

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

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA No.18/Coch/2024 : Asst.Year 2015-2016

ITA No.19/Coch/2024 : Asst.Year 2015-2016

The Income Tax Officer Ward 1 Kalpetta.	v.	Madakkimala Service Co- operative Bank Limited Madakkimala, Wayanad – 673 122. PAN : AACTM7277K.
(Appellant)		(Respondent)

Appellant by : --- None---

Respondent by : Dr.S.Pandian, CIT-DR

Date of Hearing : 23.08.2024	Date of Pronouncement : 07.11.2024
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ORDER

Per Bench :

Revenue's instant twin appeals ITA No.18/Coch/2024 & 19/Coch/2024 for assessment years 2014-2015 are directed against the CIT(A)'s order reversing the Assessing Officer's action levying sec.271D and 271E penalty (ies) of Rs.36,31,43,858 and Rs.33,02,43,427; respectively and alleging violation of the prescribed code(s) u/ss.269SS and 269T of the Act.

Cases called twice. None appears at assessee's behest. It is accordingly proceeded ex parte.

2. Learned CIT-DR invited our attention to the CIT(A)'s identical lower appeal discussion to this effect as under:-

“5.2 I have carefully considered the facts of the case as well as submissions filed by the appellant. I find force in the arguments of the Appellant. The fundamental issue in this case is that the Assessee is a 'Primary agricultural co-operative society' duly registered under the Kerala Co-operative Societies Act. The deduction under section 80P has been duly allowed to the Assessee after following the decision of the Hon'ble Supreme Court in the case of Mavilayi Service Co-operative Bank Ltd. v. Commissioner of Income Tax, Calicut, [2021] 123 taxmann.com 161 (SC), which has settled the law on this issue. There is no doubt that these co-operative societies operate in rural environments and provide credit facilities to small farmers and agricultural laborers. Most of the activities are carried out in cash only and adequate banking facilities are not available in this area. Most of the transactees do not have any other bank account except the one with Assessee co-operative society. In similar circumstances Hon'ble SUPREME COURT OF INDIA in the recent case of Commissioner of Income-tax v. Sahara India Financial Corp. Ltd., [2023] 153 taxmann.com 225 (SC), held as under :-

Section 269SS, read with section 271D, of the Income-tax Act, 1961 - Deposits - Mode of taking/accepting (Penalty) - Assessment year 2009-10 - Assessing Officer imposed penalty upon assessee, a non-banking finance company, which had accepted cash deposit in violation of section 269SS - High Court by impugned order deleted penalty on ground that depositors belonged to rural areas where adequate banking facilities were not available - Whether there was no reason to interfere with impugned judgment and, thus, instant appeal was to be dismissed - Held, yes (Paras 2 and 3) [In favour of assessee]

Similar view was also taken by the SURREME COUAT OF INDIA in the case Commissioner of Income-tax v. Sahara India Mutual Benefit Co. Ltd. [2023] 153 taxmann.com 405 (SC), wherein if was held as under:-

Section 271D, read with sections 271E and 273B, of the Income-tax Act, 1961 - Penalty - For failure to comply with provisions of section 269SS (Reasonable cause) - Assessee was a mutual benefit company doing business of mobilization of deposits from members/shareholders - Tribunal deleted penalty imposed on assessee under sections 271D and 271E

after considering assessee's business realities, difficulties in mobilizing deposits from people of small incomes, agriculturists and rural dwellers - High Court by impugned order held that revenue could not bring on record any material to show that finding of fact recorded by Tribunal as to existence of reasonable cause was perverse and thus, order of Tribunal could not be disturbed - Whether there was no reason to interfere with impugned judgment and, thus, appeal was to be dismissed - Held, yes [Paras 1 and 2] (In favour of assessee]

When such a leverage can be given to a private finance corporation, why should the Primary agricultural co-operative society be excluded? Accordingly, it is held that since the Assessee is operating in a rural environment dealing with mostly agriculturists and landless labourers, there exists a reasonable cause for the Assessee to repay the deposits accepted from the members in cash. Accordingly, the penalty of Rs.33,02,43,427/- imposed u/s. 271E of the Act by the JCIT is deleted and the grounds of appeal no. 1 to 8 are hereby allowed.”

3. Learned CIT-DR quotes (2020) 116 taxmann.com 141 (Kerala) in case of N.S.S.Karayogam v. CIT that once the assessee is not exempted from the rigor of both sections 269SS and 269T of the Act for availing loans / deposits in cash or in repayment thereof, the Assessing Officer had rightly levied the penalties herein in its hands. We find no merit in the Revenue's instant sole substantive ground as the said case law nowhere dealt with lack of banking facilities itself, before upholding sec.271D of the Act. We further find that the said issue had in fact claimed an NBFC as exempted, which was found as not acceptable. Suffice to say, it is already came on record that in assessee's case, the parties concerned are its members in remote areas not having banking facilities. That being the case, we have no reason to

interfere the CIT(A)'s detailed discussion deleting the impugned penalty(ies). Ordered accordingly.

4. These, Revenue's twin appeals ITA.Nos.18 & 19/ Coch/2024 are dismissed, in above terms. A copy of the common order be placed in the respective case files.

Order pronounced in the open court on this 07th Day of November, 2024.

Sd/-
(Amarjit Singh)
ACCOUNTANT MEMBER

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

Cochin ; Dated : 07th November, 2024.
Devadas G*

Copy to :

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

Asst.Registrar/ITAT, Cochin