

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'B' Bench, Hyderabad**

**BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER AND**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं /ITA No.171 & 172/Hyd/2024  
(निर्धारण वर्ष/Assessment Year:2017-18)

Syndicate Retired Employees and Other Mutually Aided Co-op Credit Society Ltd., Kurnool. PAN:AAGAS1034H	<b>Vs.</b>	Income Tax Officer, Ward-1, Kurnool.
(Appellant)		(Respondent)
निर्धारिती द्वारा/Assessee by:		
राजस्व द्वारा/Revenue by:		
सुनवाई की तारीख/Date of hearing:		
घोषणा की तारीख/Pronouncement:		

**आदेश/ORDER**

**PER MADHUSUDAN SAWDIA, A.M. :**

Both these appeals are filed by Syndicate Retired Employees and Other Mutually Aided Co-op Credit Society Ltd., Kurnool. ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), dated 28.12.2023 & 21.12.2023 respectively for the AY 2017-18. Since both these appeals are related to the same assessee, for the sake

of convenience they are heard together and common order is being passed.

2. At the outset, it is seen that, there is a delay of 3 days in filing of the appeal in ITA No.172/HYd/2024 for which the assessee has filed a condonation petition explaining the reasons for such delay. After considering the contents of the condonation petition and after hearing the learned DR, the delay of 3 days in filing of this appeal is condoned and the appeal is admitted for adjudication.

3. The brief facts of the cases are that the assessee is a society involved in the business of banking / providing credit facility to its members and others. The case of the assessee was selected for complete scrutiny for CASS and the assessment u/s.143(3) of the Income Tax Act, 1961 ("the Act") was passed on 24.12.2019 by the Learned Assessing Officer ("Ld. AO") making an addition of Rs.58,65,984/-.

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4. The brief facts with regards to this appeal is that the Learned Joint Commissioner of Income Tax ("Ld. JCIT") levied a penalty of Rs.92,18,500 u/s.271D of the Act vide order dated 25.3.2022 on the ground that the assessee majorly collected cash to the tune of

Rs.92,18,500/- from its members and others in contravention of section 269SS of the Act.

5. Aggrieved by the decision of Ld. JCIT the assessee had filed appeal before the Ld. CIT(A), who accepting the view taken by the Ld. JCIT dismissed the appeal of the assessee.

6. Aggrieved by the order of Ld. CIT(A), the assessee is in appeal before us. The Learned Authorised Representative ("Ld. AR") submitted that the Ld. JCIT levied a penalty of Rs.92,18,500/- u/s.271D of the Act vide order dated 25.3.2022 on the ground that the assessee majorly collected cash to the tune of Rs.92,18,500/- from its members and others in contravention of section 269SS of the Act. The Ld. AR brought to our notice to para no. 3 of the order of Ld. JCIT where the details of the cash deposit of Rs.92,18,500/- in the bank account are given and stated that section 269SS is not applicable to deposit of cash in bank account and therefore penalty u/s.271D of the Act should not be levied. In their alternate submission, the Ld. AR brought to our notice to the routine cash sheet (page Nos.114 to 118 of the paper book) and submitted that the total cash receipts of Rs.92,18,500/- include the cash receipts from members against the return of loan given to them. Therefore

such receipt of cash is not covered under the provisions of section 269SS of the Act and hence accordingly penalty u/s.271D of the Act is also not applicable. Another plea of the Ld. AR was that no such penalty had been levied by the Ld. AO on the assessee in any other year. Therefore to maintain the principle of consistency, the Ld. AO should not have levied any penalty for the year under consideration. For his submission, the Ld. AR relied on the decision of Hon'ble Delhi High Court in the case of PCIT-20, Delhi Vs. Delhi State Taxi Operators Co-operative Thrift Credit and Services Society Ltd. & Another in ITA 247/2024 & CM Appl. 25249/2024 dated 01.05.2024, the relevant portion of which is reproduced as under :

*" 1. Having heard Mr. Maratha, learned counsel appearing for the appellant and on going through the order impugned, we find that the solitary question which stands raised is with respect to the imposition of penalty referable to Sections 271D and 271E of the Income Tax Act, 1961 ['Act'].*

