

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.652/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2018-19)

Sri Bhoom Reddy Komatireddy, 3-75, Dharmaram Village and Mandal, Karimnagar – 505416. PAN : AOBPK2075E	Vs.	The Income Tax Officer, Ward – 2, Karimnagar.
अपीलार्थी / Assessee		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri A.V. Raghuram,
Advocate.

राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin. Sr. AR

सुनवाई की तारीख/Date of hearing: 05.10.2023

घोषणा की तारीख/Pronouncement on: 10.10.2023

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.26.09.2022 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. On the facts and in the circumstances of the case, the order of the Commissioner of Income Tax (Appeals) dated 26.09.2022 sustaining the penalty of Rs. 15,00,000 levied by the AO under section 271D of the Act for the alleged violation of provisions of section 269SS of the Income Tax Act, 1961 is erroneous and unsustainable in law and on facts.

2. On the facts and in the circumstances of the case, the Id. Commissioner of Income Tax (Appeals) erred in not appreciating the legal position that the bona fide concluded transactions would not come within the purview of the section 269SS of the Act. The Id. Commissioner (Appeals) ought to have appreciated that the section is applicable only to the cases where the assessee makes an attempt to explain the cash by way of loan or investment or advance in cash.

3. Without prejudice, the Id. Commissioner of Income Tax (Appeals) failed to appreciate the bona fides of the Appellant and erred in holding that the reasons offered by the Appellant would not fall within the ambit of reasonable cause for failure to comply with the provisions of section 269SS of the Act.

4. On the facts and in the circumstances of the case and given the back ground of the Appellant, the Id. Commissioner (Appeals) ought to have held that the levy of penalty under section 271D of the Act is not justified and therefore should have deleted the same.

5. On the facts and in the circumstances of the case, the Id. Commissioner (Appeals) erred in holding that the precedents cited are not applicable to the facts of the present case as the same are rendered in respect of unamended provision of section 269SS of the Act, failing to appreciate that the said orders/judgements are applicable even to the amended provision of section 269SS of the Act.”

3. The brief facts of the case are that assessee is an individual and was regularly assessed to tax. CIT(A), NFAC, in the present case, had issued notice to the assessee as the assessee accepted cash payment of Rs.15,00,000/- on sale of immovable property for A.Y. 2018-19 in contravention to the provisions of Section 269SS of the Act. In response to the said notice, the explanation was given by the assessee, however, it was not found to be satisfactory to the Id.CIT(A), NFAC and hence, he passed order u/s 271D of the Act on 21.02.2022 imposing penalty of Rs.15,00,000/- for AY 2017-18.

4. Feeling aggrieved with the penalty order passed by the CIT(A), NFAC, assessee filed appeal and thereafter, ld.CIT(A), NFAC, Delhi had dismissed the appeal of the assessee by observing as under :

“5.7 The appellant has contended that the penalty u/s 271 D is not automatic and has further claimed 'reasonable cause' for non-compliance with the provisions of section 269SS. As far as the grounds that there was reasonable cause for the appellant's failure to comply with the provisions of section 269SS are concerned, the appellant has not given any explanation for why a part of the consideration was received in cash. The appellant has not given any details of the circumstances due to which the buyer may have been prevented from paying the entire consideration by cheque. That being the case, the bona fides cannot be stated to have been established, as claimed by the appellant.”

5.8 Though the appellant has challenged the impugned order on legal grounds, in his submission, he has accepted that there was a violation of the provisions of section 269SS. As discussed in para 5.7 supra, the appellant has not been able to establish reasonable cause for his failure to comply with section 269SS. I am of the considered opinion that the levy of the penalty u/s 271 D in the present case is justified. Accordingly, I uphold the penalty u/s 271 D levied vide the impugned order.”

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

6. Before us, ld. AR has drawn our attention to the written submissions filed by the assessee before the ld.CIT(A) who has not considered the same while passing the order. The relevant portion of written submissions of the assessee filed before the ld.CIT(A) are observed as under :

“.....

8. The provisions of section 269SS of the Act defines "specified transaction", and it refers to any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place. It is respectfully submitted that the provision is introduced to plug the, loop hole of cash being explained by the assessee as being received and is liable to paid back as it was received as "advance"

or "sale consideration" for whatever reasons. This can be discerned from the words used viz., RECEIVABLE. If it is a case where it applies to cash received, then the word "RECEIVED" also would have been used. It is respectfully submitted that in the present case the sale consideration is already received in respect of concluded transaction and therefore, the same is not covered within the meaning of the term, "specified sum" as defined in section 269SS of the Act. It is therefore submitted that the provisions of section 269SS could not have been invoked in the present case and consequently the levy of penalty under section 271D of the Act is unsustainable.

9. Without prejudice to the above, it is humbly submitted that penalty u/s.271D cannot be levied simply on the basis of mere contravention of the provisions of section 269SS of the Act. The legislature has provided sufficient safeguard in the form of section 273B of the Act. It is submitted that penalty cannot be levied where the assessee is able to Prove that there was reasonable cause for non-compliance of provisions specified in the section which includes S.271D. It is therefore submitted that the penalty cannot be levied on mere contravention of the provisions of section 269SS of the Act and therefore the Assessing Officer must consider the facts & circumstances of the case as well as the object behind the penal provisions, before levying the penalty. In this regard, the appellant reply Upon the CBDT Circular No-19/2015 dated 27.11.2015 wherein it has been made clear that section 269SS of the Act was amended in order to curb generation of black money by way of dealings in cash in immoveable transactions. It is respectfully submitted that the appellant had declared the receipt of cash of Rs. 15 lakhs in the sale deed and therefore, there is no manner of doubt that the appellant have violated the provisions of section 269SS of the Act with a mala fide intention to generate black money.

10. It is submitted that the Hon'ble Supreme court in the case of Motuial Padampat Sugar Mills Ltd. Vs. State of Uttar Pradesh reported as 1979 AIR (SC) 621 held as follows: "There is no presumption that every person knows the law. it is often said that everyone is presumed to know the law, but that is not a correct statement; there is no such maxim known to the law. It is therefore not possible to presume, in the absence of any material placed before the Court, that the appellant had full knowledge of the, law."

A copy of the judgement is enclosed hereto.

11. In the present case, it is submitted given the back ground of the appellant family and the educational qualifications the appellant was not aware of the provisions of section 269SS of the Act and the restrictions therein. It is submitted that the amendments made in provisions of section 269SS fixing ceiling on cash transactions is not widely canvassed unlike section 139A of the Act dealing with filing of return of income under 1/6 criteria or. demonetization of specified notes. The Government of India also canvasses widely for payment of advance tax and filing of returns by assesseees. But the introduction of the "specified transaction" in section 269SS of the Act, which altered the age old practice of transactions through cash, has not at all been publicized. On account of the same, people like the appellant are suffering for the

alleged violation. Therefore, given the back ground of the case, it would be improper to take a stringent view of the matter and sustaining the levy of penalty.

12. It is 'submitted that the Hon'ble Apex court in the case of Hindustan Steels Ltd Vs. State of Orissa (1972) 83 ITR 26 SC held that penalty cannot be levied for mere failure to carry out a legal obligation. Penalty provisions, being quasi criminal proceedings, cannot be invoked unless the party acted deliberately in defiance of law or acted in conscious disregard of its obligation. Hence, penalty cannot be levied on mere breach of technical or venial breach of the provisions of law or where breach flows from a bona fide. belief. This shows that levy of penalty is not-automatic i.e, on mere contravention of the provisions of law. However, the legislature has also taken care of this aspect by introducing the provisions of S. 2733 in the I.T. Act 1961 which provides that no penalty shall be imposed where the assessee is able to prove, that there was reasonable cause for such failure. Thus, the combined of reading of both the above provisions along with the above said decisions of the apex court shows that penalty u/s.271D is not automatic. Thus, the object behind such legislation is to be taken in consideration in such cases.

13. In the present case, the sale consideration of receiving in cash is declared in the sale deed and therefore is no attempt on the part of the appellant to generate black money or hide anything from the Departmental Authorities. It is therefore submitted that the penalty u/s.2716 should not be imposed on mere technical ground. It is respectfully submitted that the object of the legislation behind the introduction of penalty provisions u/s 271D & 271E was to curb the generation of black ,money and thus penalty is not to be proposed in each and every case for mere' breach of the provisions of sections 271D & 271E of the Act.

The appellant also place my reliance on following decisions:-'

(i) ADI-vs-KumariA.B.Shanthi 255 ITR 258 SC - The Hon'ble Apex court held that if there is a genuine and bona fide transaction and if for any reason the taxpayer cannot get a loan or deposit by account payee cheque or demand draft for some bona fide reasons, the authority vested with the power to impose penalty has got discretionary power not to levy penalty.

(ii) CIT-vs-Saini Medical Store 276 ITR 79 (PHI)- It was held that if there is a genuine and .bona fide transaction then the authority vested with the power to impose penalty has got discretionary power not to levy penalty. In this case, the court had accepted version given by the assessee that violation of the provisions of the Act was under a bona fide belief of the assessee and the same was not with any intention to avoid or evade, the tax.

(iii) OMEC Engineers-v-CIT 294 ITR 599 (Jharkhand HO) -- The Hon'ble High Court after considering various decisions of SC held as follows: In the instant case, as noticed above, there is no finding of the assessing authority, the appellate authority or the Tribunal that the transaction made by the assessee in breach of the provisions of section 269SS was not a genuine transaction. On the contrary, the return filed by the assessee was accepted after

scrutiny under section 143(3) of the Act. Further, there is no finding of the appellate authority that the transaction in breach of the aforesaid provisions made by the assessee was mala fide and with the sole object to conceal the Income. The authorities have proceeded on the basis that breach of condition provided under section 269SS of the Act shall lead to penal consequences. In our view, in the facts and circumstances of the case, the imposition of penalty merely on technical mistake committed by the assessee, which has not resulted in any loss of revenue, shall be harsh and cannot be sustained in law.

(iv) *CIT-v-Smt. Dimple Yadav* 379 ITR 177 (All HO) wherein it was observed that object behind such legislation was to ensure that a tax payer was not allowed to give the false explanation for his unaccounted money. Thus, in order to curb the menace of black money, section 269S5 visa introduced in the Act by the legislature. It was further noted that in order to avoid undue hardship to the taxpayers, the provisions of section 27313 was also introduced by the legislature. The ignorance of law can be a reasonable cause as held by Bombay high court in the case of *CIT Vs. Shell international* (2005) 278 ITR 630 (Bombay).

(v) Referring the observations of the Hon'ble Supreme Court in the case of *MotiLalPadam pat Sugar mills, ITAT, Delhi* in the case of *Sudarshan Auto and General Finance Vs. CIT* (60 ITD 177), observed as follows "The ignorance of the law may or may not constitute a valid excuse for justifying non-compliance with a provision of statute. It will depend upon the nature of the default. If it is merely a technical or venial breach, no penalty would be imposed because the levy of penalty under any statutory provision necessarily implies existence of some guilty intention on the part of the defaulter or the offender. In order to determine the existence or absence of any guilty intention on the part of the assessee, one will have to consider all the surrounding facts and circumstances. Whether by committing any default of noncompliance with a statutory provision of law, an assessee has derived any benefit, gain or advantage whether by such a default or noncompliance the assessee has defrauded the Revenue or has caused any loss to the Revenue. These are some of the factors which will have to be seriously considered before considering the fact as to whether the ignorance on the part of the assessee and his consultant can constitute a valid excuse or a reasonable cause for the purposes of Section 273B. The expression reasonable cause has to be considered pragmatically and if the facts of the present case are examined keeping the legislative spirit in mind, we find that there were enough circumstances to show that the assessee had acquired bonafide belief that its activities are at par with the law."

(vi) The supreme Court of India laying down the law with reference to interpretation of the statutes held in *Kehar Singh Vs. State* (AIR 1988 SC 1889) - We now do not look to the statutes at present according to grammatical and ordinary sense of the word. We now look for the intention of the legislature or the purpose of the statute. First, we examine the words of the statute. If the words are precise and cover the situation in hand, we do not go further. We expound those words in the natural and ordinary sense of the words. But, if the words are ambiguous, uncertain or any doubt

arises as to the terms employed, we deem it as our paramount duty to put upon the language of the legislature rational meaning. We examine the necessity which gave rise to the act. We will not view the provision as abstract principles separated from the motive force behind. We will consider the provision in the circumstances to which they own their origin. The purpose and rationale behind the introduction of section 269SS was to curb the black money. The purpose and rationale has to be watched for introduction of section 269SS of the act not by its words and its grammatical meaning.

14. It is submitted that in the present case, there is no generation of black money. The assessee proved bonafides beyond the shadow of doubt. Once bonafide is proved what remains is only procedural default which is of a venial nature. It is submitted 'that reasonable cause means genuine belief based on reasonable grounds.

15. It is submitted that section 273B of the Act prescribes' that penalty should not be imposed if there existed a reasonable cause for not complying with the provision. It is submitted that the reasonable causes with the assessee, and assessee was prevented by sufficient cause not to comply with the provision of law in strict compliance depends on various factors. In the present case, going by the factual background submitted herein above, the technical violation is not willful and is on account of ignorance of requirement of law. It is submitted that the provision is relatively new and it is difficult for a person of the appellant background to know the requirement of law at such a short span. Further, the introduction of specified transaction w.e.f. 1st June 2015 did not receive any publicity given the fact that it had changed the age old practice of using cash for buying and selling immovable property in cash for obvious reasons. As a matter of fact, before the onset of banking transactions, the registration of property used to take place by payment of cash consideration in the presence of Sub-Registrar.

For all the aforesaid reasons, it is prayed that the Hon'ble CIT(A) may kindly delete the penalty of Rs.15 lakhs levied under section 271D of the Act for the alleged violation of provisions of section 269SS of the Act is not warranted."

7. It was submitted by the learned AR for the assessee that the provisions of section 271D r.w. section 269SS of the Act are not applicable to the facts of the case, as present case is of concluded transactions and therefore, provisions of Section 269SS are not applicable. He has drawn our attention to the provisions of section 269SS and submitted that there is no violation of section 269SS of the Act.

8. Per contra, the ld. DR had drawn our attention to the sale deed placed at paper book at pages 48 to 56 and our attention was drawn to page 49 wherein it has categorically mentioned that the assessee has accepted a sum of Rs.15 lakhs by way of cash from the purchaser namely, Sri Nimmagadda Satyanarayana Prasad. It was submitted by the ld. DR that provisions of Section 269SS were inserted in the Act with a view to curb the cash transactions in respect of immovable properties. The provisions of section 269SS were introduced in the Finance Act, 2015 and the present transaction was admittedly taken place on 22.05.2017. Ld. DR further submitted that there was sufficient time to follow the new regime and sale of the immovable property should have been made by following the manner provided by the Act and not by sale of property in cash. However, the assessee has not changed his conduct and had wrongly accepted the cash payment in violation of section 269SS of the Act. Ld. DR further 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. He also relied upon the decision of Tribunal in ITA No.28/Hyd/2023 dt.21.09.2023 wherein the Tribunal has held that penalty is leviable in case of violation of provisions of section 269SS of the Act.

9. We have heard the rival submissions and perused the material on record and also the provisions of section 269SS of the Act. From the perusal of provisions of section 269SS, more particularly, the definition of "Specified Sum" as available in Explanation 4, clearly indicates that if the assessee receives any sum of money either by advance or otherwise in relation to transfer of immovable property then the said transaction would

fall within the realm of section 269SS of the Act. The words “otherwise” used in the definition of ‘specified sum’ in the provisions of section 269SS of the Act is of significant importance and include all possible ways by which a person may accept cash for sale of immovable property. In our view, “otherwise” includes all the shades / forms of money transactions, if paid in cash.

9.1. 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 that whether assessee has justified in receiving the specified sum by way of cash, while entering into the transaction of sale of immovable property.

10. Undoubtedly, in the present case, as referred in the sale deed, assessee had accepted a sum of Rs.15 lakhs in cash, which is a clear violation of section 269SS of the Act. In our view, receipt of cash for sale of immovable property, directly attracts the provisions of section 269SS of the Act as the assessee has violated the provisions of section 269SS of the Act. Hence, we opine that the authorities below were right in their approach to impose the penalty under section 271D of the Act. In view of the above foregoing reasoning, 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. In view of the above, we do not find any merit in the appeal of the assessee. The issue in the present case is also identical to the facts and issue in the case of Sri Surender Reddy Vanteru in ITA

No.28/Hyd/2023 dt.21.09.2023 wherein the Tribunal gave decision in favour of Revenue and against the assessee. Further, the said decision is not stayed or over-ruled by any of the higher Judicial Forums. In view of the above circumstances, we respectfully following the decision of the Hon'ble Kerala High Court cited supra and the decision of jurisdictional Bench passed in ITA No.28/Hyd/2023 (supra), dismiss the appeal of the assessee. Accordingly, the appeal of the assessee is dismissed.

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

Order pronounced in the Open Court on 10th October, 2023.

Sd/- (R.K. PANDA) VICE PRESIDENT	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 10th October, 2023.

TYNN/sps

Copy to:

S.No	Addresses
1	Sri Bhoom Reddy Komatireddy, 3-75, Dharmaram Village and Mandal, Karimnagar – 505416.
2	The Income Tax Officer, Ward – 2, Karimnagar.
3	Pr.CIT, Hyderabad
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order