

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्रीदुव्वूरुआरएलरेड्डी, न्यायिकसदस्यएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No.230/Viz/2022

(निर्धारणवर्ष/ Assessment Year : 2017-18)

Mahesh Kudaravalli,
Tenali.

PAN: BBPPK 3773 H

(अपीलार्थी/ Appellant)

अपीलार्थीकीओरसे/ Assessee by

प्रत्यार्थीकीओरसे/ Revenue by

Vs. Income Tax Officer,
Ward-1,

Tenali.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR

Dr. Aparna Villuri, Sr. AR

सुनवाईकीतारीख/ Date of Hearing

: 27/03/2024

घोषणाकीतारीख/Date of

: 04/04/2024

Pronouncement

ORDER

PERS. BALAKRISHNAN, Accountant Member :

This appeal is filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [in short 'Ld. CIT(A)-NFAC'] in DIN & Order No. ITBA/NFAC/S/250/2022-23/1046099375(1), dated 29/09/2022 arising out of the order passed U/s. 271D of the Income Tax Act, 1961 [in short 'the Act'] for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is an individual e-filed his return of income for the AY 2017-18 on 22/01/2018 admitting taxable income of Rs. 11,34,970/- from 'salary' and 'other sources' after claiming deduction under Chapter-VIA of the Act to tune of Rs. 1,63,000/-. The return was selected for limited scrutiny for examination of 'cash deposits during demonetization period'. Accordingly, notice U/s. 143(2) was issued on 9/8/2018 and the same was duly served on the assessee on 13/08/2018. Thereafter, notice U/s. 142(1) of the Act was also issued and called for certain information as the Department obtained information that the assessee made cash deposit of Rs. 13,03,000/- during demonetization period. In response, the assessee submitted that he sold a property at Vijayawada for a total consideration of Rs. 50,00,000/- and received sale consideration by way of Demand Draft (DD) dated 11/05/2016 for an amount of Rs. 40,00,000/- and the same was credited in his bank account with Central Bank of India on 12/5/2016. With respect to the balance amount, the assessee submitted that Rs. 8,00,000/- was received in cash and deposited the same on 18/5/2016 and the remaining amount of Rs. 2,00,000/- received as advance for the property sold during

the FY. The assessee further submitted before the Ld. AO that the cash deposit of Rs. 13,03,000/- was made during the demonetization period out of the funds withdrawn for Rs. 25 lakhs through the assessee's mother. In this regard, the assessee's explanation was called for to substantiate his claim with supporting documentary evidence. After considering the assessee's submissions, the Ld. AO came to a conclusion that the assessee failed to explain the source for cash deposits made during the demonetization period to the extent of Rs. 13,03,000/- and accordingly the Ld. AO considered the same amount as the deemed income of the assessee for the AY 2016-17 and brought to tax U/s. 69A of the Act towards unexplained money and passed the assessment order U/s. 143(3) of the Act dated 18/12/2019. Thereafter, the Ld. AO, National Faceless Assessment Centre by observing from the reply given by the assessee that out of the total sale consideration of Rs. 50 lakhs, an amount of Rs. 40 lakhs was received by way of banking channel and the rest of the amount was received in cash, the Ld. AO considered it as the contravention of the provisions of section 269SS of the Act and therefore initiated the penalty proceedings U/s. 271D of the Act. Thereafter, a notice U/s. 274 r.w.s 271D of the Act was issued on 3/8/2021 and duly served on the assessee.

In response, the assessee filed his replies on 4/8/2021 and 18/1/2022. However, the Ld. AO did not consider the submissions of the assessee and imposed the penalty of Rs. 10,00,000/- U/s. 271D of the Act. Aggrieved by the penalty order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, after considering the submissions of the assessee, the Ld. CIT(A)-NFAC dismissed the assessee's appeal vide order dated 29/09/2022. On being aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- "1. The order of the Ld. CIT(A)-NFAC is contrary to the law and facts of the case insofar as the amount was a part of sale consideration of Rs. 10 lakhs accepted from the purchaser of the property by the appellant by upholding the provisions of section 271D of the Act as applicable.*
- 2. As the provisions of section 271D may be liberally viewed by applying the provisions of section 273B of the Act as there was a 'reasonable cause' in having bonafide belief to the appellant. The appellate authority ought to have accepted the contentions of the appellant and allowed the appeal by granting relief.*
- 3. For these and other grounds that may be urged at the time of appeal hearing the appellant prays for relief."*

4. At the outset, the Ld. Authorized Representative [AR] the assessee received the disputed amount of Rs. 10 lakhs as part of

the sale consideration and deposited the same in his bank account which clearly shows the genuineness of the transaction.

The Ld. AR submitted that the cash receipts were also considered while computing capital gains and taxes paid accordingly. The Ld. AR therefore pleaded that the penalty levied by the Ld. AO-NFAC and confirmed by the Ld. CIT(A)-NFAC is not sustainable in law and hence the same may be deleted. The Ld. AR relied on various case laws viz., decision of the ITAT, Bangalore 'B' Bench in the case of Sri Padmanabha Mangalore Chowta vs. Addl/Joint CIT in ITA No. 147/Bang/2022 (AY 2017-18), dated 7/3/2023; IT(IT)A No. 585/Bang/2022, dated 14/9/2022 in the case of Anuradha Chivukula Challa vs. Addl. CIT and decision of the ITAT, Ahmadabad Bench in the case of Narendra Kumar Chunilal Soni vs. JCIT in ITA No. 195/Ahd/2022, dated 17/5/2023 but heavily relied on the decision of this Bench in the case of ACIT vs. Kanchumarthi Venkata Sita Ramachandra Rao in ITA Nos. 245 & 246/Viz/2020, dated 30/08/2022 and also the decision of this Bench in the case of Smt. Vijapurapu Sudha Rao vs. ITO in ITA No. 111/Viz/2023 (AY 2017-18), dated 29/11/2023.

5. Per contra, the Ld. Departmental Representative heavily relied on the orders of the Ld. Revenue Authorities and argued in support of their decision.

6. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. The core issue involved in the grounds raised by the assessee is with respect to validity of levy of penalty U/s. 271D on account of receipt of cash in relation to transfer of immovable property by the assessee attracting the provisions of section 269SS of the Act. The admitted facts are that the assessee has received cash partly for the sale of immovable property from the buyer to the extent of 10,00,000/-. Section 269SS of the Act as amended by Finance Act, 2015 wef 1/6/2015 stipulates that no person shall take or accept from any other person, 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. The “specified sum” has been defined in the section 269SS of the Act as follows:

“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. From the plain reading of the above section, it is noted that any person is barred from receiving from any amount otherwise by cheque or through banking channels in relation to transfer of the immovable property. Section 269SS of the Act prohibits receipt of any amount by way of cash in relation to the transfer of any immovable property. On this aspect the Memorandum explaining the provisions of Finance Bill 2015 with respect to amendment proposed w.e.f 1/6/2015 in section 269SS is relevant and reproduced below:

“In order to curb generation of black money by way of dealings in cash in immovable property transactions it is proposed to amend section 269SS, of the Income-tax Act so as 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 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.”

8. The objective of the amendment proposed in 269SS of the Act is to curb generation of black money. In the instant case the fact is that cash received by the assessee has been deposited by the assessee into the bank account, hence does not attract the provisions of section 269SS of the Act since there is no suppression of cash receipts by the assessee. The assessee has

also offered the capital gains to tax. Further, the explanation given by the assessee for receipt of sale consideration of Rs. 10,00,000/- constitutes a “reasonable cause” as contemplated in section 273B of the Act and the assessee has accepted the cash under inevitably unavoidable circumstances as explained by the Ld. AR in his arguments and immediately on receipt of the cash, the assessee deposited the same in the bank account which contemplates the genuineness of the transaction and moreover the assessee has paid the capital gain tax thereon. Under these circumstances, we are of the considered view that the penalty levied by the Ld. AO-NFAC U/s. 271D and confirmed by Ld. CIT(A)-NFAC is unsustainable in law and accordingly the orders of the Ld. AO-NFAC and Ld. CIT(A)-NFAC are set aside and thereby we delete the penalty. It is ordered accordingly.

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

Pronounced in the open Court on 04th April, 2024.

Sd/-

(दुव्वूरु आर .एल रेड्डी)

(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)

(S.BALAKRISHNAN)

लेखासदस्य/ACCOUNTANT MEMBER

Dated :04.04.2024

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee–Mahesh Kudaravalli, 19-15-39, Lakshmi Enclave Bose Road, Tenali, Andhra Pradesh – 5322201.
2. राजस्व/The Revenue –Income Tax Officer, Ward-1, Tenali O/o. ITO, OPP. Sai Baba Temple, Bose Road, Tenali, Andhra Pradesh – 522201.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam