

आयकरअपीलीय अधिकरण, जयपुरन्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "SMC" JAIPUR

डॉ. एस.सीतालक्ष्मी, न्यायिकसदस्य एवंश्रीराठोडकमलेशजयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकरअपील सं./ITA. No. 590/JP/2023
निर्धारणवर्ष / AssessmentYear :2017-18

Shri Farman Khan 1, Village-Siruja, Chaksu Nimodia, Jaipur	बनाम Vs.	The ITO Ward 7(3) Jaipur
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.: BJEPK 9073 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Ashish Sharma, Advocate
राजस्व की ओरसे / Revenue by : Mrs. Monisha Choudhary, Addl. CIT

सुनवाई की तारीख / Date of Hearing : 07/11/2023
उदघोषणा की तारीख / Date of Pronouncement: 20 /12/2023

आदेश / ORDER

PER: RATHOD KAMLESH JAYANTBHAI, AM

This appeal filed by the assessee is directed against the order of ld. CIT(A) dated 31-07-2023, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2017-18 wherein the assessee has raised the following grounds of appeal.

“1. In the facts and circumstances of the case, the ld. CIT(A) erred in upholding the order of the JCIT, Range-7, Jaipur u/s 271D dated 29-08-2019 framed without considering/ disproving the contentions and evidences filed and without refuting the applicable ratio of the decisions cited by the assessee.

2. The ld. CIT(A) erred in holding that penalty u/s 271D was mandatory once the contravention of Section 269SS was established and regardless of any reference by the

AO and/or the guidelines of CDT Circular No. 9 dated 26-04-2016 and/ or over the ridding provision of Section 273B of the Act.

3. The Id. CIT(A) erred in ignoring the introductory purpose of Section 269SS under XXB of the Act and the decision of Hon'ble Supreme Court in case of Hindustan Steel, 93 ITR 26 and ADIT vs Kum. A.B. Shanthi, 255 ITR 258 in this regard. The penalty is not sustainable.

4. The Id. CIT(A) violated natural justice by denying assessee, the opportunity of being heard, through Video Conferencing as requested by the assessee. The order is ab initio void on this ground alone.”

2. The facts as emerges from the order of the Id. JCIT, Range-4, Jaipur (for short ‘‘AO’’) regarding the case of assessee it has been found during the assessment year 2017-18 that assessee had accepted specified sum as mentioned in clause (b) of Section 269SS of the Income Tax Act, 1961 in cash and the said sum has been received from the following parties in the assessment year 2017-18.

Details of property	Date of accepting cash	Amount	Purchaser
Immovable property in Chaksu	10-04-2016	2,90,000	Sidharth Buildtech Private Ltd.
	15-04-2016	3,80,000	
	17-04-2016	1,00,000/-	
	20-04-2016	2,50,000/-	
	25-04-2016	4,82,000/-	
	10-05-2016	2,80,000/-	
	24-05-2016	1,39,000/-	
	05-06-2016	3,10,000/-	
	15-06-2016	2,39,000/-	
		24,70,000/-	

3. The AO further noted that since the assessee accepted cash for disposing of immovable properties which are in contravention of Section 269SS of the Act, therefore, in view of the above facts, notices u/s 271D of the Income Tax Act were issued on 21-02-2019 and 04-04-2019 against which the assessee submitted the reply before the AO on different dates i.e. 05-03-2019, 08-03-2019 and 24-04-2019 who has taken into consideration the replies filed by the assessee but the same has not been found tenable by the AO and thus he invoked the provisions of Section 271D by imposing the penalty of Rs.24.70 lacs by observing as under:-

1. In this case, assessee is engaged in the business and other party who purchased property, is a company and both parties have bank accounts and they could avoid cash transactions.
2. Further, for requirement of cash for personal use, assessee could withdraw it from bank account, on that there is no prohibition.
3. Further, as per ITR, source of income of assessee is business, therefore, provisions of section 26988 is applicable on him.
4. Further, assessee could not produce any reasonable cause which hindered him accepting sale amount through bank, hence it is clear that there is no bonafide reason due to that assessee took cash for sale of property. Besides, he has not produced any evidence for claims which has been made by the assessee like urgency of funds, lack of buyers, and cheque would not be honoured, hence, same are not reliable.
5. Since assessee could not show reasonable cause for violation of provisions of section 26958 therefore, case law cited by assessee are not applicable in this case. Further, In order to curb generation of black money by way of dealings in cash in immovable property transactions, section 26988 of the Income-tax Act has been amended 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(specified sum) 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.

