

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

ITA No.159 of 2002 & other connected
cases being ITA Nos.193 & 205 of 2002
Date of decision : 14.7.2010

The Commissioner of Income Tax, Bathinda

.....Appellant

Vs.

The Faridkot-Bathinda Kshetriya Gramin Bank, Bathinda

.....Respondent

**CORAM:- HON'BLE MR. JUSTICE ADARSH KUMAR GOEL
HON'BLE MR. JUSTICE AJAY KUMAR MITTAL**

Present:-Ms. Savita Saxena, Advocate, for the appellant

Mr. Akshay Bhan, Advocate, for the respondent

ADARSH KUMAR GOEL (J):-

1. This order will dispose of ITA Nos. 159, 193 and 205 of 2002, filed by the appellants, as the issue involved in all these appeals is common as to applicability of provision of penalty under Section 271-E of the Income Tax Act, 1961 (for short "the Act"). The facts have been noticed from Income Tax Appeal No.159 of 2002.

2. The assessee is a rural bank constituted under the provisions of Regional Rural Banks Act, 1976. The assessee made cash payment to its customers for repayment of certain fixed deposits exceeding Rs.20000/- in violation of Section 269-T of the Act. The Assessing Officer imposed penalty under Section 271-E of the Act,

on that ground. The CIT (A) upheld the penalty. On further appeal, the Tribunal held that the payments to the customers were genuine transactions and bonafide. The penalty could not be sustained.

Observation of the Tribunal are;

“In the above background, this plea of the assessee cannot be rejected that at the relevant time, the payment passing officer of bank was new and had no knowledge about the Income Tax law, particularly, the provisions of Section 269-T read with Section 271-E of the Income Tax Act, 1961. However, the departmental authorities have also not rejected this contention of the assessee. On this account, it can be held that due to ignorance of law, the concerned officer was under the bonafide belief that re-payments exceeding Rs.20,000/-can be made in cash also. It is true that the staff of the assessee bank only and their exposure to the bank and other laws like Income Tax was very limited and this plea of the assessee has definitive weightage in the present context. Further more, it is an admitted fact that the assessee-bank had no training college of its own as in the case of other nationalised banks. Section 271-E read with Section 273-B of the Income Tax Act, 1961 provides that if the assessee proves that it was prevented by reasonable cause from complying with the provisions of above sections, no penalty can be imposed. The courts of the country have held that ignorance of law can be taken as a

valid plea for non-compliance of provisions of Income Tax Laws and Rules. At the same time, it has also been held by the various Benches of the Tribunal that ordinarily a plea as to the ignorance of law cannot support the breach of a statutory provision, but the fact of such an innocent mistake due to ignorance of the relevant provisions of law coupled with the fact that the transactions, in question, were genuine and bonafide transactions and were undertaken during the regular course of the business, will constitute a reasonable cause”.

3. We have heard learned counsel for the parties.
4. Section 269-T deals with cases where repayment of certain loans or deposits exceeding Rs.20000/-is made otherwise than by the account payee cheque or account payee bank draft drawn in the name of the person who had made the loan or deposit. Failure to comply with the aforesaid provision entails penal consequences under Section 271-E of the Act.
5. Section 269-SS of the Act relates to taking or accepting of certain loans and deposits by an account payee cheque or account payee bank draft where amount exceeds to Rs.20000/- and Section 271-D of the Act enumerates penalty for the violation of the same. The Hon'ble Supreme Court in **Assistant Director of Inspector Investigation Vs. A.B.Shanti, (2002) 255 ITR 258** while considering the provision of Section 269-SS and 271-D had held that where the transaction is bonafide, mere technical violation is not

enough to attract the penal provision of Section 271-D of the Act.

The relevant observations are as under:-

“The object of introducing Section 269SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he has given some false entries in his accounts, he shall not escape by giving false explanation for the same. During search and seizures, unaccounted money is unearthed and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so-called lender also to manipulate his records later to suit the plea of the taxpayer. The main object of Section 269SS was to curb this menace”.

It was further recorded as under:-

“It is important to note that another provision, namely Section 273B was also incorporated which provides that notwithstanding anything contained in the provisions of Section 271D, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provision if he proves that there was reasonable cause for failure and if the assessee proves that there was reasonable cause for failure to take a loan otherwise than by account payee cheque or account payee demand draft, then the penalty may not be levied. Therefore, undue hardship is very much

mitigated by the inclusion of Section 273B in the Act. If there was a genuine and bonafide transaction and if for any reason the taxpayer could not get a loan or deposit by account payee cheque or demand draft for some bondfide reasons, the authority vested with the power to impose penalty has got discretionary power”.

6. The provisions of Section 269-SS are analogous to Section 269-T while Section 271-E is para-materia with Section 271-D of the Act.

7. In view of the findings recorded by the Tribunal, as noticed earlier, the question raised about the leviability of penalty has to be decided against the revenue. The appeal is accordingly, dismissed.

8. A photocopy of this order be placed on each file of the connected case.

(ADARSH KUMAR GOEL)
JUDGE

14th July, 2010
akm

(AJAY KUMAR MITTAL)
JUDGE