

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'SMC', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER

आयकर अपील सं./ ITA No. 396/CHD/2019

निर्धारण वर्ष / Assessment Year : 2007-08

Shri Onkar Soni, Village Khanot, P.O.Barlin, Tehsil Baldwara, Distt. Mandi (H.P.)	Vs. बनाम	The JCIT, Range Mandi, Mandi
स्थायी लेखा सं./PAN NO. AFLPS2375E		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri A.K. Jindal

राजस्व की ओर से/ Revenue by : Sh. Manjit Singh CIT DR

सुनवाई की तारीख/Date of Hearing : 07.11.2019

उदघोषणा की तारीख/Date of Pronouncement : 07.11.2019

आदेश/Order

The present appeal has been preferred by the assessee against the order dated 22.01.2019 of the Commissioner of Income Tax (Appeals), Palampur [hereinafter referred to as 'CIT(A)'].

2. The assessee in this appeal has taken following grounds of appeal:-

1. *That the Ld. CIT(A) has erred in law & facts of the case in not complying with the directions of Hon'ble ITAT in not adjudicating the issue regarding the validity of penalty order passed u/s 271D of the income Tax Act which is highly unjustified and uncalled for.*

2. *That the Ld. CIT(A) has erred in law & facts of the case in upholding the penalty imposed u/s 271D amounting to Rs. 7,00,000/- which is highly unjustified and uncalled for.*
3. *That the appellant craves leave to add, amend or modify any ground of appeal on or before the disposal of the same.*

3. The sole issue raised by the assessee in this appeal is against the action of the Ld. CIT(A) in confirming the levy of penalty of Rs. 7 lacs levied by the Assessing Officer u/s 271D of the Income Tax Act, 1961 (in short 'the Act').

It is pertinent to mention here that earlier the assessee had preferred appeal before the Tribunal against the order of CIT(A) dated 27.1.2017 agitating the confirmation of levy of impugned penalty. The Tribunal vide order dated 11.8.2017 remanded the matter back to the file of the CIT(A) for decision afresh. The Ld. CIT(A) again confirmed the penalty so levied by the Assessing Officer vide impugned order dated 22.01.2019, hence, the assessee is again in appeal before this Tribunal.

4. At the outset, Ld. Counsel for the assessee has invited our attention to the provisions of section 269SS of the Act, as were applicable for the assessment year under consideration, allegedly in violation of which the Assessing Officer has levied the impugned penalty. The Ld. Counsel for the assessee has submitted that the assessee had received amount of Rs. 7 lacs, in cash, as against advance for the sale of property. That subsequently section 269SS of the Act

making prohibition for receipt of advance against property has been introduced w.e.f. 1.6.2015. That prior to 1.6.2015, there was no prohibition in receiving advances in cash against sale of property. The Ld. Counsel has further invited our attention to the statement dated 27.11.2009 of the payer namely Shri Ram Pal Malik recorded by the Assessing Officer during the assessment proceedings. In his statement Shri Ram Pal Malik has duly confirmed that he had paid the amount of Rs. 7 lacs for purchase of property to the assessee. Even the copy of the agreement to sell duly notarized by the Notary Public was also produced before the Assessing Officer. The Assessing Officer considering the statement of Shri Ram Pal Malik, which was corroborated with the copy of agreement to sell dated 1.2.2007, did not make any addition into the income of the assessee in this respect. However, later on, the penalty proceedings u/s 271D of the Act have been initiated by the JCIT treating the said amount as loan received in cash and he accordingly held that the assessee had violated the provisions of section 269 SS of the Act and thereby imposed penalty u/s 271D of the Act.

5. Before the Bench, the Ld. Counsel for the assessee contended that the assessee had duly proved the factum of receipt of the aforesaid money in cash as advance against the sale of property and also pleaded that the sale deed of the property, however, was effected in the name of the father of payer namely Shri Sunder Lal. He also produced the copy of the sale deed in this respect. However, the Ld. CIT(A) did not agree with the contention of the assessee observing that there was a long delay

between the date of receipt of money in the year 2007 and the execution of sale deed in the year 2014.

6. I have heard the rival contentions of the Ld. Authorized Representatives of both the parties. The fact which emerges from the file is that there is no denial or rebuttal of execution of agreement to sell by the assessee with Shri Ram Pal Malik corroborated with the statement of Shri Ram Pal Malik recorded on 27.11.2009 by the Assessing Officer during assessment proceedings. It is also an important fact on the file that the Assessing Officer did not doubt the veracity of the statement of Shri Ram Pal Malik and, therefore, did not make addition either to the income of the assessee or into the income of Shri Ram Pal Malik in respect of the said amount of Rs. 7 lacs received by the assessee in cash from Shri Ram Pal Malik. Shri Ram Pal Malik duly confirmed in his statement that the said amount was given by him in cash to the assessee as advance against sale of property. Penalty proceedings u/s 271D of the Act were initiated much after i.e. in the year 2014 by the JCIT, hence, it cannot be said that the said agreement to sell or the averments made in the statement recorded of Shri Ram Pal Malik on 27.11.2009 was an afterthought or afterwards created evidences. Since the assessee has duly established, even prior to the initiation of penalty proceedings about the transaction of receipt of advance in cash against the sale of property and there was no provision of section 269SS in the statute, as it stood during the relevant period.

In view of this, there is no justification on the part of the lower authorities in levying penalty u/s 271D of the Act.

7. So for as the observations of the Ld. CIT(A) that the sale deed was executed after a long time, in my view, is not relevant as the sale deed was finally executed or not. One may find many instances where agreement to sell is executed between the parties but finally for one reason or the other, the sale deed could not be executed. Since during the assessment proceedings and prior to the initiation of penalty proceedings, the assessee had duly proved the execution of agreement to sell and receipt of advance thereof, hence, in my view, there is no justification on the part of the lower authorities either in levying or in confirming the penalty. The same is accordingly ordered to be deleted.

The appeal of the stands allowed.

Order dictated and pronounced in the Open Court immediately on completion of hearing.

Sd/-

(संजय गर्ग / SANJAY GARG)
न्यायिक सदस्य/ Judicial Member

Dated : 07.11.2019

“आर.के.”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar