

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “B”, HYDERABAD**

BEFORE

**SHRI R.K. PANDA, VICE PRESIDENT
AND
SHRI LALIET KUMAR, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No.7/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Smt. Mala Reddy Depa,
Hyderabad.

Joint Commissioner of Income Tax,
Vs. Range – 15,
Hyderabad

[PAN No.AFQPD0264E]

अपीलार्थी / Assessee

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri A Srinivas, C.A.

राजस्व द्वारा/Revenue by: Shri Kumar Adithya, Sr.AR.

सुनवाई की तारीख/Date of hearing: 25.07.2023

घोषणा की तारीख/Pronouncement on: 26.07.2023

आदेश / **ORDER**

PER LALIET KUMAR, JM:

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals) – 11, Hyderabad dt.13.10.2021 invoking proceedings under section 271D of the Income Tax Act, 1961 (in short, “the Act”).

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

“1. The order of the Appellate Commissioner is contrary to law, facts and circumstances of the case.

2. The Appellate Commissioner erred in confirming the penalty levied u/s 271D of the Income Tax Act.”

3. Facts of the case, in brief, are that the assessee had sold an immovable property along with one more vendor, for a consideration of Rs.40 lakhs vide sale deed dated 19.05.2016. Out of the total sale consideration of Rs.40 lakhs, an amount of Rs.8 lakhs was received in cash which was in contravention to the provision of Section 269SS of the Act. Section 269SS of the Act prohibits taking or accepting loans or deposits or any specified sum in excess of Rs.20,000/- otherwise than by an account payee cheque or account payee bank draft or use of an electronic system through a bank account. Hence, the Assessing Officer levied penalty u/s 271D of the Act on the assessee towards her share of receipt of cash of Rs.4,00,000/- and passed penalty order dt.24.02.2020.

4. Feeling aggrieved with the penalty order of Assessing Officer, assessee filed an appeal before the Id.CIT(A), who dismissed the appeal of assessee.

5. Feeling aggrieved with the order of Id.CIT(A), assessee is now in appeal before us.

6. Before us, ld. AR submitted that the new provision of section 269SS of the Act was inserted w.e.f. 01.06.2015. As the assessee was not aware of the new provision of section 269SS of the Act, she accepted the amount of Rs.4 lakhs in cash towards her share, out of the total sale consideration of Rs.40 lakhs. The violation of accepting the amount in cash was unintentional and not deliberate. Further, it was submitted that the assessee entered into a Sub-Agreement of Sale with the purchaser on 05.05.2015 and whereby the assessee has accepted Rs.8 lakhs as an advance towards the sale of the plot. Ld. AR argued that since the amount was accepted by the assessee before the enforcement of the provision, therefore, the said provision cannot be invoked against the assessee.

7. On the other hand, the ld. DR has drawn our attention to the order passed by the ld.CIT(A) wherein on page 9, it was brought out by the ld.CIT(A), that the Sub-Agreement of Sale is a fabricated one, as the stamp paper was purchased on 03.04.2019 while the agreement was dated 05.05.2015. It was submitted that the Sub-Agreement of Sale was attempted to be pre-dated by the assessee by wrongly alleging that the stamp paper was purchased on 03.04.2013. Further, it was submitted that once there is a violation of the provision of section 296SS of the Act, where the assessee accepted Rs.4 lakhs in cash out of Rs.40 lakhs, then the penalty is automatic. Ld. DR further drew our attention to pages 10 and 11 of the order of ld.CIT(A) in support of his arguments.

8. We have heard the rival submissions and perused the material available on record. It is undoubtedly clear from the submissions made by the assessee that the assessee has accepted a sale consideration of Rs.4 lakhs in cash towards her share, and the sale deed was executed on 05.09.2016. In the said sale deed, it is specifically mentioned that Rs.8 lakhs was paid by way of cash. Though no specific date has been mentioned in the sale deed, however, it is to be presumed that cash must have been paid at the time of execution of the sale deed dt.05.09.2016. No contrary evidence was brought to our notice by the ld. AR to show that assessee had received the amount prior to the enforcement of the Act. The reason mentioned by the assessee for receiving Rs.4 lakhs in cash by way of Sub-Agreement of Sale dt.05.05.2015 has been dealt with by the ld.CIT(A), whereby the ld.CIT(A) has held that the said document is a fabricated one and appears to be an afterthought with a view to give colour to the transaction. Ironically, the above-mentioned ground was not raised by the assessee before the Assessing Officer. Further, no documentary evidence was filed before us to demonstrate the existence of the agreement dated 05.05.2015. Further, we may observe that the bare reading of the stamp paper clearly shows that it was dt.03.04.2019 and not 03.04.2013. In our view, the stamp paper was purchased on the alleged date 03.04.2019 and not on 03.04.2013, as no one would purchase the stamp paper way back on 03.04.2013 when there was no whisper of selling of the property to any person. Further, no stamp paper for sale of land normally be purchased without knowing the purchaser's and agreeing to the terms of agreement. In the present case, no document has been shown that negotiations were started in 2013,

and finally, agreement was executed on 05.05.2015. In view of the above, we do not find any reason to interfere with the order of Id.CIT(A) wherein he has held that document dt.05.05.2015 is a sham document, and therefore, he rejected the same.

9. Now coming to the next point, that the assessee has accepted the amount of Rs.8 lakhs in cash, in our view, the above said is contrary to section 271D of the Act. The penalty under section 271D of the Act is leviable in case there is any violation under section 269SS of the Act. Admittedly, in the present case, the assessee has accepted the specified amount for the sale of land is more than Rs.20,000/-, and therefore, the levy of penalty is justified. In view of the above, we do not find any reason to interfere with the order of Id.CIT(A). Accordingly, we confirm the penalty levied by the Assessing Officer is confirmed. Therefore, the appeal of the assessee is dismissed.

10. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 26th July, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 26th July, 2023.
TYNM/SPS

Copy to:

S.No	Addresses
1	Smt. Mala Reddy Depa, H.No.2-3-448/1, Sai Nagar, Road 3A, Nagole, Hyderabad.
2	The Joint Commissioner of Income Tax, Range - 15, Hyderabad.
3	PCIT, Central, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order