

आयकरअपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL,
VISA KHAPATNAM BENCH, VISA KHAPATNAM**

**श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष
BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER**

**आयकर अपील सं./I.T.A.No.183/Viz/2022
(निर्धारण वर्ष / Assessment Year : 2017-18)**

Samrajyam Kondru
20-130 TB Road
Ramannapeta Bus Stop
Nandigama Post and Mandal
Krishna Dist
[PAN : BFMPK8467H]

Vs. JCIT, Range-1
Vijayawada

(अपीलार्थी/ Appellant)

(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Appellant by

: Shri Rajendra Prasad Talluri,
AR

प्रत्यर्थी की ओर से / Respondent by

: Shri Sankar Pandi, DR

सुनवाई की तारीख / Date of Hearing

: 05.01.2023

घोषणा की तारीख/Date of Pronouncement

: 16.02.2023

आदेश / O R D E R

Per Shri Duvvuru RL Reddy, Judicial Member :

This appeal is filed by the assessee against the order of Commissioner of Income Tax (Appeals Unit)-1, National Faceless Appeal Centre (NFAC), Delhi in DIN & Order No.ITBA/NFAC/S/250/2022-23/1045122252(1) dated 01.09.2022 for the Assessment Year (A.Y.) 2017-18..

2. Brief facts of the case are that the assessee is an individual, deriving income from business and long term capital gains, e-filed her return of income for the A.Y.2017-18 on 05.08.2017, declaring total income of Rs.6,23,830/-. Subsequently, the case was selected for limited scrutiny under CASS to verify “cash deposit during demonetisation period”. Notices u/s 143(2) and 142(1) of the Income Tax Act, 1961 (in short ‘Act’) were issued and served on the assessee, calling for certain information viz., details of income earned, activity carried on by the assessee, income computation statement, copies of bank account statements etc. In response to the notices, the assessee furnished the information through e-filing portal as attachments. After verification of the information furnished by the assessee, the assessment is completed accepting the income returned. Later, penalty proceedings u/s 271D r.w.s. 269SS were initiated by issuing notice u/s 274 r.w.s. 271D of the Act on 19.03.2021 for violation of the provisions of section 269SS of the Act for accepting cash more than the prescribed limits in a property transaction. In response, the assessee furnished the following reply on 25.03.2021 and 04.08.2021:

“In my case, I have not taken or accepted any loan or deposit in cash. Further explanation to Section 269SS mention “specified sum” means any sum of money receivable, whether as advance or otherwise, in

relation to transfer of an immovable property, whether or not transfer takes place.

In my case, I have not received any advance against the property. I have transferred the property after collecting the entire sale consideration on the date of Registration. Hence, the said provision is not applicable in my case."

The Ld.Additional / Joint/Deputy/Assistant Commissioner of Income Tax / Income Tax Officer, NFAC, Delhi (AO) held that since the assessee has not furnished tenable or satisfactory explanation to the penalty notice, the assessee violated the provisions of section 269SS for accepting the cash more than the prescribed limits. Hence, levied 100% penalty of Rs.28,57,000/-.

3. On being aggrieved with the order of the AO, the assessee preferred appeal before the CIT(A) and the Ld.CIT(A), dismissed the appeal of the assessee, relying on various judicial precedents.

4. On being aggrieved with the order of the Ld.CIT(A), the assessee preferred appeal before the Tribunal and raised the following grounds of appeal :

1. *The Ld.CIT-A erred in law and facts and circumstances of the case in confirming the penalty levied by the AO u/s 271D of Rs.28,57,000/-*

2. *The Ld.CIT(A) erred in law and facts and circumstances of the case in confirming the penalty levied by the AO u/s 271D of*

Rs.28,57,000/- who failed to appreciate the fact that penalty is not imposable in the instant case.

a) As there is a “a reasonable cause” for non-compliance of the provisions of sec.269SS and

b) As the appellant paid taxes voluntarily by filing a return u/s 139(1) and does not have any intention to evade taxes whereas the object of bringing the provisions of sec.269SS is “to curb the practice of extending false explanation against the cash found during the search actions”;

3. The appellant craves leave to add, amend, alter, vary and / or withdraw the above grounds of appeal.

5. The assessee has also filed additional ground and requested to consider the additional ground, which reads as follows :

The Ld.CIT(A) ought not to have confirmed the order of the penalty passed by the AO u/s 271D when there is no whisper of levy of penalty in the assessment order.

6. Ground No.1 and 3 are general in nature which does not require specific adjudication.

7. Ground No.2(1) and 2(b) is related to the confirming the penalty levied by the AO u/s 271D of Rs.28,57,000/-. The Ld.AR submitted that the AO is not justified in levying penalty of Rs.28,57,000/- as there is a reasonable cause for non-compliance of section 269SS. The Ld.AR submitted that the assessee is an 81 year widowed woman, not conversant with the provisions of the Act, honest and never wanted to disregard the requirements of the Act. The assessee e-filed her return of

income for the A.Y.2017-18 u/s 139(1) and paid taxes and does not have any intention to evade taxes. The assessee did not have faith in persons around her (including purchasers) she preferred to collect the sale proceeds of immovable property in the form of cash. The assessee relied on various case laws, as filed in paper book and submitted that the penalty is not imposable in the instant case as the assessee has reasonable cause for non compliance of the provisions of section 269SS and never had any intention of evading taxes. The Ld.AR further submitted that there is no whisper of levy of penalty in the assessment order and the Ld.CIT(A) ought not to have confirmed the order of the penalty passed by the AO u/s 271D. He, therefore, pleaded to set aside the order of the Ld.CIT(A) and allow the appeal of the assessee.

8. Per contra, the Ld.DR relied on the order of the Ld.CIT(A) and pleaded to uphold the order of the Ld.CIT(A) and dismiss the appeal of the assessee.

9. We have heard both the parties and perused the material placed on record. It is an admitted fact that the AO has not mentioned in the assessment order that the penalty to be initiated separately. The Ld.Counsel for the assessee has relied on the decision of Hon'ble Supreme

Court in the case of cit Vs. Jai Laxmi Rice Mills, reported in [2015] 64 taxmann.com 75 (SC), wherein, it was held as under

“5. As pointed out above, in so far as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceedings under Section 271E of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, in so far as penalty under Section 271E is concerned, it was without any satisfaction and, therefore, no such penalty could be levied. These appeals are accordingly dismissed.”

The Ld.Counsel for the assessee has relied on various other decisions. In this case also no satisfaction has been recorded by the AO for initiation of penalty proceedings in the order of the assessment passed for the A.Y.2017-18. Therefore, we hold that since, admittedly, no satisfaction has been recorded for initiation of penalty proceedings u/s 271D in the case on hand for the A.Y.2017-18, no penalty there under could be levied. In view of the decision rendered by the Hon'ble Apex Court, we cancel the penalty levied u/s 271D for the A.Y. 2017-18. Consequently, the assessee's additional ground is allowed.

10. Since the additional ground is allowed, we are of the view that there is no requirement for us to adjudicate the other grounds raised by the assessee in this appeal.

11. In the result, the appeal of the assessee is allowed .

Order pronounced in the open court on 16th February, 2023.

Sd/-

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

(दुव्वूरु आर.एल रेड्डी)
(DUVVURU RL REDDY)

लेखा सदस्य/ACCOUNTANT MEMBER न्यायिक सदस्य/JUDICIAL MEMBER

Dated : 16 .02.2023

L.Rama, SPS

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

1. निर्धारिती/ The Assessee- Samrajyam Kondru, , 20-130 TB Road, Ramannapeta Bus Stop, Nandigama Post and Mandal, Krishna Dist
2. राजस्व/The Revenue – The Joint Commissioner of Income Tax, Range-1, CR Building, 1st Floor Annex, M.G.Road, Vijayawada
3. The Pr.CCIT, National Faceless Appeal Centre, Delhi
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeal Unit)- 1, National Faceless Appeal Centre (NFAC), Delhi
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम / DR,ITAT, Visakhapatnam
- 6.गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam