

**IN THE INCOME TAX APELALTER TRIBUNAL  
COCHIN BENCH, COCHIN**

**BEFORE S/SHRI N.R.S. GANESAN, JM & B. R. S BASKARAN, AM**

**ITA No.22/Coch/2012  
(Asst Year2007-08)**

The Income Tax Officer Ward 1, Allapuzha	Vs	Shri K V George Kannikkatu Nithin Vihar Aroor - PO Alappuzha -11
(Appellant)		(Respondent)

<b>PAN No.</b>	ACRPV4998F
Assessee By	Shri T M Sreedharan
Revenue By	Smt Susan George/Sh M Anil Kumar CIT-DR
Date of Hearing	6 <sup>th</sup> June 2013
Date of pronouncement	26 <sup>th</sup> July 2013

**OREER**

**PER N.R.S GANESAN,JM:**

This appeal by the revenue is directed against the order dated 1.12.2011 of the CIT(A)-IV and pertains to AY 2007-08 confirming the penalty levied under sec. 271 D of the I T Act.

2 Shri Anil Kumar, Id DR appeared for the department. During the year under consideration the tax audit report filed by the assessee discloses receipt of loan by cash exceeding Rs. 20,000/- to the extent of Rs. 29,47,500/-. Referring to section 269SS, the Id DR has submitted that no loan or deposit exceeding Rs. 20,000/- can be accepted otherwise than by crossed cheque or demand

draft. The assessee violated the provisions of section 269SS; therefore, the AO levied penalty u/s 271D. Referring to the explanation of the assessee that he was carrying out agricultural operation on leased land in Tamilnadu, the Id DR submitted that the assessee has not filed any material before the lower authorities to establish the facts that he was cultivating agricultural land. Referring to section 269SS, the Id DR has pointed out that any loan or deposit accepted by an agriculturalist from a person having agricultural income and neither of them has any income chargeable to tax under Income Tax Act then, the provisions of section 269SS may not be applicable to the assessee. In this case, even though the assessee claimed that he was an agriculturalist and cultivating leased land, it is not the case of the assessee that he has no income chargeable to tax under the Income Tax Act. In fact, the assessee has taxable income under income tax act. Moreover, the details of the lender were not filed by the assessee before any of the authorities below. Therefore, according to the Id DR, 2<sup>nd</sup> proviso to section 269SS may not be applicable to the assessee.

2.1 Referring to the other contention of the assessee that the money was received prior to 2006 and it was only for the purpose of account, the same was brought in the books during the year under consideration; the Id DR has submitted that this explanation of the assessee is imaginary and not correct. According to the Id DR, the assessee explained that earlier he was cultivating land in Tamilnadu and during the year under consideration, he migrated to the

State of Kerala and put up a business during the year under consideration. For the purpose of starting a business, the assessee needed money urgently; therefore, he claims that cash loans were taken from friends and relatives. This explanation of the assessee is contrary to the claim that loans were borrowed prior to 2006 and it was brought into the books only during the year under consideration. According to the Id DR, the admitted case of the assessee is that the business was set up during the year under consideration and money was also taken during the year under consideration. Though the assessee claims that money was urgently needed for setting up a business, he has not furnished any details or explains the situation in which the assessee was forced to accept the cash to pay off; therefore, the AO has rightly levied penalty u/s 271D of the Act.

2.3 Referring to the order of the Id CIT(A), the Id DR pointed out that the Id CIT(A) deleted the penalty on the ground that the department has accepted the genuineness of the loan; therefore, there was a reasonable cause. According to the Id DR, the penalty u/s 271D would be levied only in respect of genuine transaction. Unless and until it is proved that the assessee has received money in cash exceeding Rs. 20,000/-, either as loan or deposit, penalty u/s 271D cannot be levied. In case it was found that the claim of receipt of loan or deposit is not genuine and in fact the assessee has introduced his own money in the name of a third party in the books of accounts, then no question of levying penalty u/s 271D. In that case, the assessee will be construed as if he has

furnished inaccurate particulars of income and penalty would be levied u/s 271(1) ( c) of the Act for furnishing inaccurate particulars or concealing the particulars of income of the assessee. Therefore, according to the Id DR, the Id CIT(A) is not justified in deleting the addition.

2.4 On the contrary, Shri T M Sreedharan, Id Sr counsel for the assessee has submitted that when the loan or deposit taken by the assessee was accepted as genuine in the assessment proceedings, then there cannot be any levy of penalty u/s 271D. Referring to the unreported judgment of the Kerala High Court in the case of CIT vs P KShamsuddin (ITA No. 239 of 2011), a copy of which is available at page 26 of the paper book, the Id Sr counsel has submitted that when the department has accepted the source of the funds from which the loan or deposit was received as genuine, then there is a reasonable cause; therefore, penalty cannot be levied u/s 271D of the Act. According to Id Sr counsel, a similar view was taken by this Tribunal in the case of Mrs Rosary Prem in IT(SS) nos 53 to 43/Coch/05. The Id Sr counsel has also relied on the judgment of the Pubjab & Haryana High Court in the case of CIT vs Saini Medical Stores reported in 276 ITR 79 (P&H) and the judgment of the Rajasthan High Court in the case of CIT vs Manoj Lalwani reported in 260 ITR 590 (Raj); judgment of Madras High Court in the case of CIT vs Lakshmi Trust Co reported in 303 ITR 99 (Mad) and in the case of CIT vs Kundrathur Finance and Chit Co reported in 283 ITR 329 (Mad).

2.5 The Id Sr counsel has further pointed out that the assessee was an agriculturist when the loan was taken and loan was also taken from agriculturists; therefore, provisions of sec. 269SS is not applicable to the facts of the assessee's case. Hence, the AO is not justified in levying the penalty u/s 271D of the Act.

3 We have considered the rival submissions on either side and material on record. We have carefully gone through the provisions of section 269SS and sec. 271D of the IT Act which read as under:

**"269SS.** No person shall, after the 30th day of June, 1984, take or accept from any other person (hereafter in this section referred to as the depositor), any loan or deposit otherwise than by an account payee cheque or account payee bank draft if,—

(a) the amount of such loan or deposit or the aggregate amount of such loan and deposit ; or

(b) on the date of taking or accepting such loan or deposit, any loan or deposit taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid ; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b), is [twenty] thousand rupees or more :

**Provided** that the provisions of this section shall not apply to any loan or deposit taken or accepted from, or any loan or deposit taken or accepted by,—

(a) Government ;

(b) any banking company, post office savings bank or co-operative bank;

(c) any corporation established by a Central, State or Provincial Act ;

(d) any Government company as defined in section 617 of the Companies Act, 1956 (1 of 1956) ;

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette :

**[Provided further** that the provisions of this section shall not apply to any loan or deposit where the person from whom the loan or deposit is taken or accepted and the person by whom the loan or deposit is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act.]

*Explanation.—For the purposes of this section,—*

*[(i) "banking company" means a company to which the Banking Regulation Act, 1949 (10 of 1949), applies and includes any bank or banking institution referred to in section 51 of that Act ;]*

*[(ii) "co-operative bank" shall have the meaning assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949) ;*

*[(iii) "loan or deposit" means loan or deposit of money.]"*

**271D.** [(1)] If a person takes or accepts any loan or deposit in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit so taken or accepted.]

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

3.1 After the 30<sup>th</sup> day of June 1984, no person shall accept or take loan or deposit from any person otherwise than an account payee cheque or account payee bank draft, in case such loan or deposit exceeds Rs. 20,000/-. In fact Rs. 20,000/- was substituted by the Direct Tax Laws (Amendment) Act, 1987 instead of Rs. 10,000/-.

3.2 For the year under consideration, the amended provision fixing the limit at Rs. 20,000/- would be applicable. We find that the constitutional validity of sec 269SS was challenged before the Madras High Court in the case of KRMV Poonuswamy Nadar Sons (Firm) & others vs Union of India & others reported in 196 ITR 432. The Madras High Court, after considering the provisions of sec. 269SS and 276DD as they existed at that point of time, found that the assessee will have to show that there was a reasonable cause for failure to receive or accept loan or deposit by way of account payee cheque or account payee bank draft. The Madras High Court also held that the prosecution is to be at the instance of the highest functionary in the Income Tax Department. Accordingly, the constitutional validity of section 269SS and 276DD was upheld by the Madras High Court.

3.3 Subsequently, one of the assessee challenged the criminal proceedings initiated u/s 276DD of the Act by way of petition u/s 482 of Code of Criminal procedure before the Madras High Court. In Km A B Shanti (Alias) Vennira Adai Nirmala vs Asst Director of Inspection, Investigation reported in 197 ITR 330. The Id Single Judge of the Madras High Court after referring to the judgment of the Division Bench judgment in the case of K R M V Poonuswamy Nadar Sons (Firm) & others (supra) found that the contention of the assessee that section 269SS is violative of article 14 of constitution of India was not taken before the Division

Bench in the case of K R M V Poonsuwamy Nadra Sons (Firm) & others (supra) and it was also claimed before the Id Single Judge that the petitioner was not a party in the proceedings before the Division Bench. The Id Single Judge found that the transaction of loan or deposit requires two limbs i.e. one lender and another borrower. In sec. 269SS, one is left out for obvious reason; therefore, the Id Single Judge found that sec 269SS is violatible of article 14 of the Constitution of India . Accordingly, the criminal proceedings initiated against the assessee before the Madras High Court were quashed by the Id Single Judge.

3.4 This judgment of the Id Single Judge of the Madras High Court was challenged before the Apex Court in the case of Asst Director of Inspection (Investigation) vs Km A B Shanthi reported in 255 ITR 258. The Apex Court, after considering the objects behind the introduction of section 269SS and the judgment of the Constitution Bench of Apex Court in the case of S K Dutta, ITO vs Lawrence Singh Ingty reported in 68 ITR 272 (SC) found that taxation law is not open to attack on the ground that it taxes some persons or objects and not others. The Apex Court further found that a State does not have to tax everything in order to tax something. It was also found that the State can be allowed to pick and choose districts, objects, persons, methods and even rates for taxation, if it does so reasonability. The Apex Court further found that the object sought to be achieved was to eradicate the evil practice of making of false entries in the account books and later giving explanation for the same. The



Apex Court also found that sec 269SS could solve the problem to a great extent.

The fact the Apex Court observed as follows at page 263 of ITR:

*"The contention of the appellant's counsel has no force. The object of introducing section 269SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he has given some false entries in his accounts, he shall not escape by giving false explanation for the same. During search and seizure, unaccounted money is unearthed and the tax payer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so called lender also to manipulate his records later to suit the plea of the taxpayer. The main object of section 269SS was to curb this menace. As regards the tax legislations, it is a policy matter, and it is for Parliament to decide in which manner the legislation should be made. Of course, it should stand the test of constitutional validity.*

*A Constitution Bench of this Court in S K Dutta, ITO vs Lawrence Singh Ingty (1968) 68 ITR 272 held (page 275):*

*"It is not in dispute that taxation law must also pass the test of article 14. That has been laid down by this court in Moopli air vs State of Kerala (1961) 3 SCR 77. But as observed by this Court in Eash India Tabacco Co vs State of Andhra Pradesh (1963) ISCR 404 in deciding whether the taxation law is discriminatory or not it is necessary to bear in mind that the State has a wide discretion in selecting person or objects it will tax, and that a statute is not open to attack on the ground that it taxes some persons or objects and not others; it is only when within the range of its selection, the law operates unequally, and that cannot be justified on the basis of any valid classification, that it would violative of article 14. It is well settled that a State does not have to tax everything in order to tax something. It is allowed to pick and choose districts, objects, persons, methods and even rates for taxation if it does not reasonably."*

*The above dictum applies in full force as regards the present case. The object sought to be achieved was to eradicate the evil practice of making of false entries in the account books and later giving explanation for the same. To a great extent, the problem could be solved by the impugned provision."*

3.5 Ultimately, the Apex Court found that Sec 269SS does not in any way violative of Article 14 of Constitution of India and consequently, the judgment of the Id Single Judge of the Madras High Court in Km A B Shanti's case was set aside.

4 Referring to the provisions of section 273B, the Apex Court found that no penalty shall be imposable on the assessee for receiving or accepting loan or deposit otherwise than by account payee cheque or by account payee demand draft. The Apex Court found that undue hardship is very much mitigated by inclusion of section 273B in the Act. Ultimately, the Apex Court observed that if there was genuine and bonafide transaction and the taxpayer could not get a loan or deposit by account payee cheque or account payee demand drat for some bonafide reason, the authority vested with the power to impose penalty has a discretionary power not to levy the penalty. In fact the Apex Court observed as follows in page 266 of ITR as under:

*" It is important to note that another provision, namely section 273B 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 in the act. **If there was a genuine transaction and bonafide transaction and if for any reason the taxpayer could not get a loan or deposit by account payee cheque or demand draft for some bonafide reasons, the authority vested with the power to impose penalty has got discretionary power.**"*

*In that view of the mater, we do not think that section 269SS or 271D or the earlier section 276DD is unconstitutional one the ground that it was draconian or expropriatory in nature."*

4.1 In view of the judgment of the Apex Court, it is obvious that constitutional validity of provisions of sec. 269SS was upheld by holding that it does not violate

article 14 of the Constitution of India. It is also clear that in case of genuine and bonafide transaction and if the taxpayer could not get a loan or deposit by account payee cheque or account payee demand draft for some bonafide reasons, a discretion was vested with the AO or the officer who is empowered to levy of penalty, not to levy penalty. Of course, this discretion has to be exercised judicially and not arbitrarily. Thus, it is obvious from the judgment of the Apex Court that for invoking the provisions of section 269SS and 271D, the transaction shall be genuine and bonafide. However, for invoking the discretion vested with the AO under section 273B, the assessee should demonstrate that he could not get a loan or deposit by account payee cheque or demand draft for some bonafide reasons. Thus, there should be bonafide reason or reasonable cause for receiving the loan or deposit by cash and the receipts of loan or deposit by cash itself, cannot be bonafide reason or reasonable cause.

5 Let us now examine the facts of the present case in the light of the law laid down by the Apex Court in the case of Km A B Shanthi (supra).

5.1 The first contention of the Id Sr counsel in the case is that the transaction of receiving loan in cash was genuine and therefore, there was a reasonable cause in accepting the money exceeding Rs. 20,000/- by way of cash.

5.2 We have carefully gone through the provisions of sec. 273B of the Act, which reads as under:

**273B.** Notwithstanding anything contained in the provisions of <sup>59</sup>[clause (b) of sub-section (1) of] <sup>60</sup>[section 271, section 271A, <sup>61</sup>[section 271AA,] section 271B <sup>61</sup>[, section 271BA], <sup>62</sup>[section 271BB,] section 271C, <sup>63</sup>[section 271CA,] section 271D, section 271E, <sup>64</sup>[section 271F, <sup>65</sup>[section 271FA,] <sup>66</sup>[section 271FB,] <sup>67</sup>[section 271G,]] <sup>68</sup>[section 271H,] clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA] or <sup>69</sup>[section 272B or] <sup>70</sup>[sub-section (1) <sup>71</sup>[or sub-section (1A)] of section 272BB or] <sup>72</sup>[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<sup>73</sup> for the said failure.]

5.3 This section clearly shows that 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 a reasonable cause for the said failure. The word 'for any failure referred to in the said provisions' assumes significance.

5.4 Now, the failure in this case is not receiving the loan by way of account payee cheque or account payee demand draft. The receipt or acceptance of loan is not prohibited in the Income Tax Act. The income tax provides for receipt or acceptance of loan which exceeds Rs. 20,000/- by way of account payee cheque or account payee demand draft. It also provides for penalty for failure to do so. Therefore, if the assessee explains to the satisfaction of the concerned authority that there was a reasonable cause for failure to receive the loan or deposit by way of account payee cheque or account payee demand draft,

then penalty shall not be levied. Therefore, the reasonable cause should be for not receiving the loan or deposit by way of account payee cheque or account payee demand draft . In other words, there shall be a reasonable cause for receiving the loan or deposit in cash. The contention of the Ld Sr counsel for the assessee before the Tribunal is that the receipt of loan in cash itself is a reasonable cause. This Tribunal is of the considered opinion that receipt of loan by itself cannot be a reasonable cause for failure to receive the loan by way of account payee cheque or account payee demand draft. For exercising jurisdiction under section 269SS r.w.s 271D there should be receipt of loan or deposit by the assessee by way of cash or otherwise than by way of account payee cheque or demand draft. If for any reason the claim of the assessee that he has received loan or deposit was found to be false then the amount credited in the books of account of the assessee as loan or deposit has to be treated as his own income and penalty can be levied not u/s 271D but it will be u/s 271(1) (c) for furnishing inaccurate particulars of income or for concealing particulars of income in the return. Therefore, the Ld Sr counsel may not be correct in saying that mere receipt of loan by cash or genuineness of receipt of loan by cash itself would constitute a reasonable cause u/s 273B of the Act. The reasonable cause shall be for failure to comply with the provisions of section 269SS in not receiving the loan by way of account payee cheque or account payee demand draft and the genuineness of receipt of loan by cash itself per-se cannot constitute reasonable cause. In view of plain and unambiguous

language in section 273B of the I T Act, the reasonable cause shall be for failure of the procedure or method provided in section 269SS. Therefore, this Tribunal is of the considered opinion that the contention of the Id Sr counsel that the genuineness of the receipt of loan by cash itself constitute reasonable cause has no merit at all.

6 We have carefully gone through the judgment of the Kerala High Court in the case of Shri P K Shamsudin (supra). The assessee, before the Kerala High Court, used several persons probably close relatives and friends to take loan from bank for his business purpose. Therefore, the Kerala High Court found that the relative or friend who borrowed loan for assessee's business may not able to issue cheque to assessee. Accordingly, after availing the loan from bank, the creditors withdraw cash from their respective accounts and gave the same to the assessee. The Kerala High Court found that there was a reasonable cause for not receiving the money by way of account payee cheque or account payee demand draft. The Kerala High Court further found that since the loan was taken from the bank, the same fund cannot be given to the assessee by way of cheque; therefore, there was a reasonable cause in withdrawing the money from the bank and the same was given to the assessee by cash and this cause was found reasonable for not levying penalty u/s 271D of the Act.

6.1 In the case before us, the facts were entirely different. The assessee claims that money was received from agriculturist. It is not the case of the assessee that the agriculturist from whom loan was borrowed, withdrawn funds from bank. Therefore, this Tribunal is of the opinion that the judgment of the Kerala High Court in the case of Shri P K Shamsudin (supra) may not be applicable to the facts of the present case. It is well settled principles of law that the judgment of the Court has to be understood with the facts before the Court. It is not permissible to pick and choose a sentence or word from the judgment, de-hors the facts on which the observations made by the Court.

7 We have also carefully gone through the judgment of the Punjab & Haryana High Court in the case of Saini Medical Stores (supra). In the case before the P&H High Court, it was found that there was a reasonable cause for accepting the loan by way of cash. Therefore, the High Court found that due to bonafide belief, the assessee violated the provisions of sec. 269SS.

7.1 In the case before us, the assessee is not claiming that cash was received due to reasonable cause. The claim of the assessee is that receipt of money by way of cash itself is a reasonable cause. As already discussed, mere receipt of cash, itself cannot be a reasonable cause. The assessee is expected to demonstrate the reasonable cause for not receiving the loan by account

payee cheque or demand draft. Therefore, this judgment of the P&H High Court also may not be of any assistance to the assessee.

8 We also carefully gone through the judgment of the Madras High Court in the case of Lakshmi Trust Co (supra). In this case before the Madras High Court, the assessee has taken cash loan and repaid the same by cash. The assessee claimed before the authorities that the business of the assessee was done mainly in Erode and cash purchases were made; therefore, the assessee needs money urgently and hence, cash was accepted from sister concern and it was repaid in cash. The Madras High Court by placing reliance in its earlier decision in the case of Ratna Agencies (2006) 284 ITR 609 found that there was a reasonable cause. In the case of Ratna Agencies (supra), the money received was meager and it was incurred for meeting the sudden demand of overdrafts account. This was found to be a reasonable cause by the Madras High Court. Therefore, the judgment of the Madras High Court also may not be of any assistance to the assessee.

9 Now, coming to the judgment of the Madras High Court in the case of Kundrathur Finance & Chit Co (supra), it was found that there was no banking facility for the depositors. In the absence of any bank facility, the Madras High Court found that receipt of money by cash was not considered to be in violation of provisions of sec. 269SS. In fact non availability of the banking facility



was considered as a reasonable cause for receipt of money by way of cash and not the receipt of cash itself.

10 We have also carefully gone through the judgment of the Rajasthan High Court in the case of Manoj Lalwani (supra). In this case, the Rajasthan High Court found that the assessee took loan because he was in urgent need of money for complying with the time bound suppliers; therefore, receipt of cash was found to be reasonable. This judgment of the Rajasthan High Court is also may not be applicable to the facts of the present case.

11 In view of the above discussion, there should be a reasonable cause for receipt of money by way of cash. As observed by the Apex Court in *Km A B Shanti* (supra). (i) There shall be a genuine and bonafide transition and (ii) for some bonafide reasons, the assessee could not get the loan or deposit by account payee cheque or demand draft.

11.1 The above two conditions are simultaneously to be fulfilled for invoking the discretion u/s 273B and it is not mutually exclusive. In other words, in view of the judgment of the Apex Court in *Km A B Shanti* (supra), mere genuine and bonafideness of the transaction alone would not be sufficient for invoking the discretion vested u/s 273B. Apart from genuine and bonafideness of the

transaction, the assessee shall demonstrate the reasonable and bonafide cause for not receiving the loan in cash.

11.2 In the case before us, the assessee claims that transaction of receiving loan was genuine; however, it is not the case of the assessee that apart from genuineness of the loan transaction, there was any reasonable and bonafide cause for receiving the loan in cash. Therefore, the condition laid down in section 273B as explained by the Apex Court in *Km A B Shanti* (supra) was not fulfilled. Hence, the discretion vested with the AO u/s 273B cannot be invoked. This principle laid down by the Apex Court was not considered in the decision of the Tribunal relied upon by the assessee. Therefore, the decision of the Tribunal wherein the assessee placed reliance may not be of any assistance to the assessee.

12 The next contention of the Ld Sr counsel is that the funds were received prior to 2006 and it was entered in the books of account during the year under consideration. The Tribunal is of the considered opinion that this submission of the Ld Sr counsel has no merit at all. The explanation of the assessee before the lower authorities was that he needs money urgently for setting up of an industry in the State of Kerala in 2006; therefore, he received money from agriculturist in the State of Tamilnadu. If this explanation of the assessee that he needs money for setting up of industry in Kerala was accepted, then there is no question of

receiving money prior to 2006. Therefore, the submissions/argument of the Id Sr counsel is contrary to the explanation of the assessee before the lower authorities. Therefore, this Tribunal do not find any merit in the argument of the Id Sr counsel. Setting up an industry/business is a long process. Therefore, it is for the assessee to demonstrate with sufficient material and the specific urgent situation to be met by receipt of cash. In the absence of any plea that the assessee has to meet any specific urgent needs, the Tribunal could not see any reasonable cause for receiving the loan by way of cash.

13 The next contention of the Id Sr counsel is that the assessee was an agriculturist and he has received money from agriculturist; therefore, section 269SS is not applicable.

13.1 We have carefully gone through the provisions of sect. 269SS more particularly 2<sup>nd</sup> proviso to sec. 269SS. If deposit of loan was taken by an agriculturist from an agriculturist and neither of them of have any income chargeable to tax, then provisions of sec. 269SS is not applicable.

13.2 In the case before us, admittedly, the assessee has taxable income. Therefore, 2<sup>nd</sup> proviso to sec. 269SS is not applicable to the assessee. In other words, the assessee cannot take any advantage from 2<sup>nd</sup> proviso to sec. 269SS.

14 In view of the above discussion, the Tribunal unable to uphold the order of the Id CIT(A) and accordingly, the same is set aside and that of the AO is restored.

15 In the result, the appeal filed by the revenue is allowed.

Order pronounced in the open Court on this 26<sup>th</sup> day of July 2013.

Sd/-	Sd/-
<b>(B.R. BASKARAN)</b>	<b>( N.R.S GANESAN)</b>
Accountant Member	Judicial Member

Cochin: Dated 26<sup>th</sup> uly 2013

**Raj\***

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Assistant Registrar  
ITAT, COCHIN