

**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES “SMC”, HYDERABAD**

BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER

ITA No.609/Hyd/2023		
Assessment Year: 2017-18		
Damodar Rao Bibinagar, 1-8-74/6, Chikkadapally, Hyderabad, Telangana – 500020. PAN : AFJPB5620F.	Vs.	The Additional Commissioner of Income Tax, Hyderabad.
(Appellant)		(Respondent)
Assessee by:	Sri A.V. Raghuram, Advocate.	
Revenue by:	Ms. Harshita Chouhan, SR.AR	
Date of hearing:	26/12/2023	
Date of pronouncement:	27/12/2023	

ORDER

PER LALIET KUMAR, J.M.

The appeal of the assessee for A.Y. 2017-18 arises from the order of Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dt.04.12.2023 invoking proceedings under section 271D of the Income Tax Act, 1961 (in short, “the Act”).

2. The only effective ground raised by the assessee reads as under :

“ 1. On the facts and in the circumstances of the case, the order passed by the Commissioner of Income Tax (Appeals) is erroneous and unsustainable on facts and in law.

2. The Id.CIT(A) erred in sustaining the action of the Assessing Officer in levying the penalty u/ s 271 D of the Income Tax Act, 1961 of Rs. 13,10,000.

3. The Commissioner of Income Tax (Appeals) has failed to consider various reasons that were put forth before him which would prove that the violation of provisions of section 269SS was not intentional. The Id.CIT(A) erred in mechanically passing the impugned order without going into the factors which he is obligated to consider under section 273B of the Act, before sustaining the penalty.

4. The Id. CIT(A) failed to appreciate that the Appellant had admitted sale consideration which was almost double the Card Value of Stamp authorities, offered the sale to capital gains, and paid applicable taxes which evidences that the Appellant had no intention to hide any information from Revenue, but was only ignorant of the provisions of section 269SS of the Act.

5. The Id. CIT(A) erred in treating the provisions of section 271 D of the Act dealing with penalty for violation of provisions of section 269SS as automatic, failing to appreciate that provisions of section 273B of the Act confers discretion on the authorities to not to levy in deserving cases, like the present case.”

3. The brief facts of the case are that assessee had sold property situated at H.No.1-54, New No-5-14-106, Plot No.54 in Survey No. 16 at Indira Nagar, Phase-II, Meerpet Village, Kapra, Ranga Reddy Dist. vide doc. No.1683/2016 dt.22.04.2016 registered with SRO, Kapra for a consideration of Rs.58,10,000/-. Out of the said consideration, the assessee received Rs.13,10,000/- in cash thereby violating the amended provisions of Sec.269SS of the Income tax Act, 1961 and thus attracting penal provisions of Sec.271D of

the Act. In view of such violations, penalty proceedings u/s 271D of the Act were initiated and accordingly notice u/s 274 r.w.s. 271D of the Act dt. 30.03.2022 was issued and served on the assessee. However, the assessee did not respond to notices. Therefore, in view of the principle of natural justice, a show-cause notice dated 12.09.2022 was issued and served to the assessee. As the assessee did not respond to this notice also, AO presumed that it is a fit case for imposing penalty u/s 271 D of the Act. Hence, the AO imposed a penalty of Rs.13,10,000/- i.e., the sum equal to the amount of the cash of Rs.13,10,000/- received towards sale consideration, in accordance with the provisions of section 271 D of the Act. Thus, Assessing Officer passed order u/s 271D of the Act dt.28.09.2022.

4. Feeling aggrieved with the order of Assessing Officer passed u/s 271D of the Act, assessee filed an appeal, which was later migrated to the Id.CIT(A), NFAC, Delhi, who dismissed the appeal of assessee.

5. Before me, Id. AR for the assessee submitted that the property situated at H.No.1-54, New No-5-14-106, Plot No.54 in Survey No. 16 at Indira Nagar, Phase-II, Meerpet Village, Kapra, Ranga Reddy District was sold by the assessee vide registered sale deed bearing no.1683/2016 dt.22.04.2016 with SRO, Kapra for a consideration of Rs.58,10,000/-. Out of the said consideration, the assessee received Rs.13,10,000/- in cash. The Id. AR contended that the assessee being a law-abiding citizen, despite the less market value of the property being Rs.30,36,100/-, the entire consideration of Rs.58,10,000/- was mentioned in the sale deed. Id.

AR submitted that based on the consideration of Rs.58,10,000/-, mentioned in the sale deed, assessee has also claimed long term capital gains on the property in the return filed by the assessee. Ld. AR further submitted that the assessee was not aware of law and that the amount was required by assessee for his daughter's house construction. The ld. AR further submitted that assessee being a law-abiding citizen has bonfidelly mentioned the true and correct value of the property in the sale deed and in the return of income.

6. In support of the case of assessee, the ld. AR refers to the decision of Hon'ble Supreme Court in the case of Motilal Padampat Sugar Mills Limited Vs. State of Uttar Pradesh wherein it was held that lack of awareness of the law absolves liability unless willful default is established. Additionally, reliance placed on the decision of Hon'ble Supreme court in the case of Assistant Director of Inspection Vs. Kum. A.B. Shanthi dated 3rd May, 2002 addressing the validity of Section 269SS of the Act. The ld. AR further relied on the decision of Hon'ble Gauhati High Court in the case of CIT Vs. Bhagwati Prasad Bajoria and drew my attention to page 70 of the paper book. Thereafter, ld. AR relied on the decision of Hon'ble ITAT in the case of Harpal Singh Vs. Assessing Officer and drew my attention to page 73 of the paper book.

7. Per contra, the ld. DR relied upon the orders passed by the lower authorities. The ld. DR submitted that assessee, being a retired Government employee, is presumed to know the law. The ld. DR contended that the assessee, being an educated person, could have utilized banking channels instead of accepting the amount in

cash while disposing off the property. The explanation provided by the assessee stating that the cash was required for the daughter's house construction expenses, is unconvincing and further contended that assessee could have been withdrawn the amount form the bank for the said purpose.

8. I have considered the rival submissions and perused the material available on record. Admittedly, the assessee has received Rs.13,10,000/- in cash as part of sale consideration while executing the registered sale deed in favour of a buyer. The provisions of Section 271D r.w.s. 269SS impose penalties for receiving "specified sum" (the amount for sale of immovable property) in cash. The assessee's explanation that the cash was intended for the daughter's house construction, in my opinion, lacks merit as no evidence was presented to substantiate the utilization of the cash amount for that purpose. Furthermore, the assessee, being an educated person, should have been vigilant about the law. In fact, when assessee was aware of long term capital gains which is clear from the facts of claiming the deduction, then it is clear that the assessee must be aware of the provisions of Income Tax Act.

9. With respect to the reliance of the assessee on the decision of Hon'ble Supreme Court way back in 1978, much water has flown thereafter, and now the law is fairly settled down that ignorance of law is not an excuse. Even the contention of the assessee that he was unaware of the law has no merit considering that amendments to statues / Finance Act are always published in the newspaper as and when they get approved. Furthermore, when the assessee

approached for a registered sale deed, then the sale deed must have been drafted by lawyer or deed writer or a person who knows the law. Similarly, in the case when assessee has claimed long term capital gain, the Chartered Accountant / Advocate, who had filed the return of income is presumed to know the law. Hence, I find no merit in the argument of ld. AR.

10. Coming to the conduct of the assessee, the conduct of assessee speaks otherwise. The conduct of the assessee would be better if he would produce the evidence of utilization of amount for the purpose of construction of his daughter's house. The explanation given by the assessee is just a plea and any plea which is not backed by evidence is required to be rejected. In view of the foregoing reasons, I find no reason to interfere with the order of ld.CIT(A) and uphold the penalty imposed on the assessee for accepting Rs.13,10,000/- in cash, as it falls within the purview of Section 271D r.w.s. 269SS of the Income Tax Act. 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 27th December, 2023.

Sd/-
(LALIET KUMAR)
JUDICIAL MEMBER

Hyderabad, dated 27th December, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Damodar Rao Bibinagar, 1-8-74/6, Chikkadapally, Hyderabad, Telangana – 500020.
2	The Additional Commissioner of Income Tax, Hyderabad.
3	PCIT, Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order