposited in the loan provider's bank account through online method for which the bank has charged commission. It is observed that this repayment of funds was made as soon as possible to reduce the burden of commission. It is a known fact that bank transfers or funds transfers through cheque/ drafts take time. This bank also did not provide net banking facilities which could ensure immediate transfer of funds.*

*7.4 All the transaction of acquisition and repayment of funds through loans were duly reflected in the books of account of the appellant and as well as books of account of the other party. It is the case of appellant that there was business exigency compelling the appellant to accept immediate cash loans, for the purpose of honouring payment commitments to Indian Oil Petroleum*

Company. The appellant had returned the loan from the cash sales as and when adequate funds were available to him. It is noted that the Assessing Officer, during the assessment stage has not even found these transactions to be out of the ordinary, and no mention is made of the same in the assessment order, except that the appellant had not deducted TDS on the commission paid to Shri Bagdi, and for which the commission/ interest amount was disallowed in terms of section 40(a)(ia).

7.5 The appellant has submitted that he had made the repayment by using online cash deposit facility of the bank, which was out of his cash sales, and had insisted on such direct deposits to payee to ensure that the repayment was duly recorded. The assessing officer has not considered the business expediency in this case, which is a reality of the commercial world. The appellant has identified the person from whom the appellant had repaid the loan amounts. The appellant had intended to regulate business transactions to the best of his ability even in the face of funds shortage. Since part of the repayment was made by using online bank facility, it is easy to ascertain whether the payment was genuine and the source of such repayment. The appellant has received the money for business purpose and made repayment directly to the bank account of the payee, the payee named therein received the payment through online cash deposit. It has been submitted that there was no direct payment to the payee but only to the credit of this bank account without the payee actually receiving the cash, and such repayment is not in violation of provision the Act, and hence no penalty is called for. In the case of the appellant, there were genuine and bonafide transactions and the appellant had reasonable cause for inability to repay all the loans through crossed cheques alone, as the funds were required to be repaid immediately, and depositing the funds directly into the payee account cut short the bank transaction time. The authority vested with the power to impose penalty has discretion not to levy penalty in cases of such genuine transactions.

8.0 It is noticed that the penalty levying officer has not considered that the loans repaid were duly reflected in the books and were accounted for in the books. The AO has also not cared to examine the evidences, nor dwelled upon the reasons why such circumstances could possibly arise. The loan repayment, though not through crossed cheques, were for the business expediency which was explained by the appellant and summarily dismissed. The Assessing Officer has also mentioned that section 273B of I.T. Act 1961 provides that where reasonable cause exists, no penalty was leviable. On the other hand, he has not accepted the reasons provided by appellant that gave rise to the situation as in the case of appellant, and that the appellant, urgently requiring funds was also under pressure to return the funds as and when the funds were available, to maintain the limit of such borrowings. The AO also ignored the fact that the pump was located outside of the city limits where bank facilities were not available to make immediate bank deposits and subsequent bank transfers for repayment, and bank transfers usually take time and can cause delays and resultant hardships for payments.

8.1 In the above narrated facts and circumstances, it has to be examined whether the appellant has reasonable cause as provided under section 273B of I.T. Act 1961 in repaying the loan through direct cash deposits in the payee's bank account. The appellant has explained the reasonable cause in view of the facts that there were no banking facilities available to the appellant at Rewsa.

*The appellant had taken loan for the purpose of business to make immediate payments to the supplier Petroleum Company. The repayment of the loans were made from the Junds. as and when sales were made- which were cash sales. The sales amounts, Held as cash in hand was used for repayment of loans obtained. The repayment of pans was mostly through bank transfers (cheques) and a certain part was through direct deposit in the payee's bank account to restrict the delays in bank transfers in certain instances. These transactions are found recorded in the books of accounts, the payee's bank account, the appellant's bank account, and further confirmed by the loan provider as well. Therefore, there were instances of urgency of making immediate repayments; otherwise the entire business of the appellant would have been affected. There was no intention to repay the loans in cash, however, certain immediate requirement of moneys resulted in having to return the funds, albeit some portion in cash. The appellant had to depend on the loan provider for such funds for immediate use, and business exigency has been explained during the penalty, and appellate proceedings. I am of the opinion that the appellant had to accept the payment terms and conditions since he had paucity of funds which could have affected his agency business. The explanation provided by the appellant is found to be plausible and the appellant has been able to demonstrate reasonable cause for repaying some of the borrowed funds in cash, which has otherwise been found to be from accounted sources, and confirmed by the loan creditor by providing adequate evidences which has not been controverted by the AO. Shri T.B. Bagdi is also assessed to tax and appellant filed the copy of return of income filed by Shri T.S. Bagdi before the A.O. In view of above I am of the considered opinion that the appellant had reasonable cause for repaying the loans in through direct cash deposits in the loan provider's ban account of income and the appellant's case is covered by section 273B of I.T. Act 1961.*

*8.2 The contentions of the appellant as regard to reasonable cause is supported by the following decisions relied upon by the appellant:*

*1) Commissioner of Income Tax -Vs.-Kundrathur Finance & Chit Co. [2006] 283 ITR 329 (Madras High Court)*

*"The tribunal concurrently found that there were no banking facility within the jurisdiction of assessee's business place. It was also observed that the impugned transactions were genuine and bona fide. Therefore there was reasonable cause for contravention of Sec. 269SS. Penalty under Section 271D/271E rightly deleted".*

*2) Commissioner of Income Tax -Vs.-Balaji Traders [2008] 167 Taxman 27 (Madras High Court)*

*"Tribunal having found that there was business exigency forcing the assessee to take cash loans, the genuineness of creditors and transactions were never doubted by the department and there was no revenue loss to the state exchequer, the assessee has shown reasonable cause";*

*3) Commissioner of Income Tax Vs. Ratna Agencies (2006) 284 ITR 0609 (Madras High Court)*

*"Tribunal has upheld the findings of the CIT(A) that the alleged contravention did not result in any unaccounted transaction and that the said transactions were made only for meeting the sudden demand".*

4) *Jayantilal Vaishnav HUF -Vs.- JCIT, Mumbai, ITA No. 5391/Mum/2013 (ITAT, Mumbai)*

*"The reasonable cause as seen from the context of the situation where a person is reasonably and under bonafide belief of taking an action beyond his control i.e. cause which prevent a reasonable person in ordinary prudence acting under normal circumstances for taking such action. The reasonable cause has to be seen in the Judicious manner by stepping up in the shoes such person as to what were the circumstances under which he acted upon."*

*8.3 Further it is also seen that the creditor is genuine and the transactions were never doubted by the A.O. and all the transactions were reflected both in the bank statement of the loan provider and the ledger accounts. It is also seen that all the transactions were accounted by both the appellant and the creditor in their respective books of account. In my view there was no revenue loss to the exchequer as the entire transactions were recorded in the books of account of both the parties and nothing has been hidden by appellant. The appellant has also provided the name, address of the party from whom loans were obtained and the commission paid was also recorded in the books of account of appellant. Therefore, since the transactions were for business purposes and made due to business exigencies, the appellant's plea that of reasonable cause is found to be acceptable.*

*9.0 It is also noted that in the original assessment order dated 30/07/2015 passed under section 143(3), no charge of contravention u/s 269T was made, nor mentioned by the AO. It is also seen that in the original assessment order, the A.O. has not recorded any satisfaction regarding initiation of penalty proceedings u/s 271E of I.T. Act 1961, which is a legal requirement in such cases. The appellant has strongly contested that since there is no satisfaction recorded in the order of assessment regarding initiation of penalty proceedings under section 271E of the Act, therefore, the penalty proceedings itself is bad in law, and penalty could not have been levied. In this regard, the appellant's contention is supported by the following decisions relied upon by him, as under:*

*1) Judgment of Supreme Court of India in the Appeal No. 1457 of 2008 & Appeal No. 3614 of 2012 in the case of Commissioner of Income Tax, Panchkula Vs. M/s. Jai Laxmi Rice Mills.*

*"As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under section 271E though in that order the AO wanted penalty proceeding to be initiated under section 271(1)(c) of the Act. Thus in so far as penalty under section 271E is concerned, it was without any satisfaction and therefore, no such penalty could be levied."*

*2) DCIT, Chandigarh vs M/S Karan Empire Pvt. Ltd., Mohali on 16 February, 2017 (ITA No. ITA No.409/Chd/2011) which held as follows:*

"9. We find no merit in the contention of the Ld. DR that the facts of the case are distinguishable with the facts of the case before the Hon'ble Apex Court in Commissioner of Income Tax, Panchkula Vs. M/s. Jai Laxmi Rice Mills. (supra) and, therefore, the ratio propounded therein would not apply in the present case. Though undeniably, there is a difference in the facts of both the cases as in the case before the Hon'ble Apex Court the assessment had been set aside with the direction to frame afresh assessment while in the present case before us, the assessment order passed has been held to be invalid, the proposition laid down by the Hon'ble Apex Court still applies since the ultimate effect of the facts in both the cases still results in the original assessment order not surviving, as also the satisfaction recorded therein for the purpose of initiation of penalty proceedings u/s 271E/271D of the Act. Therefore, the proposition laid down by the Hon'ble Apex Court squarely applies in the present case following which we uphold the order of the Ld. CIT (Appeals) deleting the levy of penalty u/s 271D of the Act amounting to Rs.6,95,60,000/-."

3) Judgment of Income Tax Appellate Tribunal, "F" Bench, Mumbai vide ITA No.5668 & 5669/Mum/2013 in case of M/s. Vave Infotainment Network Ltd. - Vs.- Addl. Commissioner of Income Tax.

Hon'ble Apex Court in the case of CIT vs. Jai Laxmi Rice Mills reported in (2015) 379 ITR 521 (SC), dealing with the levy of penalty under section 271D of the Act, has held that if there is no satisfaction recorded in the order of assessment regarding initiation of penalty proceedings under section 271D of the Act, then no penalty thereunder could be levied. We have, respectfully perused a copy of the aforesaid judgement of the Hon'ble Apex Court (supra) and find that admittedly, by both AO in the penalty orders and learned CIT(A) in the impugned orders, no satisfaction for initiation of penalty proceedings under sections 271D and 271E of the Act has been recorded in the orders of assessment. In this factual matrix of the case and respectfully following the decision of the Hon'ble Apex Court in the case of Jai Laxmi Rice Mills (supra), we hold that since admittedly no satisfaction has been recorded for initiating penalty proceedings under sections 271D and 271E of the Act in the case on hand in the order of assessment for A.Y. 2000-01, therefore no penalty there under could be levied. In this view of the matter we cancel the penalty of 1,45,000/-each levied under sections 271D and 271E of the Act for A.Y. 2000-01. Consequently the assessee's additional grounds are allowed in both the appeals.

9.1 In view of the aforesaid judgements, cited by the appellant, the argument that the Assessing Officer has made no mention, or given any findings of contravention of section 269T, nor recorded the satisfaction for initiation of such penal proceedings is also accepted. However, it is also mentioned here that the Additional CIT had issued the show-cause notice on 23.01.2017 and passed the order levying penalty on 31.3.2017, within the limitation allowed as per Act.

10.0 Having considered all the submissions of the appellant and perused the assessment order as well as the order imposing penalty, it is noted. the appellant had due to time constraints and payment exigencies, sudden

requirement of funds and should not obtain the same through crossed cheques/ drafts, and was constrained to accept the loans through cash. These amounts were utilised for making payments to suppliers which is a state run petroleum company, whose petrol pump agency was run by the appellant in a very small village (with population less than 5000, and with no proper banking facilities to enable immediate bank payments). Of import is the fact the appellant had repaid the loans through both cheques and direct deposit of cash into the loan provider's bank account- and the source of such repayments were from sales of petrol diesel and such source was not objected to by the AO. Therefore, the source of the loan repayment was duly explained, and confirmed by the loan provider. The transactions were explained and part of sales register- which is also audited and accepted by the AO. In these circumstances, it is important to note that another provision, namely Section 273B also provides that notwithstanding anything contained in the provisions of Section 271E, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision if he proves that there was reasonable cause for such failure, and if the assessee proves that there was reasonable cause for failure to repay a loan otherwise than by account-payee cheque, or account-payee demand draft, then the penalty may not be levied.

10.1 Therefore, undue hardship is very much mitigated by the inclusion of Section 273B in the Act. If there was a genuine and bona fide transaction and if for any reason the tax payer could not repay a loan or deposit by account-payee cheque or demand draft for some bona fide reasons, the authority vested with the power to impose penalty has got discretionary power not to levy such penalty. In the case of Commissioner Income Tax-Vs-Lakshmi Trust Co.(2006) 303 ITR 0099 (Mad. HC), the Hon'ble Court held as under:

2.2. Aggrieved by the order of assessing officer imposing penalty, the assessee filed appeal before the Commissioner of Income-tax (Appeals), who, by order dated 30.4.2001, held that the business of the assessee which was done mostly in Erode required cash purchases which made the assessee to accept loans in cash from sister concerns and that repayments to sister concerns were also made in cash. The Commissioner of Income-tax (Appeals), finding that the transactions of loans were genuine and the identity of lenders was not in doubt, cancelled the penalties under section 2710 and 271E of the Act.

2.3. On appeal by the Revenue, the Appellate Tribunal, considering the fact that the transaction did not result in treatment of loan as unexplained cash credit because it was found to be fully explained, held that there was no intention on the part of the assessee to contravene the provisions of section 269-SS of the Act and accordingly, upheld the order of the Commissioner of Income-tax (Appeals). Aggrieved by the same, the Revenue has preferred this appeal raising the questions of law referred to above.

3. Mr. Narayanaswamy, learned counsel appearing for the Revenue contends that sections 269-SS and 269T of the Act are mandatory and no mens rea needs to be proved before penalty is imposed. He further submits that the assessee had no sufficient reasons to take the loans in cash.

4. *Per contra*, learned counsel appearing for the assessee, referring to two decisions of this Court in (i) *CIT v. Kundrathur Finance and Chit Co.* (283 ITR 329) and (ii) *CIT v. Ratna Agencies* (284 ITR 609), contends that if the Appellate Tribunal is satisfied that the transactions are genuine and bona fide, penalty could not be imposed, particularly when there was no evasion of tax.

5. We have given our careful consideration to the submissions made on either side.

6. This Court in *CIT v. Kundrathur Finance and Chit Co.* (283 ITR 329), following the decision of Apex Court in *Asst. Director of Inspection (Investigation) v. Kum. A.B. Shanthi* (255 ITR 258), held that if there was genuine and bona fide transaction and the tax payer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretion not to levy penalty.

7. In the instant case, the Commissioner of Income-tax (Appeals) and the Appellate Tribunal found on facts that the transactions were genuine and the identity of the lenders was also satisfied. The Appellate Tribunal also upheld the order of the Commissioner of Income-tax (Appeals) that there was no intention on the part of the assessee to evade the tax.

8. Once the said finding as to the genuineness of the transactions is arrived at by the Tribunal on facts, following the decision of this Court in *CIT v. Ratna Agencies* (284 ITR 609) wherein it was held that the finding recorded by the Tribunal in this regard is finding of fact and no question of law much less a substantial question of law would arise, we do not have any hesitation to hold that it may not be proper for this Court to interfere with such a finding of fact.

9. For all these reasons, answering the questions of law referred to us against the Revenue, the appeal stands dismissed. No costs.

10.2 Hon'ble Supreme Court in the case of *Asst. Director of Inspection (Investigation) Vs. Kum. A.B. Shanthi* (255 TTR 258) (SC) has held as under:

"...that (1) if there was a genuine and bonafide transaction and (2) if for any reason the taxpayer could not get a loan or deposit by account payee cheque or demand draft for some bonafide reasons, the authority vested with the power to impose penalty has got discretionary power. The existence of a genuine or bona fide transaction is not sufficient to attract the relief under section 2738 of the said Act. It must also be established that for some bona fide reasons the assessee could not get a loan or deposit by an account payee cheque or account payee bank draft."

