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

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

\+ ITA 637/2011
\+ ITA 638/2011
\+ ITA 640/2011
\+ ITA 646/2011

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

versus

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

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

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

R.V. EASWAR, J.:

These are four appeals filed by the Revenue under Section 260A of the Income Tax Act, 1961 ('Act', for short). They are directed against the common order passed by the Income Tax Appellate Tribunal, New Delhi Bench-G ON 17.09.2010 in ITA No.3222-3225/Del/2009 confirming the orders passed by the CIT (Appeals) cancelling the penalty imposed on the assessee under Section 271D of the Act. The following common questions of law are sought to be raised in the appeals by the Revenue: -

"*a) Whether ITAT was correct in law in deleting the penalty imposed by the AO u/s 271D of the Act?*

b) Whether ITAT was correct in law in holding that there was a reasonable cause due to which, assessee failed to comply with the provisions of Section 269SS and therefore, no penalty u/s 271D could be levied?

c) Whether ITAT was correct in law in holding that the assessee had failed to comply with the provisions of Section 269SS to a very small extent of total deposits in the range of 1.1% to 6.14% and therefore, no penalty could be levied?

d) Whether a reasonable cause within the meaning of Section 273B existed in the present case so as to delete the penalty imposed by the AO u/s 271D of the Act?

e) Whether general averment on the part of assessee e.g. existence of inadequate banking facilities and reluctance of the customers to utilize banking facilities due to illiteracy and non-cooperation in the bank constituted a reasonable cause so as to delete the penalty imposed by the AO u/s 271D, by the ITAT?

f) Whether violation of provisions of Section 269SS to a small extent ranging from 1.1% to 6.14% would exonerate the assessee from the penal provisions of Section 271D of the Act?

g) Whether order passed by ITAT is perverse in law and on facts when ITAT deleted the penalty ignoring the object and purpose of the provision for which, it was brought into the statue book?"

2. The brief facts giving rise to the filing of the present appeals may now be noticed. The assessee, which is the respondent in all the appeals is engaged in the business of accepting deposits and is a "Residuary Non-Banking Finance Company" (RNBFC). Its principal business is the mobilisation of deposits through its sister concern and agent M/s. Sahara India Firm. We may take up the assessment year 2000-01 as the lead matter

(ITA 637/2011). In the course of the proceedings the Assessing Officer noticed that the assessee had collected huge amounts of deposits through its network of more than 1300 branches all over the country with more than 3 crores depositors and that these deposits were collected in cash in violation of Section 269SS of the Act. Under this section, a person is prohibited from taking a loan or deposit in cash if it exceeds the amount of ₹20,000/-. In case of violation of this provision, Section 271D empowers the Assessing Officer to impose a penalty equivalent to the amount collected as loan or deposit in cash. However, Section 273B provides for reasonable cause to be proved by an assessee against whom action for penalty is taken. If reasonable cause is established, no penalty is attracted. In the background of these provisions the Assessing Officer referred the matter to the Additional Commissioner of Income Tax, Central Range, Lucknow to deal with the penalty proceedings as contemplated by Section 271D.

3. Before the Additional Commissioner of Income Tax the assessee submitted a detailed reply in an attempt to show the existence of reasonable cause for collection of deposits in cash. The gist of the reply is this: -

(a) The assessee basically runs different savings schemes of recurring nature such as daily deposits scheme, monthly deposit scheme, etc. The aim of such schemes is to tap savings from rural areas which are not served by banks, despite the existence of huge potential. The assessee has, therefore, registered itself with the RBI as RNBFC. The role of RNBFC in the economic development of the country has been commended by various study groups and committees appointed by the government.

(b) The deposits were collected through the agent M/s. Sahara India which has a large network of field workers who are in direct touch with the depositors. The field workers help the depositors in filling up the forms for opening the accounts, getting them witnessed and generally motivating the depositors in the rural areas.

(c) There is a tremendous reception in the rural areas for the schemes floated by the assessee since it dispenses with the cumbersome procedure the depositors in the rural areas are required to follow if they want to open accounts in banks. Very often, the banks are at a distance from their areas and there are logistic and other problems in freely accessing the banking facilities. The assessee stepped in to supply the needs of the rural/ remote areas.

(d) The agents and field-workers who collect the deposits in cash did make attempts to open accounts in the banks in their names so that the carrying of the cash to distant places can be avoided; but they faced difficulties in opening the bank accounts, presumably because the banks thought that they were competing with their business. Some correspondence to this effect between the agents and the banks was led as evidence.

(e) In some cases it is not as if the amount collected, even though it exceeds ₹20,000/- is in cash; in many cases the amount represents conversion of the deposit from one scheme to another. Details of such converted accounts, duly certified by Chartered Accountant were filed in the annexure to the assessee's submissions.

(f) 35% of the deposits received by the assessee have been added back in the assessment under Section 68 of the Act. The levy of

penalty equivalent to the amount of the deposit would thus amount to double jeopardy.

3. The Additional CIT acknowledged the effective role played by RNBFCs in mobilising the deposits from small investors in rural areas. He was, however, not prepared to accept the assessee's explanation and the facts pointed as constituting reasonable cause within the meaning of Section 273B. He observed as follows: -

> "*It is a separate code distinct from the RBI Act, Banking act & any other Act by the time being in force. The compliance of provisions of I.T. Act is mandatory. However as far as mobilization of deposit in the rural sector without proper banking facilities is concerned it is really difficult to give the benefit of reasonable causes to the assessee in the absence of a case by case study and particularly in absence of exact details of the Bank branches at various places in the relevant financial year. Therefore though the contention of the assessee in this respect has some reasonable grounds yet cannot be accepted because of the reason mentioned above.*"

4. The Additional CIT thereafter examined the assessee's explanation that the public sector banks were refusing to open accounts in the name of the agents on the ground that the agents were affecting their banking activities. In paragraph 4.4 of his order he actually acknowledged that this explanation of the assessee was supported by documentary evidence; nevertheless since such documentary evidence was not available in every case, he refused to accept the same as one of the factors constituting reasonable cause. He observed as under: -

> "*4.4 The next argument of the assessee is really strange & incredible though copies of documentary proof in some of the (sic) has been submitted by the assessee. It is strange to note that the public sector banks are refusing to open bank accounts of the agent firm, on the pretext that the agent firm*

> *is affecting their banking activities. However it cannot be proved whether in all the cases of default u/s 269SS the same arguments of the assessee are applicable or not. There are stated to be more than 1300 branches of the assessee speared all over the country of the each area may be having branches of different public sector/ co-operative sector or Private Banks. The argument of the assessee therefore is not accepted.*"

The Additional CIT also rejected the submission of the assessee that there were several cases of conversion of the deposits from one scheme to another which did not involve the receipt of cash. He however rejected the same and observed that the accounts were subjected to special audit under Section 142(2A) of the Act and, therefore, at that stage he was not willing to accept the claim. The other claim that there was double jeopardy in the sense that the deposits were treated as income under Section 68 to the extent of 35% and were also subjected to an equivalent amount of penalty was not accepted on the ground that the addition was the subject matter of appeal in different proceedings.

5. For the above reasons the Additional CIT held that the assessee, without reasonable cause, committed a violation of Section 269SS of the Act and has, therefore, rendered itself liable for penalty under Section 271D. He accordingly imposed a penalty of ₹109,98,41,899/- by order dated 28.05.2004. The penalty amount is equivalent to the amount of deposits collected in violation of Section 269SS.

6. Similar orders were passed by the Additional CIT imposing similar penalties on the assessee, for the same reasons. The following chart gives the details of the penalties imposed: -

A.Y.	Deposits received in violation of Section 269SS (expressed as a percentage of total deposits)	Amount of Penalty (in ₹)
1993-94	1.1%	₹2,17,30,841/-
1999-2000	3.31%	₹58,41,86,847/-
2000-01	5.89%	₹109,98,41,899/-
2001-02	6.14%	₹201,58,61,703/-

7. The assessee filed appeals for all the four years before the CIT (Appeals) who disposed of the appeals on the same day i.e. 12.05.2009, but by separate orders. The reasons given by him in all the years are in substance the same. Since we have taken ITA No.637/2011 relating to the assessment year 2000-01 as the lead case, we would refer to the order of the CIT (Appeals) for this year. The CIT (Appeals) cancelled the penalty imposed under Section 271D after considering the detailed written submissions filed by the assessee and the response thereto by the Assessing Officer. The gist of the reasons is as under: -

(a) The assessee had engaged the services of its agent M/s. Sahara India for mobilising the deposits. M/s. Sahara India operated through 1311 branches, the breakup of which is as under: -

(i)	Branches in Metros	57
(ii)	Branches in Capitals and Union Territories	88
(iii)	Branches at the District Level	335
(iv)	Branches below the District Level	831
	Total	1311

Thus, the majority of the branches are located in rural areas which lack adequate banking facilities. Here the people are also mainly engaged in agriculture and petty trade and the banking habit is not prevalent among them.

(b) It is a fact that there were some instances where banks refused to open accounts in the name of the agents of the assessee citing competition, excessive work load or lack of infrastructure. This is supported by evidence in the shape of correspondence.

(c) The account opening forms used by the assessee require similar details as the account opening form of a nationalised or scheduled bank.

(d) Only a small percentage of the amounts collected by the assessee as deposits violated Section 269SS. Such percentage was very minimal in the years under appeal. For the assessment years 1993-94, 1999-00, 2000-01 and 2001-02, it was 1.1%, 3.31%, 5.89% and 6.14% respectively.

(e) The whole activity of the assessee consists of acceptance of deposits and if the assessee is to remain in business, it cannot dictate terms to its clients and it has to carry on the business only under prevalent circumstances.

(f) No penalty has been levied for the intervening years, that is, assessment years 1994-95 to 1998-99 or for the years subsequent to the assessment year 2001-02. The Assessing Officer is thus not sure of levying penalty.

In the light of the aforesaid reasons and findings, the CIT (Appeals) held that the levy of the penalty is not mandatory and the assessee has shown the existence of reasonable cause. He also relied on some authorities as the question of reasonable cause and ultimately cancelled the penalties.

8. The Revenue carried the matter for all the four years in appeals before the Tribunal. The Tribunal passed a common order on 17.09.2010. The following findings have been recorded by the Tribunal: -

(a) The amount of deposit collected by the assessee in cash in violation of Section 269SS, for all the four years is very minimal, ranging from 1.1% in the assessment year 1993-94 to 6.14% in the assessment year 2001-02. This is a very important factor to be taken note of, particularly having regard to the fact that collecting deposits is itself the business of the assessee.

(b) The deposits are taken from poor people mainly in rural and semi urban areas where banking facilities are absent or inadequate. If the assessee had insisted on accepting the deposits by cheques for its various schemes, that may have adversely affected its business.

(c) The observations of the Additional CIT while imposing the penalties, to the effect that the assessee failed to establish the existence of reasonable cause case-by-case, reveals an arbitrary approach. The Additional CIT has arbitrarily rejected the assessee's explanation for reasonable cause, such as lack of adequate banking facilities in the rural areas, the lack of banking habit prevailing amongst the depositors, etc. The Additional CIT was also not justified in brushing aside the copies of the correspondence showing that some of the banks had refused to open accounts in the names of

the agents on the ground that the agents are affecting the activities of the banks in their area.

(d) The assessee has furnished the details of the location of the branches of the agent firm. These were predominantly in the rural areas where the agents had to face the problem of illiteracy or lack of banking habit. It would be very difficult for the assessee to convince the depositors to first open bank accounts from which the deposits could be made by issue of cheques. One has to take a practical view of the matter. Many depositors may not have had acceptable or valid documentary evidence to show their identity, address proof, etc. Moreover, it is also a well-known fact that there is marked reluctance in the rural areas to use the banking facilities for fear of cumbersome procedure. The depositors are served by agents of the assessee at all times of the day and they serve them at their doorsteps, which is a distinct advantage over banks. The rural depositors are habituated to this kind of facilities and may be reluctant to use the banking facility for making the deposit by issue of cheques fearing cumbersome procedure and other logistic problems involved. Moreover, the amounts of the deposits are very small and it would have perhaps made no sense to use the cheque facility, considering that the deposits schemes are basically small saving schemes.

9. The main contention of the revenue before us is that the basis of the order of the Tribunal is untenable in as much as it has held that since the nature of the assessee's business itself is to receive deposits, the provisions of Section 269SS cannot be applied. It is also contended that even if the assessee is a Residuary Non-Banking Finance Company (RNBFC), it was obliged to maintain requisite ledgers and registers which it did not and in

these circumstances there were no means of verifying the genuineness of the deposits or the genuineness, the identity and creditworthiness of the depositors, an aspect which was overlooked by the Tribunal. According to the Revenue, perversity is writ large in the order of the Tribunal.

10. The counsel for the assessee however submits that the assessee made several attempts to get exemption from the applicability of Section 269SS under clause (e) of the first proviso to the Section, but the attempts were unsuccessful. He pointed out that the CIT (Appeals) had called for a remand report from the Assessing Officer to which a detailed parawise comment was submitted by the assessee in which every aspect of the matter, both facts and law, was traversed and it was only after an examination of the entire conspectus of the facts and law that the CIT (Appeals) cancelled the penalty which orders were confirmed by the Tribunal. It was urged that the question whether there was reasonable cause for the cancellation of the penalty within the meaning of Section 273B of the Act is a question of fact and there being no material to show that the finding of the Tribunal was unreasonable or perverse or it was based on no evidence, the Court should not interfere.

11. In our opinion no substantial question of law arises for consideration. It is settled by two judgments of this Court that the finding as to the existence of reasonable cause is a finding of fact which cannot give rise to any substantial question of law: -

(i) *CIT v. Parma Nand*, (2004) 266 ITR 255

(ii) *CIT v. Itochu Corporation*, (2004) 268 ITR 172

12. The limited inquiry which the High Court can embark upon is only whether the finding as to the existence of reasonable cause is perverse or is such that no person, properly instructed on facts and law would arrive at.

Applying this test to the present case we are afraid that the criticism of the Tribunal's order levelled by the Revenue is ill-founded. We have already summarised the findings of the CIT (Appeals) which were based on facts which constitute reasonable cause. These findings have been affirmed by the Tribunal. When two appellate authorities have arrived at concurrent findings of facts as to the existence of reasonable cause in a penalty matter, this Court would be reluctant to interfere with them unless there are materials to show that the findings are perverse.

13. The standing counsel for the Revenue is not correct in his contention that the basis of the decision of the Tribunal is untenable. The Tribunal has not rested its decision on the only circumstance that it is the business of the assessee to collect deposits and, therefore, it was entitled to collect them in cash even if it involves violation of Section 269SS; that is not the substratum of the decision. That was referred to by the Tribunal and the CIT (Appeals) as one of the many circumstances which, taken together, to establish reasonable cause. The other circumstances which were taken note of by both the CIT (Appeals) and the Tribunal were that the depositors came predominantly from rural areas where there was either no proper banking facilities or such facilities were inadequate, that the deposits were basically saving schemes involving small amounts of daily or weekly savings, that there were logistical problems and fear of cumbersome procedure involved in the opening of the bank accounts and that contribution of small amounts were made as savings, that there was evidence in the shape of correspondence to show that some banks were reluctant to allow the agents of the assessee to open bank accounts for various reasons and so on and so forth. The Tribunal also noted that the violation of Section 269SS ranged from just 1.1% to 6.14% for the years under appeal which was very low

considering the total amounts of deposits collected. It also noted that no penalty proceedings were initiated for the intervening assessment years namely 1994-95 to 1998-99 and for the assessment years subsequent to the assessment year 2001-02. The CIT (Appeals) and the Tribunal, which had arrived at concurrent findings, had taken note of the entire facts and circumstances in which the assessee was placed in order to examine whether there was reasonable cause or not within the meaning of Section 273B. It is, therefore, not correct to state that the Tribunal based its decision on the only ground that Section 269SS cannot be applied to the assessee whose business itself was the collection of deposits.

14. For the above reasons, we are not inclined to hold that the view taken by the Tribunal is either perverse or so irrational that no reasonable person, on the given facts, would have come to that conclusion. The findings recorded by the Tribunal, being essentially findings of facts, do not give rise to any substantial question of law.

15. The appeals are accordingly dismissed.

(R.V. EASWAR)
JUDGE

(S. RAVINDRA BHAT)
JUDGE

SEPTEMBER 20, 2012
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