

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री संजय गर्ग, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SRI SANJAY GARG, JUDICIAL MEMBER
&
SRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 535/KOL/2024
Assessment Year: 2017-18**

Paharhati O Uttar Memari Cooperative Agricultural Marketing Society Ltd.	Vs.	ACIT, Ward-2(2), Burdwan
(Appellant)		(Respondent)
PAN: AABAP2090D		

Appearances:

Assessee represented by: Amit Agarwal, AR.

Department represented by: Yogesh Mehare, Sr. DR.

Date of concluding the hearing : January 1st, 2025

Date of pronouncing the order : January 16th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

The present appeal filed by the assessee pertaining to the AY 2017-18 is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') dated 24.01.2024 arising out of the penalty order framed u/s 271D of the Act dated 31.05.2022.



2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. That the learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi was not justified in upholding the action of the Assessing Officer of penalized of Rs. 64,33,313.00 on account of ‘cash received of Rs. 20,000.00 or above in a single transaction against repayment of KCC Loan and advance’ under section 271D of Income Tax Act, 1961 because the appellant is not an individual, but a Primary Agricultural Co-operative Society. So, the provision of section 269SS is not valid.

2. That the learned Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi was not justified in upholding the action of the Assessing Officer that in the original order under section 144 of Income Tax Act, 1961 passed by the learned Assessing Officer is invalid. Therefore the penalty order under 271D of the Income Tax Act, 1961 is also invalid.

3. That in exercise of the power to penalize under aforementioned section 271D of Income Tax Act, 1961, the learned Commissioner of Income Tax (Appeal) should have applied his judicial mind and examine the records of the case and could have come to the conclusion that the condition precedents u/s 269SS were satisfied and requirements of law are fulfilled on the facts and circumstances of the case or not.

4. The learned Commissioner of Income Tax (Appeal) should have applied his judicial mind on justification that the section 269SS is not applicable for Co-operative Society as transaction of Co-operative Societies are only with members which cannot be treated as transaction by a person with another person.

5. The learned Commissioner of Income Tax (Appeal) should follow the previous order under section 250 dated 14.08.2023 for penalty order under section 271E of The Income Tax Act, 1961 to delete this penalty order under section 271D passed by the learned Assessing Officer.

6. For that on the facts of the case, the ex-parte order passed by A.O without giving reasonable opportunity of hearing and not served any notice properly to the assessee which is completely arbitrary, unjustified, illegal.

7. Restrictions imposed by Section 269SS and 269T are not applicable in the case of Co-operative Societies. There are several decisions of ITATs to the effect that Section 269SS and 269T are not applicable to Cooperative Societies as transactions of Co-operative Societies are only with members



which cannot be treated as transaction by a person with another person. For that reason, Section 269 ST also is not applicable to Co-operative societies. Some of the decisions in the subject matter are quoted below:-

In view of the transaction took place between the assessee and its member, the strict provisions of the sec.269SS/269T cannot be applied. Income Tax Appellate Tribunal, Hyderabad The Citizen Co-Op. Society Ltd., vs. Assessing officer on 19 October, 1997 The repayments of the deposits were made to the Members of the Society and it is obvious that the assessee Society entertained a Bonafide belief that no contravention of any provisions of Income-tax Act is being made while making the repayments of loans/deposits in cash.

Income Tax Appellate Tribunal , Pune Muslim Urban Co-Op. Credit Society vs. Jt. Commissioner of Income tax, Sangli- on 25 March, 2004 According to us, these observations of the Tribunal are good enough to show that the view of the assessee society that its members being not any separate/distinct persons as contemplated in section 269T, the deposits repaid to them were not covered by the said provisions was a possible or conceivable view and the belief entertained by it on the basis of such view was a bona-fide belief. As such, considering all the facts and circumstances of the case, we are of the view the assessee society had entertained bona-fide belief that the deposits repaid by it to its members were not covered by the provisions of section 269T and this bona-fide belief coupled with the fact that the deposits were genuine and were also accepted and repaid in the regular course of business constitutes a reasonable cause for its failure to comply with the requirements of section 269T. In that view of the matter, we find no justification in the action of the learned CIT (A) confirming the penalty imposed U/s 271E and reversing his impugned order, we direct the A.O. to cancel the said penalty (Copy of some Judgement has been enclosed) The Appellants books of accounts has been audited by the Co-operative Auditor, Government of West Bengal. All cash receipts and payments accounts, Bank Statements, and all ledger accounts has been properly checked and verified by auditor. Trading, Profit and Loss accounts and Balance sheets represent a true and fair view in all respect. The Profit or Loss has been disclosed accordingly. It is very much authenticated (Copy of Audited Accounts has been enclosed) Therefore The Penalty order has been passed by charging penalty u/s 271D is equivalent to the amount of cash received in contravention of Provision Sec 269SS of the I.T. Act 1961. Amount taken in contravention of Sec 269SS of Rs. 64,33,313 is invalid.

8. That the appellant craves leave to supplement, amend, add, substitute, cancel, delete or otherwise modify all or any of the grounds herein before or at the time of hearing, if necessary, so arise.”



3. Brief facts of the case are that the assessee is a Primary Agricultural Cooperative Credit Society (PACS) and has been registered under the West Bengal Co-operative Society Act 2006, with No. 5 on 31.03.1959 by the then Registrar of Co-operative Societies with the objects as stated in the clause no.4 of the Bye Laws of the society. The main objects of the society are (a) purchase and sale of agricultural products, (b) to Provide credit against mortgage of agricultural product, (c) to supply Fertilizer pesticides, seeds, agricultural equipment etc. to its member society as per the bye-laws. The assessee had not filed the return of income for the A.Y. 2017-18 and assessment u/s 144 of I.T. Act 1961 was completed by the ITO Ward-2(2), Burdwan on 24.12.2019 on the assessed income of Rs. 1,93,57,340/-. During the course of the assessment proceedings, it was found that the assessee had received/accepted cash of Rs. 20,000/- or above in a single transaction against repayment of KCC loan or other loan totalling to Rs.64,33,313. As per the order u/s 143(3), Dt. 23.12.2019 the amount of Rs. 64,33,313/- was added to the total income of the assessee u/s 269SS of the Act. As the assessee accepted the loan in contravention of the provision of section 269SS of the I.T. Act, which attracts penalty proceedings u/s 271D of the I.T. Act, the penalty proceeding was initiated and penalty u/s 271D was imposed at Rs. 64,33,313/-.

4. Aggrieved with the penalty order, the assessee filed an appeal before the Ld. CIT(A) who relied upon the decision of Hon'ble ITAT Cochin in the case of Hindalco Employees Co-operative Credit Society Ltd. Vs. ACIT, [2014] 49 taxmann.com 309 (Cochin-Trib.), which has relied upon the decision in the case of CIT Vs. Kumbakonam Mutual Benefit Fund Ltd. [1964] 53 ITR 241 (SC) in which it has been held that



the principle of mutuality is not applicable to the share holder of a company and upheld the penalty by observing as under:

6.3 In the instant case too, the appellant has not furnished any break-up of the deposits or alas furnished any reasonable cause for accepting deposits in the form of cash. The decision also speaks of how the members and society are different and that there is no concept of mutuality between a member advancing a deposit and the society accepting the deposit as both the persons as per section 2(31) of the IT Act are different persons. The appellant- society was unable to explain reasonable cause for receiving deposits in cash from its members and thus this appellate authority is of the opinion that there is contravention to the provisions of Section 269 SS and the penalty levied u/s 271D is valid. The grounds made by the appellant are dismissed and the penalty levied u/s 271D is sustained.

5. Rival contentions were heard and the submissions made have been examined. The assessee requested that penalty was not leviable as there was mutuality between the members and the society and the deposits were taken from the members. The assessee also pleaded that in the same year, penalty u/s 271E was also levied which was deleted by the the Ld. CIT(A) and requested that on the same grounds the penalty u/s 271D should also be cancelled. However, the same did not find favour with the Ld. CIT(A) and the appeal was dismissed. Aggrieved with the order, the assessee filed an appeal before us.

6. We have considered the submissions made. In the assessment order the sum of Rs. 6433313/- has also been added to the income of the assessee and once the amount was added to the income, the same lost its character as loan and on this ground alone the levy of penalty was not justified. Further, in the case of Kumbakonam (supra), which has been relied upon in the case of Hindalco (supra), which has been



made the basis for denying the benefit of mutuality, the concern was a company in which the share holders are distinct as the company has a separate legal entity while in the case of the assessee, the status is of a society which is an association of persons and, therefore, the decision relied upon by the Ld. CIT(A) to hold that the members of society are different and there is no concept of mutuality is not justified. Further, in the course of the proceedings in ITA No. 1455/KOL/2023 for A.Y. 2017-18 order dated 18.11.2024 it has been held that the amount was not repayment of loans received from the members but was disbursed as loans to the members in cash. Section 273B of the Act specifies that the penalty u/s 271D shall not be leviable if there is a reasonable cause. It has been held in the case of [Azadi Bachao Andolan Vs. UOI [2001] 116 Taxman 249 (Delhi) that the word 'reasonable cause' has in law the prima facie meaning of reasonable with regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. The reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of bona fides.

7. Thus, when viewed as per the provision of the Act, it is apparent that the Ld. CIT(A) was not justified in holding that the concept was mutuality was not applicable to the assessee and there was no reasonable cause. The assessee was of the belief that being a society, the receipt of loan from members did not violate the provisions of section 269SS of the Act and the principle of mutuality was applicable on the facts of the case. Further, since the amount has already been added to the income of the assessee, the provision of section 269SS are



applicable to the loan or deposit, the income added lost its character as loan or deposit and therefore penalty u/s 271D was not leviable. Hence, the order of the Ld. CIT(A) is set aside as there was no violation of section 269SS of the Act and the penalty of Rs. 6433313/- imposed by the Ld. AO is hereby cancelled.

8. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 16th January, 2025.

Sd/-

[Sanjay Garg]

Judicial Member

Sd/-

[Rakesh Mishra]

Accountant Member

Dated: 16.01.2025

Bidhan (P.S.)

Copy of the order forwarded to:

- 1. Paharhati O Uttar Memari Cooperative Agricultural Marketing Society Ltd., Paharhati Memari-II, Purba Bardhaman, West Bengal, 713168.**
- 2. ACIT, Ward-2(2), Burdwan.**
- CIT(A)-NFAC, Delhi.
- CIT-
- CIT(DR), Kolkata Benches, Kolkata.
- Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata