

271D : Penalty for failure to comply with the provisions of section 269SS

Introduction

Chapter-XXI of the Income Tax Act deals with penalty leviable under the Act. Penalty under different sections of the Income tax Act are imposed by the revenue authorities, in the cases where they are satisfied that particular default defined under the respective section or sections have been committed by the assessee. The language of the act is clear that the penalty can be imposed only if there is violation of one or more of the circumstances mentioned in the respective sections. The imposition of penalty for failure to perform statutory obligation prescribed under the Act is a matter of discretion of the authorities which is to be exercised judicially and on consideration of relevant circumstances. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Imposition of penalty in the given set of circumstances is not mandatory but discretionary and in order to exercise its power on levy of penalty under the respective section or sections, primary condition is that the proceedings in respect of the captioned assessment year should be pending before the Assessing Officer so that he can come and conclude that the given facts and circumstances merit the initiation of penalty proceedings in the respective case.

271D : Penalty for failure to comply with the provisions of section 269SS.

Earlier to the introduction of Section 271D and 271E, the defaults under sections 269SS and 269T used to attract prosecution under the provisions of sections 276DD and 276E. It was decided vide Amending Act, 1987 that such defaults should, instead of attracting prosecution, be made liable to penalties. Therefore, the Amending Act, 1987 omitted the sections 276DD and 276E from the Income-tax Act and has inserted two new sections 271D and 271E to provide for penalties for these defaults. The amount of penalty is a sum equal to the amount of loan or deposit taken or deposit repaid in contravention of the provisions of section 269SS or 269T.

As per Income tax Act, Section 271D states as follows:

1) If a person takes or accepts any loan or deposit or specified sum 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 [or specified sum] so taken or accepted.

2) Any penalty imposed under sub-section (1) shall be imposed by the [Joint] Commissioner.

Thus, Penalty under section 271D of the Act is leviable, where the assessee has violated the provisions of section 269SS of the Act, which provides that no person shall accept loan or deposit exceeding Rs. 20,000/- otherwise than by crossed cheque or demand draft. Penalty u/s 271D of the Act is leviable equal to the amount of such cash loan accepted. Section 269SS read with section 271D regulates the taking of loans or deposits to prevent the use of unaccounted money and to use black money by making fictitious entry. No penalty shall be imposed 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 such failure.

Object behind Introduction of 269SS and 269T

The object behind the introduction 269SS and 269T were to counter the serious threat to the national economy by proliferation of black money and the provisions had been incorporated to counter this major economic evil. The intention of the Parliament in introducing the provisions of Section 269SS and 269T is primarily to counter the device of explaining the unaccounted money as representing loan or deposits and thus control the evasion of tax. Penalty has been prescribed under ss. 271D and 271E for violation of the provisions of Section 269SS and 269T respectively.

Exception to Section 271D

Section 273B of the Income Tax Act, in an exception to Section 269SS, and provides that no penalty is imposed on the person or assessee as the case may be for any failure referred to in the said provisions (including Section 269SS), if he proves that there was reasonable cause for the

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said failure. The legislature through the introduction of section 273B has provided for relaxing the rigour of technical breach by giving an opportunity to the assessee to show that there was a reasonable cause for not complying with the provisions of Section 269SS.

Sections 269SS and 271D cannot be read in isolation, but have to be read along with section 273B which provides that genuine and bona fide transactions are out of the rigorous provisions of the section. It is open to the assessee to furnish to the satisfaction of the assessing authority the circumstances under which the payment in the manner prescribed in section 269SS was not practicable or would have caused genuine difficulty in taking the loan/deposit. If he is able to show that, then the penalty may not be levied. Thus, undue hardship in cases of genuine and bona fide transactions are being reduced or mitigated to the minimum because of Section 273B in the Act.

Section 273B of the Income Tax Act states as under:

Penalty not to be imposed in certain cases

Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271B section 271BB, section 271C, section 271D, section 271E, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or sub-section (1) of section 272BB or clause (b) of subsection (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.

Thus, no penalty shall be imposable on a person or an assessee, as the case may be, for any failure referred to in the said provision if the assessee proves that there was a reasonable cause for such failure. In other words, penalty is not automatic under section 271D on mere violations of provisions of section 269SS.

Meaning of Reasonable Cause

The words 'reasonable cause' have not been defined under the Act, but they could receive the same interpretation which is given to the expression 'sufficient cause'. Therefore, in the context of the penalty provisions, the words 'reasonable cause' would mean a cause which is beyond the control of the assessee. 'Reasonable cause' obviously means a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bonafides. Before imposition of penalty under these sections, the Assessing Officer must be satisfied, not arbitrarily but judiciously, that the assessee has without reasonable cause failed to comply with the provisions. While considering reasonableness one should keep in mind commercial expediency and object of the section for which it was inserted. It is to see whether the transaction is in accordance with commercial expediency.

Following are some of the circumstances under which deposits were accepted in cash-

- (a) There is no bank account for the depositor.
- (b) There is no banking facility in the village where the depositors reside.
- (c) The amounts were collected on a bank holiday from the depositors.
- (d) Deposits received after banking hours.

Judicial Pronouncements

In the case of **ITO v. Tarlochan Singh [2002] (ITAT Amritsar)** the husband had taken the cash of Rs. 70,000 from his wife for the purpose of investment in the acquisition of immovable property. The Assessing Officer had levied the penalty under section 271D which was cancelled by the Income-tax Appellate Tribunal holding as under:

"Even keeping in view the contents of the Departmental Circular No. 387 [1985], it was never the intention of the Legislature to punish a party involved in a genuine transaction. Therefore, by taking a liberal view in the instant case, the assessee had a reasonable cause within the meaning of section 273D. Thus, keeping in view the entire facts of the instant case, and also keeping in view the intention of the Legislature in enacting the provisions of section 269SS; it was to be held that the assessee was prevented by sufficient cause from receiving the money by an account payee cheque or account payee bank draft.

In the instant case, the assessee was of the opinion that the amount in question did not require to be received by an account payee cheque or account payee draft. Thus, there was a reasonable cause and no penalty should have been levied.

From the above, it would be clear that the assessee had taken plea that firstly there was no violation of the provisions of section 269SS. Secondly, there was a reasonable cause. Thirdly, the assessee was under the bona fide belief that he was not required to receive the amount otherwise than by an account payee cheque or account payee draft. As an alternative submission, it was contended that the default could be considered either technical or venial breach of the provisions of law and, therefore, no penalty under section 271D was leviable.

In view of the above discussion, no penalty under section 271D was leviable. It is well-settled that penalty provision should be interpreted as it stands and, in case of doubt, in a manner favourable to the taxpayer. If the court finds that the language is ambiguous or capable of more meaning than the one, then the court has to adopt the provision which favours the assessee, more particularly where the provisions relate to the imposition of penalty. Hence, the penalty sustained by the Commissioner (Appeals) was cancelled."

The Chennai Bench of the Tribunal in the case of DCIT, v. Vignesh Flat Housing promoters 105 ITD 359 (Chennai) held as follows:

"When section 271D is read with section 273B, which begins with the non obstante clause 'Notwithstanding anything contained in the provisions of inter alia section 271D, it is clear that in spite of the provisions of section 271D, the enactment following, namely, 'no penalty shall be imposed 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', will have its full operation. Under section 273B, a judicial discretion is left with the assessing authority not to levy a penalty under section 271D, if the authority is satisfied that there was a reasonable cause for not complying with the provisions of section 269SS. The power to impose penalty has to be exercised judicially with due regard to all the facts and circumstances. It cannot be exercised mechanically. It is all very well to paint justice blind, but she does better without a bandage around her eyes. She should be blind indeed to favour or prejudice, but to see which way lies the truth and the less dues there is about the better. In the instant case, the undisclosed income, as declared in the block return, remained the assessed income. The revenue did not doubt the veracity of the creditors. The Assessing Officer did accept the credits as genuine. Most of the creditors were agriculturists, residing in remote villages and many of them were not having any bank account. The assessee-firm was not professionally

managed. From that, it could be concluded that breach from a bona fide belief. Ex facie it was a venial breach. Cash appeared to be accepted because of the business exigencies. As such, there existed a reasonable cause in accepting cash loans from various parties. The assessee might, therefore, be exonerated from the rigour of the penalty. Therefore, the appeal of the revenue stood dismissed."

N.S.S. Karayogamv. CIT, Kerela High Court 2019, In this case it is held that "It should be proved that there existed reasonable and acceptable cause for not accepting the loans or deposits through crossed cheques or demand drafts. It was found that the mere proof regarding genuineness of the transaction or the intention in accepting the amounts in cash or that there was no attempt to induct black money into the business etc. cannot be considered as a reasonable cause or as compelling circumstances provided under Section 273B to avoid the penal action contemplated u/s 271D, with respect to violation of the provisions contained under Section 269SS".

CIT, AGRA v SMT. DIMPAL YADAV, AKHILESH KUMAR YADAV, 2015, ALLAHBAD HIGH COURT

The assessee filed her reply stating that since she did not had the requisite funds at the required point of time and the funds were urgently required for conversion of the property, a loan was taken from the Samajwadi Party, which was deposited in her account and, subsequently, the loan was paid back to the Samajwadi Party. However on Appeal, ITAT deleted penalty. The Allahabad High Court held that Even though the assessee had taken a loan in cash, nonetheless, the loan transaction was a genuine transaction and was routed through the bank account of the assessee which clearly shows the bonafides of the assessee. The cash given by the lender was not unaccounted money but was duly reflected in their books of account. The Assessing Officer also accepted the explanation and found the transaction to be genuine. The contention of the

learned counsel for the appellant that since there was no urgency, the assessee could have taken the loan through cheque and should have processed the matter through regular banking channels is immaterial, inasmuch as the genuineness of the transaction has not been disputed by the Assessing Officer. Further, the cash was deposited in the bank account of the assessee and the money was thereafter, routed through the banking channel for payment to the government for converting the land into free hold property.

Thus, as reasonable cause had been shown by the assessee and the provisions of Section 273B of the Act was applicable. The appellate authorities were justified in holding that no penalty could be imposed since a reasonable cause was shown by the assessee. Thus, the case is decided in favour of assessee.

In the case of CIT v. Sunil Kumar Goel [2009] 315 ITR 163, the Hon'ble Punjab and Haryana High Court held as under :

"A family transaction, between two independent assesseees, based on an act of casualness, especially in a case where the disclosure thereof was contained in the compilation of accounts, and which had no tax effect, established 'reasonable cause' under section 273B of the Act. Since the 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 of sections 271D and 271E of the Act against him. The deletion of penalty by the Tribunal was valid."

The relevant extract of the of G.D. Subraya Sheregar v. ITO, Ward 2, (10 SOT 378) has decided the issue in favour of the assessee the relevant extract of the order is reproduced as under:

The expression "any other person" appearing in section 269SS has been interpreted by the two Benches of the Tribunal in two different ways. One view is that the said expression excludes all those persons who are closely connected with the assessee and the other view is to the opposite effect. Both views are possible views. It is well-settled that there are two possible views, the view favourable to the assessee will have to be accepted [Refer CIT v. Madho Pd. Jatia [1976] 105 ITR 179 (SC)]. Therefore, the transactions between closely related persons such as father and son must be held to fall outside the scope of section 269SS.”

The Hon’ble Madras High Court in the case of **MS. NANDA KUMARI v ITO, 2018, held that**, the assessee had shown a cause for having received the amount in cash. Therefore, if the assessee had shown a cause, the burden shifts on the AO to establish that the cause shown is not a reasonable cause by examining the cause shown and establishes that it lacks bonafides.

In the instant case, there is no such finding recorded by the Authorities below or for that matter by the Tribunal. Admittedly, the transaction in the instant case is between the assessee and her maternal uncle and aunt and there is nothing on record to show that the transaction lacks bona fides or the assessee came forward with a false case. The case on hand does not warrant levy of penalty under Section 271D - Appeal filed by the assessee is allowed

CIT V. Rugmini Ram Raghav Spinners Private Limited, 304 ITR 417
The case of the assessee is that, the amount received by the assessee is only for the purpose of allotment of shares and it is not a deposit or loan. In this case, the reasonable cause is that the assessee was under the bona fide belief that the money received is only for the purpose of allotment of shares. Also, there is no material or evidence or any compelling reason produced by the Revenue to prove that the money received is a deposit or loan. The first appellate authority

as well as the Tribunal has come to a correct conclusion after accepting the explanation offered by the assessee. It is a question of fact and the order of the Tribunal is not a perverse one. The concurrent finding given by both the authorities below is based on valid materials and evidence.

Deposits by way of Journal Entries

The loans or deposits means loan or deposits of money, any loan entry reflecting by mode of Journal entry should not attract the provisions of this section. Further, as can be observed from the memorandum (reproduced above) the intention behind bringing such provision was to curb the practise of raided parties to give false explanation regarding the Money or deposits found.

