

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 669/JP/2018
निर्धारण वर्ष/Assessment Year : 2014-15

A.C.I.T., Circle-2, Alwar.	बनाम Vs.	Balbir Singh, A-88, BSNL Exchange, Behror, Distt.- Alwar (Raj).
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AUQPS 2392 R		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

राजस्व की ओर से/ Revenue by : Shri A.S. Nehra (JCIT)
निर्धारिती की ओर से/ Assessee by : Shri Siddartha Ranka &
Ms. Pallavi Bhargava (Adv)

सुनवाई की तारीख/ Date of Hearing: 30/10/2018
उदघोषणा की तारीख/Date of Pronouncement : 20/12/2018

आदेश / ORDER

PER: VIJAY PAL RAO, J.M.:

This appeal by the revenue is directed against the order dated 07/03/2018 of Id. CIT(A), Alwar for the A.Y. 2014-15. The revenue has raised following grounds of appeal:

"1. On the facts and circumstances of the case and in law, the Id. CIT(A) has erred in deleting the penalty U/s 271D of the Act Rs. 1,00,00,000/- imposed by the JCIT for violation of provision of Section 269SS of the It Act, 1961."

That the appellant craves leave to add, amend or alter the grounds of appeal on or before the date of appeal is finally heard for disposal."

2. The assessee is an individual and engaged in the business of hotel and agricultural activities. The assessee e-filed his return of income on

29/3/2015 declaring total income of Rs. 73,76,400/-. While completing the assessment U/s 143(3) of the Income Tax Act, 1961 (in short the Act) on 19/12/2016, the Assessing Officer assessed the total income of Rs. 1,58,32,530/-. While passing the scrutiny assessment, the Assessing Officer initiated the penalty proceedings U/s 271D of the Act in respect of the cash loan of Rs. 1.00 crore taken by the assessee from Smt. Maya Devi in contravention of provisions of Section 269SS of the Act. Subsequently a notice U/s 271 of the Act was issued to the assessee on 25/1/2017 proposing levy of penalty U/s 271D of the Act. The assessee explained that the amount of Rs. 1.00 crore received from Smt. Maya Devi was not a loan but it was an advance against the sale of land vide agreement dated 12/12/2012. The Assessing Officer examined the alleged agreement and held that this is an afterthought prepared document on a old stamp paper and nothing but an attempt to create evidence that the transaction is for sale of property and not as a loan taken in cash. Consequently, the Assessing Officer levied the penalty of Rs. 1.00 crore U/s 271D of the Act vide order dated 17/5/2017.

3. The assessee challenge the levy of penalty before the Id. CIT(A) and reiterated the contention that the amount in question was received as an advance for sale of property to Smt. Maya Devi, subsequently due to the financial crisis, the purchaser could not make the balance payment

and therefore, the transaction could not be materialized, accordingly, the Id. CIT(A) has deleted the penalty levied U/s 271D of the Act.

4. Before us, the Id DR has submitted that the alleged agreement was stated to have been executed on 20/6/2013 whereas the payments were made on 11/4/2013, 22/4/2013 and finally Rs. 10.00 lacs on 20/6/2013, therefore, in absence of any other record regarding the payments made prior to the agreement, it cannot be accepted that these payments were made only as advance for sale of property. The assessee has prepared this document which is an afterthought to give a colour to the transaction of loan as advance against the property. This fact is also supported by the development that the transaction of sale of property never materialized and even the assessee has not claim to have repaid the said amount rather the assessee has claimed that since the purchaser has not paid the balance amount of sale consideration, therefore, the assessee forfeited the said amount of Rs. 1.00 crore. Even otherwise, the advance received by the assessee falls under the definition of loan or deposits as per the explanation to Section 269SS of the Act. The Id DR has further pointed out that though the agreement in question was claimed to have been executed on 12/12/2012, however, the same was notarized on 20/6/2013 which shows that this agreement was prepared subsequently by using old stamp paper to give the colour

of sale of the property. Thus, he has relied upon the order of the Assessing Officer.

5. On the other hand, the Id AR of the assessee has submitted that the assessee has taken Rs. 1.00 crore as advance against the sale of agricultural land from Smt. Maya Devi, the amount was received on various dates from 11/4/2013 to 20/6/2013. The agreement to sell was executed and notarized on 20/6/2013. As per the agreement, the time was given up to 31/5/2015 for execution of sale deed and payment of the balance amount. Smt. Maya Devi could not make the balance payment and due to the mutual relation, the assessee extended time till 23/12/2016 and thereafter till 20/4/2017. Smt. Maya Devi has accepted and confirmed the transaction of giving advance for purchase of the land in the statement recorded U/s 131 of the Act. The assessee attended the office of the Sub-Registrar, Behror on 21/4/2017 and deposited Rs. 50/- against his attendance for the purpose of registration of sale deed. Since the purchaser did not turn-up and has not paid the balance amount, therefore, the assessee forfeited the amount of Rs. 1.00 crore. The Id AR further pointed out that Smt. Maya Devi has filed a civil suit against the assessee before the Additional District & Sessions Judge, Behror for getting the sale deed executed as per the agreement. The suit is still pending before the Court. Thus, the present transaction is not loan or

deposit but it was an advance received for sale of the property and therefore, does not fall in the ambit of provision of Section 269SS of the Act. The Id AR has further submitted that explanation to Section 269SS of the Act has been inserted w.e.f. 01/6/2015 and therefore, the same is not applicable for the assessment year under consideration. He has supported the order of the Id. CIT(A).

6. We have heard the rival contentions and perused the material available on the record. The Assessing Officer has observed that the amount of Rs. 1.00 crore received by the assessee from Smt. Maya Devi was a loan and the alleged agreement produced by the assessee is nothing but an afterthought attempting to create an evidence to give the colour of the transaction of loan as advance against the sale of the property. Thus, the Assessing Officer has treated the said amount as loan in contravention of the provisions of Section 269SS of the Act and consequently imposed the penalty U/s 271D of the Act. The Id. CIT(A) has accepted the transaction as advance received against the sale of property by accepting the agreement to sell notarized on 20/6/2013. Except the agreement in question which is claimed to have been notarized and not a registered agreement there is no other document in support of the claim that the amount was received as an advance against the sale of property. The only evidence which can be independently

verified is the receipt of payment of Rs. 50/- in the office of the Sub-Registrar, Behror on 21/4/2017. The said receipt was subsequent to the assessment order as well as the show cause notice issued U/s 271D of the Act on 25/1/2017, therefore, prior to the show cause notice U/s 15/1/2017, there was no document which can independently verified the existence of this claim though the assessee has produced this agreement dated 20/6/2013. It is pertinent to note that if the assessee is having/ holding the land in question i.e. khasra No. 24 measuring 1.11 hectare situated at village Dhodhakari, Tehsil-Neemrana, Alwar then in absence of any contrary record, the explanation of the assessee that the said amount was received as an advance against the sale of the land, cannot be rejected. However, neither the Assessing Officer nor the Id. CIT(A) has examined whether the assessee owned this land in question which is subject matter of the transaction. Even the assessee did not produce any record about the ownership of the said land in question, therefore, to give the concluding finding on the matter, it is necessary to verify the fact that the land in question is owned by the assessee and free from all encumbrances so it can be freely transferred. Accordingly for the limited purpose we set aside this issue to the record of the Assessing Officer to conduct a necessary enquiry in respect of the status and ownership of the land in question as on the date of the alleged agreement. In case,

the land in question is found to be owned by the assessee then the claim of the assessee shall be accepted and no penalty can be levied.

7. In the result, appeal of the revenue is allowed for statistical purposes only.

Order pronounced in the open court on 20th December, 2018.

Sd/-
(विक्रम सिंह यादव)
(VIKRAM SINGH YADAV)
लेखा सदस्य / Accountant Member

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 20th December, 2018

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- The A.C.I.T., Circle-2, Alwar.
2. प्रत्यर्थी / The Respondent- Shri Balbir Singh, Alwar.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 669/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar