

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.111/Viz/2023

(निर्धारण वर्ष / Assessment Year : 2017-18)

Smt. Vijapurapu Sudha Rao L/R of Vijapurapu Suryanarayana Rao, Visakhapatnam. PAN: AAVPV 3537 E (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-3(1), Visakhapatnam. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Assessee by	:	Sri GVN Hari, AR
प्रत्यर्थी की ओर से / Revenue by	:	Sri Madhukar Aves, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	21/11/2023
घोषणा की तारीख/Date of Pronouncement	:	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/250/2022-23/1051485663(1), dated 28/03/2023

arising out of the order passed U/s. 271D of the Income Tax Act, 1961 [the Act], dated 25/3/2022 for the AY 2017-18.

2. Brief facts of the case are that the assessee (Sri Vijapurapu Suryanarayana Rao), is an individual. The assessee e-filed his return of income for the AY 2017-18 on 25/07/2017 declaring total income of Rs. 10,26,020/-. Thereafter, the return was summarily processed by the CPC, Bengaluru and an order U/s. 143(1) of the Act was passed on 1/11/2017. Subsequently, the assessee filed his revised return of income on 1/11/2017 declaring total income of Rs.44,81,290/- which includes capital gains of Rs. 34,65,000/- on sale of vacant site admeasuring 231 sq yds at Yendada Village, Visakhapatnam. On receiving the information by the Department that during the FY 2016-17 relevant to the AY 2017-18 the assessee sold an immovable property to Mrs. Pusapati Appala Narsimha Raju for a total consideration of Rs. 34,65,000/- out of which the assessee received an advance of Rs. 5 lakhs on 01/12/2015 through cheque and the remaining amount of Rs. 29,65,000/- on 04/04/2016 by cash, the Ld. AO-NFAC observed that since the assessee received Rs. 29,65,000/- 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 26/08/2021 and served on the assessee. In response, the assessee submitted his reply vide letter dated 9/9/2021. Subsequently, penalty notice dated 23/02/2022 was issued to the assessee and wherein it 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. In response the assessee filed his reply on 9/9/2021. The Ld. AO-NFAC did not consider the submissions of the assessee by holding that the assessee has failed to explain the reasonable cause for receipt of cash of Rs. 29,65,000/- in contravention of the provisions of section 269SS of the Act. Accordingly, the Ld. AO-NFAC imposed penalty of Rs. 29,65,000/- and passed order U/s. 271D of the Act on 25/03/2022. Aggrieved by the order of the Ld. AO-NFAC, 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-NFAC 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 quashed the penalty order passed on 25/03/2022 U/s. 271D of the Act as barred by limitation.*
- 3. The Ld. CIT(A) is not justified in upholding the penalty of Rs. 29,65,000/- levied by the Assessing Officer U/s. 271D 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 and Rs. 5 lakhs was received by cheque as an advance on 1/12/2015. The Ld. AR further submitted that the assessee's sale of property was a distress sale as the assessee had only a registered Will in his name and his mother's name and being a senior citizen the assessee could not procure proper buyers for the site. The Ld. AR also further submitted that under these circumstances, as explained above, the assessee sold the property at a lower price and he accepted the consideration as paid by the buyer. The Ld. AR further submitted that the assessee **did not take any advance in cash before the registration** and immediately on receipt of the remaining sale consideration in cash, under unavoidable circumstances, **the**

assessee deposited the same in his bank account 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-NFAC 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 viz., decision of the ITAT, Bangalore 'B' Bench in the case of Sri Padmanabha Mangalore Chowta vs. Addl/Joint CIT in ITA No. 147/Bang/2022 (AY 2017-18), dated 7/3/2023; IT(IT)A No. 585/Bang/2022, dated 14/9/2022 in the case of Anuradha Chivukula Challa vs. Addl. CIT and decision of the ITAT, Ahmadabad Bench in the case of Narendra Kumar Chunilal Soni vs. JCIT in ITA No. 195/Ahd/2022, dated 17/5/2023 but 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 partly for the sale of immovable property from the buyer to the extent of 29,65,000/-. 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. Further, the explanation given by the assessee for receipt of sale consideration of Rs. 29,65,000/- constitutes a "reasonable cause" as contemplated in

section 273B of the Act and the assessee has accepted the cash under inevitably unavoidable circumstances as explained by the Ld. AR in his arguments and immediately on receipt of the cash, the assessee deposited the same in the bank account which contemplates the genuineness of the transaction and moreover the assessee has paid the capital gain tax thereon. Under these circumstances, we are of the considered view that the penalty levied by the Ld. AO-NFAC U/s. 271D and confirmed by Ld. CIT(A)-NFAC is unsustainable in law and accordingly the orders of the Ld. AO-NFAC 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 – Smt. Vijapurapu Sudha Rao L/R of Vijapurapu Suryanarayana Rao, Flat No.201, D.No. 7-22-4/4, Ramana Residency, Kirlampudi Layoutm, Chinawaltair, Visakhapatnam, Andhra Pradesh – 530017.
2. राजस्व/The Revenue – Income Tax Officer, Infinity Tower, Shankaramatham Road, Santhipuram, Visakhapatnam, Andhra Pradesh – 530016.
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