The Hon'ble Delhi High Court in case of CIT vs. Worldwide Township Projects Ltd vide ITA No.232/2014, explained the provisions in the context of penalty levied u/s 271D of the Act vide Para 8 and the same reads as under:

A plain reading of the section 269SS indicates that, it applies to a transaction where a deposit or a loan is accepted by an assessee, otherwise than by an account payee cheque or an account payee draft. The ambit of the section is clearly restricted to transaction involving acceptance of money and not intended to affect cases where a debt or a liability arises on account of book entries. The object of the section is to prevent transactions in currency. This is also clearly explicit from clause (iii) of the explanation to section 269SS of the Act which defines loan or deposit to mean "loan or deposit of money". The liability recorded in the books of accounts by way of journal entries, i.e., crediting the account of a party to whom monies are payable or debiting the account of a party from whom monies are receivable in the books of accounts, is clearly outside the ambit of the provision of section 269SS of the Act, because passing such entries does not involve acceptance of any loan or deposit of money.

PCIT, Kota v M/S. Shakti Foundation, 2017, Rajasthan High Court “A plain reading of section indicates that it applies to a transaction where a deposit or loan money is accepted by an assessee otherwise than by an account payee cheque or an account payee draft. This is also explicit from clause (iii) of the explanation to Section 269SS of the Act which defines “loan or deposit of money”. Although in the case of cut v. Triumph International Finance (I) Ltd, it is held that the liability recorded in the books of account by way of journal entries i.e. crediting the amount of party to whom monies payable and debiting the account of a party from whom monies are receivable in the books of account is in contravention of provisions of Section 269T of the Act but in that case also the penalty was held to be not leviable for the reason that transaction was bona fide and was not to evade taxes. In assessee’s case also, the transaction is bonafide and it was not to evade taxes. In this view of the matter and further perusing the citations of the case laws the solitary ground of the Revenue is dismissed.

CIT v M/S. Sidhartha Securities And Traders Ltd, 2014, In this case the revenue was of the view that assessee had taken unsecured loan of Rs. 8,52,71,500/- from M/s Oswal Agro Mills Ltd., otherwise than by an account payee cheque or bank draft in violation of Section 269SS. The issue arise in this case is whether Section 269SS is violated if there is a book entry through journal and when there is no actual payment in cash. The Hon’ble Delhi High Court held that “Bona fides of the transactions and book entries were accepted by the Revenue. The provision of 269SS would not be violated. Mere book entries would not result in violation of Section 269SS and accordingly penalty u/s 271D cannot be sustained. There were mere book entries which had resulted in an amount becoming due and payable by the assessee to M/s Oswal Agro Mills ltd. - M/s Oswal Agro Mills Ltd. had not given any loan or deposit in cash or by way of money to the assessee. M/s Oswal Agro Mills Ltd. had made

payments to third party creditors of the assessee - in view of the payments to the creditors, book entries were made in the journal of the assessee, acknowledging their liability to pay the amount to M/s Oswal Agro Mills Ltd. Thus, the case is decided against revenue.

Provisions of Section 271D are not applicable in case of Advances received in the course of business

Suresh Kumar Dapkara v. ADD. CIT, 2020, We find that there is no dispute that the assessee has supplied electrical goods to M/s Shri Om Sai Stones Industries vide sale bill no. 237 dated 24.05.2012 for a sum of Rs 4,58,430/-. It is also not in dispute that the cash amount of Rs. 1 lac received earlier from M/s Shri Om Sai Stones Industries during the last quarter of the impugned financial year has been adjusted against the said sales and only the balance amount of Rs. 3,58,430/- has been received by the assessee.

The nature of amount so received is the cash advance against supply of goods and not loan/deposit or specified sum in relation to transfer of an immoveable property and the same cannot therefore be subject to the rigour of the provisions of section 269SS of the Act. The consequent penalty u/s 271D so levied is hereby directed to be deleted and the matter is decided in favour of the assessee.

CIT v Kharaiti Lal, 2004, 270 ITR 445, The Punjab and Haryana High Court held that “The sole question for determination before the Tribunal was as to whether the amount of Rs. 6,49,344 advanced by M/s. Daljit Singh and Bros, to the assessee was an advance for purchase of truck or was a loan or deposit. Assessing Officer had levied the penalty by considering this amount as a loan or deposit. It seems that the authorities below have not correctly appreciated the true nature of the transaction between the assessee and M/s. Daljit Singh and Bros, as well as M/s. Tata Finance Ltd. It is held that the amount received by

the assessee was in the form of advance and not a loan as alleged by the Department. Therefore, the provisions of sections 269SS are not applicable to the facts of the present case. Thus, no penalty under section 271D is also not leviable.

Authorised officer for Imposition of Penalty

Vide Circular No. 09/DV/2016 dated, the CBDT provides the clarity on the authorised officer who can impose penalty under section 271D:

The Hon'ble Kerala High Court in the case of Grihalaxmi Vision v. Addl. CIT, vide its order dated 08.07.15, observed that, *"Question to be considered is whether proceedings for levy of penalty, are initiated, with the passing of the order of assessment by the Assessing Officer or whether such proceedings have commenced with the issuance of the notice issued by the Joint Commissioner. From statutory provision, it is clear that the competent authority to levy penalty being the Joint Commissioner. Therefore, only the Joint Commissioner can initiate proceedings for levy of penalty. Such initiation of proceedings could not have been done by the Assessing Officer. The statement in the assessment order that the proceedings under Section 271D and E are initiated is inconsequential. On the other hand, if the assessment order is taken as the initiation of penalty proceedings, such initiation is by an authority who is incompetent and the proceedings thereafter would be proceedings without jurisdiction. If that be so, the initiation of the penalty proceedings is only with the issuance of the notice issued by the Joint Commissioner to the assessee to which he has filed his reply."*

The above judgment reflects the "Departmental View". Accordingly, the Assessing Officers (below the rank of Joint Commissioner of Income Tax.) may be advised to make a reference to the Range Head, regarding any violation of

the provisions of section 269SS and section 269T of the Act, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act). The Assessing Officer, (below the rank of Joint Commissioner of Income Tax) shall not issue the notice in this regard. The Range Head will issue the penalty notice and shall dispose/complete the proceedings within the limitation prescribed u/s 275(1)(c) of the Act.

Time Limit for Initiation of Penalty

M/S Govind Kripa Buildmart Pvt. Ltd. v JCIT, 2015, ITAT Jaipur,

For imposing penalty U/s 271D and 271E, the time limit for initiation is covered U/s 275(1)(c) of the Act. As per Section 275(1)(c) of the Act, this order was to pass after the expiry of financial year, in which the proceeding, in the course of which action for imposition of penalty has been initiated, or completed, or within six months from the end of the month, in which action for imposition of penalty is initiated, whichever period expire later. The Assessing Officer initiated the penalty proceeding under both the Sections on 30/12/2009. As per this section, it had to complete by 30th September, 2010 whereas actual penalty orders were passed on 30/3/2012 which got barred by limitation. Accordingly, we delete the penalty imposed U/s 271D and 271E of the Act.

On merit also, these cash receipts are not covered U/s 269SS of the Act as there was no loan or deposit envisaged U/s 269SS as these are the business transactions. The Id CIT(A) wrongly held on the basis of quantum appeal decided by the CIT(A) as well as the ITAT that these are the loan and deposit in cash as covered by Section 269SS of the Act

PCIT V Mahesh Wood Products Pvt. Ltd., Delhi High Court, 2017

The date on which the AO recommended the initiation of penalty proceedings was taken to be the relevant date as far as Section 275(1)(c) was concerned. There was no explanation for the delay of nearly five years in the ACIT acting on the said recommendation. The Court held that the starting point would be the 'initiation' of penalty proceedings. Given the scheme of Section 275(1)(c) it would be the date on which the AO wrote a letter to the ACIT recommending the issuance of the SCN. While it is true that the ACIT had the discretion whether or not to issue the SCN, if he did decide to issue a SCN, the limitation would begin to run from the date of letter of the AO recommending 'initiation' of the penalty proceedings.

In the present case, the limitation in terms of Section 275 (1) (iii) of the Act began to run on 23rd July, 2012 and the last date for passing the penalty orders was 31st January, 2013. Therefore, the penalty orders issued on 26th February 2013 were clearly barred by limitation. Thus the case is decided in favour of assessee.

CIT, Kolkata v Narayani and Sons (P) Ltd , 2016

The Calcutta High Court held that once it is realized that the penalty proceedings were initiated on 26th December, 2006 i.e. when the notice was issued by the Assessing Officer, the period of limitation necessarily expired on 30th June, 2007 whereas the order imposing penalty was passed on 21st September, 2007. Thus, no elaborate reasoning is required to demonstrate that the order is hit by limitation.

Conclusion

Though the introduction of section 271D is to curb the menace of unaccounted and black money but it is important to take in to consideration the circumstances and facts in each case. Imposition of penalty should depend upon

the facts and circumstances of each case, the assessing officers should establish the malafide intentions of the assessee to evade tax before pushing the assessee in the ambit of penalty proceedings. If the Assessee can put forth a reasonable cause for repayment of loan/deposits in cash then, such circumstances can be considered by the Assessing Authority to waive or reduce the penalty in question.