

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH: BANGALORE**

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.446/Bang/2022
Assessment Year: 2016-17

Mrs. Jaya Ignatius No.33/1 Harris Road Near Nirmala Clinic Benson Town Bengaluru 560 046 PAN NO : AABPI7560G	Vs.	ITO Ward-4(3)(2) Bengaluru
APPELLANT		RESPONDENT

Appellant by	:	Shri Akshaya K.S., A.R.
Respondent by	:	Shri Venudhar Godesi, D.R.

Date of Hearing	:	28.07.2022
Date of Pronouncement	:	28.07.2022

O R D E R

PER CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal by the assessee is directed against order of CIT(A), NFAC, Delhi dated 30.3.2022.

2. Facts of the case are that the assessee is a resident individual and senior citizen sold a land situated in Bengaluru vide sale deed dated 17.10.2015. The total sale consideration was Rs.30 lakhs. The assessee received advance of Rs.10 lakhs by way of cash in April, 2015. Out of this, assessee deposited a sum of Rs.9 lakhs to ICICI Bank account, Frazer town Branch, Bengaluru on 26.5.2015. The

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AO was of the opinion that the assessee violated the provisions of section 269SS of the Act and accordingly, issued notice u/s 274 of the Income-tax Act, 1961 ['the Act' for short] on 5.5.2020. Therefore, after giving an opportunity of hearing to the assessee, the AO levied penalty at Rs.10 lakhs u/s 271D of the Act. The assessee contested this penalty before Ld. CIT(A). However, Ld. CIT(A) confirmed the penalty levied by the AO. Against this, assessee is in appeal before us.

3. The contention of the assessee is that provisions of section 269SS cannot be applied to the assessee's case as the relevant provisions with regard to receipt from cash in relation to immovable property was made applicable vide Finance Act, 2015 w.e.f. 1.6.2015. According to the assessee's counsel, the assessee has received a sum of Rs.10 lakhs in the month of April, 2015 to show that it has been received before 2015. Further, he submitted that the said amount has been received by assessee before 1st June, 2015. To demonstrate it, he drew our attention to ICICI Bank account of Frazer Town Branch, bearing Customer ID No.525483027 to the cash deposit into account on 26.5.2015 at Rs.9 lakhs. In other words, he submitted that a sum of Rs.10 lakhs received by assessee towards sale consideration of sale of property at site No.895, BBMP Khata No.287/895, Begur Hobli, Bengaluru South Taluk executed on 17.10.2015. Thus, he submitted that said provisions of 269SS of the Act cannot be applied to the facts of the present case and penalty u/s 271D of the Act cannot be levied. Further, he submitted that the said transaction is genuine, therefore, no penalty is applicable and for this purpose, he relied on the judgement of Hon'ble Allahabad High Court in the case of CIT Vs. Dimple Yadav (379 ITR 177) for this proposition. According to him, the sales consideration has been duly reported to the department in his return of income and the transaction has to be

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considered as genuine transaction and penalty cannot be levied. More so, the assessee is a senior citizen having no knowledge of the income tax provisions, as such, penalty cannot be levied.

4. On the other hand, Ld. D.R. submitted that there is a contravention for provisions of section 269 SS of the Act. Hence, penalty u/s 271D of the Act has been levied. Even genuineness of the transaction cannot be reason to not to levy the penalty u/s 271D of the Act. In other words, genuine transaction also subject to levy of penalty u/s 271D of the Act, if there is a violation in terms of section 269SS of the Act. Further, the assessee has not proved that the assessee has received a sum of Rs.10 lakhs before relevant provisions of the Act, with regard to the receipt of cash of Rs.20,000/- or more in relation to sale of immovable property before 1st June, 2015.

5. We have heard the rival submissions and perused the materials available on record. The main contention of the assessee's counsel is that assessee has received this amount in the month of April, 2015 i.e. before amendment to section 269SS of the Act with regard to receipt of cash of Rs.20,000/- or more in relation to sale of immovable property was made applicable vide Finance Act, 2015 w.e.f. 1.6.2015. We are completely in agreement with the contention of the assessee's counsel that if the assessee has received any amount more than Rs.20,000/- by way of cash in relation to sale of immovable property, the provisions are not applicable if he has received the said amount by cash before 1st June, 2015 as the amendment came into effect by Finance Act, 2015 w.e.f. 1.6.2015. The Ld. A.R. filed a copy of sale deed dated 17.10.2015 and explained that assessee sold the property bearing site no.895BBMP Khata No.287/895, Begur Hobli, Bengaluru vide sale deed No.BGR-1-

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04893-2015-16 dated 17.10.2015 to one Mr. Shiva Kumar, for a consideration of Rs.30 lakhs. Out of this, an amount of Rs.10 lakhs has been received by cash on 26.5.2015. To confirm this receipt of Rs.10 lakhs, the assessee filed an affidavit signed by the assessee and witnessed by Akshaya K.S., Chartered Accountant and Ravindra R., which reads as follows:-


सत्यमेव जयते

INDIA NON JUDICIAL

Government of Karnataka

e-Stamp


Certificate No.	: IN-KA87560734617500U
Certificate Issued Date	: 27-Jul-2022 01:23 PM
Account Reference	: NONACC (FI)/ kacrsfl08/ BASAVANGUDI/ KA-BN
Unique Doc. Reference	: SUBIN-KAKACRSFL0893002611639631U
Purchased by	: JAYA IGNATIUS
Description of Document	: Article 4 Affidavit
Description	: AFFIDAVIT
Consideration Price (Rs.)	: 0 (Zero)
First Party	: JAYA IGNATIUS
Second Party	: INCOME TAX DEPARTMENT
Stamp Duty Paid By	: JAYA IGNATIUS
Stamp Duty Amount(Rs.)	: 20 (Twenty only)

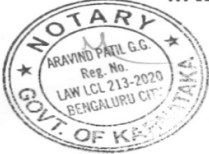
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BEFORE THE INCOME TAX APPELLATE TRIBUNAL, BENGALURU

Mrs. Jaya Ignatius
No.33/1, Harris Road, Near Nirmala Clinic,
Benson Town, Bengaluru - 560046

... Assessee





27 JUL 2022

Statutory Alert:

AFFIDAVIT

I, **Jaya Ignatius**, (PAN-AABPI7560G) aged 74 years, residing at No.33/1, Harris Road, Near Nirmala Clinic, Benson Town, Bengaluru 560046 do hereby solemnly affirm and state as follows:

1. I state that I sold the property situated at Site No.895, BBMP Katha No.287/895, Begur Village, Begur Hobli, Bengaluru south vide Sale Deed Number BGR-1-04893-2015-16 dated 17-10-2015.
2. I state that I received an advance in cash advance of Rs.10,00,000/- from Mr.Shivakumar in April 2015 in relation to the Sale mentioned in Para 1.
3. I state that out of the advance received in Cash an amount of Rs.9,00,000/- was deposited into my ICICI Savings Bank account Number 025201525939 on 26-05-2015.
4. I state that I have not received any cash from any person post 1st June 2015 in relation to the Sale of Immovable property.
5. Details of major Credits to my ICICI Savings account are enclosed herewith along with the Bank statements.

Dated this Twenty Seventh Day of July, 2022 at Bengaluru.

Identified by me

Jaya Ignatius

Deponent

JAYA IGNATIUS

Witness

K.S.

1. Akshaya.K.S
Chartered Accountant
RSCA & Co.

Ravindra

2. Ravindra R
Chartered Accountant
RSCA & Co.



u r aravind patil 27/06/22
ARAVIND PATIL G.G. B.A., LL.B.
ADVOCATE & NOTARY
12th Main, Near Old Sub Register Office
4th Block, Jayanagar, Bengaluru - 560 011.

KARNATAKA GOVT STOPPED ISSUING
NOTARY STAMPS. HENCE NOT AFFIXED

• 27 JUL 2022

6. Further, assessee submitted that out of the amount of Rs.10 lakhs received by cash, the assessee deposited an amount of Rs.9 lakhs into her SB account No.025201525939 of ICICI Bank, Frazer Town branch, Bengaluru on 26.5.2015. the Ld. A.R. also submitted that this amount has been disclosed to the department as a part of

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sale consideration and this is a genuine transaction. Assessee being senior citizen being widow, she needs amount for urgent medical purpose as such she received said amount in cash, thereafter, it was deposited into bank account with ICICI bank and duly disclosed to the department. Hence, Ld. A.R. prayed that the transaction is genuine and penalty be deleted.

7. In our opinion, the amount received by assessee has to be considered as part of sale consideration which has been received before 1st June, 2015 i.e. before insertion of relevant provisions of section, which came into effect from 1st June, 2015 as discussed earlier. There is no material to suggest otherwise. Accordingly, levy of penalty in this case is unwarranted. Thus, we delete the penalty levied by AO u/s 271D of the Act.

8. The other grounds raised by assessee in ground Nos.5 & 6 are not pressed before us, accordingly, dismissed as not pressed.

9. In the result, the assessee's appeal is partly allowed.

Order pronounced in the open court on 28th Jul, 2022

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 28th Jul, 2022.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**