

Section 271E: Penalty Provisions for failure to comply with the provisions of section 269T

Introduction

Section 269T has been introduced in Chapter XXI of the Act in the year 1981 and provides that none of the entities specified therein shall repay any deposit made with it otherwise than by an account payee cheque/bank draft drawn in the name of the person who had made the deposit, if the amount of the deposit together with the interest, if any, payable thereon, exceeds the amount specified therein. The obligation to repay the deposit by account payee cheque/bank draft for the entities specified in Section 269T would have to be construed as mandatory in view of the negative language used in the Section. In other words, the Section provides that irrespective of the fact that there are several modes for repaying the deposit, the entities specified in Section 269T shall repay the deposit only by the modes set out therein. The mandatory requirement of Section 269T is further fortified by Section 276E inserted along with Section 269T on 11th July 1981 which provides that if a person referred to in Section 269T of the Act repays any deposit in contravention of Section 269T then such person shall be punishable with imprisonment for a period up to two years and also liable to fine equal to the amount of deposit.

With effect from 1st April 1989, Section 276E dealing with the consequences on failure to comply with Section 269T has been omitted and Section 271E has been inserted which provides penalty for failure to comply with Section 269T of the Act. Section 269T has been substituted by Finance Act 2002 with effect from 1st June 2002 wherein the provision relating to repayment of deposit exceeding the prescribed limit by account payee cheque/draft has been extended to repayment of loans as well. Thus, with effect from 1st June 2002, it is mandatory under Section 269T of the Act for the persons specified therein to repay any loan/deposit

together with interest, if any, exceeding the limits prescribed therein, by account payee cheque/bank draft and failure to do so is made liable for penalty under Section 271E of the Act.

Existence of loan is sine qua non

It is clear from the bare perusal of the section 269T of the Act that it prohibits repayment of deposits or loan to any person otherwise than by way of account payee cheque or draft. Thus, following are the necessary ingredients for application of section 269T

- a. There is transaction of loan or deposits
- b. There is repayment of such loan or deposits
- c. Repayment is made otherwise than way of specified modes
- d. Repayment is made to any person

A perusal of Section 269T of the Act 1961 reveals that it prohibits a person from making repayment of loan or deposit, otherwise than by way of an account payee cheque or account payee draft. The wordings of the aforesaid provision leaves no room for ambiguity that the rigours of the said provision is attracted only in the event when the assessee makes repayment of loan or advance. In other words, existence of loan or advance is a sine qua non or foundational fact for the applicability of the provisions of Section 269T of the Act 1961.

Penalty Provisions for failure to comply with the provisions of section 269T

271E. (1) If a person repays any [loan or] deposit or specified advance referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the [loan or] deposit or specified advance so repaid.

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

Exception to section 271E

With a view to mitigate the hardship that may be caused to the genuine business transactions on account of the bar imposed under Section 269T and the penalty imposable under Section 271E, the legislature, by the Taxation Laws (Amendment & Miscellaneous Provisions) Act 1986 has introduced Section 273B with effect from 10th September 1986. Section 273B provides that notwithstanding anything contained in Section 271E, no penalty shall be imposed on the person or the assessee as the case may be for any failure referred to in the said Section, if such person or assessee proves that there was reasonable cause for such failure. Thus, reading Section 269T, 271E and 273B together it becomes clear that:

(a) Under Section 269T it is mandatory for the persons specified therein to repay loan/deposit only by account payee cheque/draft if the amount of loan/deposit together with interest, if any, exceeds the limits prescribed therein;

(b) Non-compliance of the provisions of Section 269T renders the person liable for penalty under Section 271E; and

(c) Section 273B provides that no penalty under Section 271E shall be imposed if reasonable cause is shown by the concerned person for failure to comply with the provisions of Section 269T of the Act.

Meaning of Reasonable Cause:

The expression “reasonable cause” has not been defined in the Act. However, the same has been a subject matter of discussion in many judicial pronouncements

by various courts. Accordingly, what constitutes a reasonable cause cannot be laid down with a precision. It all depends on the fact and circumstances in each case. The reasonable cause, as applied to human action, is that which would constrain a person of average intelligence and ordinary prudence.

The word “reasonable cause” is interpreted by the Tribunal in the case of Mrs.Manju Kataruka Vs. ITO 74 TTJ (Kol.) 873. Relevant lines are extracted as under :

“What would constitute reasonable cause cannot be laid down with precision. It would depend upon the factual background. The word 'reasonable' has in law the prima facie meaning of reasonable with regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. **Reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or lack of bona fide. What can be construed as a reasonable cause is to be decided on the available facts of each and every case in a judicious manner.** The decision on the matter should be taken by giving sufficient attention to particular facts of the case. It is to be looked from the view point of a man of average intelligence and ordinary prudence. It should also be borne in mind, that the law itself spells out the circumstances in which penalty can be levied by providing for reasonable cause for avoiding penalty. In other words, to decide what can be construed as a reasonable cause for avoiding penalty one has to keep in mind that the **law itself requires that the default should have occurred without reasonable cause to merit penalty and that the issue must be decided on the available facts and the nature of default in a judicious manner.** Before a cause can be said to be reasonable or not, it must be found as a fact that a particular cause operated upon the mind of the assessee **which prevented him from doing the required act** under normal circumstances.

It is true that the word “reasonable cause” is not defined under the IT Act but it could receive same meaning and interpretation which is given to the expression “sufficient cause”. Therefore, in the context of the penalty provisions, the word “reasonable cause” would mean a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fides, from doing the act of which he, called on to act reasonably, knows or ought to know.”

Important Judicial Pronouncements

CIT V Triumph International Finance (I) LTD. [2012] 345 ITR 270

Reading Section 269T, 271E and 273B together it becomes clear that Section 269T puts an embargo on repayment of loan/deposit except by the modes specified therein, non-compliance of which renders the person liable for penalty u/s 271E. However, Section 273B provides that no penalty u/s 271E shall be imposed if reasonable cause is shown by the concerned person for failure to comply with the provisions of Section 269T

In this case, repayment by journal entries was on account of the fact that the assessee was liable to receive amount towards the sale price of the shares sold by the assessee to the person from whom loan/deposit was received by the assessee. Neither the genuineness of the receipt of loan/deposit nor the transaction of repayment of loan by way of adjustment through book entries carried out in the ordinary course of business has been doubted in the regular assessment. In the absence of any finding that the repayment of loan/deposit was not a bonafide transaction and was made with a view to evade tax, it is held that though the assessee has violated the provisions of Section 269T, the assessee has shown reasonable cause u/s 273B and, therefore, penalty imposed u/s 271E deserves to be deleted. Thus the case is decided in favour of assessee.

The Punjab & Haryana High Court in the case of CIT v. Saini Medical Store 277 ITR 420 (P&H) has held as under:

“A combined reading of the provisions of section 271E and 273B makes it clear that if the assessee shows "reasonable cause" for the failure to comply with any provision referred thereto, the penalty for its violation shall not be imposable on the assessee. In the present case, the CIT(A) while deleting the penalty had accepted the explanation of the assessee that breach of the provisions of the Act was on account of bona fide belief of the assessee and the same was not with any intention to avoid or evade the tax. The findings of the CIT(A) have been confirmed in appeal by the Tribunal. Therefore, the findings recorded by the CIT(A) and the Tribunal that the assessee had shown reasonable cause for the failure to comply with the provisions of s. 269T is a finding of fact based on appreciation of material on record”

CIT V Perumal, 2014, Madras High Court, [2015] 370 ITR 313

The Tribunal rightly allowed the appeals filed by the assessee with regard to the penalty levied u/s 271D and 271E of the Income Tax Act. In this case, the loans taken in the cases were genuine and the exigency that arose out of the business was a cause for taking such loan. Since in the quantum appeal, the Tribunal found that the assessee was bona fide and while exercising power u/s 273B, considering the reasonable cause submitted by the assessee, and thus, set aside the entire penalty by accepting the explanation given by the assessee. The tribunal accepted that loan is genuine and the same is for business exigency and it is not a case of undisclosed income.

The Hon'ble Madras High Court held that “The reasonable cause for not levying penalty exists and the Tribunal was justified in allowing the assessee's appeal. The Tribunal has clearly held in the quantum appeal there was a bona fide on the

part of the assessee and as a consequence finding reasonable cause, thought it fit to delete the entire penalty. The assessee has shown the receipt of cash and repayment of the same due to business exigency and that would amount to reasonable cause. The genuineness of the transaction to meet the immediate necessity was accepted by the Tribunal in the quantum appeal and that would amount to reasonable cause in terms of Section 273B of the Income Tax Act. Thus, no substantial question of law arises for consideration. Thus the case is decided against Revenue.

Anirban Nath Sushmita Huf V. DCIT Kanpur , Allahabad High Court, 2012

The Institute of Chartered Accountants of India had clarified that loans created/discharged by means of transfer entries do not constitute acceptance or repayment of deposits of loan in cash and thus do not contravene the provisions of Section 269SS and 269T. The Assessing Officer, Appellate Authority as well as Tribunal did not consider the method of transaction, which was by way the assessee had discharge his loan liability. Also, the assessee is paying interest on the loan regularly as reflected in his statement of affairs and profit and loss account in the financial years 1992-93 and 1993-94. The repayment of loan was not made after sale of shares. The assessee appellant had debited the loan account being cost of shares. The transaction between Karta of HUF and the HUF could not be termed as deposits as provided under Section 269T. Thus the provisions of Section 269T providing for deposits to be made over and above Rs. 20, 000/- only by account payee cheque or account payee bank draft were not attracted. Hence the case is decided in favour of assessee.

Assistant Director of Inspection v. A. B. Shanthi [2002] 255 ITR 258

The object of introducing section 269SS was to ensure that a taxpayer was not allowed to give false explanation for his unaccounted money, or if he made some false entries, he shall not escape by giving false explanation for the same. The

main object of section 269SS was to curb this menace of making false entries in the account books and later giving an explanation for the same. The apex court further observed that the undue hardship of the provisions of section 271D which replaced section 276D providing for penalty was substantially mitigated by the inclusion of section 273B providing that if there was a genuine and bona fide transaction and the taxpayer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretionary power not to levy the penalty.

Mohanlal Sobhagmal, V J.C.I.T., Ajmer, 2020,

Provision of 269T and 269SS has been enacted in order to prevent the increase in black money and to stop tax evasion. The intention of the legislature was not to cover the bonafide and genuine transaction wherein the AO himself was satisfied and no tax evasion/use of the black money was involved.

A genuine transaction made in an emergency, does not attract penalty u/s 271E. It has been held that the amount paid by the assessee in cash to meet with his urgent need of money, was a reasonable cause in terms of Sec 273B. In this case the funds were needed for an urgent requirement made at the hospital at Ahemdabad towards the treatment of mother. The assessee therefore, paid the amount through different family members, who are close relative of the partners of the firm Shri Sampatraj Lunawat and Shri Mahendra Lunawat to meet with urgent need of medical treatment expenditure in emergency and hence, penalty under section 271E cannot be imposed.

Whether the book entries constitutes violation of the provisions of section 269T of the Act:

It is now a settled position that penalties under sections 271D and 271E cannot be levied on adjustments made in the personal accounts through journal entries as no actual payment or receipt of money is involved.

M/S Arkit Vincom Pvt. Ltd. V ACIT, 2017, ITAT Kolkata

In this case, the loan has been borrowed from Prakash Electronics System Ltd in the earlier year and the same has been converted into equity during the year under appeal. Hence the genuinity of the said transactions cannot be questioned by the CITA. The said transaction cannot be considered to be in violation of provisions of section 269T of the Act.

Thus, the assessee had properly explained the entire gamut of transactions together with its end use i.e for investment in co-ownership property. It was a conscious business decision taken by the assessee to use the amounts raised through share capital for investing in co-ownership property for the purpose of its business and the businessman (i.e. assessee) cannot be compelled by the revenue to conduct its business as per the whims and fancies of the revenue.

Hence, the observation of the Id CITA that the assessee could have utilized the amounts raised through share capital from other sources to repay the loan to Prakash Electronics System Ltd would only tantamount to stepping into the shoes of the businessman and we hold that the said observation is not warranted, more so in the penalty proceedings u/s 271E of the Act. The business compulsions of the assessee warranting such conversion of loan into equity cannot be brushed aside simply as a matter of doubt merely because the shares were issued at premium. Thus, the case has been decided in favour of assessee.

Imposition of penalty – Whether mandatory ?

ACIT v Parahati baruah, ITAT Gauhati, 2002

A reading of the same shows that the introduction of section 269T and section 271E in the statute are to prevent proliferation of black/unaccounted money deposited with banks and other persons by introducing the system of repayment through account payee cheques and drafts and, thus ensure that the identity of the payees is established. In the instant case, it cannot be held that there was any such intention of the assessee to hide the identity of the lender. In the facts and circumstances of the case, the identity of the lender to whom repayment has been made is known to the Department and the genuineness of the loan transaction is not in doubt. Hence, there is no deliberate breach of law. The default, if any, at most be said to be a technical default. It has been held by the Apex Court in the case of Hindustan Steels v. State of Orissa [1972] 83 ITR 26 that penalty cannot be levied merely because the authorities are empowered to levy and when there is technical or venial breach of the provisions of the Act, the authorities competent to impose penalty shall be justified in refusing to impose the penalty. Thus, the case is decided in favour of assessee.

Narne Estates Private Limited V ACIT, 2020, ITAT Hyderabad,

In this case it is held that if the assessee is able to establish that all the cash transactions are arising out of the bank withdrawals and recorded in the assessee's books of accounts within a reasonable span of time from the date of cash withdrawals from the respective bank accounts and further if all the entities are pertaining to sister concerns (arising out of the same group of ownership), then the provisions of section 269SS and 269T of the Act will not be applicable and accordingly the penal provisions of section 271D and 271E cannot be invoked. Therefore, in the interest of justice, the matter for now remitted back to AO to examine whether all the concerned entities are sister concerns and whether the cash received and repaid by the assessee are arising out of the cash withdrawals from bank account of the respective entities and the same are recorded in the books of accounts of the assessee within a reasonable span of time and if found

so delete the penalty levied invoking the provisions of section 271D and 271E of the Act and if found otherwise pass appropriate order in accordance with law and merit.

In the case of the **CIT vs. Rugmini Ram Ragav Spinners P.Ltd. (2008) 304 ITR 417 Hon'ble Madras High Court held** “the penalty under section 271E is not automatic and is to be levied only in the absence of reasonable cause. The rationale behind provisions of Sec.269SS and 269T is to prevent the tax evasion, i.e. the laundering of concealed income by the parties in the guise of cash loans or deposits in or outside the accounts. The provisions of section 269SS and 269T therefore have application only in a limited way in respect of deposits or loans. When it is neither deposit nor loan, the provisions of section 269SS and 269T have no application at all”.

The Jammu & Kashmir Bank Ltd. V ACIT, 2015, I.T.A Nos. 73, 74 & 75(Asr)/2014, ITAT Amritsar

271E confer discretion on authorities to levy or not to levy penalty and such discretion needs to be exercised with wisdom and in a fair and just manner. Even if the relevant provisions of law prescribe the levy of penalty, it does not mean that penalty must necessarily be imposed in every case falling within the provisions of section 269T. Even if penalties are prescribed the higher authorities will be justified in refusing to impose penalty when there is a technical breach of provisions of the Act

In this case, the Department has not doubted the genuineness of the transactions and has imposed & upheld the penalties holding that the reasons for repayment as submitted by assessee did not constitute reasonable cause. Also, in different years the violation has been made by different branches of the Bank & the violation has not been repeated. In Asst. Year 2008-09, the violation was by

Bulbul Nowgam, L.D. Hospital & Islamia College Branches & in Asst. Year 2007-08, the violation was by Lal Mandi Branch whereas in Asst. Year 2005-06, the violation was by Lal Bazar Branch. Also, CIT(A) himself in Asst. Year 2006-07 has deleted the penalty imposed by Assessing Officer under similar facts circumstances. Thus, there is no mens rea involved as the violation is not intentional.

Who can impose the penalty

The Hon'ble Rajasthan High Court in case of CIT v. Jitendra Singh Rathore, (2013) 352 ITR 327 held that even though the Joint Commissioner is the authority competent to impose penalty under Section 271D “the period of limitation for the purposes of such penalty was not to be reckoned from the issue of the first show cause notice by the Joint Commissioner: but the period of limitation was to be reckoned from the date of issue of first show cause for initiation of such penalty proceedings”.

Limitation for imposing Penalty

M/S Govind Kripa Buildmart Pvt. Ltd. V JCIT, 2015, ITAT Jaipur, ITA No. 876 & 877/JP/2013 For imposition penalty U/s 271D and 271E 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. In this case 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, the penalty imposed U/s 271D and 271E of the Act stands deleted.

Conclusion

Though the introduction of section 271E 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 depends 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.