

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT
MEMBER
AND
SHRI PARESH M JOSHI, JUDICIAL MEMBER MEMBER

ITA No. 327/Ind/2024
Assessment Year: 2015-16

Income Tax Officer, Indore	<u>बनाम/</u> Vs.	Sewa Sahkari Sanstha Maryadit, Village Tillore Khurd, Indore
(Revenue/Appellant)		(Assessee/Respondent)
PAN: AABAS2718R		
Assessee by	S/Shri Ashish Goyal & N.D. Patwa, ARs	
Revenue by	Shri Ram Kumar Yadav, CIT-DR	
Date of Hearing	06.03.2025	
Date of Pronouncement	11.03.2025	

आदेश / O R D E R

Per Paresh M Joshi, J.M.:

This is an appeal filed by the **Revenue** who is aggrieved by order bearing Number ITBA/CSR/F/74/2024-25/1064064818(1) dated 12.04.2024 passed by Ld. CIT(A) Under Section 250 of the Act, 1961 (hereinafter referred to as the 'Act" for sake of convenience and ease). The relevant Assessment Year is 2015-16 and the corresponding previous year period is from 01.04.2014 to

31.03.2015. The aforesaid order of Ld. CIT(A) is hereinafter referred to as the "**Impugned Order**".

2.

FACTUAL MATRIX

2.1 That the assessee is M/s Sewa Sahakari Sanstha Maryadit, Village Tillore Khurd, Tehsil & District Indore, Madhya Pradesh with status as "**AOP**".

2.2 That it was noted by the Department of Income Tax that the assessee **had made repayment of deposit in excess of Rs.20,000/-** to various persons as per **Audit Report** to the tune of **Rs.1,03,15,781/-** otherwise than account payee cheque or account payee Bank Draft or through use of Electronic Clearing System through a bank account.

2.3 That in pursuance to this information a **penalty notice** was issued to the assessee on **08.04.2019** and date of hearing was fixed for 23.04.2019 requiring the assessee to show cause as to why penalty **u/s 271E** of the Act should not be imposed on them.

2.4 That the assessee in compliance to the aforesaid notice, furnished a written reply on **23.04.2019** (Reply copy not in PB nor in penalty order of Ld. A.O).

2.5 That in meanwhile because of change of the incumbent officer yet another penalty notice u/s 271E on 01.10.2019 date of hearing fixed on 11.10.2019 came to be issued to the assessee calling upon them to show cause as to why penalty **u/s 271E** of the Act should not be imposed upon them.

2.6 That the aforesaid notice dated 01.10.2019 was replied by the assessee vide their reply dated 17.10.2019 wherein it was contended by the assessee that by virtue of assessee being an **agriculture credit cooperative society** it is not covered by the provisions of 269SS/269T of the Act.

2.7 That the Ld. A.O in his penalty order dated 21.10.2019 ultimately held as under:-

"In these circumstances, the undersigned is satisfied that it is a fit case for imposing penalty u/s 271E for violating the provision of 269T of the Act. As the amount has been prescribed to be a sum equal to the amount of the loan or deposit (or specified sum) so taken or accepted, therefore, I hereby impose penalty of Rs.1,03,05,731/-. Issue notice of demand and challans accordingly".

2.8 That the assessee being aggrieved by the aforesaid penalty order of Ld. Joint Commissioner of Income Tax, Range-2, Indore preferred first appeal before Ld. CIT(A) in terms of Section 246A of the Act and which appeal by 'impugned order' was allowed in **favour of the assessee on basis of reasons specified therein.**

The Revenue being aggrieved by the "Impugned order" has filed the present appeal before us in terms of Section 253 of the Act and has raised following grounds of appeal against the impugned order in Form 36 which are as under:-

" 1. The Ld. CIT(A) was justified in deleting the penalty u/s 271E of the Act levied by the Joint Commissioner of Income Tax, Range-2, Indore for violating the provisions of section 269T of the Act as the penalty levied after due examination and rejection of the claim of the assessee of being an agricultural credit co-operative society being covered by the provisions of 269SS/269T of the Act."

3. **Record of Hearing**

3.1 The hearing in the matter took place before this Tribunal on 06.03.2025 when the Ld. DR for and on the behalf of the Revenue appeared and has placed on record of this Tribunal a synopsis containing pages 1 to 6. The Ld. DR interalia contended before us that the "Impugned order" is illegal, bad in law and not proper and therefore the same should be set aside by this Tribunal and

the penalty order of Ld. A.O dated 21.10.2019 should be restored. It was contended that the order of Ld. A.O imposing penalty u/s 271E for violating the provision of Section 269T is correct as **admittedly** it is an **undisputed** fact that the assessee's **own Auditor** has pointed out the violation of **Section 269T** in their "**Audit Report**". **The assessee has not disputed the "Audit Report" of their own auditor** in any manner whatsoever. Further the order of penalty passed by Ld. A.O dated 21.10.2019 is well merited and speaking order where entire gamut of relevant sections of Act dealing with imposition of penalty u/s 271E for violation of Section 269T is well analysed and considered. It was respectfully contended that the "Impugned order" has totally disregarded the statutory provisions of law which are **mandatory in nature**. By passing the "impugned order" the Ld. CIT(A) has misinterpreted the law. The law is clear and express u/s 269T and 271E wherein there is a complete prohibition on repayment of deposit through modes other than prescribed banking channels. That the Ld. CIT(A) in the "impugned order" has erroneously placed reliance on judicial precedents that are distinguishable on the facts and that the

same were totally in applicable to the facts and circumstances of the present case. The most peculiar feature of the present case is that the assessee did in fact repaid deposit contrary to the statutory scheme under the Act which are mandatory in nature and no **leeway of any kind whatsoever** is provided by the Act. Hence under these peculiar facts and circumstances there is **perse** violation of the Act in terms of Section 269T and hence imposition of penalty u/s 271E is justified. The assessee is credit cooperative society which is registered under **Madhya Pradesh Cooperative Societies Act 1960** and functions under the umbrella of Indore Premier Credit Cooperative Bank. The assessee society accepts deposits from its Members in cash and provides loans to its Members in cash. It was observed by the JCIT that the assessee had made repayment of deposits in **excess of Rs.20,000/- to multiple persons** which was **reflected** in the **audit report** aggregating to **Rs.1,03,15,781/-** through **cash** i.e. through modes other than by account payee cheque, account payee bank draft or Electronic Clearing System which is in the direct contravention of Section 269T of the Act. The assessee in reply to the show cause notice has failed to offer a

reasonable explanation and no plausible reason is mentioned therein hence levy of penalty of Rs.1,03,15,781/- is justifiable u/s 271E of the Act by Ld. A.O vide order dated 21.10.2019. The Ld. DR has contended that in the "impugned order" the Ld. CIT(A) has **deleted the penalty**. The Ld. DR has also contended before us that Ld. CIT(A) in the impugned order by having observed in para 5.1 that **"It is an undisputed fact that the appellant has repaid loans in cash amounting to Rs.1,03,15,781/- violating the provisions of Section 269T"**. It is further observed by the Ld. CIT(A) in the impugned order at para 5.2 that **"Section 269T prohibits a persons from repaying any loan or deposit exceeding Rs.20,000/- otherwise than by an account payee cheque or account payee demand draft or electronic & clearing system through a bank account"**. Therefore in view of these observation the Ld. CIT(A) ought not to have deleted the penalty in the impugned order by placing reliance on judgment of Hon'ble Rajasthan High Court in case of CIT V/s Lokhpal Film Exchange (Cinema) reported in (2003) 304 ITR 172 (Raj.) and further has erroneously concluded that assessee had **demonstrated a reasonable cause for the**

contravention. The Ld. DR pointed out that in Rajasthan High Court judgment (supra) assessee was **under a bonafide belief** that Tax Auditors **had not** highlighted any violation of Section 269SS/269T whereas in the stark contrast in the present case the Tax Auditors **have explicitly reported** the violation in the Audit Report. Thus assessee cannot **feign ignorance of the statutory provision.** Ld. A.O in penalty order has recorded this fact. Further claim of the assessee that repayment of deposit/ loans **is an inherent business activity akin to a banking function is untenable.** The statutory scheme of Section 269SS and 269T does not provide any blanket exemption to Credit Co-operative Societies. The legislative intend behind these provisions **is to curb unaccounted cash transactions** and the assessee's reliance on the **banking analogy is legally unsustainable.** The assessee's plea of a bonafide belief that Section 269SS/269T were in applicable lacks merit. The Tax Auditor's explicit mention of the violation **negates** any claim of **bonafide ignorance.** It is settled principle that ignorance of law is not an excuse. The Ld. DR contended that assessee arguments that no finding has been recorded in the assessment order for

imposition of penalty u/s 271E of the Act **is incorrect and law does not contemplate such a situation.** Reliance on the judgment of Apex Court in case of CIT V/s Jain Laxmi Rice Mills (2015) 64 Taxmann.com 75 (SC) and decision of ITAT, Indore Bench in case of RVT Technologies Ltd No. 275 to 277/Ind/2023) **are all wrong as statutory provisions of the Act are express and clear.** There are **no ambiguities** in the relevant Section of the Act. **Imposition of Penalty has no nexus with assessment order. It is an independent power and proceedings are all independent.**

3.2 Per contra Ld. AR for and on behalf of the assessee contended that notice(s) for the imposition of penalty U/s 271E was first issued on 23.07.2018 by ITO 2(4), Indore (Page 21 of PB) and that the same was perse without jurisdiction. It ought to have been issued by JCIT as powers conferred are express. Reminder letter dated 18.09.2018 (PB page 22) issued by ITO 2(4), Indore too is without jurisdiction and it ought to have been issued by JCIT, as powers are expressly conferred upon him. In a worst case scenario even if the show cause notice dated 23.07.2018 is taken into consideration as having been rightly

issued the penalty order dated 21.10.2019 is time barred by virtue of Section 271E r.w.s 275(1)(c) which mandates that it should be passed within six months from completion of assessment proceedings. In the instant case, the assessment order was passed on 28.07.2017, whereas the show cause notice for penalty u/s 271E was issued on 23.07.2018. This itself was beyond 6 months from the end of the month of passing assessment order. Further penalty order was passed on 21.10.2019 which is beyond 2 years from passing of assessment order. The Ld. AR then contended that on page 23 of the PB there is **yet another notice dated 08.04.2019** which was issued by **Addl. Commissioner of Income Tax, Range-2, Indore** wherein the assessee was called upon to show cause as to why the penalty u/s 271E should not be imposed upon them for contravening the provisions of Section 269T of the Act in as much as assessee has repaid/given loan of Rs.1,03,15,781/- to various assessee's/persons **in cash** and the amounts is/are more than Rs.20,000/-. It was however **respectfully submitted** that if date of this show cause notice i.e. 08.04.2019 which was no doubt issued by the competent jurisdictional authority i.e. Addl.CIT then impugned penalty order

dated 21.10.2019 can be said to have been passed **within the time limit provided by Section 275(1)(c) of the Act.** The Ld. AR however contended that initial notice dated 23.07.2018 issued by ITO 2(4), Indore was perse without jurisdiction as ITO is not Joint Commissioner. If time from this illegal notice is reckoned, then the impugned penalty order dated 21.10.2019 though passed by JCIT **is time barred** by virtue of **Section 275(1)(c) of the Act.** It was next vehemently contended by the Ld. AR that in the instant case in so far as assessment order is concerned which is dated 28.07.2017 u/s 143(3) of the Act, the income tax authorities are not competent enough to initiate proceedings for penalty within the meaning of Section 269T and Section 271E of the Act as no satisfaction is recorded in course of any proceedings under the Act. Reliance was placed on the judgment of Hon'ble Supreme Court of India in case of CIT V/s Jain Laxmi Rice Mills case reported in (2015) 64 Taxmann.com 75 (SC) wherein it was held as follows:-

"As pointed out above, insofar as, fresh assessment order is concerned there was no satisfaction recorded regarding penalty proceeding under Section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, in so far as penalty under Section 271E is concerned, it was without

any satisfaction and, therefore, no such penalty could be levied." (emphasis applied)

The Ld. AR has also placed reliance on judgment of this Tribunal in case of RVT Technologies case ITA No. 275 to 277/Ind/2023 dated 30.04.2024 (Page 83-107 PB) wherein the issue is covered. Further the Ld. AR during the course of the hearing before this Tribunal in support of his contentions on legality and validity of notice(s) issued by ITO first and later on by the JCIT and so also the penalty order of Ld. Assessing Officer is time barred has placed reliance on judgment of Hon'ble Rajasthan High Court in case of JCIT Jaipur V/s Jitendra Singh Rathore reported in (2013) 31 Taxmann.com 52 (Rajasthan). Per contra Ld. DR has relied upon the judgment of Hon'ble Kerala High Court in case of Griha lakshmi Vision v/s Addl CIT reported in (2015) 63 Taxmann.com 116 (Kerala).

4. **Observations, findings & conclusions.**

4.1 We now have to examine the legality, validity and propriety of the "Impugned Order" **basis** records of the case.

4.2 We have carefully perused records of the case and have heard rival contentions.

4.3 We are of the considered view that broad issue which needs our determination is whether in the given facts and circumstances of the instant case (which we have set out herein above) there must necessarily be a satisfaction recorded against the assessee by Ld. A.O in the assessment order and/or in course of any proceedings under the Act for initiating the penal proceedings or not?

4.4 If answer to the above question is in affirmative whether penalty order passed by Ld. Assessing Officer is Nonest ?.

4.5 We hold that in the assessment order dated 28.07.2017 passed u/s 143(3) of the Act by ITO 2(4), Indore in respect of assessee there is not even a whisper on initiation of penalty proceedings against the assessee u/s 271E of the Act. There is no imputation or allegation of any type whatsoever against the assessee. The Ld. Assessing Officer in the said assessment order u/s 143(3) dated 28.07.2017 has held as under:-

“Relevant documentary evidences have been furnished during the course of proceedings. The details so furnished have been examined. After scrutiny of the return of income and details furnished by the assessee the returned income of the assessee is accepted.

“Assessed Income :- Nil”

Now since in the impugned Assessment order dated 28.07.2017 there is no finding and/or satisfaction with regard to acts, omissions or commissions on part of the assessee rendering themselves liable for penal/penalty action and that therefore, the penalty proceedings are separately being initiated against the assessee, **the very initiation of penalty proceeding vide Notice dated 08.04.2019 by JCIT/Addl.CIT becomes illegal and bad in law.** Our view is fortified by the judgment of Hon'ble Supreme Court of India in case of CIT v/s Jain Laxmi Rice Mills reported in 64 Taxann.com 75 (SC) wherein in para 2 to 5 Hon'ble Supreme Court of India has held as follows:-

"2. The assessee carried out this order in appeal. The Commissioner of Income Tax (Appeals) allowed the appeal and set aside the assessment order with a direction to frame the assessment de novo after affording adequate opportunity to the assessee.

3. After remand, the Assessing Officer passed fresh assessment order. In this assessment order, however, no satisfaction regarding initiation of penalty proceedings under Section 271E of the Act was recorded. It so happened that on the basis of the original assessment order dated 26.02.1996, show cause notice was given to the assessee and it resulted in passing the penalty order dated 23.09.1996. Thus, this penalty order was passed before the appeal of the assessee against the original assessment order was heard and allowed thereby setting aside the assessment order itself. It is in this backdrop, a question has arisen as to whether the penalty order, which was passed on the basis of original assessment order and

when that assessment order had been set aside, could still survive.

4. The Tribunal as well as the High Court has held that it could not be so for the simple reason that when the original assessment order itself was set aside, the satisfaction recorded therein for the purpose of initiation of the penalty proceeding under Section 271E would also not survive. This according to us is the correct proposition of law stated by the High Court in the impugned order.

5. As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under Section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, insofar as penalty under Section 271E is concerned, it was without any satisfaction and, therefore, no such penalty could be levied. These appeals are, accordingly, dismissed."

4.6 We are also of the considered opinion basis judgment of this Tribunal in case of RVT Technologies Ltd ITA No.275 to 277/Ind/2023 dated 30.04.2024 (Page 83 to 107 of PB) that there must be a satisfaction to be recorded by Ld. A.O in the assessment order for initiating the penalty u/s 271E of the Act for default of Section 269T of the Act. The Bench of ITAT, Indore had observed in the decision (supra) that for valid initiation of penalty there must be a satisfaction recorded to that effect in the assessment order and in the absence of any recording of satisfaction in the assessment order proceedings initiated for penalty u/s 271E of the Act are vitiated. Needless to repeat and

reiterate that in the instant case assessment order dated 28.07.2017 is silent on aspect of initiation of penalty proceedings u/s 271E of the Act. This is thus a undisputed fact. We also gainfully refer to another decision of ITAT, Indore Bench in case of Umakant Sharma V/s JCIT dated 19.07.2023 in ITA No. 364 to 366/Ind/2022 which is also referred and relied upon in RVT Technologies Ltd (supra) wherein in para 11 it is recorded that :-

*" 11. Therefore, it is pre-requisite condition that the initiation of penalty 271D/271E of the Act, there **must be assessment proceedings or proceeding arising from assessment order are pending in the case of the assessee.** Accordingly in the facts and circumstances of the case and following the judgment of Hon'ble Supreme Court as well as Coordinate Bench of the Tribunal in case of Vijayaben G. Zalavadia us. JCIT (supra), we hold that the penalty levied u/s 271D of the Act **without any assessment proceedings in the case of the assessee is not valid and liable to be quashed. We order accordingly**".*

4.7 We have also gone through the latest judgment of Hon'ble Rajasthan High Court dated 30th January 2025 in DB Civil Writ Petition No. 1102/2025 in case titled Sunil Agrawal V/s Asst. Commissioner of Income Tax, CC-4, Jaipur wherein Hon'ble Division Bench wherein in Para 2,3,4,5,6,7,8,9,11&12 has observed and recorded as under:-

"1. These writ petitions are being decided by this order as the facts and issues involved are same. Though in some of the cases penalty under Section 271D and in others under Section 271E of the Income Tax Act,

1961 (hereafter 'the Act of 1961') was imposed. The language of Section 2710 and Section 271E are analogous. For the sake of convenience, the facts are being taken from D.B. Civil Writ Petition No. 1102/2025.

2. This petition is filed seeking quashing of notices dated 01.10.2024, 03.01.2025, 13.01.2025 issued under Section 271E of the Act of 1961, for Assessment Year 2012-2013.

3. The brief facts are that search was conducted on the premises of the petitioner. The proceedings initiated under Section 148 of the Act of 1961 culminated in re-assessment order dated 12.03.2024 resulting in additions of Rs.9,90,000/-and Rs.23,785/- under Sections 69A and 69C of the Act of 1961 respectively. The order was passed after approval from the Additional Commissioner of the Income Tax (hereinafter 'ACIT'). On 01.10.2024 notice was issued to the petitioner for imposition of penalty under Section 271E of the Act of 1961. In the response dated 16.10.2024 the petitioner relied upon the decision of the Supreme Court in Commissioner of Income Tax Vs. Jai Laxmi Rice Mills reported in [(2015) 379 ITR 521 (SC)] to contend that there was no satisfaction recorded in the reassessment order for initiating the penalty proceedings under section 271E of the Act of 1961. The objections filed were rejected and a notice dated 03.01.2025 was issued. Hence, the present writ petition.

4. Learned counsel for the petitioners submitted that the issue involved that penalty under section 271D cannot be imposed if there was intent of AO to do so, is covered by decision of the Supreme Court in Jai Laxmi Rice Mills (supra).

5. Learned counsel for the respondent submitted that reply filed in the present writ petition is adopted in all the connected matters. Reliance is placed upon the annexures filed with the reply to the submit that the Deputy Commissioner of Income Tax (hereafter 'DCIT') vide communication dated 01.08.2024 referred the matter to the ACIT for imposition of penalty under section 271E and the ACIT on 24.09.2024 recorded the satisfaction. It is argued that there is no requirement under section 271E for assessing officer (hereinafter AO) to record the satisfaction. The counsel is not able to distinguish the citation relied upon by counsel for the petitioner.

6. The reassessment order was passed on 12.03.2024 and no satisfaction was recorded for initiating the penalty proceedings under Section 271E.

7. *The reliance on the reference made by the DCIT to ACIT on 01.08.2024 shall not enhance case of the department as the reference was after the conclusion of reassessment proceedings by the DCIT.*

8. *The satisfaction dated 24.09.2024 recorded by the ACIT cannot be equated with the satisfaction to be recorded in the reassessment proceedings by the concerned AO.*

9. *In Jai Laxmi Rice Mills (supra) the Supreme Court was dealing with the issue as to whether the penalty proceedings under section 271D are independent of the assessment proceedings. In that case, in the assessment order passed in pursuance to the remand no satisfaction was recorded for initiating the proceedings under section 271E. Though the AO stated for initiation of proceedings under section 271(1)(c). The penalty proceeding was quashed on the ground that in absence of satisfaction recorded by the AO the penalty can not be imposed.*

10. x

11. *In the case in hand the DCII had only recorded satisfaction for proceedings under Section 271(1)(c) of the Act of 1961 and no satisfaction was recorded to initiate penalty proceedings under Section 271D.*

12. *The issue involved in the present writ petition is squarely covered by the decision of the Supreme Court in Jai Laxmi Rice Mills (supra). The notice issued under Section 271E and the proceedings in pursuance thereto are quashed."*

We respectfully concur with the ratio laid down by Hon'ble High Court. We however observe that Ld. DR has not brought on record of this Tribunal any contrary decision to the effect that for imposition of penalty u/s 271E there is no necessity of any satisfaction to be recorded by Ld. A.O in the assessment order. However as and by way of abundant caution we note and observe that statutorily there is nothing in the statute with regard to satisfaction to be recorded in the assessment order or in course

of any proceeding under the Act for initiating penalty u/s 271E of the Act. But this Tribunal being subordinate to Hon'ble Supreme Court and Hon'ble High Court have to necessary follow judicial discipline and doctrine of precedent. Hence we respectfully follow ratio of Hon'ble Supreme Court & Hon'ble High Court (supra).

4.8 We finally hold that in the present case no satisfaction is recorded in the assessment order dated 28.07.2017 u/s 143(3) of the Act and therefore imposition of penalty u/s 271E is illegal and bad in law on this limited legal ground.

4.9 Consequently we dismiss the appeal of the Revenue.

5.

Order

5.1 In result appeal of Revenue is dismissed.

Order pronounced in open court on 11.03.2025.

Sd/-

Sd/-

(BHAGIRATH MAL BIYANI)
ACCOUNTANT MEMBER

(PARESH M JOSHI)
JUDICIAL MEMBER

Indore

दिनांक /Dated : 11/03/2025

Dev/Sr. PS

Sewa Sahkari Sanstha Maryadit
ITA No. 327/Ind/2024 - AY 2015-16

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

Senior Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore