

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

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / ITA No. 488/Hyd/2023
(निर्धारण वर्ष / Assessment Year: 2018-19)

Ramkumar Reddy Satty, Hyderabad [PAN : BAOPS4639E]	Vs.	Asst. Commissioner of Income Tax, Central Circle-1(2), Hyderabad
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri S. Rama Rao, AR
राजस्व द्वारा/Revenue by: Shri Shakeer Ahamed, DR

सुनवाई की तारीख/Date of hearing: 11/03/2024
घोषणा की तारीख/Pronouncement on: 19/03/2024

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 25/09/2023 passed by the learned Commissioner of Income Tax (Appeals)-11, Hyderabad ("Ld. CIT(A)"), in the case of Ramkumar Reddy Satty ("the assessee") for the assessment year 2018-19, the assessee preferred this appeal.

2. Brief facts of the case are that the assessee is a Book Maker of Hyderabad Race Club. During the year under consideration the assessee

sold a property for a consideration of Rs.39,38,000/- vide registered sale deed dated 12/07/2017, out of which, an amount of Rs. 9,38,000/- was received in cash. Hence the learned Assessing Officer passed an order dated 16/03/2022 under section 271D of the Income Tax Act, 1961 ('the Act') by levying penalty of Rs. 9,38,000/-.

3. Aggrieved, assessee preferred appeal before the learned CIT(A), and pleaded that the cash of Rs. 9.38 lakhs was received from the purchaser on the day of registration and before the Jt. Sub Registrar only, since the purchaser did not have sufficient bank balance and hence had to pay such sum in cash, which was accepted by the assessee to avoid inconvenience to the purchaser. Learned CIT(A), however, did not accept the contention of the assessee, stating that it is only an after thought and self serving. Learned CIT(A) accordingly dismissed the appeal of the assessee vide order dated 25/09/2023, holding that violation of the provisions under section 269SS of the Act shall follow and confirmed the penalty.

4. Aggrieved by the order of learned CIT(A), the assessee is now in appeal before us. Learned AR submitted that the amendment brought out under the provisions of section 269SS of the Act w.e.f. 01/06/2015 which includes the 'specified sum', and the definition of 'specified sum' as given in Explanation to Section 269SS of the Act shows that it means any sum of money receivable, whether as advance or otherwise, in relation to transfer of immovable property, whether or not the transfer takes place. Basing on this, he explained that this means that this is applicable for advance given at the time of entering into agreement for purchase/sale of property and not for actually registration done and sale consideration

received at time of registration of sale deed for purchase/sale of property. Learned AR also submitted that a provision was also brought in by the legislature in the statute vide Finance Act, 2017 w.e.f. 01/04/2017 by introducing the provision of section 269ST of the Act, wherein even the purchase of property, if the amount is two lakhs or more will be covered and penalty will be levied of an equivalent to the amount under section 271DA of the Act, which was also simultaneously introduced by the Finance Act, 2017 w.e.f. 01/04/2017. Hence, according to learned AR, this provision of 'specified sum' introduced w.e.f. 01/06/2015 does not hit the assessee's transaction, because on facts, the assessee has not received the amount of cash of Rs. 9,38,000/- as advance, but he received the same in front of the sub-registrar at the time of registration for sale of property. For this, he produced a copy of the registered sale deed for verification, which was not denied by the Learned assessing officer.

5. Per contra, learned DR placed heavy reliance on the orders of the authorities below and submitted that the sale consideration received in cash at the time of registration of sale deed, also hit by the provisions of Section 269SS of the Act in relation to acceptance of specified transaction of 'specified sum' of money i.e., whether as advance or otherwise, which means even the sale consideration received at the time of registration of sale deed is hit by this provision. Learned DR, however, does not dispute the contents of the sale deed produced by the assessee showing that the cash was paid and received in the presence of the Sub-Registrar. He requested that the order of the learned CIT(A) may be affirmed.

6. We have gone through the record in the light of the submissions made on either side. The relevant word “specified sum” has been defined under explanation (iv) to section 269SS, which is reproduced as under :

“(iv) “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.”

7. The meaning of the “specified sum” has also been dealt with by a Co-ordinate Bench of the Tribunal in the case of ITO vs. Shri. R. Dhinagharan (HUF), ITA No. 3329/Chny/2019, dated 28/12/2023, wherein the ITAT took the view that the ‘sum specified’ as per Explanation to Section 269SS of the Act, only applicable for advance receivable, namely, ‘as advance or otherwise’ means advance can be in any manner, and therefore, this provision will not apply to the transaction that happens when the final payment at the time of registration of sale deed and payment takes place before sub-registrar for registration of property. Relevant part of para No.12.1 of the decision of the ITAT is as under :

“From the above provisions, Memorandum explaining the intention of amendment by Finance Bill, 2015 including the definition of ‘sum specified’ brought in the Explanation to Section 269SS of the Act, it is clear that the intention for bringing this provision was to curb the generation of black money in real estate prohibiting acceptance or repayment of advance in cash of Rs.20,000/- or more for any transaction in immovable property. This was explained by Hon'ble Finance Minister while placing the Finance Bill, 2015 in her budget speech highlighting the intention of the amendment that the amendment in Explanation to Section 269SS i.e., ‘sum specified’ means only applicable for advance receivable, whether as advance or otherwise means advance can be in any manner. Hence, this provision will not apply to the transaction that happens at the time of final payment at the time of registration of sale deed and payment is made before sub-registrar at the time of registration of property. In the present case before us, it is an admitted fact that all sale deeds were registered and cash payment was made at one

go before the sub- registrar at the time of registration of sale deeds of plots. Hence, in our view, there is no violation of provisions of section 269SS of the Act in the present case in the given facts and circumstances of the case and hence, penalty is not exigible in this case. Hence, we confirm the order of CIT(A) deleting the penalty but on entirely different ground i.e., on jurisdictional issue only. Accordingly, the appeal of the Revenue is dismissed.”

8. In the present case before us, it is an admitted fact that the assessee received the amount of cash of Rs.9,38,000/- not as advance, but as the final payment in front of the Sub-Registrar at the time of registration for sale of property. While respectfully following the view taken by the Co-ordinate Bench of the Tribunal in the case of R. Dhinagharan(HUF) (supra), we hold that there is no violation of provisions of section 269SS of the Act in the present case in the given facts and circumstances and hence, penalty under section 271D of the Act is not leviable. Hence, we allow the grounds raised by the assessee.

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

Order pronounced in the open court on this the 19th day of March, 2024.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 19/03/2024

TNMM

Copy forwarded to:

1. Ramkumar Reddy Satty, 8-2-684, Plot No. 9, Road No.12, Banjara Hills, Hyderabad.
2. Asst. Commissioner of Income Tax, Central Circle-1(2), Hyderabad.
3. Pr.CIT (Central), Hyderabad.
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ITAT, HYDERABAD