IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

1.I.T.A.No.777 of 2008

The Commissioner of Income Tax, Faridabad ---Appellant

Versus

Sunil Kumar Goel ---Respondent

2. I.T.A.No.778 of 2008
Date of Decision:- 3.3.2009

The Commissioner of Income Tax, Faridabad ---Appellant

Versus

Sunil Kumar Goel ---Respondent

CORAM:- HON'BLE MR.JUSTICE J.S.KHEHAR
HON'BLE MR.JUSTICE NAWAB SINGH

Present:- Mr.Yogesh Putney, Advocate for the appellant.

Mr.Kashmiri Lal Goel, Advocate for the respondent.

J.S.KHEHAR, J. (ORAL)

Through the instant order, we propose to dispose of ITA Nos.777 and 778 of 2008. The issue which arises for consideration is the validity of the order passed by the Income Tax Appellate Tribunal, Delhi Bench on 19.1.2007, whereby, the penalty imposed on the respondent-assessee under Sections 271D and 271E of the Income Tax Act, 1961 (hereinafter referred to as "the Act") was ordered to be set aside.

The basis of the controversy raised in the instant appeals emerges from the order dated 11.10.1993 (Annexure A1) passed the Deputy Commissioner of Income Tax, Rohtak Range, Rohtak, showing that the

respondent-assessee Sunil Kumar Goel had taken the following loans in cash:-

26.4.90	Rs.25,000/-
05.5.90	Rs.30,000/-
11.5.90	Rs.10,000/-
19.5.90	Rs.10,000/-
28.6.90	Rs.20,000/-
16.7.90	Rs.15,000/-
6.6.90	Rs.20,000/-
12.6.90	Rs.15,000/-

The aforesaid cash loans were taken during the financial year 1990-91 (assessment year 1991-92). According to the appellant-revenue, the action of the respondent-assessee in taking the aforesaid cash loans was in clear violation of Section 269SS of the Act. Section 269SS of the Act is being extracted hereunder:-

> **"Section 269SS.** No person shall, after the 30th day of June, 1984, take or accept from any other person (hereafter in this section referred to as the depositor) any loan or deposit otherwise than by an account payee cheque or account payee bank draft if, -
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> (a) the amount of such loan or deposit or the aggregate amount of such loan and deposit; or
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> (b) 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), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is [twenty] thousand rupees or more :

Provided that the provisions of this section shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by, -

(a) Government;

(b) any banking company, post office savings bank or co-operative bank;

(c) any corporation established by a Central, State or Provincial Act;

(d) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(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 :

Provided further that the provisions of this section shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and the person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act.

Explanation—For the purposes of this section--

> (i) "banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949), applies and includes any bank or banking institution referred to in section 51 of that Act;
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> (ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);
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> (iii) "loan or deposit" means loan or deposit of money."

A perusal of the aforesaid provisions reveals, that it is not open to an assessee to accept a loan or a deposit (the aggregate whereof, is in excess of Rs.20,000/-) by way of cash. It is apparent from the factual position noticed from the extract of the order dated 11.10.1993 that the respondent -assessee had taken loans in excess of Rs.10,000/- by way of cash. This action of the respondent-assessee was sought to be penalized by invoking Section 271D of the Act. Section 271D of the Act is also being extracted hereunder:-

> "271D (1) If a person takes or accepts any loan or deposit in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.
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> (2) Any penalty imposable under sub-section (I) shall be imposed by the Joint Commissioner."

It is the vehement contention of the learned counsel for the appellant-revenue that Section 271D of the Act is a mandate, in as much as,every violation of Section 269SS of the Act, is liable to be penalized by imposing a penalty (equal to the amount of the loan/deposit taken or accepted by the assessee in cash). It is, therefore, the submission of the learned counsel for the appellant-revenue that it was not open to the Income Tax Appellate Tribunal to set aside the penalty imposed on the respondent-assessee under

Section 271D of the Act for the violation of Section 269SS of the Act.

The facts noticed here-in-above are relevant for Income Tax Appeal No.777 of 2008.

In so far as I.T.A.No.778 of 2008 is concerned, it pertains to penalty imposed on the respondent-assessee on the return of the aforesaid loans taken in cash. Undisputably, the alleged loans depicted here-in-above, were returned by way of cash. On this occasion, the appellant-revenue arrived at the conclusion that the respondent-assessee had violated the mandatory provisions of Section 269T of the Act. Section 269T of the Act is being extracted hereunder:-

> "269T. No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has made the loan or deposit if--
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> (a) the amount of the loan or deposit together with the interest, if any, payable thereon, or
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> (b) the aggregate amount of the loans or deposits held by such person with the branch of the banking company or co-operative bank or, as the case may be, the other company or co-operative society or the firm, or other person either in his own name or jointly with any other person on the date of such repayment together with the interest, if any, payable on such loans or deposits,
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> is twenty thousand rupees or more:

Provided that where the repayment is by a branch of a banking company or co-operative bank, such repayment may also be made by crediting the amount of such loan or deposit to the savings bank account or deposit has to be repaid:

Provided further that nothing contained in this section shall apply to repayment of any loan or deposit taken or accepted from--

(i) Government;

(ii) Any banking company, post office savings bank or co-operative bank;

(iii) Any corporation established by a Central, State or Provincial Act;

(iv) Any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956);

(v) 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 :

Explanation—For the purposes of this section--

(i) "banking company" shall have the meaning assigned to itin clause (i) of the Explanation to Section 269SS;

(ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(iii) "loan or deposit" means any loan or deposit of money which is repayable after notice or repayable after a period and, in the case of a person other than a company, includes loan or

deposit of any nature."

It is apparent from the aforesaid provisions that return of loan/deposit by way of cash (which aggregates a sum in excess of Rs.20,000/-), violates Section 269T of the Act. The penal provisions for imposing penalty on account of the aforesaid violation is in the form of Section 271E of the Act. Section 271E of the Act is also being extracted hereunder:-

> "271E (1) If a person repays any [loan or] deposit referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the [loan or] deposit so paid.]
>
> (2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner."

On the same analogy as has been noticed in Section 271D of the Act, it is the contention of the learned counsel for the appellant-revenue that the action of the respondent-assessee in returning loans (the aggregate of which was, more than Rs.20,000/-) by way of cash, has the effect of mandatory penal action. Inasmuch as the assessee is required to pay by way of penalty a sum equal to the amount of loan repaid in cash.

For violating the mandate of Section 269SS of the Act, according to the learned counsel for the appellant-revenue, a penalty was imposed on the respondent-assessee under Section 271D of the Act, likewise, for violating the mandate of Section 269T of the Act, a penalty was imposed on the respondent-assessee under Section 271E of the Act by the Assessing Officer..

In the appellate proceedings initiated at the hands of the respondent-assessee before the Commissioner of Income Tax (Appeals),

Faridabad, the respondent-assessee failed, inasmuch as, the appeal preferred by the respondent-assessee was dismissed by the Commissioner of Income Tax (Appeals), Faridabad vide order dated 23.12.1994, by upholding the order dated 11.10.1993 passed by the Deputy Commissioner of Income Tax, Rohtak. Dissatisfied with the order passed by the first appellate authority, the respondent-assessee preferred an appeal before the Income Tax Appellate Tribunal. The instant appeal was allowed by the Income Tax Appellate Tribunal vide its order dated 19.1.2007. The order passed by the Income Tax Appellate Tribunal, referred to above, is the subject of challenge at the hands of the Revenue in the instant appeal.

As against this, the solitary submission advanced by the learned counsel for the appellant-revenue to the effect that the provisions of Sections 271D and 271E of the Act are mandatory and that they do not vest any discretion with the revenue, it is submitted by the learned counsel for the respondent-assessee on the strength of Section 273B of the Act that there are circumstances where the Revenue is precluded from imposing a penalty (under Sections 271D and 271E of the Act) even though there has been a technical non compliance of Section 269SS and/or 269T of the Act. Section 273B of the Act which has been relied upon by the learned counsel for the respondent-assessee is being extracted hereunder:-

> **"273B.** Notwithstanding anything contained in the provisions of [clause (b) of sub-section (1) of] [section 271, section 271A, section 271AA] section 271B [section 271BA), [section 271BB], section 271C [section 271CA] section 271D, section 271E, [section 271F, [section 271FA] [section 271FB] [section 271G]] clause (c) or clause (d) of sub-section (1) or sub-section (2) of

> section 272A, sub-section (1) of section 272AA] or [section 272B or [sub-section (1) [or sub-section (1A)] of section 272BB or] [sub-section (1) of section 272BBB or] clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.]"

We have considered the submission advanced by the learned counsel for the respondent-assessee. We are satisfied that Section 273B of the Act envisages a non-obstante clause as against Sections 271D and 271E of the Act (which have been sought to be invoked for penalizing the respondent-assessee). In the exceptional situation envisaged in Section 273B of the Act, it is permissible for an assessee to substantiate "reasonable cause" for his failure to comply with the provisions on the basis whereof, penalty is sought to be imposed upon him. Taken to the logical conclusion in so far as the present controversy is concerned, it is open to the respondent-assessee, in the present case, to establish a reasonable cause for having not complied with the provisions of Section 269SS of the Act (in case of ITA No.777 of 2008) and Section 269T of the Act (in case of ITA No.778 of 2008). If an assessee successfully discharges the aforesaid obligations, then it is open to him to raise a claim that he should be excused from the consequential penal effect.

The explanation tendered by the respondent-assessee which has been taken into consideration by the Income Tax Appellate Tribunal was that the action of the respondent-assessee was bona fide and not aimed at

avoiding any tax liability. So far as the instant issue is concerned, the Income Tax Appellate Tribunal arrived at the conclusion, that the action of the respondent-assessee had not resulted in the infraction of any law, inasmuch as, the default committed by him was technical and venial in nature. The Income Tax Appellate Tribunal also expressed the view, that no prejudice was caused to the Revenue, inasmuch as, there was no avoidance of tax or tax evasion at the hands of the respondent-assessee. Relying upon the judgment rendered by this Court in Commissioner of Income-Tax V.Saini Medical Store, (2005) 277 ITR 420 that bonafides and genuineness of the transaction, would constitute a "reasonable cause" for not invoking the provisions of Sections 271D and 271E of the Act, the Income Tax Appellate Tribunal arrived at the conclusion that the respondent-assessee has been successful to show "reasonable cause". And accordingly the Income Tax Appellate Tribunal returned a finding, that acceptance of the return of payments received by the respondent-assessee, by way of cash, at the hands of the respondent-assessee, ought to be overlooked, in the facts and circumstances of this case.

As against the aforesaid conclusion drawn by the Income Tax Appellate Tribunal, it was submitted by the learned counsel for the appellant-revenue, that on eight different occasions different amounts ranging from Rs.10,000/- to 30,000/- were taken by way of cash, by the respondent-assessee as loans in conscious and deliberate disregard of obligation envisaged under Section 269SS of the Act. And the aforesaid loans were then returned by way of cash, again, in conscious disregard of the obligation envisaged under Section 269T of the Act. It was also submitted by the learned counsel for the appellant-revenue, that it had not

been argued at the hands of the respondent-assessee, that action of the respondent-assessee was not deliberate, or that, the same was under a bona fide belief that he could not accept or return a loan(s) in excess of Rs.20,000/- by way of cash. It is, therefore, the submission of the learned counsel for the appellant-revenue, that the onus to establish bona fides at the hands of the respondent-assessee, squarely rests on the shoulder of the respondent-assessee. In addition to the above, it is submitted that a breach of the provisions of the Act, cannot be justified on alleged bona fide belief, which cannot be illustrated through cogent evidence. It is, therefore, the submission of the learned counsel for the appellant-revenue, that in the facts and circumstances of the present case, the respondent-assessee, could not be deemed to have established a reasonable cause for not abiding by the provisions of Sections 269SS and 269T of the Act.

Having given our thoughtful consideration to the submissions advanced by the learned counsel for the rival parties, we are of the view that the finding that there was reasonable cause shown by the respondent-assessee, is a finding of fact. This emerges from the decision rendered by this Court in Commissioner of Income Tax's case (supra), wherein, this Court has inter-alia held as under:-

> "As pointed out earlier, there is no doubt about the genuineness of the transactions which have been fully accepted in the assessment made for the year under consideration. Even if, there is any ignorance, which resulted in the infraction of law, the default is technical and venial which did not prejudice the interests of the Revenue as no tax avoidance or tax evasion was involved. To my mind, bona fide belief coupled with the

genuineness of the transactions would constitute reasonable cause under section 273B for not invoking the provisions of section 271E of the Act. The impugned order of penalty is cancelled.

The findings of the Commissioner of Income tax (Appeals) have been confirmed in appeal by the Tribunal.

Therefore, the findings recorded by the Commissioner of Income-tax (Appeals) and the Tribunal that the assessee had shown reasonable cause for the failure to comply with the provisions of section 269T of the Act is a finding of fact based on appreciation of material on record. It does not give rise to any question of law, much less substantial question of law.

Accordingly, the appeal is dismissed."

The Income Tax Appellate Tribunal was right in recording its conclusion that a "reasonable cause" had been shown by the respondent-assessee. The Income Tax Appellate Tribunal relied on the fact that the respondent-assessee had produced his cash books, depicting loans taken by him unilaterally before the Revenue. Another fact taken into consideration was, that no prejudice was caused to the Revenue, in the instant action of the respondent-assessee inasmuch as, the respondent-assessee did not attempt by the impugned act to avoid any tax liability. Furthermore, there is no dispute about the fact, that the instant cash transactions of the respondent-assessee were with the sister concern, and that, these transactions were between the family, and due to business exigency. A family transaction, between two independent assessees, based on an act of casualness, specially in a case where the disclosure thereof is contained in

the compilation of accounts, and which has no tax effect, in our view establishes "reasonable cause" under Section 273B of the Act. Since the respondent-assessee, had satisfactorily established "reasonable cause" under Section 273B of the Act, he must be deemed to have established sufficient cause for not invoking the penal provisions (Sections 271D and 271E of the Act) against him.

For the reasons recorded here-in-above, we find no merit in either of the aforesaid two appeals i.e. ITA Nos.777 and 778 of 2008, and accordingly, the said appeals are hereby dismissed.

(J.S.Khehar)
Judge

(Nawab Singh)
Judge

3.3.2009
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