

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 1727/Bang/2024
Assessment Year : 2017-18

M/s. Doeguling Primary Agriculture Cooperative Society Ltd., Camp No. 3, Tattihalli Tibetan Colony, Mundgod – 581 411. Karnataka. PAN: AACAD1852C	Vs.	The Income Tax Officer, Ward – 1, Sirsi.
APPELLANT		RESPONDENT

Assessee by	:	Shri H. Siva Prasad Reddy – IRS (DCIT Retd.)
Revenue by	:	Shri Amith Doreraju M, Addl. CIT (DR)

Date of Hearing	:	14-11-2024
Date of Pronouncement	:	15-01-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the NFAC, Delhi dated 30/04/2024 in respect of the A.Y. 2017-18 on the following grounds of appeal:

“1. The impugned penalty order dated, 01-02-2022 passed u/s 271D of the Act is passed in haste violating the principles of natural justice and opposed to the facts of the case. Hence, the same is void ab initio.

Penalty u/s 271D

2.1. *The learned AO as well as the learned CIT(A) failed to appreciate that penalty u/s 271D cannot be levied mechanically.*

(i) *Without considering the surrounding facts of the case in right & proper perspective.*

(ii) *Without considering the grounds taken & submissions made by the assessee.*

(iii) *Without appreciating that section 269SS is not attracted to the deposits received from its members, who are agriculturists.*

(iv) *Without considering the submissions and the principles laid down in the relied upon cases.*

(v) *Without considering the intent of Circular of the CBDT dated, 25-03-2004 which has directed not to levy the penalty u/s 271D/271E indiscriminately against the co-operative societies and keep the provisions of section 273B in view which mandates that the penalty should not be levied if there is a reasonable cause.*

2.2. *In the light of the above, the learned CIT(A) erred in sustaining the penalty of Rs. 85,06,510/- levied u/s 271D of the Act.*

3. *The grounds are taken without prejudice to one another and the Appellant craves leave to add or delete or modify or revise any ground at the time of hearing before the Hon'ble Tribunal.*

For these and other grounds that may be urged at the time of hearing, it is prayed that the Hon'ble Tribunal may be pleased to allow the appeal in the interest of the equity and justice."

2. The appeal has been filed by the assessee before this Tribunal with a delay of 73 days and the assessee had submitted the reasons in the delay condonation affidavit and we have perused the reasons and satisfied that the assessee has a valid reason for not presenting the appeal before this Tribunal within the period of limitation. We therefore condone the said delay of 73 days in filing the appeal before this Tribunal.

Now we will take up the main appeal filed by the assessee for adjudication.

3. The brief facts of the case are that the assessee is a co-operative society registered under the provisions of the Karnataka Co-operative Societies Act and filed their return of income on 24/06/2017 and declared a Nil income. Thereafter, the case was selected for scrutiny under CASS and assessment was completed u/s. 143(3) of the Act by accepting the return of income filed by the assessee. At the time of assessment proceedings, the AO on verification of the cash book, found that the assessee had accepted deposits of Rs. 20,000/- and above by cash for which the AO had initiated penalty proceedings u/s. 271D of the Act for the alleged contravention of 269SS of the Act. The assessee filed their reply to the notices issued by the AO and contended that the deposits are received only from the members of the society and not from the any other person to attract the provisions. Further, the assessee submitted that the deposits made by the members could not be treated as loan or deposit in order to attract section 269SS of the Act. The assessee also relied on the order of the Hon'ble Hyderabad Tribunal reported in (2010) 41 DTR 305 (Hyderabad) in the case of Citizen Co-operative Society Ltd. vs. Addl. CIT. The AO not accepted the explanation offered by the assessee for the reason that the assessee had not shown that there is any business exigency to accept the loans / deposits in cash. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and once again explained the details and prayed to allow the appeal. The Ld.CIT(A) also dismissed the appeal on the very same ground that the assessee had not proved the business exigency to accept the loans / deposits in cash from the members. As against the said order of the Ld.CIT(A), the assessee is in appeal before this Tribunal.

4. At the time of hearing, the Ld.AR brought to our notice that the assessee had properly explained the facts but in spite of that the AO had confirmed the levy of penalty for the reason that the assessee had not

produced any cogent material or evidence to show that there is any business exigency on the part of the assessee to accept the loans / deposits in cash.

5. The Ld.AR further submitted that the violation mentioned in section 269SS would not be attracted in the present case since the assessee received the deposits from the members and whose identity is verifiable and also contended that the deposits are not made from any other person not connected with the assessee. The Ld.AR further submitted that even though the assessee had relied on the order of the Hon'ble Hyderabad Tribunal, both the authorities had not discussed anything about the same which is also on the very same set of facts found in the present case. The Ld.AR also produced the copy of the reply filed by the assessee along with the acknowledgement and the acknowledgement for filing the return of income, statement of income, consolidated balance sheet as on 31/03/2017, consolidated profit and loss account for the year ended 31/03/2017, receipts and payments account for the year ending 31/03/2017, the audit report in form 3CA and 3CD. The Ld.AR therefore prayed to allow the appeal since the levy is not any tax but only penalty.

The Ld.DR relied on the orders of the lower authorities and submitted that it is a fact that the assessee had received deposits more than Rs. 20,000/- in cash and therefore they have committed the violation as prescribed in section 269SS of the Act and therefore penalty u/s. 271D is rightly levied and confirmed by the authorities.

6. We have heard the arguments of both sides and perused the materials available on record.

7. First we will peruse the reply filed by the assessee to the show cause notice issued by the AO which is as follows:

To,	
Additional/Joint Deputy/Assistant Commissioner of Income Tax	
National e-assessment Centre, New Delhi	
Dear Sir /Madam	
Su b:	Dropping the Penalty proceedings u/s 271D -request for -FY : 2016-17 relevant to the assessment year 2017-18 -reg.
Ref	1.ITBA/PNL/S/91/2021-02/1034648226(1)/ dated:05-03-2021 (Intimation letter)
	2. ITBA/PNL/M271D/2021-22/1034648193(1) /dated:06-09-2021
	3. ITBA/PNL/F/271D/2021-22/1035312489(1)/ dated:06/09-2021
	4. Our Adjournment request dated:08-09-2021
	With reference to the above We respectfully submitted as under :
01	Brief note on the activities of the Society
	Ours is a Co-operative society registered under Karnataka Co-operative Societies Act 1959. It has been mainly engaged in providing credit facilities to needy members. In addition to providing credit facilities to members, the society is engaging in trading in Tibetan made handicraft, providing tractor service to farmers, running work shop for tractors and two wheelers provision store, manufacturing of cement bricks, maintaining cable net work services and letting out of shops. In addition to that the society has been investing surplus funds as compliance to the statutory requirements and as part of investment activities of the society in Co-operative bank.
02	Composition of Membership of the Society

	<p>Membership: The members of the society wholly and exclusively consists of Tibetians immigrants fled to India during 1959 to 1960 due to repression of the Republic of China . The main occupations of members are agriculture, animal husbandry and sweater business as hawkers or street venders . Most of them are alien to languages and culture of India . Their life and movement is limited to the settlement area.</p>				
03	<p>Details of deposit and depositors</p>				
	<p>The details of loan accepted during the financial year relevant to the assessment year is as under:</p>				
	Member ship no.	Name of the depositor (Their PAN/Aadhar)	Address	Amou nt	Occupati on
	2850	Thendup Tharvay PAN:ALOFT481 3B	Tattihalli Mundgo d-581411 (Kar)	5,00,00 0	Farmer
	3162	Lobsang Thutop PAN:ASVPT373 4H	---do---	9,00,000	Farmer
	2902	Tenzin Kunga PAN:CFAPK472 1H	=--do--	10,00,000	Farmer
	1683	Dhondup Dorjee PAN:BGXPD945	---do---	6,06,510	Farmer

		2M			
	2753	Namgyal Aadhar No.55186881905 1	---do---	10,00,000	Farmer
	593	Tashi Dhondup PAN:CIRPD2644 E	---do---	10,00,000	Farmer
	2845	Tenzin Wangpo PAN:ACPPW78 31G	---do---	9,00,000	Farmer
	2006	Tenzin Yangphel	---do---	6,00,000	Farmer
	2004	Tenzin Palmo	---do---	10,00,000	Farmer
	4034	Chemi Dolma	---do---	10,00,000	Farmer
	Total			85,06,510	
04	Brief reasons that the society could not accept the deposit by account payee cheque or account payee demand draft				
The above depositors are					
	(a) Regular members of the Society admitted as per the bye-laws of the society . As per the by-laws they are entitled to vote and receive the dividend				
	(b) Non-residents of India living in the refugee camp under the				

	Registration of Foreigners Rule 1939.
	(c) are agriculturists, who are not known the local language for transacting with banks located in the camp where they are residing
	(d) being refugees facing problem in opening banks accounts with Scheduled or Co-operative banks as they cannot comply with the KYC norms prescribed by the bank (There is only one nationalized bank and Co-operative Bank in the Camp)
05	Intention of the Section 269SS in the Act
	We would like to submit that the very intension of introducing the section 269SS in the Finance Act 1984 was to curb the practice of giving false explanation about the cash or unaccounted deposits found during the search actions. Relevant portion of the Section is reproduced here under for your kind reference which read as under :
	<i>"Unaccounted cash found in the course of searches carried out by the Income tax department is often explained by tax payers as representing loans taken from or deposits made by various persons. Unaccounted income is also brought into the books of account in the form of such loans and deposits and tax payers are also able to get confirmatory letters from such persons in support of their explanation. With a view to countering this device, which enables taxpayers to explain away unaccounted cash or unaccounted deposits, the Finance Act has inserted a new section 269SS in the Income tax Act debarring persons from taking or accepting, after 30th June, 1984, from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft... .."</i>
	From the above Memorandum it is clear that the intention of the section is to curb the practice of concealing of un accounted money which is not in the instant case as the society has account each and every transactions of acceptance of deposit and the accounts of the society is subject to Audit under Karnataka Co-operative Societies Act 1959 and Income tax Act Further , the books of accounts is subject to audit by the Auditors of Tibetain Government in Exile .
06	Legal position of applicability of Section 269SS to Co-operative societies . We respectfully submit that in Citizen Co-operative Society Ltd. v. Addl. CIT (2010) 41 DTR 305 (Hyd.)(Trib.)' it was held that 'Money received by assessee co-operative society from its member/director and their relatives by way of deposits and loans given to them as part of its banking activities cannot be considered as "loan" or "deposit" so as to attract section 269SS or 269T, as the assessee is working on the concept of mutuality and its directors or members are not covered by the expression "any other person" occurring in

	section 269SS, more so when the assessing officer has accepted the genuineness of such deposits and the assessee was under bonafide belief the provisions of section 269SS and 269T are not applicable. (A.Ys. 2006-07 and 2007-08) Citizen Co-operative Society Ltd. v. Addl. CIT (2010) 41 DTR 305 (Hyd.)(Trib.)'
07	Adverse financial implication on the society :
	If the penalty of Rs.83,06,510 (85,06,510 -20000x10) is levied on the society , the society would go into liquidation as the share capital of the society as per the latest balance sheet as on 31-03-2021 is about Rs.120 lakhs . The society is going to be suffered from liquidity for its day to day transaction.
	Humble prayer of the Society : We earnestly request you sir not to initiate penalty which will adversely affect the society as <ul style="list-style-type: none"> ➤ There is no intention of evading the tax by the depositors and the society ➤ Those deposits have been accepted and deposited in cash for genuine reasons ➤ The transactions has been accounted by the society ➤ Levy of penalty adversely affect the financial position which may lead to liquidation of the society
08	Condoning the delay in submission of the information : Due to severe spreading of COVID-19 in the Settlement area there is restriction in movement of staff , affect of the virus to some employee further affected the movement . All thses reasons caused delay which may kindly be condoned .

Thanking you Sir

Yours faithfully

Sd/-

(Chief executive)

Members KYC being copies of PAN card, Aadhar card have been enclosed for kind perusal:

CERTIFIED COPY



H. SIVA PRASAD REDDY
Deputy Commissioner of Income Tax (Retd.)

8. Along with the reply, the assessee had also enclosed the KYC details such as copies of PAN Card, Aadhaar Card for due verification of the assessing officer. As seen from the reply filed by the assessee, we are able to found that the assessee society was formed only for the welfare of the Tibetan immigrants who have fled to India during 1959-1960 because of the repression made by the China. The society is mainly engaged in providing credit facilities to its members who are all Tibetians and who are all carrying on the agricultural activities. The members of the society are also carrying on the business of animal husbandry and sweater business and they are not able to interact with the locals because they are alien to the local language and the culture of India. The members carried on their activities inside the settlement area. The members are all non-residents of India living in the refugee camp established under the Registration of Foreigners Rule 1939. Because the members of the society are all non-residents and not well versed with the local language, they are not able to transact with the bank located in their camp. Further, the members of the society were also not able to open bank accounts for want of some records. In such circumstances, the members would feel free to transact with the assessee society since the assessee society is also headed by a Tibetan.

9. On considering the above said facts, we are of the opinion that the assessee society is not on par with the other societies and its members. Because of the necessity, the members would deposit their earning in their account maintained in the society and get interest from that. It is not the case of the AO that the assessee had received deposits from third parties who are all not connected with the society but the AO himself had accepted the fact that the deposits are made only by the members and also furnished the details of the members. Therefore in the present case, the amounts received in cash could not be treated as a violation to attract penalty u/s., 271D of the Act.

10. Further, we have also considered the intention for inserting section 269SS and the corresponding penalties which is as follows:

“ the CBDT has explained the object of introduction of s. 269SS by the Finance Act, 1984, in its Circular No. 387, dt. 6th July, 1984, (1984) 43 CTR (St) 3 : (1985) 152ITR (St) 1 thus :

'Unaccounted cash found in the course of searches carried out by the IT Department is often explained by taxpayers as representing loans taken from or deposits made by various persons. Unaccounted income is also brought into the books of account in the form of such loans and deposits, and taxpayers are also able to get confirmatory letters from such persons in support of their explanation.

With a view to circumventing this device, which enables taxpayers to explain away unaccounted cash or unaccounted deposits, the bill seeks to make a new provision in the IT Act debarring persons from taking or accepting, after 30th June, 1984, from any other person any loan or deposit otherwise than by an account payee cheque or account payee bank draft, if the amount of such loan or the aggregate amount of such loan and deposit is Rs. 10,000 or more. This prohibition will also apply in cases where on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), and the amount or the aggregate amount remaining unpaid is Rs. 10,000 or more. The proposed prohibition would also apply to cases where the amount of such loan or deposit together with the aggregate amount remaining unpaid on the date on which such loan or deposit is proposed to be taken, is Rs. 10,000 or more.”

11. Therefore it is clear that the legislature had inserted the provisions only to curb the tax evasion whereby huge transactions are made outside the books of accounts by way of cash. This circular is cited in the order of the Hon'ble Hyderabad Tribunal which was relied on by the assessee. In the present case, there is no iota of evidence to show that the cash transactions made by the assessee is to evade any payment of tax or concealment of income. In fact all the deposits are made by the members which was duly recorded in the books of accounts of the society. Therefore, the cash

received from the members could not be equated with the cash received from any other persons. Further, the assessee society is established only for the welfare of the Tibetan refugees and the AO had accepted the return of income filed by the assessee u/s. 143(2) of the Act without making any additions to the returned income. It shows that the assessee is properly maintaining the books of accounts and no concealment of income was there during the course of their activities. If the assessee had received the cash more than Rs. 20,000/- from any other persons, it can be treated as a violation and therefore penalty could be imposed u/s. 271D of the Act. The financial statements filed by the assessee would also exhibit that everything received by the assessee had been properly accounted for, audited by an independent auditor and also by the auditor appointed by the Registrar of Co-operative Societies. No authorities have found anything wrong in the books of accounts. In such circumstances, we are of the view that there is no violation committed by the assessee in order to impose penalty u/s. 271D of the Act.

12. Further, we also rely on the findings given by the Hon'ble Hyderabad Tribunal reported in 41 DTR 305 in the case of Citizen Co-operative Society Ltd. wherein it was held as follows:

“17. In the present case, assessee is subject to rules laid down by cooperative society Act and the assessee has been carrying out banking operation which are under audit of various authorities and therefore the assessee could not be put at par with the other cases of other concerns since the assessee have no control in respect of the amounts received from the customers in the form of deposits. The customer usually go to the bank to make deposits with an intention of earning interest and the assessee is to maintain the same and the depositor operate those accounts and the deposits repayable on expiry of specific period. There is no dispute in these assessment years that the assessee has been carrying on the banking transactions which may be with or without approval of the Reserve Bank of India. If the carrying on the operations of the banking activities is not at all approved by the Reserve Bank of India or the assessee is having no requisite licence

from the authorities, the concerned authorities could have stopped the same or taken action against the assessee. Once the assessee is permitted to carry on the banking activities, then the assessee is bound by the relevant provisions of the Banking Regulations Act. The bank, for all its banking activities is strictly governed by the Banking Regulation Act 1949. 'Banking' is described as accepting, for the purpose of lending or investment of money, due from the public repayable on demand or otherwise and withdrawal by cheque, draft order or otherwise. The deposits held by the assessee are its stock in trade. The deposits and loans are just like buying and selling of goods/products. The amounts in account maintained by the assessee bank were not in the control of the assessee. In the sense that the bank may be required to pay at any point of time. In case of banks, like present assessee, the customer identity required to be taken with proper introduction, photographs and address etc. This is so because, any person from general public can come and open a deposit account with the bank. The acceptance of deposit by this assessee cannot be equated with other kind of assessees. In other cases, normally, deposits are accepted from the people connected with are known to the depositees. It is in accordance with the terms of section 131 of the Negotiable Instruments Act. The customer introduction had to be taken to avoid any kind of fraud. The assessee like present is not obliged to question the source of deposit made by its customers. Also, the customer can keep the deposit for a period which is according to their convenience . The amount has to be repaid by the assessee to its customer immediately on demand. These features distinguish the case of the assessee from other ordinary assessees. Therefore, the provisions of section 271D/271E to be viewed in the background of these aspects. Further, the assessee is subject to periodical inspects and audits by various statutory authorities and in case of any default assessee is liable for having penalty besides cancellation of its licence. This is not the case with other assessees. Further, the assessee has to maintain confidentiality in respect of the information collected by it from its customers, such information is not to be divulged to outsiders.

There is no such obligation with other assessee. In spite of this, the assessee has furnished the information as available with it. Now if the address of the customers of the assessee found to be incomplete, this cannot form the basis for levying the penalty. There is no finding by the lower authorities that the assessee violated any guidelines

issued by the Regulatory authorities. Usually, the bank was not required to go for detailed verification of addresses, whereabouts of its customers. There is no absolute obligation to assessee to make enquiries about the proposed customer so as to examine the genuineness/sources of the deposits. Bank usually rely in the introduction of any old customer and that if the bank bona fide acted on the reference of a customer, it can avail of the protection under section 131 of the Negotiable Instrument Act. Further, the bank is accepting the deposits and there is no involving of any risk to the bank, even the rule of proper introduction did not operate strictly. It is to be noted that the assessee while doing the business in ordinary course, if it puts various conditions, the expected business may not be able to achieve. Therefore, it cannot be said that assessee did commit any infringement or it is incorrect to say that there was any deliberate attempt on the part of the assessee to accommodate tax dodgers. The deposits accepted and repaid by the assessee were part of its Banking activities and the depositors were its Members. The deposits received by the assessee, which was carrying on the banking business, were not in the nature of taking of any loan or deposits for the purpose of funding its project as a source of investment, that rather, it was in the business of accepting deposits that in view of the nature of such business, the scrutiny of the deposits could not be the same as in the case of assessee making entries of deposits on account of loan etc. The authority vested with the power to impose penalty as a discretionary power not to levy the penalty. It is all very well to paint justice blind, but she does better without a bandage round the eyes. She should be blind indeed to favour or prejudice, but clear to see which way lies the truth and the less dust there is about the better. We made attempt to examine the truth. We found that there is no addition on account of these impugned deposits in the return of income it means that deposits are genuine. Veracity of creditor not doubted by the Revenue. Assessing Officer did accept the deposit as genuine. The breach of provisions of sections 269SS/269T from a bona fide belief. Ex facie it is a venial breach. The law takes no notice of trivialities. Cash payments and receipts made because of business exigencies. The mere violation of a statutory obligation is not liable for any penalty more so, undisputedly the penal action is quasi criminal nature. The income of the assessee is exempt under section 80P of the Act and more so, there is no establishment of deliberate and intentional violation of the provisions by the assessee, that too, in order to hide

any income or to evade any payment of tax. Usually penalty will not be imposed unless the party concerned has acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation and that penalty will also not be imposed merely because it is lawful to do so. The imposition of penalty for failure to perform statutory obligation is only a discretionary power of the authority exercising judicial functions on consideration of all the relevant circumstances. If the assessee acted on genuine belief that penal provisions have no application to deposits and it applied only to other kind of assessee, then penalty could not be levied. As such, in present case, there exists reasonable cause in accepting the deposits in cash and paying by cash. Assessee may therefore be exonerated from the levy of penalty. The other contention of the assessee counsel is that the words 'any other person' in section 269SS or 269T does not denote the director of the assessee or members of the assessee society, when read with the legislative intent as reproduced in Board circular No. 387, dated 6-9-1984. The term 'any other person' in the context of introduction of section 269SS appears to mean persons who are not very intimately or very closely connected with the assessee. In the present case the assessee accepted the deposits and repaid the same either to the members/directors or to their dependents children or their associated concerns or their relatives. Further, we have carefully pursued bye-law of the assessee society. As seen from the bye-law, it is working on the concept of mutuality. Where a number of persons coming together and contribute a common fund for financing of some venture or object and will in this respect have no dealing or relation with any outside body, then any transactions with those persons cannot be regarded in any sense as loan. There must be complete identity between the contributors and the participators. If these requirements are fulfilled it is immaterial what particular form the association takes. Trading between people associating together in this way does not give rise levy of penalty. Where the trade or activity is mutual, the fact that, as regards certain activities, certain members only of the association take advantage of facilities which it offers does not affect the mutuality of the enterprise. The contributor of the fund are entitled to participate in the surplus, thereby creating an identity between the participators and contributors and acceptance of deposits and repayment of the same is incidental to the attainment of the main object of the

assessee society. The concept of mutuality is primarily based on the principle that one cannot make profit from himself. Thus, when the facilities are provided to only to members of the society, who provide the funds to the society and their identity with the funds and their participation in the surplus arising from the said fund is unmistakably found then the principles of mutuality will apply. The fact of the present case, are akin to the above position and all the ingredients necessary for holding the application of the concept of mutuality are satisfied because there is complete identity between the contributors and participators and the requirement of the law is that contributors of the common fund and the participators in the surplus must be an identical body. That does not mean that each member should contribute to the common fund that or that each member should participate in the surplus or get back from the surplus precisely what he has paid. What is required is that the members as a clause must be able to participate in the surplus. It is immaterial whether the surplus is paid back to the members in cash or is put to reserve with the society for his development and for providing better amenities to the member. In view of the transaction took place between the assessee and its member, the strict provisions of the section 269SS/269T cannot be applied.

17.1 Further, the Legislature was intending to curb the tax evasion in a 'search situation' and referred to confirmatory letters produced in such situations to counter 'cash found'. A statute is an edict of the legislature and the conventional way of interpreting or constituting a statute is to seek the intention of its maker. A statute is to be constitute according to the intent of them who make it. The legislature in a modern state is actuated with some policy to curb some evils or to some public benefits. A bare mechanical interpretation of the words without the application of a legitimate intent, devoid of any concept or purpose will reduce most of the remedial and beneficial legislation to futility. Keeping in view of the intent of the legislature behind the enacting sections 269SS/269T, it is clear that the loan or deposit brought in by the assessee was not to explain its unaccounted cash and, therefore the question of violating these provisions did not arise. The term 'various persons' and 'such persons' is to be understood only in relation to 'such situation' as the section itself was introduced to meet such situations only. Thus, the director or member of the assessee society is clearly not covered by the expression 'any other person'

occurring in section 269SS. The transaction in question cannot be considered as 'loan' or 'deposit' so as to attract section 269SS or section 269T of the Act. The transactions can also be attributed various exigencies of business carried on by the assessee and thus constitutes a 'reasonable cause' as contemplated by section 273B. The expression 'reasonable cause' has to be considered pragmatically and as it is transactions are openly done, to meet the exigencies of business, it can be said to constitute 'reasonable cause'. The bona fide business of transaction cannot be considered for levying the penalty under section 271D or 271E. More so, the assessee has been carrying on the banking business and it is having bona fide belief that provision of section 269SS/269T is not applicable to the assessee case and same is coupled with genuineness of the transaction constitute a reasonable cause and in such case the default on the part of the assessee is merely of a technical or venial nature and no penalty be levied.

18. To sum up, a harmonious construction of the relevant provisions of sections 271D, 271E and 273B clearly reveals the use of expression 'shall be liable to pay' in sections 271D and 271E and the provisions of section 273B providing that no penalty would be leviable if the person concerned proves that there are reasonable cause or the said failure clearly indicates these provisions give a discretion to the authority to impose the penalty or not to impose the penalty. Such a discretion has to be exercised in a just and fair manner having regard to the entire facts and materials existing on record. Ordinarily, a plea as to be ignorance of law cannot support the breach of a statutory provision but the fact of such a technical break due to ignorance of the relevant provisions of law or on account of bona fide belief, coupled with the fact that transactions in question are genuine and bona fide transaction were undertaken during the regular course of its business will not result in levy of penalty under sections 271D and 271E.

19. In view of the above discussion, we inclined to delete the penalty levied under sections 271D and 271E of the Income-tax Act for the assessment years 2006-07 and 2007-08.”

13. In the present case also, the assessee had established that they had received deposits from the members and not from any other person which is a prerequisite for treating the receipt of cash as violation u/s. 269SS of the

Act. Further the AO also accepted that the assessee had received the cash only from the members of the society. In such circumstances, we are also in agreement with the findings of the Hon'ble Hyderabad Tribunal cited (supra) and therefore we are also allowing the appeal filed by the assessee by deleting the penalty imposed u/s. 271D of the Act.

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

Order pronounced in the open court on 15th January, 2025.

Sd/-
(WASEEM AHMED)
Accountant Member

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 15th January, 2025.
/MS /

Copy to:

- | | |
|---------------|------------------------|
| 1. Appellant | 2. Respondent |
| 3. CIT | 4. DR, ITAT, Bangalore |
| 5. Guard file | 6. CIT(A) |

By order

Assistant Registrar,
ITAT, Bangalore