**आयकर अपीलीय अधिकरण, हैदराबाद पीठ में**
**IN THE INCOME TAX APPELLATE TRIBUNAL**
**HYDERABAD BENCHES "SMC", HYDERABAD**

**BEFORE**
**SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

आ.अपी.सं / **ITA No. 514/Hyd/2023**
(निर्धारण वर्ष / Assessment Year: 2017-18)

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| Sultana Begum,<br>Hyderabad<br>[PAN No. ALJPB9208P] | Vs. | Additional Commissioner<br>of Income Tax,<br>Range-9,<br>Hyderabad |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती द्वारा/Assessee by: Shri Mohd. Afzal, AR
राजस्व द्वारा/Revenue by: Shri Waseem UR Rehman, DR

सुनवाई की तारीख/Date of hearing: 06/12/2023
घोषणा की तारीख/Pronouncement on: 18/12/2023

## आदेश / **ORDER**

Aggrieved by the order dated 06/09/2023 passed bys the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Sultana Begum ("the assessee") for the assessment year 2017-18, assessee preferred this appeal.

2. Brief facts of the case are that during the financial year relevant to assessment year 2017-18, assessee sold her property in Plot No. 135 in Sy.

No. 172/13 & 172/14 situated at Setwindabad Colony, Hydernagar Village, Balanagar Mandal, RR District and accepted the sale consideration in cash in contravention to the provision of section 269SS of the Income Tax Act, 1961 ('the Act'), learned Assessing Officer levied penalty of Rs. 14 lakhs under section 271D of the Act.

3. In appeal, learned CIT(A) confirmed the penalty, observing that the assessee has not filed any evidence along with supporting evidence to corroborate the fact that she did not get the full amount as consideration for the sale of land as mentioned in the sale deed, the assessee's claim that she got only Rs.7,00,000/- and that too in 2010 to 2012 is not supported by any documentary evidences and that in the absence of the same, the assessee's submission can't be relied upon and the order levied penalty under section 271D of the Act was to be confirmed. Appeal of the assessee was consequently dismissed.

4. Assessee filed the present appeal and contended that the impugned order is erroneous and bad in law inasmuch as the penalty under section 271D of the Act was levied and sustained without satisfaction being recorded in the assessment order. Learned AR relied upon the decisions in the cases of CIT vs. Jai Laxmi Rice Mills 379 ITR 521, Mohd. Atiq vs. ITO 46 ITR 452, ITO vs. Bisheshwar Lal 76 ITR 653, CIT vs. Padampat Singhania (HUF) 280 ITR 14, Vijayaben G. Zalavadia vs. JCIT in ITA Nos.458 to 463/Ahd/2020 and Srinivasa Reddy Reddeppagari vs. JCIT in W.P.No.44285 of 2022, dated 26/12/2022.

5. Per contra, learned DR argued that once the violation of the provisions under section 269SS of the Act is established, penalty under

section 271D of the Act is automatic and, therefore, no question of satisfaction arises. Learned DR further submitted that the penalty under section 271D of the Act is leviable even without the assessment order and such proceedings are independent in themselves.

6. I have gone through the record in the light of the submissions made on either side. The only question that arises is whether without satisfaction being recorded in the assessment order, penalty can be levied under section 271D of the Act? In the case of Umakant Sharma Vs JCIT in ITA No. 364 to 366/Ind/2022 dated 19/07/2023 for the assessment year 2008-09, a Co-ordinate Bench of the Indore Tribunal observed that, it is pre-requisite condition that the initiation of penalty under section 271D/271E of the Act, there must be assessment proceedings or proceeding arising from assessment order are pending in the case of the assessee, and, therefore, following the judgment of Hon'ble Supreme Court as well as Co-ordinate Bench of the Tribunal in case of Vijayaben G. Zalavadia vs. JCIT (supra), deleted the penalty levied under section 271D of the Act by holding that without any assessment proceedings in the case of the assessee such penalty is not valid and liable to be quashed.

7. Further, this question has directly and substantially been dealt with by the Hon'ble jurisdictional High Court in the case of Srinivasa Reddy Reddeppagari (supra). In that case, while referring to the decision of the Hon'ble Apex Court in the case of Jai Laxmi Rice Mills (supra), the Hon'ble High Court held that the provisions under section 271E and 271D of the Act are in pari materia and since in terms of the decision in Jai Laxmi Rice Mills (supra), satisfaction must be recorded in the original assessment order for the purpose of initiation of penalty proceedings under section 271E of the

Act, the same is equally applicable for initiation of penalty proceedings under section 271D of the Act. Hon'ble High Court further observed that when there is a decision of the Supreme Court, it is the bounden duty of an adjudicating authority, be in an income tax authority or any other civil authority or for that matter any court in the country, to comply with the decision of the Supreme Court. For the sake of completeness, I deem it just and necessary to extract hereunder the relevant observations and findings of the Hon'ble High Court,-

> *"14. Issue raised in the writ petition is whether without satisfaction being recorded in the assessment order, penalty can be levied by the Joint Commissioner under Section 271D of the Act ?*
>
> *15. Insofar the present case is concerned, we find that in the assessment order dated 24.03.2022 passed under Section 153A of the Act, return of income filed by the petitioner was accepted by the assessing officer and accordingly, the total income was assessed. In the return of income, petitioner had admitted receiving total income of Rs.80,84,180.00 which was also accepted by the assessing officer.*
>
> *16. Subsequently, respondent No.1 took the view that petitioner had sold immovable properties for a total sale consideration of Rs.92,13,000.00 out of which he had accepted cash to the tune of Rs.87,80,000.00 which was in violation of Section 269SS of the Act, attracting penalty under Section 271D of the Act.*
>
> *17. Before we advert to the reply submitted by the petitioner, we may mention that under Section 269SS of the Act, no person shall take or accept from any other person (referred to as a depositor) 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 or through such other electronic mode as may be prescribed, if the amount of such loan or deposit or specified sum is twenty thousand rupees or more. However, as per the first proviso, the rigor of Section 269SS is not applicable to the Government, banking company, post office savings bank or cooperative bank etc. As per the second proviso, this provision would also not be applicable where both the depositor and the receiver are having agricultural income and neither of them has any income chargeable to tax under the Act.*

*18. Section 271D of the Act deals with penalty for failure to comply with the provisions of Section 269SS of the Act. Section 271D of the Act being relevant is extracted hereunder:*

> *Penalty for failure to comply with the provisions of section 269SS.*
>
> *271D. (1) If a person takes or accepts any loan or deposit [or specified sum] in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit [or specified sum] so taken or accepted.] [(2) Any penalty imposable under sub-section (1) shall be imposed by the [Joint] Commissioner.]*

*19. Thus, what sub-section (1) of Section 271D provides for is that if a person takes or accepts any loan or deposit or specified amount in contravention of the provisions of Section 269SS, he shall be liable to pay by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted. Sub-section (2) clarifies that any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.*

*20. It would be useful to refer to Section 271E of the Act also at this stage which deals with penalty for failure to comply with the provisions of Section 269T of the Act. Be it stated that Section 269T of the Act provides that no branch of a banking company or a cooperative bank and no other company or cooperative society and no firm or other person shall repay any loan or deposit made with it or any specified advance received by it otherwise than by an account payee cheque or account payee bank draft drawn in the name of the person who had made the loan or deposit or who had paid the specified advance or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, if such an amount is twenty thousand rupees or more. As in the case of Section 269SS, Section 269T of the Act also does not apply to the Government, banking company, post office savings bank etc. Section 271E of the Act reads as under:*

> *Penalty for failure to comply with the provisions of section 269T.*
>
> *271E. [(1)] If a person repays any [loan or] deposit [or specified advance] referred to in section 269T otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the [loan or] deposit [or specified advance] so repaid.] [(2)*

> *Any penalty imposable under sub-section (1) shall be imposed by the [Joint] Commissioner.]*

*21. Thus, sub-section (1) of Section 271E of the Act provides that if a person repays any loan or deposit or specified advance referred to in Section 269T of the Act otherwise than in accordance with the provisions of that section, he shall be liable to pay by way of penalty a sum equal to the amount of the loan or deposit or specified advance so repaid. Sub-section (2) clarifies that any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.*

*22. From an analysis of Sections 271D and 271E of the Act, it is seen that both the provisions are pari materia to each other. While Section 271D of the Act would be attracted on a person accepting loan or deposit or specified sum in contravention of Section 269SS of the Act, penalty under Section 271E of the Act would be imposable on a person who makes or repays the loan or deposit or specified advance in contravention of Section 269T. Therefore, in a way, the two provisions are complimentary to each other.*

*23. In Jai Laxmi Rice Mills Ambala City (supra), Supreme Court considered the question as to whether penalty proceedings under Section 271D of the Act is independent of the assessment proceeding ? In the facts of that case, it was found that the penalty order was issued following the assessment order. However in appeal, Commissioner of Income Tax (Appeals) had set aside the original assessment order with a direction to frame assessment de novo. In the fresh assessment order, no satisfaction was recorded by the assessing officer regarding initiation of penalty proceedings under Section 271E of the Act. It was noticed that the penalty order was passed before the appeal of the assessee was allowed by the Commissioner of Income Tax (Appeals). It was in that context that Supreme Court held as follows:*

> *The Tribunal as well as the High Court has held that it could not be so for the simple reason that when the original assessment order itself was set aside, the satisfaction recorded therein for the purpose of initiation of the penalty proceeding under Section 271E would also not survive. This according to us is the correct proposition of law stated by the High Court in the impugned order.*
>
> *As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under Section 271E of the Act,*

> *though in that order the Assessing Officer wanted penalty proceeding to be initiated under Section 271(1)(c) of the Act. Thus, insofar as penalty under Section 271E is concerned, it was without any satisfaction and, therefore, no such penalty could be levied. These appeals are, accordingly, dismissed.*

*24. Reverting back to the facts of the present case, we find that petitioner had submitted reply to the show cause notice on 02.06.2022. In his reply, petitioner mentioned that no satisfaction was recorded by the assessing officer in the assessment order as to infraction of Section 269SS of the Act. Therefore, no penalty could be levied under Section 271D of the Act without recorded satisfaction. In this connection, reference was made to the decision of the Supreme Court in Jai Laxmi Rice Mills Ambala City (1 supra) wherein it was clarified that provisions of Section 271E are in pari materia with the provisions of Section 271D of the Act. However, this aspect of the matter was not considered by respondent No.1 while passing the impugned order. Respondent No.1 relying upon the Kerala High Court decision in Grihalaxmi Vision (2 supra) noted that competent authority to levy penalty is the Joint Commissioner. He has also referred to an earlier decision of the Supreme Court in CIT V. Mac Data Ltd.3 wherein it was observed that assessing officer has to satisfy himself as to whether penalty proceedings should be initiated or not. Assessing officer is not required to record his satisfaction in a particular manner or reduce it into writing. Therefore, respondent No.1 imposed the penalty under Section 271D of the Act.*

*25. We are afraid respondent No.1 had completely overlooked the decision of the Supreme Court in Jai Laxmi Rice Mills Ambala City (1 supra). In the said decision as extracted above, Supreme Court had concurred with the view taken by the High Court holding that satisfaction must be recorded in the original assessment order for the purpose of initiation of penalty proceedings under Section 271E of the Act. We have already discussed above that provisions of Section 271E and 271D of the Act are in pari materia. When there is a decision of the Supreme Court, it is the bounden duty of an adjudicating authority, be it an income tax authority or any other civil authority or for that matter any court in the country, to comply with the decision of the Supreme Court.*

*26. Article 141 of the Constitution of India is clear that law declared by the Supreme Court shall be binding on all courts within the territory of India. This is further clarified in Article 144, which says that all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. We are therefore, of the unhesitant view*

*that respondent No.1 overlooked the relevant considerations while passing the impugned order dated.29.11.2022.*

*27. Further, issue in the present writ petition is not the competence of the Joint Commissioner in issuing the order of penalty. Therefore, reference to Grihalaxmi Vision (2 supra) was wholly unnecessary.*

*28.Consequently, we set aside the impugned order dated 29.11.2022 and remand the matter back to the file of respondent No.1 to pass a fresh order in accordance with law after giving a reasonable opportunity of hearing to the petitioner."*

8. While respectfully following the decision of the Hon'ble jurisdictional High Court as extracted above, I hold that the impugned orders dated 06/09/2023 passed by the learned CIT(A) and order dated 30/01/2020 passed by the Additional Commissioner of Income Tax, are bad in law and are liable to be quashed. Grounds of appeal are accordingly allowed.

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

Order pronounced in the open court on this the 18th day of December, 2023.

Sd/-
**(K. NARASIMHA CHARY)**
**JUDICIAL MEMBER**

Hyderabad,
Dated: 18/12/2023

*TNMM*

Copy forwarded to:

1. Sultana Begum, 17-3-325/9/1, Murtuza Nagar, Yakutpura, Hyderabad.
2. Additional Commissioner of Income Tax, Range-9, Hyderabad.
3. Pr.CIT, Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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