

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

Before Shri Satbeer Singh Godara, Judicial Member and
Shri Amarjit Singh, Judicial Member

ITA Nos. 728 & 729/Coch/2023
(Assessment Year: 2015-16)

The Income Tax Officer-1 Mayos Building Kainatty Kalpatta 673122	vs.	Mullankolly Service Co-op. Bank Ltd. Padichira, Pulpally P.O. Wayand 673579 [PAN: AABAM1539J]
(Appellant)		(Respondent)

Appellant by:	Shri Adithya Unnikrishnan, CA
Respondent by:	Shri Sanjit Kumar Das, CIT-DR

Date of Hearing:	12.08.2024
Date of Pronouncement:	25.08.2024

ORDER

Per Bench

These Revenue's twin appeals ITA Nos.728 & 729/Coch/2023 arise against the orders of the National Faceless Appeal Centre, Delhi [CIT(A)] in proceedings u/s. 271D and 271E of the Income Tax Act, 1961 (the Act) as below: -

Sr. No.	ITA No.	AY	DIN & Order No.	Date
1	728/Coch/2023	2015-16	ITBA/NFAC/S/250/2023-24/10553883328(1)	24.08.2023
2	729/Coch/2023	2015-16	ITBA/NFAC/S/250/2023-24/1055382781(1)	24.08.2023

Heard both the parties. Case files perused.

2. The Revenue vehemently contends during the course of hearing that the CIT(A)/NFAC herein has erred in law and on facts in deleting sections 271D & 271E penalties of Rs. 25,63,75,028/- and 18,07,95,770/-; case-wise respectively imposed by the Assessing Officer on account of violation of sections 269SS and 269T of the Act at assessee's behest, inter alia, availing cash loans as well repaying the same in very mode. We note that the CIT(A)'s finding in Revenue's former appeal under challenge read as under: -

“5.2 DECISION: I have gone through and considered the observation of AO, submission of the appellant and all the materials available on the record. The issue on the hand is imposition of penalty u/ 271D of Rs. 25,63,75,028/- by JCIT, Range-2 Kozhikode.

5.2.1 As stated above, the appellant is a primary agricultural credit society that accepts deposits from its members and also provide credit facilities to them. During the assessment proceedings for the same assessment year, the assessing officer observed the violation of section 269SS of the Income Tax Act which prohibits taking loan/deposit in cash amounting Rs. 20,000/- or more. The penalty proceedings u/s 271D was initiated by the JCIT on 25.01.2018 and the final penalty order has been passed within six months on 26.07.2018. The appellant has taken a wrong plea that penalty proceedings was initiated by the assessing officer in the pre assessment notice dated 16.11.2017. However, it is seen that this is not a penalty notice and only a pre assessment notice asking the details of deposits accepted and repaid. It has been held in various decisions that a penalty notice can be issued only by the authority who is competent to levy the penalty. In the existing facts, the penalty notice was issued on 25.01.2018, Therefore, the penalty order dated 26.07.2018 is passed within the statutory limitations. Accordingly, this plea is rejected.

The appellant has also raised the ground that section 269SS is not applicable to it as definition of person does not include "Co-operative society". This is wrong as co-operative society is an AOP and is covered under the definition of person. Accordingly ground no 2 is dismissed.

5.2.2 REMAND PROCEEDINGS: It is seen that during the penalty proceedings, the JCIT had asked the appellant on 17.07.2018 to produce the supporting evidences for the cash deposit & cash repayments of the depositors like Name, PAN, ID etc & the compliance was sought by 20th July, 2018 i.e., within 3 days. As per the appellant the details could not be furnished during the penalty proceedings.

During the appellate proceedings in its uploaded online submission, the appellant has submitted following particulars

1. A list containing name and address of the depositors.

The JCIT was directed to go through the details of the deposits and furnish a remand report by way of this office letter dated 03.07.2023. However, despite reminders, no remand report has been received till date. Therefore, I proceed to decide the case as follows.

5.2.3. The appellant is a primary agricultural credit society and deals predominantly with the farmers. As stated during the penalty proceedings, more than 90% of its members are agriculturists, it operates in the hilly areas of North Kerela in the Wayanad district and banking facilities are scarcely available in the remote villages. The appellant's area, was predominantly agricultural based economy, all cash deposits by members are out of sale of agricultural produces and withdrawals are for meeting day to day expenditure like wages, purchase of manure, seeds which are met by cash. The appellant is undertaking the functions of banking and credit business in the rural area, though not a co-operative bank as per banking regulation act.

5.2.4 The appellant has accepted deposits from the members which are known and identifiable. It is also stated that as name of the appellant is Mullankolly Service Cooperative Bank Limited, there is fair degree of similarity in the activities of appellant and Cooperative Banks. So appellant bonafidely believed that they are permitted for cash transactions in respect of acceptance of deposits and repayment of loans. This fact was, acknowledged by CBDT in its Circular F. No. 415/6/2000-IT (Inv.I) dated 25th March, 2004 which stated that it was a widespread belief, even if erroneous that the provisions of section 269SS do not apply to the credit co-operative societies and advised the field officers not to impose penalty under section 271D and 271E indiscriminately and should keep in view the provisions of section 273B of the Act.

It is also seen that in the tax audit report, no violations of provisions of section 269SS and 269T have been mentioned by the Chartered Accountant. I agree with the appellant that there is no deliberate or intentional violation of the provisions by the appellant in order to evade any payment of tax.

5.2.5 The appellant has also brought my attention to number of Hon'ble ITAT decisions of Delhi, Pune and Hyderabad benches in this regard. The latest decision in the case of M/s. Delhi State Taxi Operators' Co-operative Thrift Credit & Services Society Ltd. Vs. JCIT Range-60-ITA Nos. 3107 & 3108/Del/2019, New Delhi dated 26.04.2023 has allowed the appeal in a similar case. Relevant extract is as follows:

QUOTE

"21. We do not agree with this rigid approach of the Ld. JCIT/CIT(A). In the context of constitutionality of the provisions in A ADIT vs. AB Shanthi 255 ITR 258 (SC) the Hon'ble Supreme Court observed that the object of introducing section 269SS is to ensure that a taxpayer is not allowed to give false explanation for its unaccounted money, or if he has given some false entries in its accounts, he shall not escape by giving false explanation for the same. Provisions inserted to curb the rampant circulation of black money. The Ld. JCIT relied upon the decision of Hon'ble Supreme Court (supra) to justify levy of impugned penalty upon the assessee but he failed to appreciate that none of the observations of the Hon'ble Supreme Court apply to the facts of the assessee's case. It is not a case of search operations conducted on the assessee. There is no allegation leveled by the Revenue that false explanation at any point of time has been given by the assessee. Neither any false entry was ever detected by the Revenue in the books of account of the assessee. We are at pains to say that further observations made by the Hon'ble Supreme Court in the decision (supra) escaped the attention of the Ld. JCIT/CIT(A). The Hon'ble Supreme Court further observed

in para 19 that it is important to note that another provision, namely section 2738 of the Act was also incorporated which provides that notwithstanding anything contained in the provisions of section 271D 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 failure to take a loan otherwise than by account payee cheque or account payee demand draft then the penalty may not be levied. Therefore, undue hardship is very much mitigated by the inclusion of section 273B. If there was a ITA Nos. 3107 & 3108/Del//2019 genuine and bonafide transaction and 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 rested with the power to impose penalty has got discretionary power.

22. In *Farrukhabad Investment (1) Ltd. vs. JCIT* (2003) 85 ITD 230 (Delhi), the Delhi Bench of the Tribunal's observation applies squarely to the facts of the assessee's case. In para 46 of its order, the Tribunal observed that keeping in view the intent of the legislature behind enacting the above sections, we hold that the loans/deposits brought in by the assessee was not to explain its unaccounted cash and therefore, the question of violating the provisions of section 269SS/269T did not arise. We may mention here that even there is no suggestion from the Revenue that by way of accepting loans and deposits in cash, the assessee has introduced its unaccounted cash in the garb of loans.

23. We would like to mention the decision of Pune Bench of the Tribunal in *Vishal Purandar Nagri Sahakari Pat Sansthan Maryadit* rendered on 22.12.2008 in ITA No. 1290/PN/2008. It was a case of credit co-operative society which rendered services which are somewhat close to the services usually rendered by the co-operative bank in the sense they accept deposit from the members and give loans to the members. Keeping this in view, the Tribunal observed that there is a fair degree of similarity in the services rendered by these credit co-operative societies and co-operative banks. In these circumstances, the bonafides of assessee's belief for being entitled to the same treatment as banking institutions cannot be rejected outright This is surely an incorrect view, but when an authority is examining an explanation in the context of a penalty proceedings, all that the authority has to see is whether or not such an explanation stands the preponderance of probabilities, and whether there are any inconsistencies or fallacies in such an explanation which demonstrate that the explanation is a make believe story. The Tribunal went on to observe further that it is important to bear in mind that section 273B comes into play when the assessee has committed a lapse but the assessee can demonstrate that there was reasonable cause for having committed that lapse.

24. We may also refer to the decision of the co-ordinate bench of Delhi Tribunal in the *Mamurpur Co-operative Thrift and Credit Society Ltd. vs. Addl. CIT* rendered on 10.09.2020 in ITA No. 1370 & 1371/Del/2019. In this case also the assessee is a co-operative society registered under the Cooperative Society Act and is engaged in carrying on the business of providing credit facilities to its members. The assessment year involved is 2014-15 in which for the first time violation of section 269SS/269T has been pointed out. Even the tax auditor has not made any remark in their Tax Audit Report regarding violation of section 269SS or 269T in this year or in earlier years. In view of past history of the case the assessee was under bonafide belief that alleged loan or deposit accepted or repayment hereof was not in violation of section 269SS or 269T. On these facts which are akin to the

case under consideration before us the Tribunal recorded the following findings and cancelled the penalty levied under section 271D and 271E of the Act: -

"In our opinion, belief on the part of the assessee in view of the past history of the case that deposit/repayment by its members in cash is bonafide belief. In the case of CIT vs. Lokpal Film Exchange (Cinema) (2008) 304 ITR 172, the Hon'ble High Court held that the assessee had acted bonafidely and its plea that inter se transaction between the partners and the firm were not governed by the provision of section 269SS/269T, was a reasonable explanation and no penalty could be imposed. In view of the above, we are of the opinion that considering the bonafide and genuine transaction, reasonable cause in terms of section 2738 of the Act, exist in the case of the assessee for not complying with the provision of section 269SS and 269T, and therefore, we cancel the penalty levied in terms of section 271D and 271E of the Act."

25. In the light of the above discussion and following the precedents we are of the view that the assessee has discharged the onus which lay upon it ITA Nos. 3107 & 3108/Del//2019 to establish the existence of reasonable cause for violation of the provision of section 269SS and 269T of the Act. In our opinion, the explanation offered by the assessee before the Ld. JCIT/CIT(A) was reasonable but was discarded merely because they proceeded on the premise that breach of condition provided under section 269SS and 269T shall necessarily lead to penal consequences which understanding in our humble opinion is not in 1 accordance with law. We, therefore, cancel the penalty levied under section 271D and 271E of the Act. The ground No. 1, 3 & 4 are decided in favour of the assessee."

UNQUOTE

5.2.6 It is seen that the facts of the above cases are somewhat similar to the appellant's case. As in the case decided by the Hon'ble ITAT Delhi, the appellant's society carries on credit activity similar to cooperative banks, the appellant's tax auditor and the appellants are under bona fide belief that the loans /deposits acceptance or repayment in cash is not in violation of section 269SS and 269T. There was a reasonable cause for entering the transactions in cash and the transactions are genuine. Respectfully, following above decisions, penalty under section 271D of the Rs. 25,63,75,028/- is hereby deleted. Accordingly, these grounds of appeals are hereby partly allowed.

3. Suffice to say, it has come on record that the assessee had filed all the relevant details demonstrating the corresponding cash loan transactions with its members in the regular business activity. This clinching fact has remained unrebutted by the department's side. That being the case, we conclude that the learned CIT(A) herein has rightly held non-applicability of the foregoing statutory provision(s) in the case of credit activities in cash between a co-operative bank vis-à-vis its members as not attracting the twin penalty provisions u/sec.271D and 271E of the Act. We make it clear that this assessee a cooperative society has discharged it's onus of having

executed cash sum(s) entries of payment with the members in remote areas not fully covered by organized banking. We accordingly find no merit in Revenue's instant twin appeals seeking to revive sections 271D & 271E penalties forming subject matter of the corresponding substantive grounds. Rejected accordingly.

4. These Revenue's twin appeals ITA Nos.728 & 729/Coch/2023 are dismissed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open court on 25th September, 2024

Sd/-
(Amarjit Singh)
Accountant Member

Sd/-
(Satbeer Singh Godara)
Judicial Member

Cochin, Dated: 25th September, 2024

n.p.

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