10.3 It is observed that the appellant's loan transactions were genuine and bonafide and that he had to repay the loans on immediate basis by account payee cheque, and also through direct cash deposits- which however was sourced from the appellant's legitimate sales, and therefore, the appellant's plea of reasonable cause is found to be substantiated. It is also a settled proposition of law that levy of penalty is not mandatory and the observation of assessing officer that levy of penalty was mandatory is contrary to the judicial settled principle of law, as the provisions of section 273B was ignored,

*11.0 Considering the totality of the facts and circumstances of the case and the decisions relied upon by appellant, and also discussed hereinabove, I am of the view that in this case there was time constraints and business exigency forcing the appellant to make immediate repayment of loans. The alleged contravention did not result in any unaccounted transactions and that the said transactions were made only for meeting the business exigency. Since all the impugned transactions are genuine and bona fide, I hold that there was reasonable cause for repaying part of Nie loan through direct deposits into payee's account and accordingly, in terms of section 273B, no penalty was leviable u/s. 271E. In view of above, the penalty levied under section 271E of I.T. Act 1961 of the sum of Rs.85,76,380/- is held as unjustified and therefore, deleted. The grounds of appeal of appellant are allowed."*

The Revenue being aggrieved, is in appeal before the Tribunal.

7. The learned Departmental Representative submitted before us that the assessee has deposited petrol sale proceeds in his bank account, withdrew the same and repaid the loan amount to the bank account of Commission Agent which is violation of the provisions of section 269T of the Act. The assessee, instead of withdrawing the money from bank, he should have paid money through banking channels and thus the assessee failed to do so and, therefore, the learned JCIT has rightly levied the penalty. Deleting the penalty by the learned CIT(A) was not justified.

8. The learned Counsel for the assessee submitted that the assessee is in the business of sale of petrol and is a sole Petrol Agent of Indian Oil Petroleum Company. The assessee has maintained regular books of account as well as indent book provided by the company for sale purchase of petrol, diesel and oil. The business of the assessee was under the direct supervision of Petroleum Industries and regulated by Indian Oil Petroleum Company. The books of accounts were audited as per section 44AB of the Act and the

assessee has submitted the audited report along with audited Profit & Loss A/c, Balance Sheet along with Schedules of return of income and the same were also submitted during the assessment proceedings. No defects have been pointed out by the Assessing Officer in the books of account of the assessee. The assessee required fund for his business purpose and hence borrowed funds from Shri T.B. Bagadi, on commission basis. The Assessing Officer has even not doubted the borrowings and sale proceeds of the assessee depositing in the bank account. The learned Counsel submitted that the case of the learned JCIT is that, the assessee has withdrawn the money from the bank account and deposited the same in the bank account of the commission agent. According to the assessee, levy of penalty is incorrect. He strongly supported the order passed by the learned CIT(A).

9. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. It is fact that the assessee is engaged in the business of Petrol Pump and authorised dealer of Indian Oil Petroleum Company. The sale proceeds are deposited in his bank account. For the purpose of business, the assessee had obtained loans from Commission Agent. We find that the books of accounts of the assessee were audited. The Assessing Officer has not doubted the loan amount obtained by the assessee from the Commission Agent and the sale proceeds which were deposited in the bank account of the assessee. The only case of the learned JCIT is that, the assessee, instead of transferring money from his account to the account of Commission Agent, the assessee withdrew the money from his bank account and repaid the loan to the Commission Agent by depositing the

money to the bank account of the Commission Agent, which is in contravention to the provisions of section 269T of the Act and hence the penalty is levied under section 271E of the Act. Though the learned JCIT is technically correct in saying that the assessee should have transferred the funds from his bank account to the bank account of the Commission Agent, be that as it may, the fact is, the assessee was carrying on his business of Petrol Pump by obtaining the loan from Commission Agent and sale proceeds are deposited in his own bank account. From those sale proceeds, the assessee withdrew the money from his bank account and deposited the same to the bank account of the Commission Agent in view of the immediate necessity. Under these circumstances, in our opinion, penalty cannot be levied under section 271E of the Act. Moreover, the learned JCIT has not expressed any doubt that the assessee has used the repayment of money other than his business source. In this view of the matter, we are of the opinion that penalty under section 271E of the Act for ₹ 85,76,380, is not leviable in the present case. Accordingly, we also do not find any reason to interfere with the order passed by the learned CIT(A) and uphold the same by dismissing the grounds of appeal raised by the Revenue.

10. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 29/07/2024

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**NAGPUR, DATED: 29/07/2024**

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury  
Sr. Private Secretary

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur