IN THE INCOME TAX APPELLATE TRIBUNAL
Pune Bench B, Pune

Before Shri I.C. Sudhir Judicial Member
and Shri D. Karunakara Rao Accountant Member

I.T.A. No. 545/PN/2010: A.Y. 2003-04

I.T.O. Ward 1, Ahmednagar Appellant

Vs.

Vivekanand Gramin Bigar Sheti
Sahakari Pat Sanstha Maryadit
At Ganore Tal. Akole
Dist. Ahemdnagar
PAN AAAAV 2778 F ... Respondent

Appellant by: Shri Hemant Kumar Leuva
Respondent by: None

ORDER

PER I.C. SUDHIR, JM

The short issue that we are required to adjudicate in this appeal is whether or not the CIT(A) was justified in deleting the impugned penalty of Rs. 2,07,200/- u/s 271D of the Income-tax Act, 1961 imposed on the assessee. The assessment year involved is 2003-04.

2. The learned departmental representative fairly agrees that the issue in this appeal is squarely covered by the decision of this Bench in the case of Vishal Purandar Nagari Sahakari Pat Sanstha

Maryadit in ITA No. 1290/PN/2008 and 1291/PN/2008 for A.Y 2005-06 which we have decided in favour of the assessee by way of an order dated 22nd December 2008. In the said order we have inter-alia observed as under:

> "5. We have heard the rival contentions at considerable length. We have also perused the material on record and duly considered factual matrix of the case as also the applicable legal position.
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> 6. The assessee, as we have noted earlier, is a credit cooperative society, - 'pat sansthan', as it is known in the vernacular language. These pat sansthans are quite a common phenomenon in this part of the country and they render services which are somewhat close to the services usually rendered by the cooperative banks, in the sense they accept deposits from the members and give loans to the members. These institutions usually work at the level of talukas and moffusil towns. There is no doubt that these are not banks and are not permitted to carry out the banking business, but it is also true that there is a fair degree of similarity in the services rendered by these credit cooperative societies and cooperative banks. In these circumstances, the bonafides of assessee's belief for being entitled to the same treatment as banking institutions cannot be rejected outright . This is surely an incorrect view, but when an authority is examining an explanation in the context of a penalty proceedings, all that the authority has to see is whether or not such an explanation stands the preponderance of probabilities, and whether there are any inconsistencies or fallacies in such an explanation which demonstrate that the explanation is a make believe story.
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> 7. The question whether or not the legal position adopted by the assessee is correct or not cannot be the only basis on which penalty matters are decided, or else there is no need for any hearing once the lapse on

the part of the assessee is established, nor can section 273 B have any relevance in such a situation. It is important to bear in mind that section 273 B comes into play when the assessee has committed a lapse but the assessee can demonstrate that there was reasonable cause for having committed that lapse. The facts relating to the factors leading to a lapse can only be known to the persons committing that lapse are best in the knowledge of person committing the lapse, and, therefore, the onus on him to elaborate the same. However, it is inherently impossible for anyone to substantiate, with cogent evidence and material – as being insisted by the learned Departmental Representative, something like a bonafide belief which is a state of mind. All that can be done in such a situation is to explain the circumstances and factors leading to such a belief, and, in our considered view, unless a fallacy or inconsistency is found in the same, or unless such an explanation fails the test of probabilities, the same is to be treated as a reasonable explanation covered for the purposes of Section 273B.

8. The other aspect of the matter is whether or not ignorance of law can be an acceptable explanation, and whether such an explanation can be acceptable for individuals or groups of individuals alone – and not juridical persons. This issue is now well settled by the Hon'ble Supreme Court in the case of Motilal Padmapat Sugar Mills (supra) wherein Their Lordships have observed that **"** ...it must be remembered that there is no presumption that everyone is presumed to know the law. It is often said that everyone is presumed to know the law, but that is not a correct statement; there is no such maxim known to law", and interestingly these observations were made in the context of an artificial juridical person, i.e. a company. Referring to these observations of the Hon'ble Supreme Court, a co ordinate bench of this Tribunal, in the case of Sudershan Auto and General Finance Vs CIT (60 ITD 177), observed as follows:

"The ignorance of law may or may not constitute a valid excuse for justifying with a provision of the statute. It will depend upon the nature of default. If it is merely technical or venial breach, no penalty would be impossible because the levy of penalty would necessarily implies existence of some guilty intention on the part of the defaulter or the offender. In order to determine the existence or absence of guilty intention on the part of the assessee, one will have to consider all the surrounding facts and circumstances. Whether by committing default of non compliance with a statutory provision of law, an assessee has derived benefit, gain or advantage, whether by such a default or non compliance the assessee has defrauded the Revenue or caused any loss to the revenue ? These are some of the factors which will have to be seriously considered before considering the fact as to whether ignorance of law on the part of the assessee or his consultant can constitute valid excuse or reasonable cause for the purpose of Section 273B……"

9. We are in respectful agreement with the views so stated by the co ordinate bench. Viewed in this perspective and bearing in mind entirety of the case, as also the fact that the Assessing Officer has in some of the cases accepted the same explanation in the other years, we are of the considered view that the explanation of the assessee deserves to be accepted. It was a widespread, even if erroneous, belief that the provisions of Section 269-SS do not apply to the credit cooperative societies, and it is also evident from the fact that even the CBDT has taken notice of imposition of resultant penalties in large number of cases, and issued a circular highlighting that these penalties should not be imposed indiscriminately and without considering the scheme of Section 273 B. Such a widespread belief, by itself, can be viewed as a reasonable cause for assessee's bonafide belief.

10. Having said that, we may also add that it is not a case where even after the assessee after having come to know of the correct legal position due to income tax department's action against him continues to follow the same practice. Once the assessee comes to know as to what is the correct legal position or at least the

> revenue's stand on that issue, there is no question of his having bonafide but incorrect belief about the legal position. That is a different situation and we are not at all concerned with such a situation in the present case. This decision cannot have any precedence value in such a situation.
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> 11. With the aforesaid caveat, we uphold the grievance of the assessee and direct the Assessing Officer to delete the impugned penalty. The assessee gets the relief accordingly."

3. The view so taken in the above cases has been confirmed by the Hon'ble jurisdictional High Court vide judgment dated 18-3-2009 in the case of CIT Vs. Bandhkam Khate Sevakanchi Sahakari Patsanstha Maryadit wherein Their Lordships have held that after position of law is brought to the notice of the assessee the assessee has started taking money by cheque, in such a situation Tribunal's canceling penalty u/s 271D does not call for any inference. Keeping this in view also the penalty indeed deserves to be deleted.

4. Respectfully following the aforesaid view taken by us in the case of Vishal Purandar Nagari Sahakari Pat Sanstha Maryadit (supra), we decide the matter in favour of the assessee and hold that the penalty was not leviable on the facts and circumstances of the case. Our attention has not been invited to any variations in

the material facts of the present case viz-a-vis the case of Vishal Purandar Nagari Sahakari Pat Sanstha Maryadit and as such there is no reason to take any other view in the matter than the view so taken by us in the Tribunal's order mentioned supra. In this view of the matter, we uphold the order of the CIT(A) and delete the levy of penalty u/s 271D of the Act on the assessee.

5. In the result the appeal of the Revenue is dismissed.

Order pronounced on the 30th day of September 2010.

Sd/-	sd/-
(D. Karunakara Rao)	(I.C. Sudhir)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Pune dated the 30th September 2010
Ankam

Copy of the order is forwarded to :

1. The Appellant
2. The Respondent
3. The CIT(A)- I, Pune
4. The CIT- I Pune
5. The D.R, 'B' Bench, Pune
6. Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Pune