

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकर अपील सं./ I.T.A. No. 244/Viz/2022

(निर्धारण वर्ष / Assessment Year :2016-17)

Eda Srikanth Reddy,
Guntur.

PAN: AAUPE 2413 K

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Assessee by

प्रत्यार्थी की ओर से / Revenue by

Vs. Income Tax Officer,
Ward-2(1),

Guntur.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Sri Madhukar Aves, Sr. AR

सुनवाई की तारीख / Date of Hearing

घोषणा की तारीख/Date of
Pronouncement

: 21/11/2023

: 29/11/2023

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [CIT(A)-NFAC] vide DIN & Order No. ITBA/NFAC/S/250/2022-23/1047676212(1), dated 28/11/2023

arising out of the order passed U/s. 271D of the Income Tax Act, 1961 [the Act], dated 30/08/2022 for the AY 2016-17.

2. Brief facts of the case are that the assessee is an individual. The assessee e-filed his original return of income for the AY 2016-17 on 10/03/2017 declaring total income of Rs. 28,95,400/-. Thereafter, the return was summarily processed by the CPC, Bangaluru and an order U/s. 143(1) of the Act dated 11/04/2017 was passed. As per the information available with the Department that during the AY 2016-17 the assessee sold an immovable property along with two others for a total consideration of Rs.52,32,000/- out of which the assessee's share was Rs. 14,20,000/- and received the same by cash, the Ld. AO observed that since the assessee received Rs. 14,20,000/- in cash, which resulted in violation of the provisions of section 269SS of the Act and therefore initiated the penalty proceedings U/s. 271D of the Act and issued a notice U/s. 274 r.w.s 271D of the Act dated 01/02/2022 and served on the assessee wherein the assessee was asked to explain as to why the penalty U/s. 271D should not be imposed in the case of the assessee considering the non-compliance of the provisions of section 269SS of the Act. Thereafter, the case was taken up by NFAC for

completion of proceedings. However, since there is a change in the incumbent, one more opportunity was afforded to the assessee vide letter dated 4/8/2022 requiring the assessee to submit his explanation on or before 12/8/2022. In response, the assessee filed his reply. Finally, a show cause notice dated 24/8/2022 was issued to the assessee and the assessee submitted his response on 26/8/2022 contending the levy of penalty. The Ld. AO did not consider the submissions of the assessee by holding that the assessee was failed explain the reasonable cause for receipt of cash of Rs. 14,20,000/- in contravention of the provisions of section 269SS of the Act. Accordingly, the Ld. AO imposed penalty of Rs. 14,20,000/- and passed order U/s. 271D of the Act on 30/08/2022. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC. On appeal, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee and upheld the penalty levied by the Ld.AO U/s. 271D of the Act. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before us by raising the following grounds of appeal:

- "1. The order of the Ld.CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*

2. *The Ld. CIT(A) ought to have held that that the penalty proceedings initiated in the case of appellant are barred by limitation and ought to have quashed the penalty order as void-ab-initio.*
3. *The Ld. CIT(A) ought to have cancelled the penalty of Rs. 14,20,000/- U/s. 271D of the Act by considering that the case of the appellant falls within the scope of reasonable cause provided U/s. 273B of the Act.*
4. *Any other grounds may be urged at the time of hearing."*

3. At the outset, the Ld. Authorized Representative submitted that the assessee did not receive any cash in advance for sale of the immovable property till the registration of the sale deed. The Ld. AR further submitted that the assessee's sale of property was evidenced by the sale deed and a copy of the same is submitted before the Hon'ble Bench. The Ld. AR further submitted that the assessee while filing the return of income has disclosed the transaction in respect of sale of immovable property and paid the tax on capital gains. The Ld. AR further also submitted that the intention of the Legislature in bringing the amendment to the provisions of section 269SS is to curb the generation of black money or unaccounted money i.e., to penalize the tax evaders for not disclosing the transactions in their returns of income, whereas in the instant case the assessee has disclosed the

transaction in his return of income and paid the taxes under the bonafide belief that the cash may be accepted on sale of property under certain circumstances as in the case of the assessee. The Ld. AR also further submitted that under these circumstances, as explained above, the assessee sold the property and disclosed the same in his return of income which clearly shows the genuineness of the transaction and also paid taxes thereon. Therefore, the Ld. AR pleaded that the penalty levied by the Ld. AO and confirmed by the Ld. CIT(A)-NFAC is not sustainable in law and hence the same may be deleted. The Ld. AR relied on various case laws however, heavily relied on the decision of this Bench in the case of ACIT vs. Kanchumarthi Venkata Sita Ramachandra Rao in ITA Nos. 245 & 246/Viz/2020, dated 30/08/2022.

Per contra, the Ld. Departmental Representative heavily relied on the orders of the Ld. Revenue Authorities and argued in support of their decision.

4. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. The core issue involved in the grounds raised by the assessee is with respect to validity of levy of penalty U/s. 271D on account of

receipt of cash in relation to transfer of immovable property by the assessee attracting the provisions of section 269SS of the Act. The admitted facts are that the assessee has received cash of Rs. 14,20,000/- as his portion out of the total sale consideration of Rs. 52,32,000/- for the sale of immovable property from the buyer. Section 269SS of the Act as amended by Finance Act, 2015 wef 1/6/2015 stipulates that no person shall take or accept from any other person, any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account. The "specified sum" has been defined in the section 269SS of the Act as follows:

"Specified sum" means 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."

5. From the plain reading of the above section, it is noted that any person is barred from receiving from any amount otherwise by cheque or through banking channels in relation to transfer of the immovable property. Section 269SS of the Act prohibits receipt of any amount by way of cash in relation to the transfer of any immovable property. The Memorandum explaining the

provisions of Finance Bill 2015 with respect to amendment proposed w.e.f 1/6/2015 in section 269SS is reproduced below:

"In order to curb generation of black money by way of dealings in cash in immovable property transactions it is proposed to amend section 269SS, of the Income-tax Act so as to provide that no person shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more."

6. The objective of the amendment proposed in 269SS of the Act is to curb generation of black money. In the instant case the fact is that cash received by the assessee has been deposited by the assessee into the bank account, hence does not attract the provisions of section 269SS of the Act since there is no suppression of cash receipts by the assessee. The assessee has also offered the capital gains to tax which is evident from his return of income. Under these circumstances, we are of the considered view that the penalty levied by the Ld. AO U/s. 271D and confirmed by Ld. CIT(A)-NFAC is unsustainable in law and accordingly the orders of the Ld. AO and Ld. CIT(A)-NFAC are set

aside and thereby we delete the penalty. It is ordered accordingly.

7. In the result, appeal of the assessee is allowed.

Pronounced in the open Court on 29th November, 2023.

Sd/-

(दुव्वूरु आर.एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated : 29.11.2023

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Eda Srikanth Reddy, 1-206, Reddy Palem (Post), Guntur, Andhra Pradesh – 522509.
2. राजस्व/The Revenue – Income Tax Officer, Ward-2(1), O/o. ITO, Lakshmipuram Main Road, Guntur, Andhra Pradesh – 522006.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam