

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. SAKTIJIT DEY, VICE PRESIDENT
AND
SH. N. K. BILLAIYA, ACCOUNTANT MEMBER**

ITA No.446/Del/2023
Assessment Year: 2016-17

Rajni Kant Jha 46, Gangotri Apartment, Pocket-I, Sector-12, Dwarka New Delhi-110078 PAN No.AGYPJ6887A	Vs.	ITO Ward- 35 (5) Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Gaurav Jain, Advocate Sh. Shubham Jain, Advocate
Respondent by	Sh. Vivek Vardhan, Sr DR

Date of hearing:	20/12/2023
Date of Pronouncement:	22/12/2023

ORDER

PER N. K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order dated 23.12.2022 by NFAC, Delhi pertaining to A.Y. 2016-17.

2. The solitary grievance of the assessee is that NFAC erred in confirming the penalty levied u/s. 271D of the Act amounting to Rs.23.10 lacs.

3. Briefly stated the facts of the case are that the assessee had sold immovable property for Rs.28.10 lacs out of which Rs.23.10 lacs was received in cash. According to the AO since the transaction was in-violation of the provision of section 269SS of the Act penalty proceedings u/s.271D of the Act were separately initiated.

4. Statutory notices were issued and served upon the assessee. Assessee explained that Rs.23.10 lacs was received in cash as advance against the property sold in the month of April, 2015 and was not aware of the amended provision of the Act. It was strongly contended that since the assessee was financially broke and for the livelihood of his family he took the advance though the sale transaction took place subsequently which does not fall in the year under consideration.

5. The contention of the assessee did not find any favour with NFAC and the penalty was confirmed.

6. Before us the Counsel for the assessee reiterated what has been stated before the lower authorities. It is the say of the Counsel that the assessee took advance of Rs.23.10 lacs in the month of April, 2015 and the amendment has come by Finance Act, 2015 w.e.f. 01.06.2015, therefore, on the date of taking the advance the provisions was not there in the statute, therefore, the

assessee had reasonable and sufficient cause for taking the advance in cash.

7. Per contra supporting the order of the lower authorities the DR stated that the provisions are mandatory and should have been followed by the assessee.

8. We have given a thoughtful consideration to the orders of the authorities below. We find that the impugned property was sold to Smt. Meetu for a total consideration of Rs.28.10 lacs. The assessee has received cash of Rs.23.10 lacs in the month of April, 2015 but subsequently the balance payment was received by cheque and the sale deed was executed on 01.04.2016 which falls in F.Y. 2016-17 relevant to A.Y.2017-18. Technically in a case of the transfer of immovable property the date of registered sale deed should be taken as the date of sale and, therefore, the transaction is outside the assessment year under consideration.

9. Be that as it may since the assessee had taken the advance in the month of April, 2015 and the amendment has been brought by the Finance Act, 2015 w.e.f. 01.06.2015 it is more reasonable to conclude that the assessee had reasonable and sufficient cause for accepting the cash of Rs.23.10 lacs as advance and as part of the sale consideration.

10. On given facts we do not find this to be a fit case for the levy of penalty u/s. 271D of the Act, therefore, we direct the AO to delete the penalty.

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

Order pronounced in the open court on 22.12.2023.

**Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT**

NEHA

Date:- .12.2023

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

**Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT NEW DELHI