

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

**BEFORE SHRI INTURI RAMA RAO, AM
AND SHRI SONJOY SARMA, JM**

**ITA Nos. 420 & 421/Coch/2022
Assessment Year: 2015-16**

M/s. Thirunelly Service Co-op. Appellant
Bank Ltd. rep. by its Secretary,
Kartilkulam, Manathavady,
Wayanad, Kerala.
[PAN: AACAT 8023 B]

vs.

Joint Commissioner of Income Tax Respondent
Range-2, Kozhikode

Appellant by: Shri Arun Raj S, Advocate
Respondent by: Shri Sanjit Kumar Das, CIT-DR

Date of Hearing: 13.06.2025
Date of Pronouncement: 04.08.2025

ORDER

Per: Inturi Rama Rao, AM

These appeals filed by the assessee are directed against the different orders of the National Faceless Appeal Centre, Delhi [CIT(A)] dated 06.03.2024 for Assessment Year (AY) 2015-16; confirming the levy of penalty made u/s. 271D and 271E of the Act respectively.

2. Since both the appeals involve identical facts and issues, the appeals were heard together and disposed of vide this common order.

3. For the sake of convenience and clarity, facts relevant to A.Y. 2015-16 in ITA No. 420/Coch/2025 are stated herein.

4. Brief facts of the case are that assessee is a cooperative society registered under Kerala Co-operative Societies Act, 1969. It is classified as primary agricultural credit cooperative society. It is engaged in the business of accepting deposits from members and providing credit facilities to its members for agricultural purposes. The return of income for the A.Y. 2015-16 was filed on 28/05/2016 disclosing income of Rs. 36,710/- after claiming deduction u/s. 80P of the Act of Rs. 72,25,461/-. Against the said return of income, the assessment was completed by the ITO, Ward-2, Kalpetta (for short, 'AO') vide order dated 26/12/2017 passed u/s. 143(3) of the Income Tax Act, 1961 (for short, 'the Act') after disallowing the claim for deduction u/s. 80P by holding that the assessee is dealing with the non-members.

5. Being aggrieved, an appeal was filed before the CIT(A). While matter stood thus, the AO noticed that assessee violated the provisions of section 269SS of the Act by accepting cash deposits and repaid the deposits in cash. Therefore, made a reference to the

JCIT, Range-2, Kozhikode for initiation of penalty proceedings on 02/01/2018. Accordingly, JCIT issued a show-cause notice u/s.274 r.w.s. 271D on 25/01/2018. In response to the show-cause notice, the assessee submitted that the assessee is a cooperative bank, therefore, the provisions of section 269SS have no application. However, JCIT rejected the above explanation and proceeded with levy of penalty of Rs. 2,18,31,129/- u/s. 271D of the Act vide order dated 26/07/2018.

6. Being aggrieved by the order of levy of penalty, the appellant preferred an appeal before the CIT(A) contending that the provisions of section 269SS have no application to a cooperative society. Without prejudice to the above, it is contended that the penalty cannot be levied u/s. 271D where there is a reasonable cause for violation of the provisions of section 269SS of the Act. However, the CIT(A) dismissed the appeal by holding that the provisions of section 269SS are very much applicable to a cooperative society by making a reference to the provisions of section 269SS of the Act and the contention of the appellant that there was a reasonable cause for accepting deposits in cash from members was also rejected.

7. Being aggrieved, the assessee-cooperative society is in appeal before this Tribunal in the present appeal.

8. Learned counsel for the assessee submits that the provisions of section 269SS have no application as it is a cooperative society, as its activities are akin to cooperative bank. He placed reliance on the decision of coordinate bench of this Tribunal in the case of *ITO vs. Poothady Service Co-op. Bank Ltd.* in ITA Nos. 796 & 797/Coch/2023 dated 25/09/2024 wherein after making reference to the CBDT Circular in F.No.415/6/2000-IT (Inv.I), dt. 25/03/2004 held that penalty u/s. 271D cannot be levied in the case of cooperative society. The learned counsel also submits that in the absence of finding in the assessment order recording satisfaction for initiating penalty proceedings u/s. 271D, no penalty can be levied placing reliance on the decision of Hon'ble Supreme Court in the case of case of *CIT Vs. Jai Laxmi Rice Mills* (2015) 379 ITR 521 (SC).

9. On the other hand, ld. CIT-DR placing reliance on the decision of this Tribunal in the case of *The Nadapuram Service Co-op. Bank Ltd. vs. JCIT* in ITA No. 957/Coch/2024 dt.14/05/2025 submits that the order of the Ld. CIT(A) is in accordance with law, therefore no interference by this Tribunal is required.

10. We have heard the rival submissions and perused the material on record. The issue that arises for our consideration is whether the AO was justified in levying penalty u/s.271D of the Act for violation of the provisions of sec.269SS of the Act. The admitted facts of the case are that the assessee is a co-operative society

incorporated under the provisions of Kerala State Co-operative Societies Act, 1969. It is classified as a primary agricultural co-operative credit society does not enjoy the license from the RBI to carry on the business of banking. The provisions of sec.269SS of the Act were inserted by the Finance Act, 1984 with effect from 1st July, 1984. It provides that no person shall after 30th day of June, 1984, take or accept from any person, any loan or deposit otherwise than by an account payee cheque or account payee bank draft or use of other electronic clearing system through a bank account, as may be prescribed in a sum exceeding Rs.20,000 or more. The first proviso to sec.269SS provides that the above provision shall not apply in respect of loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by, -

- (a) the Government;
- (b) any banking company, post office savings bank or cooperative bank;
- (c) any corporate established by a Central, State or Provincial Act;
- (d) any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);
- (e) such other institution, association or body or class of institutions, associations or bodies which the Central government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette;

11. The provisions of section 271D of the Act provides for levy of penalty for contravention of provisions of sec.269SS of the Act. The provisions of section 273B of the Act provides that where there is a reasonable cause for violation of the provisions of section 269SS, no penalty shall be levied. There is no dispute about the factum of receipt of loans or deposits by the appellant-society from its members in cash and the appellant-society is a primary agricultural co-operative credit society, which does not fall under the category of any banking company or a co-operative bank, nor it falls under any of the exempted categories enumerated under the first proviso to the above section. The contention that the appellant is a co-operative bank cannot be accepted for the reason that the appellant co-operative society does not enjoy a banking license issued by the RBI. The Hon'ble Apex Court in the case of Kerala State Co-operative Agricultural & Rural Development Bank Ltd. vs. Assessing Officer (2023) 458 ITR 384 (SC) categorically held that in the absence of license to carry on the banking business by a cooperative society, it cannot be considered as a co-operative bank. It is an admitted fact that the appellant does not enjoy the license issued by the RBI to carry on the business of banking. Therefore, the contention that it is a co-operative bank cannot be accepted.

12. As regards to the contention that the provisions of sec.269SS of the Act have no application to the society formed under the

Co-operative Societies Act, has no legs to stand in view of the fact that the cooperative society does not fall under any of the exempted categories enumerated under the first proviso to sec.269SS of the Act. Furthermore, the Parliament has inserted the third proviso to sec.269SS providing for enhancing the threshold limit from Rs.20,000 to Rs.2,00,000 in the case of loan or deposit accepted by the primary agricultural co-operative credit society, primary agricultural and rural development bank. Thus, the intention of the Parliament is abundantly clear that the provisions of sec.269SS of the Act should be applied even in respect of loan or deposits accepted by primary agricultural cooperative credit society. Therefore, the legislative intention is very clear that to make the provisions of sec.269SS applicable to a primary agricultural co-operative credit society.

13. It is the contention of the appellant that it was under the *bonafide* belief that the provisions of sec.269SS have no application. It is not demonstrated before us as to how it had entertained such a *bonafide* belief. The term "*bonafide* belief" has not been defined under the provisions of Income-tax Act, 1961, but the provisions sub-section (22) of sec.3 of General Clauses Act, 1897 defines the term '*bonafide* belief' to mean that a thing shall be deemed to be done in good faith where it is in fact done honestly, whether it is done negligently or not. Thus, if the element of honesty is present,

the requirement of good faith is satisfied. But this requires to be judged taking into consideration the factual situation prevailing in a particular situation. In the present case, on a careful perusal of the orders of the lower authorities, it would reveal that no factual foundation is laid as to how the appellant-society had entertained a *bonafide* belief that the provisions of sec.269SS of the Act have no application to it. In the absence of this factual foundation, no relief can be granted merely based on the bald submissions. Thus, we do not find any merit in the contention that it is under the *bonafide* belief that provisions of sec.269SS of the Act have no application.

