

आयकर अपीलिय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad

Before Shri R.K. Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member

ITA No.523/Hyd/2022		
Assessment Year: 2017-18		
Shri Ramachandran Bandhuvula, Hyderabad PAN:ACZPB3228M (Appellant)	Vs.	Income Tax Officer Ward 3(1) Hyderabad (Respondent)
Assessee by:	Advocate Smt. S. Sandhya	
Revenue by:	Shri KPRR Murthy, CIT(DR)	
Date of hearing:	17/04/2023	
Date of pronouncement:	19/04/2023	

ORDER

Per R.K. Panda, A.M

This appeal filed by the assessee is directed against the order dated 29.08.2022 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. The grounds raised by the assessee are as under:

"1. The order of the learned Commissioner of Income-Tax (Appeals) 15 erroneous to the extent it is prejudicial to the appellant.

2. The order of the learned Commissioner of Income-Tax (Appeals) erred in levy of penalty u/s 271D of the I.T Act. Without giving proper opportunity.

3. The Learned Commissioner of Income-Tax (Appeals) ought to have observed that the transaction of sale doesn't fall during the previous year relevant for assessment year under consideration as the registration took place on. 20.01.2016 relevant for the Assessment Year 2016-17.

4. The Learned Commissioner of Income-Tax (Appeals) to have considered the facts that the assessee filed the return of income in time admitting the Capital gain

5. The Learned Commissioner of Income-Tax(Appeals) ought to have considered that the appellant was out of India from 08-06-16 to 05-12 2016 and ought to have considered that the submissions made by the appellant.

6. Any other ground that may be urged at the time of hearing.”

3. Facts of the case, in brief, are that the assessee is an individual and is a retired officer from NMDC. He filed his return of income for the A.Y 2017-18 on 19.7.2017 admitting taxable income of Rs.4,83,310/-. The case was selected for limited scrutiny under CASS for examination of ‘cash deposited during the demonetization period’. Accordingly statutory notices u/s 143(2) and 142(1) were issued to the assessee.

4. During the course of assessment proceedings, the assessee explained that the cash deposit of Rs.10,48,000/- on 7.12.2016 in the Bank A/c maintained with SBI Gandhinagar, Musheerabad was out of the sale proceeds of property on 20.01.2016 vide registered sale deed No.416/2016 dated 20.01.2016 for Rs.10,48,000/- and the entire consideration was received in cash as per sale deed. The assessee stated that the cash was kept with him with an intention to invest in another property and in the meantime he left India on 8.6.2016 and returned back on 5.12.2016. On 7.12.2016, the assessee deposited the entire cash into his above Bank A/c. It was further stated that the assessee has declared Rs.10,27,029/- as Long-Term Capital Gain (LTCG) on sale of property in the return of income for the A.Y 2016-17.

5. Considering the above submission made by the assessee, the Assessing Officer accepted the explanation of the assessee and completed the assessment accepting the returned income of Rs.4,83,310/-. Subsequently, the Assessing Officer issued notice u/s 271D of the Act and initiated penalty proceedings u/s 271D of the Act for the A.Y 2017-18 on the ground that the assessee has violated the provisions of section 269SS of the Act. In absence of any explanation from the side of the assessee, the Assessing Officer held that the assessee is liable to pay penalty as per the provisions of section 271D of the I.T. Act and levied penalty of Rs.10,48,000/- being 100% of the amount of cash received in violation of provisions of section 269SS of the Act.

6. In appeal, the learned CIT (A) NFAC upheld the action of the Assessing Officer by observing as under:

“5.1. The appellant filed written submission on 04.08.2022. For the sake of clarity, the relevant part of the same is reproduced hereunder:

The explanation offered by the appellant is verified by the AO and he completed the assessment by passing an assessment order dated 4th Dec 2019 accepting the returned income as the assessed income.

The penalty proceedings are initiated by issuing a show cause notice dated 24th Aug 2021. The penalty was levied U/S 271D at Rs 10,48,000/-

While levying the penalty the AO had not considered the genuine belief of the appellant who believed that once capital gains was offered to tax, it would be a sufficient compliance of all the legal requirements.

Attention is drawn to the judgement of the Honorable High Court of Gauhati in the case of CIT Vs Bhagwati Prasad Bajoria (HUF)' [2003] [133 Taxman 426] where it was held that where the transaction got duly concluded that the reflected in the books, it could not be assessee had entered into a defraud transaction to avoid payment of tax or to revenue. Hence, penalty U/S 271D cannot be levied. In the instant case also, the was transaction under of capital gains got duly reflected in the return of income and the appellant genuine impression that once he had paid the taxes, there would not be any violations. The fact of voluntary

disclosure and voluntary payment of taxes indicate that there no intention on the part of the appellant to avoid payment of taxes or to defraud revenue. Thus, it is pleaded that Penalty U/S 271D does not get attracted in the instant case also.

Further the appellant relied on the judgement given by the Jurisdictional High Court in the case of 'National Surgical Corporation Vs CIT' (2000) [242 ITR 667] [AP] where it was held that penalty U/S 271D is not justified where there is a reasonable cause for failure to comply with the provisions of Sec 269SS.

In the instant case also, the appellant is having reasonable belief that once the taxes are duly paid, then it will be in accordance with the law and hence it will not invite the rigors of Sec 271D.

In view of the above detailed submission, it is pleaded that the penalty levied by the AO of Rs 10,48,000 be deleted,

5.2. The reply of the appellant has duly been considered.

5.3. In the assessment order u/s 143(3) dated 04.12.2019 for the A.Y.2017-18, the A.O/ITO Ward 3(2), Hyderabad, after duly considering the explanation given by the appellant for the cash deposit made on 07.12.2016 of Rs.10,48,000/- has not made any addition on that score and accepted the returned income.

5.3.1. In the penalty order u/s 271D dated 21.01.2022 for the A.Y.2017-18, the A.O, NFAC has mentioned that the appellant has not responded to the two penalty show cause notices issued and after considering the facts on record has levied the penalty.

5.3.2. Admittedly, as may be seen from the copy of sale deed dated 20.01.2016, the appellant has not received the sale consideration of Rs.10,48,000/- in account payee cheque or Demand draft or use of ECS through a bank account; The appellant has received the same in cash.

5. 3. 3. The appellant, a retired officer of NMDC, despite working in a quasi-Government undertaking for long years has not received the sale consideration of Rs.10,48,000/- in account payee cheque or Demand draft or use of ECS through a bank account. Admittedly the appellant has kept the cash with himself from 20.01.2016 to 07.12.2016.

5.3.4. As per the provisions of section 269 SS of the Income Tax Act, No Person shall take or accept from any other person, any loan or deposit or any specified sum otherwise than by account payee cheque or bank draft or ECS through a Bank A/c if the amount of any such loan or deposit or any specified sum or the aggregate of any such loan or deposit or any specified sum is Rs.20,000/- or more.

5.3.5 As per the provisions of section 271D of the Income Tax Act, if a person takes or accepts any loan or deposit in contravention of the

provisions of section 269 SS, he shall be liable to pay by way of penalty, a sum equal to the amount of loan or deposit so taken or accepted.

5.3.6. Admittedly the appellant has violated the provisions of Sec.269 SS, despite being a quasi-Government officer. With due respect to the case laws relied on by the appellant, it is hereby held that the same are not applicable to the facts of the case of the appellant, for the reason those two orders have been passed by the Hon. High Courts, much before the demonetization Scheme 2016.

5.3.7 In view of the above and in view of the facts mentioned in the penalty order dated 21.01.2022 passed u/s 271 D of the I.T. Act 1961, by the A.O, NFAC, the levy of penalty of Rs.10,48,000/- is hereby CONFIRMED.

5.3.8. While confirming levy of penalty u/s 271 D of the I.T. Act 1961, reliance is placed on the following authorities :

(i) 245 ITR 661(Karn)-Chamundi Granites Pvt Ltd- While affirming the Hon.Karnataka High Court order, the Hon.Apex Court(255 ITR 258,266-SC) ruled that sec.269. which prescribes the mode of taking or accepting certain loans or deposits, is not discriminatory and is not violative of article 14 of the constitution; nor was it enacted by Parliament without legislative competence. It cannot be said that sec.269 SS deals with, a subject which is outside the scope of the Income Tax Act or that relates to a topic not within the competence of Parliament. It cannot be said - that sec:269 Ss or Sec.271 D or the earlier,section276DD is unconstitutional on the ground that it was draconian or expropriatory in nature.

(ii) 255 ITR 258(SC)- ADIT VS AB Shanthi. As per this case law, the object of introducing sec.269 SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he has made some false entries in his accounts, he should not escape by giving false explanation for the same. Provision inserted to rampant circulation of black money.

5.4. In the result, the appeal is DISMISSED”.

7. The learned Counsel for the assessee referring to page 1 to 3 of the paper book drew the attention of the bench to the computation statement and submitted that the assessee has shown LTCG of Rs.10,27,029/- on a/c of sale of property of Plot in Survey No.10 & 11 Anmagal, Hayathnagar, Hayathnagar Mandal R.R. Distt. for a consideration of Rs.10,48,000/-on 20.01.2016. Referring to page 15 to 22 of the paper book, she drew the attention of the Bench to the copy of the sale document

No.416/2016 executed on 20.01.2016 according to which the assessee has received the sale proceeds of Rs.10,48,000/-. She submitted that since no DD number or cheque number or NEFT/RTGS etc., is mentioned, so it is clear that such amount of Rs.10,48,000/- was received in cash which was kept by the assessee and got deposited into the Bank A/c on 7.12.2016 which has been accepted by the Assessing Officer. She submitted that the violation, if any, has been committed during A.Y 2016-17 i.e. the year in which the property was sold and cash was received and not in the A.Y 2017-18. Referring to the copy of the penalty notice, she submitted that the Assessing Officer has initiated penalty proceedings u/s 271D of the Act for the A.Y 2017-18 and therefore, in absence of any violation of provisions of section 269SS by the assessee for the A.Y 2017-18, the penalty notice issued by the Assessing Officer itself is void abinitio and the order of the CIT (A) NFAC upholding the order is devoid of any merit. Referring to the decision of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd vs. State of Orissa (1972) 183 ITR 26 (S.C), she submitted that levy of penalty is not automatic. Relying on various other decisions, she submitted that penalty levied by the Assessing Officer and upheld by the CIT (A) NFAC being not in conformity with the law has to be deleted.

8. The learned DR, on the other hand, heavily relied on the order of the Assessing Officer and the CIT (A) NFAC.

9. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) NFAC and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in instant case levied penalty of Rs.10,48,000/- u/s

271D of the Act on the ground that the assessee has received Rs.6,15,000/- on different dates from Shri Vilas Ajabrao Narnaware and Shri Anil Ajabrao Narnaware regarding sale of immovable property. However, during the year, there is no sale of property as is discernible from the assessment order and the assessment order refers to the deposit of cash during demonetization period amounting to Rs.10,48,000/- which was accepted by the Assessing Officer himself being out of sale of immovable property on 20.01.2016 for Rs.10,48,000/- in cash. Therefore, provisions of section 269SS, if any, has been violated in the assessment year 2016-17 and not in A.Y 2017-8. Therefore, the very initiation of penalty proceedings u/s 271D for the A.Y 2017-18 is void abinitio and therefore, the order of the CIT (A) NFAC confirming the penalty u/s 271D of the Act has no legs to stand. We, therefore, set aside the order of the CIT (A) NFAC and direct the Assessing Officer to cancel the penalty. The grounds raised by the assessee are accordingly allowed.

10. In the result, appeal filed by the assessee is allowed.

Order pronounced in the Open Court on 19TH April, 2023.

Sd/- (LALIET KUMAR) JUDICIAL MEMBER	Sd/- (R.K. PANDA) ACCOUNTANT MEMBER
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Hyderabad, dated April, 2023.

Vinodan/sps

Copy to:

S.No	Addresses
1	Shri Ramachandran Bandhuvula, 208 Priya Apartment, New Bakaram, Hyderabad 500020
2	Income Tax Officer Ward 3(1) Signature Towers, Kondapur Hyderabad
3	NFAC Delhi
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order