INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH "B": NEW DELHI

BEFORE

SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

AND

MS. ASTHA CHANDRA, JUDICIAL MEMBER

ITA Nos. 3107 & 3108/Del/2019
Asstt. Years: 2013-14 & 2013-14

M/s. Delhi State Taxi Operators's Co-operative Thrift Credit & Services Society Ltd., C-19, Pandav Nagar, Ganesh Nagar Complex, New Delhi – 110 091. PAN AAAAD0030A	Vs.	JCIT, Range-60, New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri C.S. Aggarwal, Sr. Advocate, Shri Ravi Pratap Mall, Adv., Ms. Pushpa Sharma, Adv., Shri Uma Shankar, Adv. and Shri Sandeip S Nagar, CA
Department by :	Shri T. James Singson, CIT-DR
Date of Hearing :	13.03.2023
Date of pronouncement :	26.04.2023

O R D E R

PER ASTHA CHANDRA, JM

The two appeals filed by the assessee are directed against two separate orders both dated 28.03.2019 of the Ld. Commissioner of Income Tax (Appeals)–19, New Delhi **("CIT(A)")** whereby he upheld the penalty of Rs. 16,71,24,134/- and Rs. 2,01,58,524/- levied by the Ld. JCIT Range-16, New Delhi **("JCIT")** under section 271D and 271E of the Income Tax Act, 1961 **(the "Act")** for the Assessment Year **("AY")** 2013-14 for violation of the provisions of section 269SS and 269T respectively of the Act.

2. The orders of the Ld. CIT(A) have been challenged by the assessee on the following common grounds:-

"***ITA No. 3107/Del/2019***

1. *That the Learned Joint Commissioner of Income Tax and Learned Commissioner of Income Tax (Appeals) have erred in not appreciating the facts of the appellant's case, properly.*
2. *That the Learned Joint Commissioner of Income Tax has erred is in imposing a penalty and Learned Commissioner of Income Tax (Appeals) has erred in confirming the penalty u/s 271D in contravention of 269SS after the expiry of limitation period provided u/s 275(1)(c) of the income tax Act, 1961.*
3. *That the Learned Joint Commissioner of Income Tax has erred in imposing a penalty of Rs. 16,71,24,134/- u/s 271D, of the Income Tax Act,1961 and Learned Commissioner of Income Tax (Appeals) has erred in confirming the same.*
4. *That the orders of the Learned Joint Commissioner of Income Tax and Learned Commissioner of Income Tax (Appeals) are bad in law as well as on the facts of the appellant's case.*

ITA No. 3108/Del/2019

1. *That the Learned Joint Commissioner of Income Tax (JCIT) and Learned Commissioner of Income Tax (Appeals) have erred in not appreciating the facts of the appellant's case, properly.*
2. *That the Learned JCIT has erred in imposing a penalty u/s 271E in contravention of 269T after the expiry of limitation period provided u/s 275(1)(c) of the income tax Act,1961 and Learned CIT-(A) has erred in confirming the same.*
3. *That the Learned Joint Commissioner of Income Tax has erred in imposing a penalty u/s 271E and Learned CIT-(A) has erred in confirming the same.*
4. *That the orders of the Learned Joint Commissioner of Income Tax and Learned Commissioner of Income Tax (Appeals) are bad in law as well as on the facts of the appellant's case."*

3. On 05.12.2022 Revenue filed an application under Rule 29 of the ITAT Rules and prayed for admission of additional evidence which consisted of two volumes of Paper Book. Perusal thereof revealed that all the documents therein formed part of the records of the Revenue except pages 266 to 310 and 163 to 355 of Volume 1 which contained documents of a third party submitted by a disgruntled ex-member of the assessee society before Revenue authorities alleging that the assessee society has been acting fraudulently. The Ld. AR objected to the admittance thereof as none of the documents has any relevance to the appeal filed by the assessee before the

Tribunal. Moreover, no finding has been recorded by the Revenue authorities nor there is any material on record to establish that the assessee has indulged in fraudulent activities. The Ld. DR was fair enough to submit that evidence not placed before the Ld. CIT(A) may not be admitted. After hearing the Ld. Representative of the parties and perusal of the material on record, we decline to accept the request of the Revenue for admittance of additional evidence and proceed to decide the appeal of the assessee on merits.

4. Perusal of the penalty orders dated 24.04.2017 reveal that on reference by the Ld. Assessing Officer **("AO")** vide letter dated 28.11.2016 the Ld. JCIT issued show cause notice dated 29.11.2016 initiating penalty proceedings. Neither anybody attended nor any reply received from the assessee. Another show cause notice dated 24.01.2017 also remained uncomplied. However, in response to third show cause notice dated 21.02.2017, the assessee submitted reply vide letter dated 15.03.2017 which the Ld. JCIT summarised in four pages of the penalty order in para 2 thereof. The explanation offered by the assessee was not acceptable to the Ld. JCIT who in para 3.1 of his order observed that during the assessment proceedings, the Ld. AO vide ordersheet entry dated 23.02.2016 sought list of members of the assessee society from whom deposits have been accepted. On perusal, cash deposits of Rs. 16,71,24,134/- and repayment of deposits of Rs. 2,01,58,524/- were found to be in contravention of section 269SS and 269T respectively of the Act. In para 3.2, the Ld. JCIT noted from the assessee's reply dated 15.03.2017 the contention of the assessee that audit report under section 44AB of the Act obtained from an independent Chartered Accountant also confirmed that the provisions of section 269SS and 269T are not applicable to the society. The society is under bonafide belief that the deposits are made/repaid voluntarily by the members and are genuine. The case of the assessee is of mutually aided society for the benefit of its members. The penalty proceedings be kindly dropped.

5. The Ld. JCIT did not accept the contention of the assessee by observing that the Chartered Accountant mentioned against column 24(a) of

the report 'nil'. So the Chartered Accountant tried to conceal the facts. According to Ld. JCIT genuineness of deposits in cash and repayment of deposits is not a criteria while considering the provisions of section 269SS and section 269T of the Act which have been inserted to curb the circulation of black money. Holding that the assessee violated the provisions of section 269SS and section 269T by accepting deposits of Rs. 16,71,24,134/- in cash and by repayment of loan or deposit of Rs. 2,01,58,524/- in cash respectively without reasonable cause, the Ld. JCIT imposed the impugned penalty under section 271D and 271E of the Act respectively.

6. The assessee challenged the penalty under section 271D and 271E of the Act on grounds, inter alia that these have been imposed after the expiry of limitation period provided under section 275(1)(c) of the Act. Vide write up dated 24.10.2018 submitted before the Ld. CIT(A), the assessee gave brief facts on the functioning and governing of the assessee cooperative society. It was pointed out that the decision of Hon'ble Supreme Court in ADIT vs. AB Shanthi 255 ITR 258 (SC) relied upon by the Ld. JCIT actually supports the case of the assessee as the Hon'ble Supreme Court observed therein that undue hardship is very much mitigated by the inclusion of section 273B. 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 bonafide reasons, the authority vested with the power to impose penalty has got discretionary power. The assessee also distinguished other decisions relied upon by the Ld. JCIT and emphasised that penalty cannot be imposed if there existed reasonable cause.

6.1 It was further submitted that the Ld. AO had not recorded his satisfaction about existence of conditions for initiation of impugned penalty proceedings before the assessment was concluded. In the absence of a clear finding as to violation of provisions under section 269SS and 269T, initiation of penalty proceedings is without jurisdiction. Relying on the ratio of the decision of Hon'ble Delhi High Court in CIT vs. Rajinder Kumar Somani 125 ITR 756 (Delhi) which still holds the field, it was submitted that penalty

proceedings must be initiated in the course of some proceedings against the assessee related to the year for which penalty is to be levied. Reliance was also placed on the decision of Hon'ble Supreme Court rendered in the context of penalty under section 271E in the case of CIT vs. Jai Laxmi Rice Mills (2015) 64 taxmann.com 75 (SC) wherein the Hon'ble Supreme Court held that there was no satisfaction recorded regarding penalty proceedings under section 271E of the Act, though in that order the Assessing Officer wanted penalty proceedings 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. The assessee also relied on the decision of Mumbai ITAT in Keshu Ramsay vs. JCIT (2006) 5 SOT 9 (Mumbai).

6.2 It was contended by the assessee that the impugned penalty order is barred by limitation as assessment under section 143(3) of the Act was made on 30.03.2016. The first penalty notice was issued on 04.05.2016 and the penalty order was passed on 24.04.2017 which is barred by limitation as provided under section 275(1)(c) of the Act. As per section 275(1)(c) no order of penalty can be passed after the expiry of the financial year in which the proceedings in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty is initiated whichever period expires later. It was the submission of the assessee that the limitation for penalty subsisted till 30.09.2016. Therefore, the penalty levied by the Ld. JCIT on 24.04.2017 is barred by limitation. Reliance was placed on the decision of Hon'ble Supreme Court in CIT vs. Hissaria Brothers (2016) 74 taxmann.com 22 (SC); Hon'ble Delhi High Court in ITO vs. Dinesh Jain (2014) 52 taxmann.com 108 (Delhi) and CBDT Circular 10/2016 dated 26.04.2016 in support of the proposition that the period of limitation for purpose of penalty is to be reckoned from date of first show cause notice issued for imposing penalty.

6.3 According to the assesee, the assessment in its case in several preceding years have been completed under section 143(3) under complete scrutiny and impugned penalties have never been imposed on the assessee which confirmed the bonafide belief of the assessee that provisions of section 269SS/269T are not applicable to it. The Ld. AO in his order under section 143(3) dated 30.03.2016 did not record any adverse findings with regard to the deposits of the members and its repayment to them.

6.4 It was further stated that income of the assessee is exempt under section 80P. The Ld. AO/JCIT have not established that there was deliberate and intentional violation of the provisions of Section 269SS/269T in order to hide any income or to evade any payment of tax. Relying on the decision of Agra Bench of the Tribunal in DCIT vs. Akhilesh Kumar Yadav (2012) 26 taxmann.com 264 (Agra-Trib) it was submitted that the genuineness of transaction has not been doubted and involvement of unaccounted or black money has not been traced. Hence penalty for violation, if any, of the provisions of section 269SS/269T cannot be levied.

6.5 The assessee brought to the notice of the Ld. CIT(A) the need to follow the rule of consistency as also the legislative intent given in Board Circular No. 387 dated 06.09.1984 for bringing on the statute book the provisions of Section 269SS/269T of the Act.

6.6 It was also submitted that the assessee society is run on the principles of mutuality. The money received from the members of the society is in the nature of capital receipt and can in no way be treated as loan/deposit. The deposits accepted and repaid by the assessee were part of its business activities and the depositors were its members.

6.7 In its submission dated 08.03.2019, the assessee reiterated the earlier submissions.

6.8 Vide letter dated 25.03.2019 to the Ld. CIT(A), the assessee pointed

out that during the penalty proceedings the Ld. JCIT had issued/served notice dated 04.05.2016, 26.07.2016 and 29.09.2016 at the correct address of the assessee fixing hearing on 16.05.2016, 05.08.2016 and 06.10.2016 respectively. In response to each notice the assessee submitted reply with correct name and PAN. Details called for relating to deposits received in cash, repayments made in cash, confirmation of account of members etc. were submitted which were verified by the Ld. JCIT. It was thus submitted that the Ld. JCIT erred in computing the time limit from 29.11.2016 as against from 28.04.2016 when the Ld. AO made reference for initiation of penalty proceedings on the basis of which notices dated 04.05.2016, 26.07.2016 and 29.09.2016 were issued. The assessee further pointed out that the Ld. JCIT sought to rely on decisions in which Revenue had issued notices to non existing entities and the courts unanimously held that such notice(s) contain jurisdictional defect and not procedural irregularity curable by invoking the provisions of section 292B of the Act. Therefore, the Ld. JCIT has incorrectly taken the shelter of section 292B to save the limitation.

7. The Ld. CIT(A) recorded his finding in para 9(A) of his appellate order that the assessee is not covered within the gateways provided as per proviso first and second to section 269SS and 269T. Therefore the default of the assessee in accepting deposits in cash and repayment of deposits in cash stands established.

7.1 On the issue of existence or otherwise of reasonable cause within the meaning of section 273B, the Ld. CIT(A) recorded the following finding in para 9.1(B) of his appellate order:

"9.1(B).....The appellant has pleaded existence of reasonable ground on the following counts-

(a) The transactions were genuine

(b) That no penalties u/s 27ID or 27IE were ever initiated or levied in the earlier years and that the appellant's belief was bonafide.

(c) On the basis of precedence in earlier years, no penalty u/s 27ID or u/s 27IE was to be initiated/levied.

I have examined the appellant's pleas as aforesaid. The appellant's plea that such a penalty / violation not levied/detected in earlier years is not a valid argument for purposes of pleading a reasonable cause. It is established that the assessee -appellant has been violating provisions of section 269SS of the Income Tax Act, 1961. The appellant's plea tantamounts to saying that "you did not catch my wrong doing and now you cannot do anything" is not acceptable, as has been held by the Hon'ble Supreme Court in the Case of Phool Chand Bajranglal {110 ITR 834(SC)}. Further, it has been held by Hon'ble Supreme Court in the case of Distributors Baroda Pvt. Ltd. {155 ITR 120(SC)}, that to perpetuate an error is no heroism. Therefore, once an error / wrong doing is detected, the full force of law has to be applied to remedy / rectify the situation/default. As such, this plea of the appellant is not judicially acceptable.

Genuineness of transaction is not a valid plea, as even in genuine transactions, transacting in cash is not allowed. Therefore, I am of the view that the appellant cannot plead existence of valid reasons within the meaning of provisions of section 273B of the Income Tax Act, 196l."

7.2 On the issue whether or not penalty is barred by limitation within the meaning of section 275(1)(c) of the Act, the Ld. CIT(A) observed at page 62 of his appellate order that admittedly first information by the Ld. AO was sent to the Ld. JCIT vide letter dated 28.04.2016. However it was subsequently informed by the Ld. AO on 28.11.2016 to the Ld. JCIT that there was error in the said intimation/request as the name of the assessee was given wrong and fresh proposal to initiate penalty was sent to Ld. JCIT who vide ordersheet entry dated 29.11.2016 filed the notice(s) and stated that fresh notice is to be issued with correct name of the assessee along with PAN.

7.3 On page 65 of the appellate order, the Ld. CIT(A) observed and held as under:

"The report of the A.O. dated 01.02.2019 was duly provided to the appellant. It is noted by me that the penalty proceedings which had been initiated by issue of notice dated 04.05.2016 stood nullified, as were other notices issued till 29.11.2016. This is for the reason that the earlier notices issued did not carry the name of the appellant and did not carry the PAN of the appellant. It is noted that when the notice for levy of penalty itself does not specify the name (or even the PAN) the same is liable to be treated as invalid. The appellant has challenged that the notices issued prior to 29.11.2016 were not bad and were actually proper notices as per provisions of section 292B of the Income Tax Act, 1961. According to the appellant, as the first notice initiating penalty was issued on 04.05.2016, penalty could have been levied at best till 30.11.2016. According to the appellant, the penalty is therefore time barred. However, I find that the mistake in the notice issued were clearly brought to the notice of the Range Head by the A.O vide his letter dated 28.11.2016. Since the A.O had sent the fresh proposal after taking conscious view (as according to him the earlier initiation of penalty in the a wrong name was bad), I hold that the original penalty proceedings were rightly brought to an end, The wrong notice (even without specifying the PAN of an assessee) is a defect which does not get

cured even as per provisions of section 292B of the Income Tax Act, 1961. This is for the reason that penalty and penalty procedure have to be strictly construed/followed. Accordingly, I agree with Revenue Authorities that penalty proceedings in this case began with the fresh information received on 28.11.2016 and were therefore completed in time. The time bearing date was 31.05.2017 but penalty was levied on 24.04.2014 itself. In this view of the matter, I decide the issue of limitation against the assessee. "

8. Aggrieved the assessee is in appeal before the Tribunal. The common Ground No. 1, 3, & 4 in both the appeals relate to imposition of the impugned penalty which has been confirmed by the Ld. CIT(A) and Ground No. 2 relates to confirmation of the impugned penalty by the Ld. CIT(A) after the expiry of limitation period provided under section 275(1)(c) of the Act.

9. The Ld. AR submitted that the assessee is a co-operative society registered with the Registrar of Co-operative Societies, Govt. of NCT, New Delhi on 20.06.1956. The society works on the concept of mutuality and is engaged in the activity of granting thrift and credit facilities to its members (more than 4000) who are taxi operators coming from rural areas. The Registrar of Co-operative Societies (RCS) has classified the society under Banking Section and the Assistant Registrar (Banking) Govt. of NCT, New Delhi is supervising the activities of the society.

9.1 The Ld. AR stated that initiation of proceedings in the absence of any finding /satisfaction recorded by the Ld. AO in the assessment order passed under section 143(3) which is a condition precedent is without jurisdiction. He referred to Jai Laxmi Rice Mills's case (supra). He further submitted that penalty is not leviable for technical/venial breach of statutory provision as held by the Hon'ble Supreme Court in Hindustan Steel vs. State of Orissa 83 ITR 26 (SC).

9.2 It was pointed out by the Ld. AR that as per section 273B, penalty under sections mentioned therein is not exigible if there is reasonable cause. On identical facts in the case of Mamurpur Co-operative Thrift and Credit Society Ltd. vs. Addl. CIT, Delhi Bench of the Tribunal in its order dated 10.09.2020 in ITA Nos. 1370 & 1371/Del/2019 for AY 2014-15, held that

considering the bonafide and genuine transaction reasonable cause in terms of section 273B of the Act did exist for not complying with the provisions of section 269SS and 269T and cancelled the penalties levied under section 271D and 271E of the Act. Our attention was also drawn to the CBDT Circular No. 415/6/2000-17(Inv I) dated 25.03.2004 wherein the Board took note of the fact that, in the cases of the Credit Co-operative Societies, penalties under section 271D and 271E are being imposed without appreciating the genuine difficulties faced by them in complying with these provisions and advised the field officers not to impose penalty indiscriminately and keep in view the provisions of section 273B of the Act. Reliance was placed on numerous decisions which deleted penalties taking note of the said circular.

9.3 The Ld. AR submitted that the legislative intent behind bringing the provisions of section 269SS and 269T was to curb the practice of extending false explanation against the cash found during the search. So the intention was to bring down the non-genuine transaction and to prevent the unaccounted income being brought in the books of account in the form of loans/deposits. In the case of the assessee, none of the deposits or repayments have been doubted or found to be ingenuine neither by the Ld. AO/JCIT/CIT(A). The Ld. AR asserted that the activities of the society are genuine, the transactions are genuine. Accordingly, the purpose for which these provisions were brought on the statute book does not apply to the assessee's case. Reliance was placed on several decisions including the decision of Delhi Tribunal in Farrukhabad Investment (I) Ltd. vs. JCIT reported in 85 ITD 230.

9.4 Stress was laid on the fact that the concept of mutuality in the case of Co-operative Societies has been recognised by the Hon'ble Supreme Court in ITO vs. Venketsh Premises co-operative societies Ltd. (2018) 402 ITR 670 (SC) which is based on the theory that a person cannot make profit from himself. The assessee society is engaged in the activity of granting thrift and credit facilities to its members who are taxi operators from rural

background. It is registered body and undertakes its activities in compliance to its bye laws duly approved by the Registrar of Co-operative Societies.

9.5 Same arguments advanced before the Ld. CIT(A) on the issue that the impugned penalties have been levied beyond the period of limitation prescribed under section 275(1)(c) of the Act were repeated. Reference and reliance was placed on the decision of Hon'ble Delhi High Court in PCIT vs. Maheshwood Product (P) Ltd. (2017) 394 ITR 313 (Delhi) wherein it is held that the date of initiation of penalty proceedings would be the date on which the AO wrote a letter to the ACIT recommending the issuance of show cause notice (SCN).

9.6 It has also been submitted that penalty proceedings can be initiated only once and cannot be re-initiated as has been done in the case of the assessee. Decision of Hyderabad Bench of the Tribunal in Dillu Cine Enterprises P. Ltd. vs. Addl. CIT (2002) 80 ITD 484 (Hyd.) was relied upon.

9.7 Impugned penalties were also assailed on the ground that no proceedings were pending on the date of initiation of penalty proceedings. So the orders passed are void and without jurisdiction as held in CIT vs. Rajinder Kumar Somani (1980) 4 Taxman 549 (Delhi).

10. The Ld. DR strongly supported the order of the Ld. CIT(A). He submitted that recording of satisfaction in assessment order is not required for initiation of proceedings under section 271D and 271E of the Act. Due satisfaction was recorded by the Ld. AO while referring the issue to Ld. JCIT for initiation of penalty proceedings. Scanned copies of Ld. AO's letter may be seen in the order of the Ld. CIT(A).

10.1 The Ld. DR pointed out that the initial SCN was treated as invalid and penalty proceedings initiated by such notice stood nullified. Fresh SCN was issued by the Ld. JCIT after making an ordersheet entry dated 29.11.2016.

The Ld. CIT(A) has therefore observed that original proceedings were brought to end. Wrong notice without name and PAN does not get cured under section 292B of the Act. In the case of the assessee, penalty proceedings began with fresh information received by Ld. JCIT on 28.11.2016. Time barring date was 31.05.2017. Penalty was imposed on 24.04.2017 in time.

10.2 It has been submitted by the Ld. DR that genuineness of transaction is not a criteria for imposition of penalty. Even in genuine transaction transacting in cash is not allowed under section 269SS and 269T of the Act. The case of the assessee does not fall under the exclusionary clause.

10.3 Refuting the argument of the Ld. AR that penalty cannot be imposed for technical / venial breach of statutory provision, the Ld. DR submitted that it has been observed by the Ld. CIT(A) that there is violation of statutory provisions of section 269SS and 269T which resulted in initiation of the penalty proceedings.

10.4 The Ld. DR assailed the argument of the Ld. AR that assessee is a co-operative society engaged in the business of banking providing credit facility to its member and as such neither section 269SS nor section 269T of the Act is applicable, relying on the definition of "banking company" and "co-operative bank" as per proviso and explanation (i) thereto. The very fact that from AY 2018-19 the assessee is no longer having transactions in cash establishes that there was violation of provisions of section 269SS and 269T prior to that assessment year without any reasonable cause. If the Revenue did not detect the said violation in earlier years it does not become a valid argument for pleading a reasonable clause.

11. We have carefully considered the rival submissions. We place on record our admiration for the efforts put in and pains taken by the Ld. Representative of the parties in advocating their respective sides. We have thoroughly perused the material available in the records.

12. Let us first take up the common ground No. 2 in both the appeals of the assessee relating to passing of the impugned orders of penalty after the expiry of limitation period. The reason is this. The Hon'ble Supreme Court has observed in the case of CIT vs. Kedia Power Ltd. (2013) 217 taxman 400 (SC) that the dispute whether penalty order was passed within time with reference to the date of initiation of penalty proceedings is a matter, which should have been adjudicated by the Tribunal before considering the merits of the case.

12.1. In the light of the decision of Hon'ble Delhi High Court in CIT vs. Worldwide Township Projects Ltd. in ITA No. 232/2014 dated 21.05.2014 and the CBDT Circular F. No. 279/Misc./M-140/2015-ITJ dated 26th April, 2016 stating therein that the period of limitation of penalty proceedings under section 271D and 271E of the Act is governed by the provisions of section 275(1)(c) of the Act, we proceed further.

12.2. For ready reference, section 275 of the Act which falls under "Chapter XXI. Penalties Imposable", is reproduced below:-

"275.(1) No order imposing a penalty under this chapter shall be passed -

(a) xxx (not applicable)

(b) xxx (not applicable)

(c) in any case, after the expiry of the financial year in which the proceedings, in the course of which action for the imposition of penalty has been initiated, are completed, or six months from the end of the month in which action for imposition of penalty initiated whichever period expire later."

12.3. In Sharma & Sons (JP) vs. CIT 151 ITR 333 (Raj.) the Hon'ble Rajasthan High Court held that the language of section 275 is clear and explicit. It is mandatory. It embodies a rule of limitation which is strictly enforceable. An order of penalty must be passed within the specified period.

12.4 The legal implication of the decision in Sharma & Sons (supra) and several other High Courts of Kerala, Gujarat, Andhra Pradesh and M.P. is that where penalty proceedings are not completed before the stipulated date, the order so passed will not be valid in the eye of law.

13. Section 275(1)(c) of the Act talks of initiation of penalty proceedings for the purpose of reckoning of the period of limitation. When does initiation of penalty proceedings take place? The answer is provided in the decision of the Hon'ble Delhi High Court in PCIT vs. Mahesh Wood Products (P) Ltd. (2017) 394 ITR 312 (Del) wherein it is held that given the scheme of section 275(1)(c) the date of initiation of penalty proceedings would be the date on which Ld. AO wrote a letter to JCIT recommending the issuance of SCN.

14. In its submission vide letter dated 25.03.2019 before the Ld. CIT(A) the assessee submitted that during penalty proceedings the Ld. JCIT issued/served the following notices at the correct address to the assessee with slight variation in the name of the assessee.

Sl. No.	Notice u/s	Notice Dispatch Ref. No.	Notice Dated	Issued by	Fixed for Hearing on	Reply submitted by assessee on
1.	274 r.w.s. 271D	D. No. 38 05/05/2016	04.05.2016	Sh. Ashis Mohanty,JCiT, Range-60	16.05.2016	16.05.2016, 11.06.2016 & 07.07.2016
2.	274 r.w.s. 271E	D. No. 38 05/05/2016	04.05.2016	Sh. Ashis Mohanty,JCIT, Range-60	16.05.2016	16.05.2016, 11.06.2016 & 07.07.2016
3.	274 r.w.s. 271D	D. No. 195 28/07/2016	26.07.2016	Sh. Raghunath, JCIT,Range-_60	05.08.2016	05.08.2016 & 26.08.2016
4.	274 r.w.s. 271E	D. No. 195 28/07/2016	26.07.2016	Sh. Raghunath, JCIT,Range- 60	05.08.2016	05.08.2016 & 26.08.2016
5.	274 r.w.s. 271D	Issued by hand on 01/10/2016	29.09.2016	Sh. Shubhash Verma.JCIT, Range-60	16.05.2016	-
6.	274 r.w.s. 271E	Issued by hand on 01/10/2016	29.09.2016	Sh.Shubhash Verma.JCIT, Range-60	06.10.2016	-

14.1 It may be observed that all the three SCNs dated 04.05.2016, 26.07.2016 and 29.09.2016 were issued by three different JCIT(s).

14.2 It was asserted by the assessee that all the above notices were duly served on the assessee and the assessee responded to each of them with correct name and PAN. All the requisite details were furnished and the Ld. JCIT(s) verified/examined them.

14.3 The letter F. No. ITO/W-60(5)/2016-17/13 dated 28.04.2016 of the Ld. AO referring the case for initiation of the impugned penalty proceedings for contravention by the assessee of the provisions of section 269SS and 269T to the Ld. JCIT which formed the basis of issuance of SCN dated 04.05.2016 is at page 56 of the Ld. CIT(A)'s order. It is observed therefrom that in this reference letter the Ld. AO has mentioned the names of the assessee as M/s. Delhi Taxi Co-op. Thrift & Credit Society. This reference letter dated 28.04.2016 is issued by the same Ld. AO who had framed assessment in the case of the assessee for AY 2013-14 on 30.03.2016 barely 28 days earlier in the name of M/s. Delhi State Taxi Operators Co-operative Thrift Credit & Service Society Ltd. Even assuming for a moment but not admitting that it was a case of human error on the part of the Ld. AO to make a little mistake in reference letter in writing the name of the assessee correctly but admittedly there was no mistake at all in the address of the assessee in SCN(s) issued by the Ld. JCIT(s) as pointed out above. It is not the case of the Revenue that SCN issued to the assessee by the Ld. JCIT on 04.05.2016 was not served upon the assessee. On being served the first SCN dated 04.05.2016 issued by the Ld. JCIT, the assessee acted upon it and submitted in response thereto as also to subsequent notices all the requisite details. Upto this stage there was no confusion in the mind of any of the stakeholders as to the validity of the initial SCN issued on 04.05.2016 by the Ld. JCIT on the basis of reference letter of the Ld. AO dated 28.04.2016 recommending issuance of SCN. Therefore, following the decision of Delhi

High Court in Mahesh Wood Products (P) Ltd. (Supra), 28.04.2016 should have legally been taken as the date of initiation of penalty proceedings for the purpose of reckoning the period of limitation as per the provisions of section 275(1)(c) of the Act. Had it been so the limitation to pass penalty orders subsisted till 31.03.2017 or 31.10.2016 whichever expires later by which date the penalty orders should have been passed. But this was not to be. This did not happen.

14.4 What happened is this. No penalty orders were passed within the specified dates upto which the period of limitation subsisted. Thereafter, another Ld. AO of Ward-60(5), New Delhi made fresh reference for initiation of impugned penalty proceedings vide letter F. No. ITO/W-60(5)/2016-17/348 dated 28.11.2016 (copies at page 62 of Ld. CIT(A)'s order) saying that in the earlier first reference name of the assessee was mentioned as Delhi Taxi Co-op. Thrift & Credit Society in place of M/s. Delhi State Taxi Operators Co-operative Thrift Credit and Services. PAN was also not mentioned. In view of the above alleged deficiency in the first reference, a fresh reference on 28.11.2016 is made. On 29.11.2016 the Ld. JCIT made the following ordersheet entries:-

"29.11.2016 On perusal of asst record it is noticed that AO Ward-60(5) has not intimated PAN number of A and the name was also not complete. Therefore the notice issued under section 274 r.w.s. 271D of IT Act and notice under 274 r.w.s 271E are filed and fresh notice is to be issued with correct name of the A along with PAN".

14.5 In para 2 of the impugned penalty orders dated 24.4.2017 the Ld. JCIT observes as under:-

"2. The undersigned initiated penalty proceedings under section 271D/271E of the Income Tax Act, 1961 on 29.11.2016 by issuing show cause notice dated 29.11.2016 to the assessee."

14.6 The Ld. JCIT passed the order on 24.04.2017 imposing the impugned penalty under section 271D and 271E of the Act.

14.7 The assessee submitted before the Ld. CIT(A) that the assessment under section 143(3) for AY 2013-14 was made on 30.03.2016 and the first penalty notice under section 271D and 271E was issued on 04.05.2016 and the penalty orders have been passed on 24.04.2017 in violation of section 275(1)(c) of the Act and thus are barred by limitation. Reliance among others was placed on the decisions of Hon'ble Delhi High Court in ITO vs. Dinesh Jain (2014) 53 taxman.com 108 (Delhi) and Hon'ble Supreme Court's decision in Hissaria Brothers (2016) 74 taxman.com 22 (SC) wherein it is held that period of limitation for purpose of penalty is to be reckoned from date of first show cause notice issued for imposing penalty.

14.8 Strangely enough the impugned penalty orders passed by the Ld. JCIT on 24.04.2017 do not even mention the fact of issuance of first SCN dated 04.5.2016 followed by subsequent notices dated 26.07.2016 and 29.09.2016. The Ld. CIT(A), however observes at page 65 of his appellate order that the penalty proceedings which had been initiated by issue of notice dated 04.05.2016 stood nullified as were other notices issued till 29.11.2016 for the reason that the earlier notices did not carry the correct name of the assessee and its PAN. The Ld. CIT(A) recorded the finding that such deficiency/defect does not get cured even as per provisions of section 292B of the Act. It is rather uncommon that the Revenue sought to use the provisions of section 292B against itself.

14.9 We observe from page 45 of the appellate order of Ld. CIT(A) that despite the fact that before the Ld. CIT(A) the assessee had argued relying upon the decisions mentioned below that minor defect/deficiency /irregularity in the notice, e.g. incorrect name and even incorrect PAN would not invalidate such notice, the Ld. CIT(A) chose to record his findings mentioned in para 14.8 above with which we are not inclined to agree:-

i. Sky Light Hospitality LLP vs. ACIT (2018) 90 taxman.com 413 (Delhi) SLP dismissed in Sky Light Hospitality LLP vs. ACIT (2018) 92 taxmann.com 93 (SC)
ii. Sudev Industries Ltd. vs. CIT (2018) 99 taxmann.com 109 (SC)
iii. CIT vs. Jagat Novel Exhibitors (P) Ltd. (2012) 18 taxmann.com 138 (Delhi)

15. On the facts and in the circumstances of the case as set out above, we hold that the initial first SCN dated 04.05.2016 and other notices issued before 29.11.2016 by the Ld. JCITs were legally valid and penalty order should have been passed within the specified date upto which the period of limitation as per the provisions of section 275(1)(c) subsisted. This has not been done. Initiation of penalty proceedings by issuing fresh SCN dated 29.11.2016 and consequent levy of impugned penalty under section 271D and 271E are not in accordance with law having been passed beyond the time limit described under section 275(1)(c) of the Act. We, therefore, hold that the impugned penalty imposed under section 271D and 271E of the Act is not sustainable and both the impugned penalty orders passed under section 271D and 271E of the Act on 24.04.2017 are liable to be quashed. Ground No. 2 is decided in favour of the assessee.

16. We take up now ground No. 1, 3 and 4 which challenge the impugned penalty levied under section 271D and 271E by the Ld. JCIT on merits which has been confirmed by the Ld. CIT(A). Perusal of the assessment order dated 30.03.2016 passed by the Ld. AO under section 143(3) of the Act reveals that the assessee is a co-operative society involved in the activity of granting thrift and credit facilities to its members who are the taxi operators. The assessee claimed deduction under section 80P amounting to Rs. 4,96,78,980/- which the Ld. AO allowed to the assessee. However, income of Rs. 1,40,000/- from house property and miscellaneous income of Rs.5,980/- were brought to tax. This assessment was completed on total income of Rs. 1,45,980/- as against income declared at Nil. It is observed that there is no initiation/satisfaction in the order of assessment to levy penalty under section 271D and 271E of the Act. The submission of the Ld.

AR before us is that in the absence of any finding/satisfaction for violation of the provisions of section 269SS and 269T recorded by the Ld. AO in the order of assessment passed under section 143(3) of the Act which is a condition precedent, even the initiation of penalty proceedings is without jurisdiction. Before the Ld. CIT(A) as also before us the reliance was placed on the decision of Hon'ble Supreme Court in CIT vs. Jai Lakshmi Rice Mils (2015) 64 taxmann.com 75 (SC) and the decision of Hon'le Delhi High Court in CIT vs. Rajender Kumar Somani (1980) 125 ITR 756 (Delhi) and decision of Bombay Tribunal in Kushu Ramsay vs. JCIT (2006) 5 SOT 9 (Mumbai). Ld. CIT(A) did not record any finding on this submission of the assessee. The Ld. DR, however, refuted the assessee's contention by saying that the assessment proceedings and penalty proceedings are two separate and independent proceedings not consequential to each other. Hence, satisfaction to be recorded in the assessment order is not required for initiation of penalty proceedings under section 271D and 271E of the Act. Due satisfaction was recorded by the Ld. AO while referring the issue to Ld. JCIT for initiation of penalty proceedings. We are of the view that controversy on the issue still continues and till it is finally put to rest, the penalty proceedings cannot be said to be vitiated on this ground alone.

17. The Ld. AR drew our attention to the rationale behind the introduction of section 269SS explained by the board in Circular No. 387 dated 6th July, 1984 reported in (1985) 152 ITR (St) 22. It says that unaccounted cash found in the course of searches carried out by the Income Tax Department is often explained by taxpayers as representing loans taken from or deposits made by various persons. Unaccounted income is also brought into the books of account in the form of such loans and deposits, and the taxpayers are also able to get confirmatory letters from such persons in support of their explanation. With a view to countering this device which enables the taxpayer to explain away unaccounted cash or unaccounted deposits, the Finance Act, 1984 inserted a new section 269SS. The argument of the Ld. AR is that the legislative intent was to bring down the non-genuine transactions to prevent the unaccounted income being brought into the

books of account in the form of loans/deposits. According to the Ld. AR in the case of the assessee none of the deposits or repayments have been doubted or found to be ingenuine either by the Ld. AO or by the Ld. CIT(A). The activities of the society are genuine, the transactions are genuine and accordingly the purpose for which the enactment of section 269SS and 269T was introduced has no application to the assessee's case. This plea of the assessee was not acceptable to the Ld. CIT(A) who at page 55 of his appellate order observed, as pointed out by the Ld. DR as well that genuineness of transaction is not a valid plea, as even in genuine transactions, transacting in cash is not allowed. We deliberated. In our opinion, it is imperative to keep in mind the legislative intent in order to judicially appreciated a fact situation wherein the loans/deposits brought in by the assessee were not to explain its unaccounted cash and there was no material on record to suggest that by way of accepting loans/deposits in cash the assessee had introduced its unaccounted cash in books of account in the garb of loans. There is no allegation at all against the assessee that by accepting loans/deposits in cash its intention ever was to avoid payment of tax or to defraud Revenue.

18. The case of the assessee has along been that it is a co-operative society engaged in the business of banking by providing credit facility to its members and as such neither section 269SS nor section 269T of the Act is applicable to it. Since inception 63 years ago the assessee was under a bonafide and genuine belief that it being a credit thrift society could accept from its members sums in cash and advance to them such sums in cash and that there is no prohibition to do so. The assessee pleaded before the Ld. JCIT and the Ld. CIT(A) that for its default there existed reasonable cause within the meaning of section 273B of the Act. It was also the submission of the assessee that in none of the earlier years any contravention of the provisions of section 269SS and 269T was pointed out to the assessee by the Department. All these arguments/plea were not judicially acceptable to the Ld. JCIT/CIT(A) for the reason that once a wrong doing is detected, the full force of law has to be applied to remedy/rectify the

situation/default. The Ld. DR also emphasised that the practice of cash dealings have been carried out by the assessee without any reasonable cause.

19. We considered carefully submissions of the parties. It is not in dispute that the assessee is a co-operative society which considers itself, though erroneously, to be engaged in the business of banking as it was providing credit facilities to its members right from inception. It is also an admitted position that the assessee's claim of deduction under section 80P has always been accepted by the department on the basic premise that the assessee has been engaged in carrying on the business of banking or providing credit facilities to its members as stipulated in sub-section 2(a)(i) of section 80P of the Act. It is noteworthy that the provisions of section 269SS and section 269T were brought on the statute book w.e.f. 01.04.1984 which is around 28 years after the assessee society came into existence. But the Department never before the AY 2013-14 presently under consideration raised the issue of violation of the provisions of section 269SS and 269T though assessments were made under section 143(3) of the Act after scrutiny. This gives the bonafide impression that the Department had accepted, by implication that in the facts and peculiar circumstances of the assessee's case, the provisions of section 269SS and 269T were inapplicable to it. Therefore, the rule of consistency should have been followed in AY 2013-14 also which has not been done. Even the CBDT acknowledged in its Circular F. No. 415/6/2000-IT(Inv.I) dated 25th March, 2004 that it was a widespread belief, even if erroneous that the provisions of section 269SS do not apply to the credit co-operative societies and advised the field officers not to impose penalty under section 271D and 271E indiscriminately and should keep in view the provisions of section 273B of the Act.

20. Section 273 of the Act ordains that no penalty under section 271D and 271E shall be imposable on the person or the assessee if he proves that there was reasonable cause for the failure. During penalty proceedings before the Ld. JCIT, the assessee vide reply dated 15.03.2017 submitted that the audit report under section 44AB of the Act obtained from an

independent Chartered Accountant confirmed that the provisions of section 269SS and 269T are not applicable to the society; the provisions of section 269SS and 269 have no application to the facts of the case and the society is under bonafide belief, the deposits are made/repaid are voluntarily by the members and are genuine; it is a case of mutually aided society for the benefit of its members and the proceedings for imposing penalty under section 271D and 271E may kindly be dropped. The explanation was not acceptable to the Ld. JCIT. In the statement of facts filed by the assessee before the Ld. CIT(A) it stated that the society works on the concept of mutuality and engaged in thrift and credit business, welfare activities of its members and employees and accepting deposits from its members and redeploying the funds by way of advancing loans to its members. It was further stated that as the nature of activities of the society is that of thrift credit/banking, the society has been classified under the Banking Section (as per Part V of the Banking Regulation Act, 1949) of the Co-operative Societies and the Assistant Registrar (Banking), Government of NCT, Delhi is supervising the activities of the society.

20.1 Before the Ld. CIT(A), drawing his attention to the provisions of section 273B of the Act, it was submitted that there is no finding in the assessment order that the transactions made by the assessee in breach of provisions of section 269SS or 269T were not a genuine transaction. Rather the penalties have been imposed stating that genuineness is no consideration, implying thereby that the genuineness of the transaction is accepted. The assessment order passed under section 143(3) after scrutiny of the books of account nowhere recorded any finding that the transactions made by the assessee was malafide and with the sole object to conceal or undisclose the money. Mere technical mistake not resulting in any loss of revenue may not invite harsh penalty. The transactions are attributable to various exigencies of business carried on by the assessee constituted a 'reasonable cause' as contemplated under section 273B of the Act. It was also the submission of the assessee that the impugned penalty has never been imposed upon the assessee so the assessee was under bonafide belief

that provisions of section 269SS and 269T were not applicable to the assessee. It was the plea of the assessee that bonafide belief coupled with genuineness of transaction constituted reasonable cause for not invoking provisions of section 271D and 271E of the Act.

20.2 The Ld. CIT(A) rejected the explanation of the assessee observing, inter alia that the assessee cannot plead existence of valid reasons within the meaning of section 273B of the Act.

21. We do not agree with this rigid approach of the Ld. JCIT/CIT(A). In the context of constitutionality of the provisions in ADIT vs. AB Shanthi 255 ITR 258 (SC) the Hon'ble Supreme Court observed that the object of introducing section 269SS is to ensure that a taxpayer is not allowed to give false explanation for its unaccounted money, or if he has given some false entries in its accounts, he shall not escape by giving false explanation for the same. Provisions inserted to curb the rampant circulation of black money. The Ld. JCIT relied upon the decision of Hon'ble Supreme Court (supra) to justify levy of impugned penalty upon the assessee but he failed to appreciate that none of the observations of the Hon'ble Supreme Court apply to the facts of the assessee's case. It is not a case of search operations conducted on the assessee. There is no allegation levelled by the Revenue that false explanation at any point of time has been given by the assessee. Neither any false entry was ever detected by the Revenue in the books of account of the assessee. We are at pains to say that further observations made by the Hon'ble Supreme Court in the decision (supra) escaped the attention of the Ld. JCIT/CIT(A). The Hon'ble Supreme Court further observed in para 19 that it is important to note that another provision, namely section 273B of the Act 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 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. 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 bonafide reasons, the authority rested with the power to impose penalty has got discretionary power.

22. In Farrukhabad Investment (I) Ltd. vs. JCIT (2003) 85 ITD 230 (Delhi), the Delhi Bench of the Tribunal's observation applies squarely to the facts of the assessee's case. In para 46 of its order, the Tribunal observed that keeping in view the intent of the legislature behind enacting the above sections, we hold that the loans/deposits brought in by the assessee was not to explain its unaccounted cash and therefore, the question of violating the provisions of section 269SS/269T did not arise. We may mention here that even there is no suggestion from the Revenue that by way of accepting loans and deposits in cash, the assessee has introduced its unaccounted cash in the garb of loans.

23. We would like to mention the decision of Pune Bench of the Tribunal in Vishal Purandar Nagri Sahakari Pat Sansthan Maryadit rendered on 22.12.2008 in ITA No. 1290/PN/2008. It was a case of credit co-operative society which rendered services which are somewhat close to the services usually rendered by the co-operative bank in the sense they accept deposit from the members and give loans to the members. Keeping this in view, the Tribunal observed that there is a fair degree of similarity in the services rendered by these credit co-operative societies and co-operative banks. In these circumstances, the bonafides of assessee's belief for being entitled to the same treatment as banking institutions cannot be rejected outright. This is surely an incorrect view, but when an authority is examining an explanation in the context of a penalty proceedings, all that the authority has to see is whether or not such an explanation stands the preponderance of probabilities, and whether there are any inconsistencies or fallacies in such an explanation which demonstrate that the explanation is a make believe story. The Tribunal went on to observe further that it is important to bear in mind that section 273B comes into play when the assesee has

committed a lapse but the assessee can demonstrate that there was reasonable cause for having committed that lapse.

24. We may also refer to the decision of the co-ordinate bench of Delhi Tribunal in the Mamurpur Co-operative Thrift and Credit Society Ltd. vs. Addl. CIT rendered on 10.09.2020 in ITA No. 1370 & 1371/Del/2019. In this case also the assessee is a co-operative society registered under the Co-operative Society Act and is engaged in carrying on the business of providing credit facilities to its members. The assessment year involved is 2014-15 in which for the first time violation of section 269SS/269T has been pointed out. Even the tax auditor has not made any remark in their Tax Audit Report regarding violation of section 269SS or 269T in this year or in earlier years. In view of past history of the case the assessee was under bonafide belief that alleged loan or deposit accepted or repayment hereof was not in violation of section 269SS or 269T. On these facts which are akin to the case under consideration before us the Tribunal recorded the following findings and cancelled the penalty levied under section 271D and 271E of the Act :-

> *"In our opinion, belief on the part of the assessee in view of the past history of the case that deposit/repayment by its members in cash is bonafide belief. In the case of CIT vs. Lokpal Film Exchange (Cinema) (2008) 304 ITR 172, the Hon'ble High Court held that the assessee had acted bonafidely and its plea that inter se transaction between the partners and the firm were not governed by the provision of section 269SS/269T, was a reasonable explanation and no penalty could be imposed. In view of the above, we are of the opinion that considering the bonafide and genuine transaction, reasonable cause in terms of section 273B of the Act, exist in the case of the assessee for not complying with the provision of section 269SS and 269T, and therefore, we cancel the penalty levied in terms of section 271D and 271E of the Act."*

25. In the light of the above discussion and following the precedents we are of the view that the assessee has discharged the onus which lay upon it

to establish the existence of reasonable cause for violation of the provision of section 269SS and 269T of the Act. In our opinion, the explanation offered by the assessee before the Ld. JCIT/CIT(A) was reasonable but was discarded merely because they proceeded on the premise that breach of condition provided under section 269SS and 269T shall necessarily lead to penal consequences which understanding in our humble opinion is not in accordance with law. We, therefore, cancel the penalty levied under section 271D and 271E of the Act. The ground No. 1, 3 & 4 are decided in favour of the assessee.

26. In the result, both the appeals filed by the assessee are allowed.

Order pronounced in the open court on 26th April, 2023.

sd/- **sd/-**

(SHAMIM YAHYA)
ACCOUNTANT MEMBER

(ASTHA CHANDRA)
JUDICIAL MEMBER

Dated: 26/04/2023

Veena

Copy forwarded to -
1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	

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