As regards, the reliance on the decision of coordinate Bench of this Tribunal in the case of *ITO vs. Poothady Service Co-op. Bank Ltd.* in ITA Nos. 796 & 797/Coch/2023 dated 25/09/2024, on mere reading of the para 3 of the said order, it would reveal that the Tribunal held that the provisions of section 269SS have no application in the case of credit activities between a cooperative bank vis-à-vis its members. The said decision has no application to the present case, as the appellant before us is admittedly a cooperative society. Regarding the CBDT Circular F.No. 415/2000-IT (Inv.), dt. 25/03/2004, firstly it is applicable in respect to the orders passed prior to the issuance of this circular, amply clarified that section 269SS are very much applicable to the cooperative

society and further clarified the position even in the subsequent circulars.

14. Next, we will deal with the contention of the appellant-society that since the transactions of acceptance of loans or deposits in cash as genuine and *bonafide*, the penalty cannot be levied u/s.271D of the Act, placing reliance on the decision of the Hon'ble Madras High Court in the case of *PCIT v. Kundrathur Finance and Chit Co.* (2006) 283 ITR 329 (Mad.). This contention was rejected by the Hon'ble Kerala High Court in the case of *NSS Karayogam v CIT* (2020) 271 Taxman 193 (Kerala), wherein it was held that mere genuineness of transaction does not constitute a reasonable cause as contemplated u/s.271D of the Act for non-levy of penalty u/s.271D of the Act. The relevant portion of the judgment reads as under:-

“6. We take note of the fact that, in Listin Stephen's case (supra), after referring to a catena of decisions like CIT v. P.K. Shamsudin 2011 (1) KLT online 1211, K.V.George (supra), Assistant Director of Inspection (Investigation) v. Kumari A.B.Santhi [2002 (2) KLT Online 1007 (SC)], NSS Karayogam v. CIT 2014 (2) KLT Online 1208 and Grihalakshmi Vision v. Addl. CIT 2015 (4) KLT SN 88 and CIT Thrissur v. Al Ameen Educational Trust 2018 (1) KLT Online 3133 held that the 'reasonable cause' contemplated under section 273B should be a reasonable cause as to why or what was the reason which compelled the assessee to accept the loans or deposit in cash. In other words, it should be proved that there existed reasonable and acceptable cause for not accepting the loans or deposits through crossed cheques or demand drafts. It was found that the mere proof regarding genuineness of the transaction or the intention in accepting the amounts in cash or

that there was no attempt to induct black money into the business etc. cannot be considered as a reasonable cause or as compelling circumstances provided under section 273B to avoid the penal action contemplated under section 271D, with respect to violation of the provisions contained under section 269SS.”

15. Finally, the argument made on behalf of the appellant-society that there was a reasonable cause for accepting loans or deposits in cash from members, and therefore, no penalty can be levied u/s.271D of the Act, also cannot be accepted for the reason that the appellant had failed to show the reasons which compelled the appellant-society to accept the loans and deposits in cash. Thus, this contention also cannot be accepted for the failure of the appellant to prove its reasonable cause.

16. With regard to contention of the learned counsel that in absence of recording satisfaction of the AO in the assessment order, no penalty proceedings can be initiated, cannot be accepted in view of the fact that in the body of the assessment order, AO discussed about the violation of provisions of section 269SS by the assessee society. The ratio of decision of Hon'ble Supreme Court in the case of *CIT Vs. Jai Laxmi Rice Mills* (supra), have no application in the facts of the present case. Thus, we do not find any merit in the arguments made on behalf of the appellant society. We confirm concurrent findings of the lower authorities.

17. In the result, appeal filed by the assessee stands dismissed.

18. The findings given in the appeal in ITA No. 420/Coch/2025 shall apply *mutatis mutandis* to the appeal in ITA No. 421/Coch/2025 also.

19. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced on 04th August, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
(SONJOY SARMA)
JUDICIAL MEMBER

Sd/-
(INTURI RAMA RAO)
ACCOUNTANT MEMBER

Cochin, Dated: 04th August, 2025

vr/-

Copy to:

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

By Order

Assistant Registrar
ITAT, Cochin

