

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Reserved on : 9th August, 2012.**
Date of Decision : 20th September, 2012.

+ **ITA 846/2011**
+ **ITA 849/2011**
+ **ITA 848/2011**
+ **ITA 850/2011**
+ **ITA 851/2011**
+ **ITA 876/2011**

CIT Appellant
Through: Mr. Kamal Sawhney, Sr. Standing Counsel.

versus

SAHARA INDIA MUTUAL BENEFIT CO LTD. Respondent
Through: Mr. Percy J. Pardiwala, Sr. Adv. with Mr. Satyen Sethi, Mr. Arta Trana Panda, Advocates.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT
MR. JUSTICE R.V. EASWAR

1. Whether Reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporters or not? Y
3. Whether the judgment should be reported in the Digest? Y

R.V. EASWAR, J.:

The Revenue has filed these six appeals, two for the assessment year 1993-94 and one each for the assessment years 1992-93, 1996-97, 1999-2000 and 2000-2001. The appeals are directed against the common order of the Income Tax Appellate Tribunal (“Tribunal”) dated 4th

November, 2010, upholding the orders of the CIT(A) cancelling the penalties levied on the assessee as follows:-

ITA Nos.	Assessment years	Penalty under Section 271D	Penalty under Section 271E
846 & 849/2011	1993-94	98,23,600/-	33,13,132/-
851/2011	1992-93	62,10,800/-	--
850/2011	1999-2000	--	5,16,33,730/-
848/2011	1996-97	52,65,00,000/-	--
876/2011	2000-2001	--	8,76,42,197

2. The assessee is a public limited company engaged in the business of mobilisation of deposits from its members. It is registered as a mutual benefit company under Section 620A of the Companies Act, 1956. It can accept deposits only from its share holders/members and nobody else.

3. Section 269SS of the Income Tax Act, 1961 (“Act” for short) says that any person who accepts a loan or deposit in excess of Rs.20,000/-, in cash, from any other person, will be liable to penalty of an equivalent amount under Section 271D of the Act. Repayment of the loans or deposits, in cash in excess of Rs.20,000/- is also punishable with penalty of an equivalent amount under Section 271E. Section 273B provides that if the assessee is able to show reasonable cause for accepting or repaying

the loans/deposits in cash in violation of the provisions of Section 269SS and Section 269T, no penalty is imposable.

4. We may take up the appeals for the assessment year 1993-94(ITA Nos.846 & 849/2011) as the lead matter. While completing the assessment under Section 144 read with Section 148 and Section 251, the Assessing Officer noticed that the assessee had collected deposits in contravention of the provision of Section 269SS and that had also repaid them in violation of Section 269T. He, therefore, referred the matter to the Additional Commissioner of Income Tax, Central Range, Lucknow who is the competent authority for imposing the penalty. Before him the assessee submitted a list, duly certified by its Chartered Accountant, along with the ledgers containing the details for the acceptance of the deposits to the tune of Rs.98,23,600/- in cash. Similar details and ledgers were also produced in respect of the default in repayment of the deposits to the extent of Rs.33,13,132/-. A reply running to about 127 pages was filed before the Additional CIT giving reasons as to why penalty should not be imposed under Sections 271D and 271E. The summary of the reply is as below:-

- (a) The assessee, being a mutual benefit company under the Companies Act, can accept the loans or deposits only from its share holders or members who are known and identifiable. The deposits are thus genuine. It amounts to the company taking deposits from itself.

- (b) The deposits are mobilized under various saving schemes collected through more than 600 branches of the agents spread across the country. They are located in remote areas where the savings and the contributions to the schemes are small. The field workers motivate the members/share holders to effect savings and deposit them with the assessee. The procedural formalities are more or less the same as in the case of opening an account in the banks.
- (c) In several cases, the agents of the assessee had faced difficulties in opening bank accounts since banks refused to accommodate the agents who were seen as competitors affecting the business of the banks. The agents could not, therefore, open bank accounts for collection and repayment of the deposits.
- (d) The branches were situated in rural areas with inadequate banking facilities and it was difficult for the share holders/members residing in these areas to open bank accounts due to logistics and other problems. There was little exposure to the banking habit.
- (e) The agents of the assessee were not in a position to refuse to accept legal tender.
- (f) The percentage of deposits received/repaid in cash, in violation of Section 269SS and 269T, out the total deposits/repayments, is as follows :

A.Y.	Acceptance or repayment	Percentage
1992-93	Acceptance	2.33%
1993-94	Acceptance	1.52%
1993-94	Repayment	2.37%
1996-97	Acceptance	0.40%
1999-2000	Repayment	1.33%
2000-01	Repayment	1.59%

(g) From the copies of the account opening form, it was possible to identify the depositors. Copies of those forms were submitted wherever the deposits were above Rs.20,000/-

(h) 50% of the deposits mobilized during the year was added under Section 68 of the Act and the addition as well as the equivalent amount of penalty on the same deposits was not warranted and amounted to double jeopardy.

5. The above submissions were considered by the Additional CIT in detail. He was not prepared to look upon the assessee as an entity exempt from the provisions of the Act. According to him the only question was whether there was reasonable cause for the violation and the question of genuineness of the deposits was not material. He further noted that though the correspondence produced showed that some of the public sector banks had refused to open bank accounts, it was difficult to

ascertain whether the refusal was oral or was in writing and, therefore, this point could not be considered in favour of the assessee. The Addl.CIT was prepared to accept only “to some extent” the argument that persons from agricultural background and small shopkeepers cannot be expected to have exposure to banking facilities or banking habit, even though he also said that the said argument was correct. He, however, held that the provisions of the Act were applicable uniformly to deposits from all persons without any exemption for persons of agricultural background and petty shopkeepers. As regards the objection that the deposits were genuine and the depositors were identifiable, he held that the provisions of Section 269SS were applicable to genuine deposits only. He also considered as irrelevant the fact that the amounts were added under Section 68 of the Act in the assessment against which an appeal was pending. In this view of the matter, he held that the assessee was liable to penalty under Section 271D.

6. A similar view was taken by him in respect of the applicability of Section 269T of the Act and the penalty imposed under Section 271E for having repaid the deposits in cash.

7. In respect of the other years, the penalties under Section 271D and Section 271E were levied for similar reasons.

8. All the penalties were deleted by the CIT(Appeals). He was of the view that there was reasonable cause for the acceptance/repayment of the

deposits as explained by the assessee. The revenue carried the matter in appeal before the Tribunal. The Tribunal relied on its orders in the case of *ACIT Vs. M/s Sahara India Financial Corporation Ltd.*, a group company, dated 17.9.2010 in ITA Nos.3222 to 3225/Del./2009 relating to the assessment years 1993-94, 1999-2000, 2000-01 and 2001-02 and following the view taken therein, confirmed the orders of the CIT(Appeals) cancelling the penalties. After noticing the aforesaid order of the Tribunal, the Tribunal in the impugned order, insofar as the penalties under Section 271D are concerned, held as follows :

“5. We have heard rival submissions and have gone through the entire material available on record. Learned DR contends that ITAT in respect of above years while upholding the deletion of penalty u/s 271-D, has not considered the aspect of each transactions while ascertaining reasonable cause. In our view it is not so in as much as ITAT has consciously considered this aspect at more than one places and has held that AO though agreed that assessee has reasonable cause in mobilizing these deposits in rural and semi-urban areas, was not justified in levying penalty by holding that transactions based reasonable cause has not been spelt out. ITAT has held that difficulties spelt out by assessee are common knowledge and it has not been disputed that the main operations of the assessee’s business is to mobilize deposits from rural area and semi-urban areas. ITAT after considering the assessee’s business realities, difficulties in mobilizing daily, weekly or monthly deposits from people of small incomes, agriculturists and rural dwellers has held that this type of mobilizing of funds will have element and a small percentage of cash deposits, therefore, we are unable to agree with learned DR that ITAT

has not considered this aspect in proper perspective. In view thereof, respectfully following the order of ITAT in the case of assessee itself in respect of 271-D penalty, the impugned orders of learned CIT(A), deleting penalties us/(sic)271D in the years in question are also upheld. Revenue's appeals in this behalf are dismissed."

9. As regards the penalty imposed under Section 271E on repayment of the deposits otherwise than through account payee cheque or draft, the Tribunal held that the same facts constitute reasonable cause for the repayment of the deposits also. This is what the Tribunal says:

"5.1 Coming to penalty u/s 271-E, though the penalty is technically different, as mentioned above, but the ingredients of reasonable cause remain by and large the same. The assessee's business will have a small fraction of cash payments of deposits where banking facilities are inadequate and other factors as indicated exist. Some depositors insisted for cash repayments of their deposits which were collected on daily, weekly or monthly earn over basis in our view it will not be possible for the assessee to deny the same and invite bad publicity among its depositors which would have serious repercussions for business. It has not been pointed out to us that the volume of such cash repayment of deposits is alarming or disproportionate."

10. It would appear that there were some instances of repayment of the deposits otherwise than through account payee cheques or account payee drafts even in bigger cities like the Bhinder, Gorakhpur etc. With reference to these repayments the Tribunal referred to the assessee's explanation that the depositors insisted on cash payments which the

assessee was not in a position to refuse, considering the nature of its business. The Tribunal observed as follows :

“5.2 Apropos some instances of repayment in bigger cities like Bhainder, Gorakhpur etc., the assessee has explained that these persons insisted for cash deposits and assessee as a matter of business policy cannot refuse such repayments. Assessee is not diverting its deposits to any sister concern or violating any RBI regulations. Deposits were collected in due course of time on daily, weekly, monthly or similar type in recurring manner. Any irregularity has not been attributed by any of the lower authorities towards the business operations of the assessee. Under these circumstances, we have no hesitation to hold that the reasonable cause as upheld in respect of penalty u/s 271D also existed in case of penalties u/s 271E. Therefore, we uphold the order of CIT(A) deleting such penalties u/s 271-E in the years in question. On this issue also revenue’s appeals are dismissed.”

11. The revenue is in appeal before this Court contending that the order of the Tribunal is untenable in as much as it holds that since the business of the assessee itself is to collect and repay deposits, there can be no violation of the provisions of Section 269SS and Section 269T. We are however, unable to accept the contention. This is not the only reason given by the Tribunal for approving the orders of the CIT(Appeals) cancelling the penalties. It is only one of the many circumstances and facts taken into consideration by the Tribunal in accepting the assessee’s explanation that there existed reasonable cause within the meaning of Section 273B. The Tribunal has in substance relied on its earlier order in

the case of M/s Sahara India Financial Corporation Ltd., (a group company) (supra). This aspect of the matter has been considered by us in our judgment today passed in the appeals filed by the revenue against the orders of the Tribunal in the case of M/s Sahara India Financial Corporation Ltd. dated 17.9.2010. We have held that the explanation of the assessee as to the facts and circumstances in which it was placed which constituted reasonable cause has been accepted by the Tribunal and the finding of the Tribunal that there was reasonable cause for the default within the meaning of 273B is a question of fact which cannot be disturbed by the High Court as there was no material or evidence brought before the Court to show that the finding was perverse or was of such nature that no reasonable person, duly instructed on the facts and the legal position, would have reached. In the present case also the revenue has not been able to bring on record any material to show that the finding of the Tribunal as to the existence of reasonable cause is perverse. In the judgments of this Court in *Commissioner Of Income Tax vs Parma Nand* (2004) 266 ITR 255 and *CIT Vs Itocha Corporation* (2004) 268 ITR 172, it has been held that whether or not there was reasonable cause for the default is a question of fact which does not give rise to a substantial question of law unless the finding is perverse or irrational. In the light of these judgments and having regard to the finding of fact entered by the Tribunal that there was reasonable cause for the defaults, we do not find any substantial question of law arising for our consideration.

The appeals of the revenue are accordingly, dismissed with no order as to costs.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

SEPTEMBER 20, 2012
Bisht/vld