

आयकर अपीलिय 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.28/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2017-18)

Surender Reddy Vanteru, R/o.Hyderabad. PAN : ACGPV0244H	Vs.	The Joint Commissioner of Income Tax, Range -1 5, Hyderabad.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri K.C. Devdas, C.A.
राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin. Sr. AR

सुनवाई की तारीख/Date of hearing: 11.09.2023
घोषणा की तारीख/Pronouncement on: 21.09.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.09.12.2022 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 Hon'ble Commissioner of Income Tax (Appeals) has erred both on facts of the case and in law involved in so far as it is prejudicial to the interest of the Appellant.

2. *The Hon'ble CIT(A) without taking into consideration the information filed before him proceeded to complete the appeal u/s.250 of the IT Act and the same is not sustainable.*

3. *The Hon'ble CIT(A) ignored the explanations given by the assessee and concluded that the assessee violated the provisions of 269SS of the IT Act and proceeded to levy penalty u/s.271D of the IT Act and such provision has no basis and therefore the same is liable to be deleted.*

4. *The Hon'ble CIT(A) ought to have observed that the assessing officer brought the sale consideration received on sale of agricultural lands in cash without bringing any documentary evidences and arrived at a conclusion that the assessee has taken cash of Rs.14,73,960/- on sale of agricultural land and such conclusion is not valid.*

5. *The Hon'ble CIT(A) ought to have observed that the CIT(A) has enhanced the cash receipts from Rs. 14,73,960/- to Rs.21,34,375/- mentioning the assessee has failed to give reasonable clause and such conclusion is not valid. The order of the Appellate Commissioner is contrary to law, facts and circumstances of the case."*

2.1 The assessee also raised the following additional ground which reads as under :

" The levy of penalty u/s 271D of the I.T. Act, 1961 at Rs. 21,34,37S (After enhancement by CIT(A) as against 14,73,960 leaved by J.C.1.T) is wholly unsustainable based on the facts and in law as the Assessing Officer has not recorded his satisfaction about initiation of penalty proceedings u/s 271D of the said Act".

2.2. The Id. AR for the assessee submitted that he wishes to not press the additional ground raised. Hence, the additional ground raised by the assessee is dismissed as not pressed.

3. The brief facts of the case are that assessee is an individual and was regularly assessed to tax. Assessing Officer came to know that assessee accepted cash payment of Rs.14,73,960/- on sale of agricultural land situated at Nadergal Village, R.R. District, in contravention to the provisions of Section 269SS of the Act. Thereafter, the explanation given by the assessee was not satisfactory to the Assessing Officer and hence, he passed order u/s 271D of the Act on 29.02.2020 imposing penalty of Rs.14,73,960/- for AY 2017-18.

4. Feeling aggrieved with the penalty order passed by the assessing officer, assessee filed appeal and thereafter, it was migrated to the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of the assessee.

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

6. Before us, Id. AR has drawn our attention to Para 4.0 to 6.0 of the penalty order and also Para 5.2 to 5.333 of the order of Id.CIT(A). The Id. AR had submitted that no penalty can be imposed on the assessee, as the assessee is merely a GPA Holder for the sale deed dt.18.04.2016 executed by Katikereddy Aravind Reddy, Katikereddy Manemma, Katikereddy Anuradha, Nadidhe Indumathi and Alwa Haimavathi in favour of M/s. Sthirasti Infra. Id. AR further submitted that the assessee has not received anything towards the consideration nor the cash and therefore, the penalty cannot be levied on the assessee as per section 271D of the Act. Id. AR further submitted that there is an enhancement made by the Id.CIT(A) as only a sum of Rs.14,73,960/- was imposed as penalty by the Assessing Officer whereas the said sum was increased to Rs.21,34,375/-.

7. Per contra, Id. DR had submitted that the assessee in computation of income has disclosed the sale consideration in cash and had also claimed deduction under section 54B of the Act. The Id. DR had also drawn our attention to Page 19 of the paper book submitted by the assessee in the penalty proceedings wherein the assessee has admitted that he has received an amount of Rs.21,34,375/- as part of his share in sale consideration out of the total sale consideration of

Rs.70,75,000/- . Ld. DR contended that once the amount was received in cash, in violation of provisions of section 269SS of the Act r.w.s 271D, then penalty was rightly imposed by the Assessing Officer. Further, ld. DR submitted that there was no necessity or valid reason for receiving the sale consideration in cash by the assessee and therefore, for that purposes, the ld. DR has drawn our attention to page 30 of the paper book, wherein the sale consideration was received by post paid cheques duly payable on 11.07.2016, 16.07.2016, 21.07.2016, 06.07.2016, 16.07.2016, 06.07.2016, and 16.07.2016 and the cash payment was received on the date of sale deed dt.18.04.2016. It was submitted by the ld. DR that once the major portion of the consideration i.e., 2.60 crores were received through the post paid cheques, then there was no requirement or necessity to accept the amount in cash by the assessee.

7.1 In support of his case, Ld. DR relied upon the following decisions :

- a) Decision in the case of Vasan Healthcare Pvt. Ltd. Vs. ACIT reported in (2021) 125 taxmann.com 266 (SC).
- b) Decision in the case of PCIT Vs. Sahara India Financial Corporation Limited reported in (2020) 119 taxmann.com 285 (SC).
- c) Decision in the case of CIT, Chennai Vs. Object Frontier Software Pvt, Limited reported in (2016) 75 taxmann.com 196 (SC)
- d) Decision in the case of ACIT Vs. Kum. A.B. Shanthy reported in (2002) 122 Taxman 574 (SC).

8. During the course of argument, the ld.AR was directed to produce Agreement of Sale cum General Power of Attorney dt.22.04.2004 on or before 14.09.2023. However, till date, the ld.AR has not filed the said document for the reasons best known to him. However, the ld.AR vide letter dt.15.09.2023 had filed two judgments i.e., Chet Ram Verma Vs. ITO dated 22.09.,2020 of ITAT Agra Bench and Sh. Kamaldeep Singh Vs. ITO dt.20.12.2022 of ITAT Amritsar Bench, on the point that no additions can be made in the hands of GPA Holder.

9. We have heard the rival submissions and perused the material on record. For the purpose of invoking the penalty provisions of Section 271D r.w.s. 269SS of the Act, it is essential to establish whether the person has received the specified sum by way of cash, in respect to sale of immovable property or not. In the present case, as clear from the sale deed dt.18.04.2016, a sum of Rs.70,75,000/- was received by way of cash by the vendors nos.1 to 5 through the GPA Holder and by vendor nos. 6 to 8 for a total consideration along with the post dated cheques for Rs.2.60 crores. The receipt of payment was not disputed by the assessee before us, who is the GPA Holder. However, it was sought to be argued by the ld. AR that that no penalty can be imposed upon the assessee, as he was merely a GPA Holder.

9.1. First of all, we have to find out whether the assessee was merely a GPA Holder or was having any rights thereon. Page 26 of the paper book clearly shows that the assessee along with two others were the agreement of sale cum General Power of Attorney Holders, as per the General Power of Attorney Deed Document No.5632/2004/Bk/1 dt.22.04.2004 and that there was

existing an agreement of sale along with GPA in favour of the assessee and two others. The Id.AR was directed by this Bench on the date of hearing to produce the said document, however, for the reasons best known to him and the assessee, the said document was not produced before us.

9.2 In fact, in the sale deed produced before us, at page No.29, it was mentioned as under :

*WHEREAS the No.1 of the Parties on the First Part has been on the look out better utilization and enjoyment of the fruits of the property by sale / alienation in favour of the prospective purchasers with ability to raise the required consideration and has thus offered for sale of the land admeasuring Ac.5-00 guntas., in Survey No.209/aa, from out of his holding Ac.9-26 guntas., through a Regd. **Agreement of Sale cum General Power of Attorney Deed Doct. No.5632/2004/Bk-1, Dated 22.04.2004, Regd. At S.R.O. Champapet, Vide Pata No.184, Pass Book No.98265, Title Deed No.374607, issued by M.R.O., Saroornagar, Ranga Reddy District.***

9.3. From the reading of the above noted portion, it is abundantly clear that Parties of the First Part has desisted themselves from the rights and the rights have been transferred in favour of the person before us through the registered agreement of sale cum GPA dated 22.04.2004 which is also followed by the changing title deed as per the SRO, Champapet. In view of the above, it is clear that the assessee is not merely a GPA Holder but is having more rights than the GPA Holder, which was derived on the basis of Registered Agreement of Sale cum General Power of Attorney Deed dated 22.04.2004.

9.4 The issue before us is whether the assessee can be held liable for violation of provisions of section 269SS r.w.s. 271D of the Act or not ? For that purposes, what is required for us, is the assessee should receive the specified sum by way of cash, while entering into the transaction of sale of immovable property. In the present case, undoubtedly, the appellant has received specified sum in cash and therefore, there was a violation of provisions of section 269SS r.w.s. 271D of the Act. The reliance by the assessee on the decision of Agra Tribunal in the case of Chet Ram Verma Vs. ITO (supra) is of no help to the assessee as in the said case, the Tribunal was not concerned with the imposition of penalty rather the Tribunal was only concerned with reopening of the assessment proceedings. Even the second case i.e., Sk. Kamaldeep Singh Vs. ITO (supra) relied upon by the assessee, is also of no help, as the facts of the said case are not applicable to the facts of the present case. In the present case, the exact nature of the Agreement cum Sale of GPA was not known to us. However, from the portion reproduced hereinabove, it is abundantly clear that the assessee got the transfer of title of properties in his favour on the strength of this agreement of sale cum GPA and thereafter, he had put the purchaser in physical possession of the schedule properties.

10. Therefore, it is wrong on the part of the assessee before us to allege that no penalty can be imposed upon him u/s 271D of the Act. Furthermore, if we look into reply at page 19 of the paper book, it was mentioned as under :

“...During the year under consideration I along with five other members had sold an immovable property in Survey No.209 situated at Nadergul Village, Saroor Nagar Revenue Mandal, Ranga Reddy District and received an amount of Rs.21,34,375/- in cash as part of my consideration out of total cash consideration of Rs.70,75,000/-. I wish to submit that I am not aware of the provisions of the Income Tax Act wherein I should not accept sales consideration towards sale of immovable property in cash.”

11. It is clear that assessee has admitted to have received an amount of Rs.21,34,375/- by way of cash towards his share of sale consideration and therefore, the assessee has neither disputed the receipt of cash towards the sale of property nor has disputed that he has not received the amount. Thus, the requirements of section 271D are fulfilled as the assessee has received an amount i.e., more than Rs.20,000/- by way cash in violation of section 269SS of the Act.

12. Furthermore, the last contention raised by the ld. AR before us is that the ld.CIT(A) has wrongly enhanced the penalty and thereafter, issued show cause notice to the assessee. Perusal of the order of ld.CIT(A) from Para 5.1 to 5.3.3 makes it abundantly clear that the notice has been given for enhancement vide order dt.29.02.2020 whereby the ld.CIT(A) sought to enhance from Rs.14,73,960/- to Rs.21,34,375/-. Therefore, this contention of the ld. AR also fails.

13. In view of the foregoing discussion and also relying on the decision of Kerala High Court in the case of CIT, Trichur Vs. AL-Ameen Educational Trust Kulapully, P.O. Shornpur reported in (2018) 92 taxmann.com 128, we are of the opinion that the assessee has violated the provisions of section 269SS r.w.s. 271D

of the Act. The assessee was not having any reasonable cause for accepting the consideration, which is more than Rs.20,000/- by way of cash and in view of the above, we do not find any merit in the appeal of the assessee. Accordingly, the appeal of the assessee is dismissed.

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

Order pronounced in the Open Court on 21st September, 2023.

Sd/-

Sd/-

(R.K. PANDA) VICE PRESIDENT	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 21st September, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Surender Reddy Vanteru, 1-3-80/501, 6, Sri Harsha Residency, Habsiguda, Hyderabad – 500007.
2	Joint Commissioner of Income Tax, Range – 15, Hyderabad.
3	Pr.CIT, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order