Since, assessee has received specified sum as mentioned in clause (b) of section 269SS of the Income-tax Act 1961 in cash for transfer of immovable property as defined in clause (d) of section 269UA. Therefore, it is evident that the assessee has violated abovementioned provisions of the Income-tax Act. Hence, penalty u/s 271D of the Income-tax Act is leviable in this case.

In the view of the above, it is apparent that the assessee has violated the provisions of section 269SS by receiving cash of Rs. 24,70,000/- instead of account payee cheque or demand drafts from M/s Sidharth Buildtech Private Limited

In view of above discussion, it is evident that this is a fit case for imposing penalty u/s 271D of the I.T. Act, 1961. Therefore, a penalty of Rs. 24,70,000 u/s 271D of the I.T. Act, 1961 is levied for default so committed.”

4. Being aggrieved by the order of levying penalty, the assessee carried the matter before the Id. CIT(A) against the imposition of penalty u/s 271D by the AO vide order dated 29-08-2019 which has been confirmed by the Id. CIT(A) by observing as under:-

“5. Appellant order

5.1 The contention that an assessment order u/s 143(3) is not required for the applicability of Section 269SS is supported by the provisions of the Income Tax Act, 1961. Under Section 269SS, the mode of taking or accepting certain loans, deposits, and specified sums is strictly regulated. The primary focus of this section is on the manner in which the specified transactions should be conducted, rather than being dependent on the existence of an assessment order.

The absence of an assessment order for A.Y. 2017-18 does not negate the applicability of Section 269SS in your case. The said section lays down that no person shall take or accept specified sums of money in cash, and any violation of this provision attracts penalty u/s. 271D of the Income Tax Act.

Regarding the reference to the Range Head, while it may be relevant in certain procedural aspects, it is not a mandatory requirement for the initiation of penalty proceedings under Section 271D. The provisions of the Income Tax Act are clear about the consequences of contravening the prescribed modes of accepting loans, deposits, or specified sums in cash. The JCIT (Joint Commissioner of Income Tax) has the authority to initiate penalty

proceedings when any such contravention is established, regardless of whether a reference has been made.

In conclusion, the absence of an assessment order and the lack of a reference to the Range Head do not invalidate the applicability of Section 269SS in your case. The penalty prescribed under section 271D was triggered by the conduct of specified transactions in cash, and the proceedings are in line with the statutory provisions of the Income Tax Act.

5.2 The appellant's contention that the Assessing Officer (AO) erred in framing the order without duly considering and addressing the contentions, bonafide facts, and genuine circumstances of the assessee, lacks a valid basis.

After conducting a thorough analysis of the appellant's submission and carefully considering the contentions raised, it has been concluded that the grounds presented by the appellant cannot be upheld. The decision is based on the following explanations:

1. The appellant provided detailed explanations for the necessity of accepting cash for various purposes, such as agricultural operations, construction work, and addressing elderly parents' health concerns. However, it is important to emphasize that Section 269SS is specifically designed to discourage cash transactions, including those related to immovable property. While the appellant's reasons may have been well-intentioned, the primary goal of the law is to combat black money generation and ensure transparency in financial dealings. Although concerns about the potential non-honor of cheques are understandable, adherence to the prescribed modes of payment is crucial to comply with the provisions of the Income Tax Act.
2. The appellant mentioned the buyer, M/s Siddharth Buildtech Pvt. Ltd., and their cash transaction practices and dishonoring of cheques. Nonetheless, it is essential to note that the buyer's practices do not absolve the seller from complying with Section 269SS. As the seller in this transaction, it remains the seller's responsibility to ensure adherence to the prescribed modes of payment, regardless of the buyer's practices.
3. The appellant cited specific judicial decisions in support of their defense. Although their reliance on these cases is acknowledged, it is vital to assess the relevance of those judicial decisions to the specific circumstances of this case. The applicability of judicial decisions can vary depending on the unique facts and context of each case.

In conclusion, while the circumstances and concerns raised by the appellant have been taken into consideration, the applicability of Section 269SS is not contingent on the availability of funds in their bank accounts or the conduct of the buyer. The law places an obligation on both the buyer and the seller to carry out transactions in the prescribed modes to discourage black money generation.

Regrettably, the appeal cannot be supported based on the arguments presented. The proceedings were conducted in accordance with the relevant provisions of the Income Tax Act, and the penalty under Section 271D remains applicable.

Based on the preceding discussions, the appellant's appeal has been dismissed.

6. In the result, the appeal is dismissed.’’

5. During the course of hearing, the ld.AR of the assessee submitted the written submission praying therein to delete the penalty confirmed by the ld. CIT(A) which is not justified. Hence the written submission as it is placed as under:

Grounds of Appeal

Ground No. 1:- In the facts and circumstance of the appellant, the learned CIT(A) erred in upholding the order of the JCIT, Range-7, Jaipur, u/s 271D dated 29.08.2019, framed without considering / disproving the contentions and evidence filed and without refuting the applicable ratio of the decisions, cited by the appellant.

Submission :

1. The appellant, a small time contractor filed Return of Income for A.Y. 2017-18, on 31.03.2018 at total income of Rs. 4,17,430/-. His father was hundred years old then and mother was of 70 years. For their medical needs / emergency, the appellant needed cash in hand, since, the banking facility in his remote village Siruja, in Chaksu Tehsil were not easily accessible. To raise money, the appellant was compelled to sell his agricultural land, under duress to the only available and capable buyer, which in that area, happened to be a builder namely M/s Sidharth Build Tech. Pvt. Ltd. The appellant entered into agreement(s) for sale and thereby received sale advances, in 9 tranches, totaling Rs. 24,70,000/-, in cash between 10th April 2016 to 15th June 2016 (A.Y. 2017-18) from M/s Sidharth Build Tech. Pvt. Ltd. The related sale deeds were registered only in next year in June 2017, i.e. A.Y. 2018-19. The resultant capital gains were disclosed in the relevant Return for A.Y. 2018-19. This Return of Income was reassessed u/s 147 /144B vide order dated 27.03.2023, by the Faceless Assessing officer (FAO) at the Returned Income itself. In other words, all transactions were found disclosed and the explanations were accepted, and so no unaccounted income /Black money or evasion of tax was found by the FAO. A copy of the assessment order A.Y. 2018-19 is enclosed (**As Annexure-1**).

2. **Further**, nothing amiss was found in the Return of A.Y. 2017-18, too as it was neither reopened nor any proceeding u/s 263 was initiated, though the copy of the impugned sale deeds were available with the AO (as revealed by AO in his RTI reply dated 18.05.2021).
3. Despite this, the JCIT, Range, on his own, initiated proceeding u/s 271D vide issue of notices dated 21.02.2019 and 04.04.2019. The replies of the appellant, received by the JCIT on 05.03.2019, 08.03.2019 and 24.04.2019, have been reproduced in the order u/s 271D of the Act.

The summarized version of the JCIT (page 7 of his penalty order and on page 5 of CIT(A) order) for not finding the explanation / reasonable cause of the assessee as tenable, is:-

"The reasons given for imposing penalty were that the assessee and the purchaser party were both in business and had bank a/c and so could avoid cash transactions. (ii) For personal use, there was no bar for assessee to have withdrawn cash from his bank account. (iii) Assessee being in business, section 26955 was applicable. And Assessee "could not produce any reasonable cause which hindered him accepting sale amount through bank, hence, it is clear that there is no bonafide reasons" for taking cash, (v) No evidence was produced for the claim of urgency offunds, lack of buyers, belief that cheques would not be honored, hence, some are not reliable. (vi) The case laws cited (by assessee) were not applicable as there was no reasonable cause. Further, the section 269SS was amended in order to curb generation of black money by way of dealings in cash in immovable property transactions."

4. Before the CIT(A) the assessee had filed rebuttal of the JCIT's conclusion along with evidence. This has been reproduced by the CIT(A) from page 5 to page 11 of the appeal order. The CIT(A) admitted (on page 13 / 14) that *"The appellant provided detailed explanations for the necessity of accepting cash for various purposes, such as agricultural operations, construction work, and addressing elderly parents' health concerns".* The CIT(A) accepted that *"concerns about the potential non-honor of cheques are understandable" and that the appellant had cited specific judicial decisions "Although their reliance on these cases is acknowledged" , but, "The applicability of judicial decisions can vary depending on the unique facts and context of each case."* However, the CIT(A) did not elaborate as to how the ratio of the cited decisions was not applicable in the facts and in the context of the appellant.
5. Further, The observations of the CIT(A) on the rebuttal of the appellant are broadly:-
 - i. *the absence of an assessment order and the lack of a reference to the Range Head do not invalidate the applicability of Section 269SS in your case. The penalty prescribed under section 271D was triggered by the*

conduct of specified transactions in cash, and the proceedings are in line with the statutory provisions of the Income Tax Act.

Moreover, From the tenor, content of the CIT(A) order it is apparent that the only reason for not admitting appeal of the appellant was that *“In conclusion, while the circumstances and concerns raised by the appellant have been taken into consideration, the applicability of Section 269SS is not contingent on the availability of funds in their bank accounts or the conduct of the buyer. The law places an obligation on both the buyer and the seller to carry out transactions in the prescribed modes to discourage black money generation.”*

6. Apparently, the CIT(A) overlooked the overriding provisions of section 273B of the Act and the applicable decision of the Hon'ble Supreme Court in case of **Hindustan Steel Ltd. v. State of Orissa, 83 ITR 26 (Supreme Court):-**

“For failure to register as a dealer: section 9(1), read with section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances.”(emphasis supplied).

7. While, the reasonable causes, and circumstances explained by the assessee were not touched upon by the JCIT, the CIT(A) only expressed helplessness despite the provision of section 273B of the Act, and the decisions of the Supreme Court in this regards the conduct of the assessee was not deliberate, or dishonest or in defiance of law or in disregard of obligation. There was no evasion of tax or generation of Black money, impliedly accepted by the JCIT / CIT(A). In these facts and circumstance the penalty imposed by the not justified and needs to be deleted and ground of appeal allowed.

Ground No. 2:-The learned CIT(A) erred in holding that penalty u/s 271D was mandatory once the contravention of section 269SS was “established” and regardless of any reference by the assessing officer, and / or the guidelines of CBDT circular no. 9 dated 26.04.2016, and /or the over ridding provision of section 273B of the Act.

Submissions –

1. The AO i.e. JCIT, Range-7, Jaipur in opening para office order had noted *"It has been found that during F.Y. 2016-17, he has accepted specified sum as mentioned in clause (b) of the section 269SS of the Income tax Act, 1961"*.

It is inexplicable as to how the JCIT found this information. It is pertinent to note that Return for A.Y. 2017-18, was not subjected to any proceedings under the Act. Further, no reference was made to the Range JCIT / Addl. CIT by the AO or in fact by any IT authority, regarding "Contravention" of section 269SS of the Act, in A.Y. 2017-18. This is evident from the response, of the ITO, Ward-7(2), Jaipur vide order u/s 7(1) r.w.s 6(3) of the RTI Act, 2005 to the application filed by appellant under the RTI Act. As per the ITO Ward-7(2), Jaipur :-

- (i) assessment order for A.Y. 2017-18 and the letter ITO, Ward-7(2) *"or any other ITO, of intimation / reference regarding of contravention of section 269 SS by the applicant was **not available**"*.
- (ii) That *"copy of the direction of the office of the director ICICI & I, if any regarding the contravention of the 269 SS by the **was not available**"*.

2. Thus, the Range- JCIT initiated proceedings on his whims and by arrogating the duty and role assigned to the ITO and without having any information / reference of the stated contravention of Section 269SS by the appellant. This also explains as to why the quantum of the contravention of section 269SS, mentioned by the JCIT, differed in his notices JCIT dated 21.02.2019, and in the notice dated 04.04.2019. The JCIT also did not act on the replies filed by the appellant in March / April 2019, for another four months before passing order only on 29.08.2019.

3. Sir, while the CBDT Circular no. 10/2016 dated 26.04.2016 states the limitation for proceedings u/s 271D, the circular No. 09/DV/2016 dated 26.04.2016, advised the Assessing Officers (below the rank of JCIT) **"to make a reference to the Range Head, regarding any violation of the provisions of section 269SS and section 269T of the Act, as the case may be, in the course of the assessment proceedings (or any other proceedings under the Act). The Assessing Officer, (below the rank of Joint Commissioner of Income Tax) shall not issue the notice in this regard."**

Sir, there is no assessment order u/s 143(3)/ proceedings / any occasion for A.Y. 2017-18 in the case of assessee, for any reference to be made the Range Head regarding violation of section 269SS by the assessee. The CBDT circular implies that the AO should first note the contravention, and determine its quantum before making the reference. The proceeding u/s 271D were not to be percolated from above.

In case of assessee, the Range- JCIT has arrogated the role assigned, to the AO, by the CBDT circular, dated 26.04.2016. This assumption of the role of AO by the Range JCIT is contrary to the established law. As held by **the Hon'ble Supreme Court in case of CIT, Shimla Vs Greenworld Corporation, 314 ITR 81**, *that when a statute provides for different hierarchies providing for forums in relation to passing of an order as also appellate or original order, by no stretch of imagination a higher authority can interfere with independence which is basic feature of any statutory scheme involving adjudicatory*

process. Further, assessing authority, exercising quasi-judicial function keeping in view scheme contained in Act, would not lose its independence to pass an independent order of assessment.

4. Sir, the observations of the CIT(A) that a reference from the ITO and / or the absence of an assessment order is not required, is invalid, since, it would make the CBDT circular infructuous and render it nugatory.

Hence, the proceeding and the order u/s 271D suffer from infirmities and fatal flaws and deserves to be quashed and the related ground of appeal to be allowed.

Ground No. 3:-The learned CIT(A) erred in ignoring the introductory propose of section 269SS under chapter XXB of the Act, and the decisions of the Hon'ble Supreme Court in case of Hindustan Steel, 83 ITR 26 and ADIT Vs. Kum.A.B.Shanthi, 255 ITR 258, in this regard. The penalty is not sustainable.

Submission :

1. The JCIT in his order noted that the amended provisions of Section 269SS, were meant to curb generation of black money. The CIT(A) in his order felt that penalty u/s 271D was inevitable and mandatory, once the provision of section 269SS was contravened, (irrespective of the reasonable cause and the provisions of section 273B of the Act and the judicial decisions in this regard). The CIT(A) observed (page 13) that ***"While the appellant's reasons may have been wellintentioned, the primary goal of the law is to combat black money generation and ensure transparency in financial dealings."*** Thus, both the JCIT and the CIT(A) proceeded on incorrect premises to come to an invalid conclusion. Moreover, both overlooked the provisions of section 273B, which were applicable in the facts and circumstance of the assessee.

2. In the I.T. Act, Section 269SS is under chapter XX-B of The Act which is

"REQUIREMENT AS TO MODE OF ACCEPTANCE, PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX". I

Sir, in facts and circumstances of the Assessee, there has been no generation of black money or evasion of Tax as contemplated in Chapter XXB of the Act. There is no or lack of transparency in financial dealings as felt, by the CIT(A). The Reasonable Cause of the Appellant has not been disproved or refuted. In fact it is accepted by the CIT(A). Thus, the payments by the purchaser and its receipt by the assessee were disclosed in the related books of account and Returns of Income. There was no loss of revenue and the factum and quantum of the transaction have not been doubted. Both the seller and the purchaser were existing persons. The transactions and the income returned in the relevant A.Y. 2018-19 was accepted by the FAO u/s 147/144B, after detailed enquiry . As such,

in view of the genuine and bonafide reasons, the undoubted transactions and their disclosure by the seller/purchaser, the business exigency, the urgency and factors that necessitated the receipts of the assessee and payments by the company, in cash etc. constituted “reasonable cause” and were in line with the legislative intention.

3. Your kind attention is drawn to the decision of the **Hon’ble Supreme Court in case of ADIT Vs. AB Shanti, 255 ITR 258 (cited before the JCIT/CIT(A) also)** which observed the object of introducing of section 269SS of the Act, as under:—

“The object of introducing section 269SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he makes some false entries, he shall not escape by giving false explanation for the same. During search and seizures, unaccounted money is unearthed and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so-called lender also to manipulate his records to suit the plea of the taxpayer. The main object of section 269SS was to curb this menace of making false entries in the account books and later giving an explanation for the same”.

The Hon’ble Supreme Court further observed that section 273B of the Act further provides that if there are a genuine and bona fide transactions and the tax payer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretionary power not to levy penalty. Section 273B of the Act provides that if assessee proves that there was a reasonable cause, the assessee is not subject to levy of penalty. This was reaffirmed by the Hon’ble Supreme Court in case of of **Hindustan Steel Ltd. v. State of Orissa, 83 ITR 26 (Supreme Court) (supra)** etc.

6. Kindly also refer to the decision in case of **CIT V/s Balaji Traders, 303 ITR 312(Madras)** and **the CIT V/s Ratna Agencies (Madras 284 ITR 609)**. The ratio of their decisions applies in the case of assessee.

Section 271D of the Income-tax Act, 1961 - Penalty - For failure to comply with section 269SS - Assessment year 1993-94 - Assessing Officer found that assessee had availed cash borrowings exceeding Rs. 20,000 for about 36 times during year - Considering assessee's act to be in violation of section 269SS, Assessing Officer imposed penalty upon assessee under section 271D - Tribunal found that there was business exigency forcing assessee to take cash loans for purpose of honouring its cheque commitments; creditors were genuine persons and transactions were satisfactorily explained by assessee; and there was no revenue

loss to State exchequer - Tribunal accordingly, set aside penalty - Whether Tribunal was justified - Held, yes

(i) **CIT V/s Ratna Agencies (Madras 284 ITR 609)**

Section 271D, read with section 271E of Income-tax Act, 1961 – Penalty – For failure to comply with section 269SS – Assessment year 1989-90 – Assessing Officer levied penalty on assessee under sections 271D and 271E on ground that assessee had contravened provisions of sections 269SS and 269T by accepting cash loans exceeding Rs. 20,000 – On appeal, Commissioner (Appeals) deleted said penalty holding that contravention alleged against assessee did not result in any unaccounted transaction such as lending and repayment and that both lending and repayment were entered in books of assessee and figures involved were meager and was incurred only for meeting sudden demand of over draft account – Tribunal upheld said order – Whether on facts, it could be said that there was reasonable cause for assessee not strictly complying with provisions of section 269SS and, therefore, no penalty under sections 271D and 271E could be imposed – Held, yes

Sir, in view of the un-rebutted facts and circumstance of the appellant and the applicable ratio of the judicial decisions and the flaws in the order of the Range JCIT / CIT(A) it is pleaded that the penalty order is quashed and appeal of the assessee allowed.

Ground No. 4:-CIT(A) violated Natural Justice by denying appellant, the opportunity of being heard, through Video conferencing, as requested by the appellant. The order is ab-initio void on this ground alone.

Submissions –

The CIT(A) accepted the validated details filed by the appellant in the paper book before him, namely i.e.:-

- (i) Copy of KhasraGirdawri (Land Revenue Record of assessee) of Farman Khan;
- (ii) Copy of Aadhar Card of parents of appellant.
- (iii) Copy of the computation / return for A.Y. 2018-19.
- (iv) Copy of the RTI Application dated 20.04.2021.
- (v) Copy of reply to RTI Application dated 18.05.2021.
- (vi) Copy of the bank statement of assessee Farman Khan in Canara Bank, SBI Bank (for F.Y. 01.04.2016 to 31.03.2017) & ICICI Bank from 11.06.2013.
- (vii) Bank statements of M/s Sidharth Buildtech Pvt Ltd. in ICICI Bank & Axis Bank at Chaksu.
- (viii) Copy of the Confirmation of M/s Sidharth Buildtech Pvt Ltd.

- (ix) Copy of the order Addl. Civil Judge-34, Chaksu, Jaipur dated 22.08.2015, in the case of Lala Ram Vs. Satyanarayan u/s 138 of Negotiable Instrument Act.
- (x) Copy of the order Addl. Civil Judge-20, Sanganer, Jaipur dated 18.08.2018 in the case of Vishnukant Vs. Satyanarayan Sharma.

However, the CIT(A) did not consider the specific request for Video Conferencing made by the assessee vide his submission. This is in violation of the scheme for faceless assessments / faceless appeal and the Principles of Natural Justice itself and makes the order of the CIT(A) invalid and liable to be quashed.

Prayer :-

Thus, in law and in facts, the penalty imposed the u/s 271D deserves to be quashed and it is prayed so. "

The ld. AR of the assessee in addition to the above written submission also argued that assessee has reasonable cause and has also filed the copy of the court order passed under negotiable instrument Act [section 138] and the same was sufficient reasons for the assessee to accept the cash which has not been appreciated by the lower authority. The ld. AR of the assessee submitted that the land was not a capital asset since it was agricultural land located in a village and that section 269SS applied for only in respect of the transfer of immovable property which is capital assets. Even the assessee resides in a village where the banking facilities not available and the nearest bank is 8 km away.

6. On the other hand, the ld. DR supported the order of the AO and ld. CIT(A) by mentioning that the Assessee has violated the provisions of Section 269SS of

the Act and thus the AO has rightly invoked the provisions of Section 271D imposing penalty of Rs.24.70 lacs being failure by the assessee to comply with the provisions of Section 269SS of the Act. To this effect, the ld. DR relied upon following case laws.

1. Sri Sai Balaji Gas Cylinder (P) Ltd. vs ACIT (2023) 155 Taxmann.com319 (Chennai – Trib)
2. DCIT vs Shri Gangadhara Murthy (ITA No. 2631, 2655 to 2637/Bang/2018 dated 20-09-2021 – ITAT Bang. Bench)
3. Dr. Sankaran Sundar vs ITO, Ward -2 (2)(7), Bangalore (ITA No. 572/Bang /2022 dated 21-09-2022)
4. Dewan Chand Amrit Lal vs DCIT, Hissar Range (2006) 98 ITD 200 (Chd. Special Bench).

7. We have heard both the parties and perused the materials on record including the case laws cited by the respective parties. In this case, it is noted that the AO imposed the penalty of Rs.24.70 lacs u/s 271D of the Act on the ground that the assessee has violated the provisions of Section 269SS by receiving cash of Rs.24.70 lacs instead of account payee cheque or demand drafts from M/s, Sidharth Buildtech Private Limited which is default in the eye of the AO. It is also noteworthy to mention that the AO has elaborately discussed the reason at page 7 of his order by justifying the reason of imposition of penalty u/s 271D amounting to Rs.24.70 lacs. It is also imperative to mention that the ld. CIT(A) took into

consideration the important submission of the assessee but dismissed the appeal of the assessee with following narration.

“After conducting a thorough analysis of the appellant's submission and carefully considering the contentions raised, it has been concluded that the grounds presented by the appellant cannot be upheld. The decision is based on the following explanations:

1. The appellant provided detailed explanations for the necessity of accepting cash for various purposes, such as agricultural operations, construction work, and addressing elderly parents' health concerns. However, it is important to emphasize that Section 269SS is specifically designed to discourage cash transactions, including those related to immovable property. While the appellant's reasons may have been well-intentioned, the primary goal of the law is to combat black money generation and ensure transparency in financial dealings. Although concerns about the potential non-honor of cheques are understandable, adherence to the prescribed modes of payment is crucial to comply with the provisions of the Income Tax Act.

2. The appellant mentioned the buyer, M/s Siddharth Buildtech Pvt. Ltd., and their cash transaction practices and dishonoring of cheques. Nonetheless, it is essential to note that the buyer's practices do not absolve the seller from complying with Section 269SS. As the seller in this transaction, it remains the seller's responsibility to ensure adherence to the prescribed modes of payment, regardless of the buyer's practices.

3. The appellant cited specific judicial decisions in support of their defense. Although their reliance on these cases is acknowledged, it is vital to assess the relevance of those judicial decisions to the specific circumstances of this case. The applicability of judicial decisions can vary depending on the unique facts and context of each case.

In conclusion, while the circumstances and concerns raised by the appellant have been taken into consideration, the applicability of Section 269SS is not contingent on the availability of funds in their bank accounts or the conduct of the buyer. The law places an obligation on both the buyer and the seller to carry out transactions in the prescribed modes to discourage black money generation.

Regrettably, the appeal cannot be supported based on the arguments presented. The proceedings were conducted in accordance with the relevant provisions of the Income Tax Act, and the penalty under Section 271D remains applicable.

Based on the preceding discussions, the appellant's appeal has been dismissed.”

The Bench has taken into consideration the orders of both the lower authorities including the written submission the ld AR of the assessee and case laws of respective parties. It is noted that the amended provisions of Section 269SS were meant to curb generation of black money. It is also noted that ld. CIT(A) felt that penalty u/s 271D was inevitable and mandatory once the provision of Section 269SS was contravened. It is also noted from page of 13 (para 1) of the ld.CIT(A) order wherein he mentioned that *“while the appellant’s reason may have been well intentioned, the primary goal of the law is to combat black money generation and ensure transparency in financial dealings”*. Thus both the JCIT and ld CIT (A) proceeded on incorrect premises to come to an invalid conclusion as both of them overlooked the provisions of Section 273B which were applicable in the facts and circumstances of the case and therefore, it is imperative to reproduce the provision of the Act;

Penalty not to be imposed in certain cases.

273B. Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of [section 271](#), [section 271A](#), [section 271AA](#), [section 271B](#), [section 271BA](#), [section 271BB](#), [section 271C](#), [section 271CA](#), [section 271D](#), [section 271E](#), [section 271F](#), [section 271FA](#), [section 271FAB](#), [section 271FB](#), [section 271G](#), [section 271GA](#), [section 271GB](#), [section 271H](#), [section 271-I](#), [section 271J](#), clause (c) or clause (d) of sub-section (1) or sub-section (2) of [section 272A](#), sub-section (1) of [section 272AA](#) or [section 272B](#) or sub-section (1) or sub-section (1A) of [section 272BB](#) or sub-section (1) of [section 272BBB](#) or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of [section 273](#), no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.

Based on the above provision of the Act and considering the fact that the assessee is facing the dishonour of cheque from the party from whom the payment is considered as accepted in contravention of the provision of the Act. In support of this contention the ld. AR of the assessee placed on record the court order at page 26-28 of the paper book for dishonour of the cheque. The ld. AR of the assessee also submitted that the assessee lives in a village and the banking facility is available at 8 km away from his village. Considering that facts there were sufficient reasons for such a failure for accepting the cash of the specified sum by the assessee against which there is no rebuttable as the assessee has filed the evidence in support of the contention and written submission. The bench also noted from the written submission that the apex court has in the case of ADIT vs AB Shanti, 255 ITR 258 which observed the object of introducing of Section 269SS of the Act as under:-

“The object of introducing section 269SS is to ensure that a taxpayer is not allowed to give false explanation for his unaccounted money, or if he makes some false entries, he shall not escape by giving false explanation for the same. During search and seizures, unaccounted money is unearthed and the taxpayer would usually give the explanation that he had borrowed or received deposits from his relatives or friends and it is easy for the so-called lender also to manipulate his records to suit the plea of the taxpayer. The main object of section 269SS was to curb this menace of making false entries in the account books and later giving an explanation for the same”

It is also worthwhile to mention that Hon'ble Supreme Court further observed that section 273B of the Act further provides that if there are a genuine and bona fide transactions and the tax payer could not get a loan or deposit by account payee cheque or demand draft for some bona fide reason, the authority vested with the power to impose penalty has a discretionary power not to levy penalty. Section 273B of the Act provides that if assessee proves that there was a reasonable cause, the assessee is not subject to levy of penalty. This was reaffirmed by the Hon'ble Supreme Court in case of Hindustan Steel Ltd. v. State of Orissa, 83 ITR 26 (Supreme Court) (supra). We also took into consideration the following case laws wherein imposition of penalty was not justified.

(i) CIT V/s Balaji Traders, 303 ITR 312(Madras) and the CIT V/s Ratna Agencies (Madras 284 ITR 609). The ratio of their decisions applies in the case of assessee.

Section 271D of the Income-tax Act, 1961 - Penalty - For failure to comply with section 269SS - Assessment year 1993-94 - Assessing Officer found that assessee had availed cash borrowings exceeding Rs. 20,000 for about 36 times during year - Considering assessee's act to be in violation of section 269SS, Assessing Officer imposed penalty upon assessee under section 271D - Tribunal found that there was business exigency forcing assessee to take cash loans for purpose of honouring its cheque commitments; creditors were genuine persons and transactions were satisfactorily explained by assessee; and there was no revenue loss to State exchequer - Tribunal accordingly, set aside penalty - Whether Tribunal was justified - Held, yes

(ii) CIT V/s Ratna Agencies (Madras 284 ITR 609)

Section 271D, read with section 271E of Income-tax Act, 1961 – Penalty – For failure to comply with section 269SS – Assessment year 1989-90 – Assessing Officer levied penalty on assessee under sections 271D and 271E on ground that assessee had contravened

provisions of sections 269SS and 269T by accepting cash loans exceeding Rs. 20,000 – On appeal, Commissioner (Appeals) deleted said penalty holding that contravention alleged against assessee did not result in any unaccounted transaction such as lending and repayment and that both lending and repayment were entered in books of assessee and figures involved were meager and was incurred only for meeting sudden demand of over draft account – Tribunal upheld said order – Whether on facts, it could be said that there was reasonable cause for assessee not strictly complying with provisions of section 269SS and, therefore, no penalty under sections 271D and 271E could be imposed – Held, yes

Thus, considering the provision of section 273B of the Act and considering the peculiar facts explained with the evidence by the assessee that assessee has reasonable cause to accept the cash and therefore, respectfully following the judicial precedent cited hereinabove, we do not concur with the findings of the Id.CIT(A) and thus penalty confirmed by the Id. CIT(A) u/s 271D of the Act amounting to Rs.Rs.24.70 lacs is directed to be deleted. Thus the appeal of the assessee is allowed.

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

Order pronounced in the open court on 20 /12/2023

Sd/-
(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

Sd/-
(राठोडकमलेशजयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 20 /12/2023.

Mishra

आदेश की प्रतिलिपिअग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Farman Khan, Chaksu ,Jaipur
2. प्रत्यर्थी / The Respondent- The ITO, Ward 7(3), Jaipur
3. आयकरआयुक्त / CIT
4. विभागीय प्रतिनिधि, आयकरअपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
5. गार्डफाईल / Guard File {ITA No. 590/JP/2023}

आदेशानुसार / By order,

सहायकपंजीकार / Asst. Registrar