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Penalty upheld for accepting cash deposits

The Hon'ble Kerala High Court held that ignorance of a provision or lack of banking facilities are not acceptable reasons for accepting cash deposits in excess of the prescribed limit of INR 20,000, and upheld levy of penalty

Facts of the case:

- N.S.S Karayogam (the taxpayer)¹ is a charitable organisation.
- During the course of audit proceedings for Assessment Year (AY) 2005-06, the Assessing Officer (AO) found that the taxpayer had conducted finance business and accepted cash deposits in excess of the permissible limit of INR 20,000, under Section 269SS of the Income-tax Act, 1961 (ITA).
- The Additional Commissioner of Income-tax (ACIT), on recommendation from the AO, initiated penalty proceedings on the taxpayer, for accepting cash deposits in excess of permissible limit.
- The taxpayer contended the following in support of non-levy of penalty:
 - It is a charitable organisation rendering services to weaker sections of the society;
 - It had no income chargeable to tax and therefore it was under bona fide belief that the income-tax provision relating to restriction on cash deposits were not applicable;
 - Both the taxpayer and depositor earned agricultural income and thus, the restriction on acceptance of cash deposit did not apply (as per the second proviso to Section 269SS of the Act); and
 - Violation, if any, was due to ignorance of law.
- The ACIT did not accept taxpayer's contention and imposed penalty on the following basis:
 - The taxpayer did not have a reasonable cause for acceptance of cash deposits;
 - The taxpayer was doing large scale finance business and thus, the contention of ignorance was not acceptable;
 - The contention that there was no motive for violation of law, was not acceptable.
- On further appeal by the taxpayer, the penalty imposed was confirmed by the Commissioner of Income-tax Appeals [CIT(A)] and the Income-tax Appellate Tribunal (ITAT).
- Aggrieved by the ITAT's order, the taxpayer filed an appeal before the Kerala High Court (HC).
- The taxpayer relied on the case of K.V. George² and contended before the Kerala HC that the Revenue authorities had failed to consider the aspect of 'reasonable cause'. The Kerala HC after going through the facts, submissions and explanations offered by the taxpayer remanded the case back to the AO for fresh consideration, based on complete facts.

¹ 116 Taxmann.com 141 (Kerala)

² K.V George v/s CIT 42 taxmann.com 261 (Kerala)

- The AO, based on the order of the Kerala HC, examined the issue afresh and concluded that there was no 'reasonable cause' for the taxpayer to accept cash deposits in excess of the permissible limit of INR 20,000. The AO reaffirmed the imposition of penalty on the taxpayer.
- On appeal by the taxpayer, the CIT(A) upheld the AO's order. On further appeal, the ITAT upheld the order of the CIT(A). The ITAT relying on the case of Listin Stephen³ held that the taxpayer was unable to prove compelling circumstances for accepting deposits in cash and therefore, there existed no 'reasonable cause' for the taxpayer to accept cash deposits.
- Aggrieved with the ITAT's order, the taxpayer preferred an appeal before the Kerala HC.

Decision of the Kerala HC:

- The Kerala HC relying on various cases⁴ held that a taxpayer needs to have a compelling reason for accepting cash loan or deposit. Mere proof regarding genuineness of a transaction or the intention to accept cash or the fact that there was no attempt to induct black money into the business, etc., are not reasonable causes or compelling circumstances to avoid penalty.
- The Kerala HC held that in the case under consideration:
 - Ignorance of the provisions of law or lack of banking facilities in an area, cannot be accepted as compelling reasons for violation of the provisions of section 269SS of the ITA;
 - Considering that the taxpayer was conducting finance business of money lending and receiving deposits, the contention of taxpayer that both taxpayer and the depositor were having agricultural income (and thus, the restrictions of Section 269SS of the ITA do not apply) was not accepted;
 - Considering that the taxpayer was neither registered as a bank nor as a Non-Banking Financial Company (NBFC), the relaxation (from restrictions of Section 269SS of the ITA) provided for banks and NBFCs, was not available to the taxpayer.
- In view of the above, the Kerala HC confirmed the imposition of penalty for acceptance of cash deposits in excess of the permissible limit of INR 20,000.

Observations:

- The ruling affirms the principle that the taxpayer has to provide reasonable cause or compelling reason for accepting cash deposits. Mere genuineness of a transaction or the fact that there was no attempt to induct unaccounted money, are not reasonable causes or compelling reasons for accepting cash deposits.
- The ruling also affirms the legal principle of "Ignorantia juris non excusa" i.e. "ignorance of law is no excuse".
- Taxpayers should take note of the principles laid down in this ruling while accepting deposits or loan.

³ Listin Stephen v/s Dy CIT 2019(2) KLT 221

⁴ Listin Stephen vs Dy. CIT 2019 (2) KLT 221; CIT vs P.K. Shamsudin (2011) 1 KLT online 1211; K.V. George vs CIT (2014) 42 taxmann.com 261 (Ker.), Assistant Director of Inspection (Investigation) vs Kumari A.B.Santhi (2002) 2 KLT Online 1007 (SC), NSS Karayogam vs CIT (2014) 2 KLT Online 1208; Grihalakshmi Vision vs Addl. CIT (2015) 4 KLT SN 88 and CIT Thrissur vs Al Ameen Educational Trust (2018) 1 KLT Online 3133.



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