*2. The Income Tax Appellate Tribunal on an overall conspectus of the facts which obtained has observed as follows:-*

*"18. The case of the assessee has along been that it is a co- operative society engaged in the business of banking by providing credit facility to its members and as such neither section 269SS nor non section 269T of the Act is applicable to it. Since inception 63 years ago the assessee was under a bonafide and genuine belief that it being a credit thrift society could accept from its members sums in cash and advance to them such sums in cash and that there is no prohibition to do so. The assessee pleaded before the Ld. JCIT and the Ld. CIT(A) that for its default there existed reasonable cause within the meaning of section 273B of the Act. It*

was also the submission of the assessee that in none of the earlier years any contravention of the provisions of section 269SS and 269T was pointed out to the assessee by the Department. All these arguments/plea were not judicially acceptable to the Ld. JCIT/CIT(A) for the reason that once a wrong doing is detected, the full force of law has to be applied to remedy/rectify the situation/default. The Ld. DR also emphasised that the practice of cash dealings have been carried out by the assessee without any reasonable cause.

19. We considered carefully submissions of the parties. It is not in dispute that the assessee is a co-operative society which considers itself, though erroneously, to be engaged in the business of banking as it was providing credit facilities to its members right from inception. It is also an admitted position that the assessee's claim of deduction under section 80P has always been accepted by the department on the basic premise that the assessee has been engaged in carrying on the business of banking or providing credit facilities to its members as stipulated in sub-section 2(a)(i) of section 80P of the Act. It is noteworthy that the provisions of section 269SS and section 269T were brought on the statute book w.e.f. 01.04.1984 which is around 28 years after the assessee society came into existence. But the Department never before the AY 2013-14 presently under consideration raised the issue of violation of the provisions of section 269SS and 269T though assessments were made under section 143(3) of the Act after scrutiny. This gives the bonafide impression that the Department had accepted, by implication that in the facts and peculiar circumstances of the assessee's case, the provisions of section 269SS and 269T were inapplicable to it. Therefore, the rule of consistency should have been followed in AY 2013-14 also which has not been done. Even the CBDT acknowledged in its Circular F. No. 415/6/2000-IT(Inv.I) dated 25th March, 2004 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.'

3. Bearing in mind the aforesaid view as expressed and which was plausible in the facts and circumstances of the case, we find that the appeal fails to raise any substantial question of law. It shall consequently stand dismissed."

7. Per contra, the Ld. DR relied on the orders of revenue authorities and submitted that the the assessee had accepted the cash in contravention to the provisions of section 269SS of the Act. Therefore the penalty levied u/s.271D of the Act has rightly been levied on the assessee.

8. We have heard the rival contentions and also gone through the record in the light of the submissions made on either side. As far as the reliance of the assessee on the decision in the case of PCIT-20, Delhi Vs. Delhi State Taxi Operators Co-operative Thrift Credit and Services Society Ltd. & Another (supra), the facts of the case are not applicable to the case of the assessee, as in this case the assessment of the assessee for earlier year had already been done u/s.143(3) of the Act. However, in the case of the assessee no information of any assessment u/s.143(3) in earlier year has been brought to our notice. Therefore this contention of the assessee is not acceptable and is rejected.

8.1 So far as the submission of the assessee is concerned that the Ld. JCIT has levied the penalty on cash deposit of Rs.92,18,500/- in the bank account, the contention of the assessee is not acceptable. The Ld. JCIT in para no.3 of his order

only made an observation that how the cash received by the assessee has been utilised. The Ld. JCIT in his order had categorically given the findings that the penalty u/s.271B of the Act has been levied on cash received by the assessee in contravention of section 269SS and not on the basis of cash deposited in the bank account. Therefore we reject this contention of the assessee.

8.2 So far as the submission of the assessee is concerned that they have received cash from members against the return of loan given to them to which provisions of section 269SS of the Act are not attracted. The same is required to be verified by the Ld.JCIT from the records of the assessee. Therefore we remand the issue to the file of the Ld. JCIT with a direction to verify the nature of cash receipts by the assessee. If the nature of cash receipt is on account of return of loan given to the members then in our opinion there is no contravention of section 269SS, hence no penalty can be levied u/s.271D of the Act on such cash receipts. Therefore we direct the Ld. JCIT to delete the penalty levied u/s.271D of the Act on the portion of cash received from members against the return of loan given to them.

9. In the result, the appeal of the assessee is partly allowed for statistical purposes.

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10. During the penalty proceedings u/s.271E of the Act, the Ld.JCIT found that the assessee had undertaken cash transactions of Rs.21,50,74,000/- relating to advancing the specified amount and concluded that the assessee failed to comply with the provisions of section 269T of the Act. Therefore he levied a penalty of Rs.21,50,74,000/- u/s.271E of the Act vide his order dated 25.03.2022.

11. Aggrieved with the order of Ld.JCIT, the assessee filed appeal before the Ld.CIT(A). Before the Ld.CIT(A), the assessee submitted that the amount of Rs.21,50,74,000/- was the closing balance of principal amount appearing as on 31.3.2017 and the actual amount of the transactions during the year was Rs.2,01,58,687/-. Considering the submissions of the assessee, the Ld.CIT(A) directed the Ld.JCIT to verify the actual amount and levy the penalty accordingly.

12. Aggrieved with the order of Ld. CIT(A), the assessee is in appeal before us. The Ld. AR submitted that the Ld.JCIT under para Nos.6 to 8 of his order came to the finding that the assessee

had made advance of Rs.21,50,74,000/- in cash and therefore has contravened the provisions contained in section 269T of the Act and consequently levied penalty u/s.271E of the Act. The Ld. AR further submitted that the provisions of section 269T of the Act restrict the repayment of loan or deposit or specified sum in cash and it does not make any restriction in making of any advance in cash. Therefore the assessee has made no contravention of the provisions contained in section 269T of the Act and therefore no penalty u/s.269T is leviable on the assessee.

13. Per contra, the Ld. DR reiterated that the assessee has contravened the provisions of section 269T of the Act and therefore is liable for penalty u/s.271E of the Act.

14. We have heard the rival contentions and gone through the record in the light of the submissions made on either side. For the sake of clarity, it is necessary to go through the provisions of section 269T of the Act, the relevant portion of which is reproduced as under :

***“ Mode of repayment of certain loans or deposits.***

**269T.** *No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank*

*draft drawn in the name of the person who has made the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed if—*

*(a) the amount of the loan or deposit or specified advance together with the interest, if any, payable thereon, or*

*(b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits, or*

*(c) the aggregate amount of the specified advances received by such person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such specified advances, is twenty thousand rupees or more:”*

From the perusal of the provisions contained under section 269T of the Act it is abundantly clear that the section restrict the repayment of loan or deposit or any specified advances in cash. However, section 269T does not prohibit the making of any advances in cash. There is no dispute about the fact that the Ld. JCIT as per his observation under para nos.6 to 8 of his order came to the conclusion that the assessee has made advances in cash and concluded that the assessee has contravened the

provisions of section 269T of the Act and accordingly levied penalty u/s.271E of the Act. However in our considered opinion, there is no contravention of section 269T in making any advance in cash and therefore no penalty can be levied u/s.271E of the Act. Therefore we delete the penalty levied u/s. 271E of the Act by the Ld.JCIT. Accordingly, we allow the appeal of the assessee.

15. To sum up, the appeal in ITA No.171/Hyd/2024 is allowed and the appeal in ITA No.172/Hyd/2024 is partly allowed for statistical purposes.

**Order pronounced in the open Court on 23rd Oct., 2024.**

Sd/-  
(K. NARAIMHA CHARY)  
JUDICIAL MEMBER

Sd/-  
(MADHUSUDAN SAWDIA)  
ACCOUNTANT MEMBER

Hyderabad.

Dated: 23.10.2024.

\* Reddy gp

**Copy of the Order forwarded to :**

1.	Syndicate Retired Employees and Other Mutually Aided Co-op Credit Society Ltd., 40/437, Ground Floor, Eswar Nagar, Kurnool-518 001.
2.	ITO, Ward – 1, Kurnool.
3.	Pr.CIT, Kurnool.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,