

**IN THE INCOME TAX APPELLATE TRIBUNAL
[DELHI BENCH: 'A' NEW DELHI]**

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER

AND

SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER

I.T.A. No. 2739/DEL/2022 (A.Y. 2017-18)

Income Tax Officer, Ward : 53 (1) E-2 Block Pratyakash Kar Bhawan, DR. CPM Civic Centre, New Delhi. (APPELLANT)	Vs.	Amit Gupta, 40, Anand Lok, New Delhi PAN No. AESPG4967L (RESPONDENT)
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Assessee by :	Shri Yudhisthir Mehtani, CA
Department by:	Shri Kanv Bali, Sr. D. R.;

Date of Hearing	31.05.2023
Date of Pronouncement	31.05.2023

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the Revenue against the order dated 28/09/2019 of the National Appeal Centre (hereinafter referred to CIT (NFAC)Delhi- for assessment year 2017-18.

2. The Revenue has raised the following substantive ground of appeal :-

“1. On the facts and circumstances of the case the Ld. CIT(A) erred in deleting the penalty imposed u/s 271D.

2. On the facts and circumstances of the case the Ld. CIT(A) erred in holding that part of the sale consideration was received through post dated cheques.

3. On the facts and circumstances of the case the Ld.CIT(A) erred in appreciating the true nature of transaction after date of sale deed which are nothing but circuitous transaction of the nature of accommodation entries.”

3. Brief facts of the case are that, the JCIT received an information that the assessee had received sale consideration of Rs. 1,18,00,000/- for sale of immovable property on 11/04/2016. The JCIT was of the opinion that there is a contravention of provisions contained in Section 269 SS of the Act accordingly penalty proceedings u/s 271D were initiated. The assessee appeared before the JCIT and explained that the assessee received entire sale consideration of Rs.1,18,00,000/- through RTGS and post dated cheques. The JCIT by rejecting the reply filed by the assessee, imposed penalty of Rs.1,18,00,000/- u/s 271D of the Act.

4. As against the order of penalty passed u/s 271D of the Act dated 28/09/2019, the assessee preferred an Appeal before the CIT(A), the Ld.CIT(A)

vide order dated 28/09/2022, allowed the Appeal filed by the assessee by deleting the penalty imposed by the JCIT u/s 271D of the Act. As against the order of the CIT(A) dated 28/09/2022, the Revenue preferred the present Appeal on the grounds mentioned above.

5. The Ld. DR vehemently submitted that the Ld.CIT(A) erred in deleting the penalty imposed u/s 271D of the Act holding that the part of the sale consideration was received through post dated cheques, further without appreciating the true nature of transaction after date of sale deed which are nothing but circuitous transaction of the nature of accommodation entries. The Ld. DR taken us through the assessment order and submitted that the order of the CIT(A) is require to be reversed.

6. On the other hand, the Ld. Counsel for the assessee submitted that no sale consideration is paid by cash the entire payment has been made by TRGS which has been elaborately discussed in the order of the CIT(A) who requires no interference. The Ld. AR relying on the order of the CIT(A) prayed for dismissal of the Appeal filed by the Revenue.

7. We have heard both the parties and perused the material available on record. The Ld.CIT(A) while deleting the addition observed as under:-

“5. Decision

5.1. In the penalty order, the JCIT has mentioned that the appellant had received cash of Rs. 118p0000/- as a part of the sale consideration for .the immovable property sold during the relevant previous year. However, in the written submission, the appellant has clarified that he received the full consideration of Rs. 1.18 crores in the form of a/c payee cheques/ RTGS. The receipt enclosed along with the sale deed shows that the sum of Rs. 11800000/- was received by the appellant from the purchaser Samta Kumari in the following manner:

a) Rs. 3500000/-vide RTGS, dated 26.05.2015, In Koak Mahindra Bank.

b.Rs. 500000/- vide cheque No.164524, dated 11.04.2016, drawn on Axis Bank.

c. Rs. 118000/- shall be deposited by the purchaser PARTY as TDS @ 1% of sale consideration, with Income Tax Department against PAN No. Of executants, for which Form 26-QB will be provided to executants in due course.

d) Further balance sum of Rs.7682000/- is received through post dated cheques as per details below.

1.Rs. 2000000/- vide ChequeNo.164525 dated 11.07.2016,drawn on Axis Bank.

2.Rs.2000000/- videChequeNo.164526 dated11.10.2016, drawn on Axis Bank

3.Rs.2000000/- videChequeNo.164527 dated11.10.2017, drawn on Axis Bank

4. Rs. 2000000/- vide Cheque No.164528 dated 11.04.2017, drawn on Axis Bank

5.2. The appellant has submitted that advance of Rs. 3500000/- was received in his Kotak Mahindra Bank account on 26.05.2015 and the same can be verified from the bank statement. Further, the cheque no. 164524 of Rs. 500000/- was returned back to the vendee on 28.04.2016 after receiving RTGS of the same amount in the bank. This entry can also be verified from the bank statement. A sum of Rs. 1.18 lakh was deducted as TDS being one percent of the sale consideration. The balance of

13.02.2018	10 lakhs	000035/ Kotak Bank	Page 37
14.02.2018	6.28 Lakhs	000036/Kotak Bank	Page 37

5.4 The details as given above have been verified from the bank statement of the appellant. Thus it is evident that the whole of the consideration of Rs, 1.18 crore has been received by the appellant either through RTGS or through post-dated cheques which have been en-cashed subsequently. There is no material! to show that any part of the consideration was received in cash. It is clear that the JCIT has not appreciated the facts properly. He has imposed the penalty u/s 27ID based on the premise that the whole of the consideration has been received in cash whereas there is sufficient evidence to show that the whole of the consideration has been received through the banking channel. Apparently, the appellant has not received any sum in contravention of the provisions of section 269SS. When there is no violation of the provisions of section 269SS, a penalty u/s

271D cannot be imposed. Hence, in my opinion, there was no justification for imposing a penalty u/s 271D and the JCIT committed a grave error in imposing a hefty penalty of Rs. 1.18crore.”

8. It is the specific allegation of the JCIT that the assessee had received cash of Rs. 1,18,00,000/-, thus the JCIT passed the order u/s 271D of the Act. However, during the appellate proceedings the assessee contended that the assessee received a full consideration of Rs. 1.18 crore by account payee cheques/RTGS and gave a details before the CIT(A). The CIT(A) has verified the details given by the assessee from the bank statement of the assessee and came to the conclusion that the sale consideration of Rs. 1.18 crore has been received by the assessee either through RTGS or through post dated cheques and the said amount has been encashed subsequently.

9. By considering the above facts and circumstances, we are of the opinion that, since there is no material to show that any part of the consideration was received in cash, the order of the penalty has been rightly deleted by the CIT(A). thus, we do not find any infirmity or error in the order of the Ld.CIT(A) in deleting the order penalty and we find no merit in the grounds of Appeal of the Revenue. Accordingly, the Grounds of Appeal of the Revenue are dismissed.

10. In the result, the Appeal filed by the Revenue is dismissed.

Order pronounced in the open court on : **31/05/2023**.

Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER
Dated : 31/05/2023

R.N, Sr. PS

Copy forwarded to :-

1. Appellant
2. Respondent
3. CIT
4. CIT (Appeals)
5. DR: ITAT

Sd/-
(YOGESH KUMAR U.S.)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI