SISTA SOMAYAJULU
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2025:CGHC:19863-DB

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HIGH COURT OF CHHATTISGARH AT BILASPUR

TAXC No. 98 of 2023

{Arising out of order dated 28-4-2023 passed by the Income Tax Appellate Tribunal, Raipur Bench, Raipur, in ITA No.63/RPR/2022}

Sandeep Kaur Gill, W/o Lakhwant Singh Gill, Aged about 53 years, R/o 26/934, Shukla Colony, R.S. Shukla Ward, Raja Talab, Raipur, Chhattisgarh.

... Appellant

versus

1. Union of India, Through its Secretary, Ministry of Finance (Department of Revenue) No. 137, North Block, New Delhi 110001.

2. Commissioner of Income Tax (Appeals), National Faceless Appeals Centre (NFAC), New Delhi.

3. Principal Commissioner of Income Tax, Raipur-1, New C.R. Building, Civil Lines, Raipur, Chhattisgarh.

4. Joint Commissioner of Income Tax, Raipur (Range-3), Raipur, Chhattisgarh.

... Respondents

For Appellant	**:**	Mr. Arjit Tiwari, Advocate.
For Respondents No.2 to 4	**:**	Mr. Ajay Kumrani, Advocate on behalf of Mr. Amit Chaudhari, Advocate.

Division Bench: -
Hon'ble Shri Sanjay K. Agrawal and
Hon'ble Shri Deepak Kumar Tiwari, JJ.

Order On Board
(01/05/2025)

Sanjay K. Agrawal, J.

1. This tax appeal preferred under Section 260A of the Income Tax Act, 1961 (for short, 'the Act') was admitted for hearing on 29-9-2023 on the following substantial questions of law: -

> "1. whether or not the respondent No.4 while levying the penalty under Section 271 E of the Income Tax Act 1961 has erred at law as the said penalty for the alleged contravention of the Section 269 T of the Income Tax Act 1961 was made with a myopic view and is uncalled and illegal.
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> 2. whether the reasonable cause shown by the petitioner, for having repaid the loan in cash on instruction of the lender to arrest escalation of the interest on loan for want of liquidation, whether it can be held to be bona fide quo Section 273 B of the Income Tax Act."

2. The aforesaid questions of law arise on the following factual backdrop: -

3. The appellant's assessment under Section 143(3) read with Section 147 of the Income Tax Act, 1961 (for short “the Act”) for the assessment year 2015-16 was completed on 23-12-2017, however, in the assessment proceeding, the Assessing Officer held that the assessee has made repayment of loan to M/s. Tata Finance Corporation in that financial year to the extent of ₹ 6,71,939/- in cash against the loan taken for commercial vehicle and accordingly proceeded to initiate penalty proceeding under Section 271E of the Act on the ground that repayment of loan to the extent of more than twenty thousand rupees by the assessee is in violation of provisions contained in Section 269T of the Act, which the assessee replied on 27-12-2018 stating that due to failure on her part to pay

installments in time, the financer by letter dated 5-11-2012 insisted upon her to make cash payment, which the assessee also, in turn, filed copy of the financer's letter issued by M/s. Tata Finance Corporation, however, the Assessing Officer did not accept the explanation of the assessee and order imposing penalty under Section 271E of the Act was passed on 28-12-2018.

4. Feeling aggrieved and dissatisfied with the order of penalty under Section 271E of the Act for non-compliance of Section 269T of the Act, the assessee has filed appeal before the Commissioner of Income Tax (Appeals), NFAC, which dismissed the appeal on 24-12-2021 leading to filing of further appeal before the ITAT. The learned ITAT by its impugned order dated 28-4-2023 dismissed the appeal holding that non-compliance of the provisions contained in Section 269T of the Act would invite penalty under Section 271E of the Act which the Assessing Officer has rightly levied and the appellate authority i.e. the CIT (Appeals) has rightly dismissed the appeal filed by the appellant leading to filing of this instant appeal before this Court.

5. Mr. Arjit Tiwari, learned counsel appearing for the appellant / assessee, would submit that the Assessing Officer has accepted the transaction of repayment of loan to M/s. Tata Finance Corporation and the transaction was duly reflected in the books of account i.e. the ledger maintained by the assessee. He would further submit that return of the assessee was also accepted during the assessment proceeding under Section 143(3) of the Act and none of the three authorities have recorded a finding that the

transaction was not genuine. He would also submit that all the three authorities have concurrently committed a grave legal error in holding that non-compliance of Section 269T of the Act would straightway result in imposition of penalty under Section 271E of the Act overlooking the provisions contained in 273B of the Act which clearly provides that no penalty shall be imposable on the person or the assessee for any failure referred to in the said provisions, in the instant case, Section 271E of the Act, if the assessee proves that there was reasonable cause for the said failure as the same was duly reflected in the books of account i.e. the ledger of M/s. Tata Finance Corporation maintained by the assessee. He would further contend that return of income was duly accepted and in that view of the matter, reasonable cause has been shown, but reasonable cause shown by the assessee was not considered by the three authorities and the Assessing Officer has straightway levied penalty finding violation of Section 269T of the Act which is per se illegal and bad in law, as the order imposing penalty is discretionary and once material has been brought on record for exercising the discretion, discretion ought to have been exercised by the assessing authority which has failed to exercise judiciously and the two appellate authorities also concurrently did not notice the illegality committed by the assessing authority and affirmed the order imposing penalty mechanically rendering the order illegal and liable to be set aside.

6. Mr. Ajay Kumrani, learned counsel appearing for respondents No.2 to 4/ Revenue, would support the impugned order and submit that the finding

recorded by the three authorities that there is complete non-compliance of Section 269T of the Act inviting the provisions contained in Section 271E of the Act is the correct finding of fact based on the evidence available on record which is neither perverse nor contrary to the record and as such, the appeal deserves to be dismissed.

7. We have heard learned counsel for the parties and considered their rival submissions made herein-above and also gone through the record with utmost circumspection.

8. Admittedly and undisputedly, assessment under Section 143(3) read with Section 147 of the Act for the assessment year 2015-16 was completed and the transaction entered into by the appellant was accepted as genuine transaction duly reflected in the books of account, return of income of the assessee for the assessment year 2015-16 was also accepted, and none of the three authorities have recorded a finding that same was not genuine and *bona fide* transaction. However, the assessing authority while accepting return of the assessee for the assessment year 2015-16 finding that for the same assessment year ₹ 6,71,939/- loan has been repaid in cash to M/s. Tata Finance Corporation, straightway proceeded to initiate proceeding under Section 271E of the Act leading to imposition of penalty without noticing the provisions contained in Section 273B of the Act.

9. In order to consider the plea raised at the Bar, it would be apposite to consider the provisions contained in firstly Section 269T, Section 271E and Section 273B of the Act. Section 269T of the Act states as under: -

> "**269T. Mode of repayment of certain loans or deposits**.—No branch of a banking company or a co-operative bank and no other company or co-operative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who has mad the loan or deposit or paid the specified advance, or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed ..."

10. A careful perusal of Section 269T of the Act would show that it deals with mode of repayment of certain loans or deposits. It mandates that no company including a banking company, co-operative society or firm shall repay to any person any deposit made with it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who had made the deposit if the amount of deposit together with interest is more than ₹ 20,000/-. The language used in Section 269T of the Act is in negative. Section 269T provides that none of the entities specified therein shall repay deposit otherwise than by the modes set out therein. In other words, Section 269T 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. Thus, the negative language used in Section 269T as also the penal consequences provided in Section 271E for non-compliance of the procedure prescribed under Section 269T leave no manner of doubt that repayment of deposit in the manner prescribed under Section 269T is mandatory. Thus, 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.

11. Consequence of non-compliance of mandatory provision contained in Section 269T of the Act is provided in Section 271E of the Act, which states as under: -

> "**271E. Penalty for failure to comply with the provisions of section 269T**.—(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.
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> (2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner."

12. The aforesaid provision, Section 271E of the Act, included in Chapter XXI of the Act, deals with penalties imposable for failure to comply with the provisions of Section 269T of the Act and it speaks of levy of penalty equal to the amount of the deposit so repaid in contravention of Section 269T of the Act. Section 271E of the Act is a penal provision, as assessee's failure to comply with the provisions contained in Section 269T of the Act would attract the penalty as sum equal to the amount of loan or deposit. This penal provision has to be construed strictly.

13. In the matter of **Hindustan Steel Ltd. v. State of Orissa**[1], it has been held by their Lordships of the Supreme Court that 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

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[1] (1969) 2 SCC 627

guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation and penalty will not also be imposed merely because it is lawful to do so. Their Lordships observed as under in paragraph 8 of the report: -

> "8. Under the Act penalty may be imposed for failure to register as a dealer — Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. 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. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute. Those in charge of the affairs of the Company in failing to register the Company as a dealer acted in the honest and genuine belief that the Company was not a dealer. Granting that they erred, no case for imposing penalty was made out."

14. At this stage, it would be appropriate to notice Section 273B of the Act. It is a provision which contemplates certain exigencies in which though the assessee is liable to suffer penalty, but penalty is not to be imposed in certain cases. Section 273B of the Act also includes Section 271E of the Act and, as such, imposition of penalty under Section 271E of the Act for non-compliance of Section 269T is subject to the provisions contained in Section 273B of the Act and no penalty shall be imposable on the person or the assessee under Section 271E of the Act, as the case may be, for any

failure referred to in the said provisions if assesse proves that there was reasonable cause for the said failure. Section 273B of the Act provides as under: -

> "**273B. 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 271AA, section 271B, section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, section 271FAB, section 271FB, section 271G, section 271GA, section 271GB, section 271H, section 271-I, section 271J, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (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."

15. As such, an exception has been carved out in Section 273B of the Act for not imposing penalty which is otherwise imposable under Section 271E if the assessee proves that there was reasonable cause for the said failure and in the instant case, for non-compliance of the provisions contained in Section 269T of the Act. A careful perusal of the provision contained in Section 273B of the Act would show that "reasonable cause" has to be shown for non-compliance of the provision contained in Section 269T of the Act, in the instant case, otherwise penalty has to be imposed under Section 271E of the Act.

16. Their Lordships of the Supreme Court in the matter of **Assistant Director of Inspection v. Kum. A.B. Shanthi**[2] while upholding the constitutional validity of Sections 269SS and 271D of the Act held that notwithstanding

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[2] [2002] 122 Taxman 574 (SC)

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 such failure and if the assessee 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. Their Lordships further held that by virtue of Section 273B of the Act, the authority vested with the power to impose penalty has got discretionary power, and observed as under: -

> "19. 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 such failure and if the assessee 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 *bona fide* transaction and if for any reason the taxpayer could not get a loan or deposit by account payee cheque or demand draft for some *bona fide* reasons, the authority vested with the power to impose penalty has got discretionary power."

17. Therefore, a combined reading of the provisions contained in Section 271E of the Act [which provides penalty for failure to comply with the provisions of Section 269T] and Section 273B of the Act makes it abundantly clear that if the assessee shows reasonable cause for the failure to comply with any provision referred thereto, the penalty for its violation of Section 269T of the Act shall not be imposable on the assessee. The word 'reasonable cause' has not been defined in the Act of

1961. 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 bona fides.

18. The Delhi High Court in the matter of **Azadi Bachao Andolan v. Union of India**[3] defined the words 'reasonable cause' as under: -

> "6. ... Reasonable cause, as applied to human action is that which would constrain a person of average intelligence and ordinary prudence. The expression "reasonable" is not susceptible of a clear and precise definition, for an attempt to give specific meaning to the word "reasonable" is trying to count what is not number and measure what is not space. It can be described as rational according to the dictates of reason and is not excessive or immoderate. 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" (See Re. A Solicitor, (1945) KB 368). 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 want of *bona fides*. ..."

19. In our considered opinion, *bona fide* belief coupled with the genuineness of the transactions would constitute a reasonable cause. Furthermore, the transaction which was *bona fide* and not aimed to avoid any tax liability would constitute a reasonable cause within the meaaning of Section 273B of the Act for not invoking Section 271E of the Act.

20. Coming to the facts of the case in light of the aforesaid principles of law, it is quite vivid that in the instant case, the assessing authority while completing the assessment of return of income, came to the conclusion

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[3] 2001 SCC OnLine Del 293

that the assessee made repayment of loan to M/s. Tata Finance Corporation for the assessment year 2015-16 in cash and proceeded to levy penalty under Section 271E of the Act straightway without noticing the provisions contained in Section 273B of the Act. There is no finding by the assessing authority or the two appellate authorities that the transaction made by the assessee in breach of the provisions contained in Section 269T of the Act, was not a genuine transaction. On the other hand, return of the assessee has been accepted as it is and the transaction reflected in the books of account during the assessment year under Section 143(3) and none of the authorities have recorded finding that the same was not genuine and not a *bona fide* transaction. There is no finding of the two appellate authorities that the transaction in breach of the aforesaid provisions made by the assessee was a *mala fide* transaction with an object to evade the tax and aimed to avoid any tax liability. As stated earlier, all the three authorities viz., the Assessing Officer, the CIT (Appeals) and the ITAT have proceeded on the basis that breach of provisions contained in Section 269SS of the Act shall lead automatically to penal provisions contained in Section 271E of the Act and completely ignored the provisions contained in Section 273B of the Act which requires that on proof of reasonable cause, the penalty imposable under Section 271E(1) would not be imposable and further ignored the fact that the imposition of penalty merely on technical mistake committed by the assessee, which has not resulted in any loss of revenue, would not be sustainable.

21. However, it has been noticed by the CIT (Appeals) that as per letter dated 5-11-2012 issued by M/s. Tata Finance Corporation, the said finance company has insisted upon the assessee to make repayment of loan in cash which persuaded the assessee to make payment of loan amount in cash which was duly reflected in the books of account and which has also been accepted by the Assessing Officer during the assessment proceedings and while filing return for that particular year, which has even not been disturbed by the first and second appellate authorities. As such, in our considered opinion, the cause shown by the assessee that on the insistence of M/s. Tata Finance Corporation to pay the amount of loan in cash vide its letter dated 5-11-2012, would constitute a reasonable cause within the meaning of Section 273B of the Act and also in light of the decision of the Supreme Court in **Kum. A.B. Shanthi's** case (supra), reasonable cause has been shown by the assessee for non-compliance with the provisions contained in Section 269T of the Act and the transaction is genuine and *bona fide* which is not disputed by all the three authorities, however, all the three authorities ignored the provision contained in Section 273B of the Act and proceeded to levy penalty under Section 271E of the Act rendering the provision contained in Section 273B of the Act otiose, as the provision contained in 271E of the Act for imposition of penalty for non-compliance of Section 269T of the Act is subject to Section 273B of the Act.

22. In that view of the matter, the order imposing penalty dated 28-12-2018 passed by the Assessing Officer, affirmed by the first appellate authority

by order dated 24-12-2021 and further affirmed by the second appellate authority by order dated 28-4-2023, are liable to be and are hereby set-aside/quashed and it is held that since the appellant has shown the reasonable cause within the meaning of Section 273B of the Act, the appellant is not liable to pay penalty under Section 271E of the Act for non-compliance of Section 269T of the Act. The substantial questions of law are answered against the Revenue and in favour of the assessee.

23. The appeal is allowed to the extent indicated herein-above. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Sd/-
(Deepak Kumar Tiwari)
Judge

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