

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'SMC' : NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
and  
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.2525/DEL/2023  
(Assessment Year: 2017-18)**

Sudama Sharma,  
IPSO Legal H-35, 1<sup>st</sup> Floor,  
Jangpura Extension,  
Delhi – 110 014.

vs. ITO, Ward 67 (1),  
New Delhi.

**(PAN : BFOPS9326F)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Dishant Sethi, Advocate  
Ms. Sumangla Saxena, Advocate  
Shri Shyam Sunder, Advocate  
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 02.05.2024  
Date of Order : .05.2024

**ORDER**

**PER SHAMIM YAHYA, ACCOUNTANT MEMBER :**

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)/National Faceless Appeal Centre (NFAC) dated 27.07.2023 for the assessment year 2017-18.

2. Grounds of appeal taken by the assessee read as under :-

“1. That the Ld. CIT (A), NFAC has erred in law as well as on facts in sustaining the addition of Rs.21,000/- made by Ld. Assessing Officer u/s 271D r.w.s. 269SS of the Act.

2. That the levy of penalty u/s 271D of the Act is bad in law in as much as the appellant had a reasonable cause as provided u/s 273B of the Act.”

3. The facts relating to levy of penalty are duly captured from the assessee’s submissions before the Id. CIT (A) as under :-

Assessee has sold property LIG Flat No.434, Third Floor, Pocket B, Lok Nayak Puram, New Delhi to Shri Binay Kumar Gupta for a total sale consideration of Rs.15,00,000/- vide sale deed dated 07.02.2017. A sum of Rs.21,000/- was received in part in two instalments out of total bayana paid of Rs.1,21,000/-. Subsequently, sale deed was made after taking loan by the buyer from HDFC Bank and whole of the payment was mad through account payee cheques. The buyers is a school teacher and receiving salary from the government and so was not having enough resources to make payment on his own due to which loan was taken. The bayana initially was paid of Rs.10,000/- to the broker for getting the deal clicked and the broker paid Rs.10,000/- to the assessee for getting the deal confirmed thereafter Rs.21,000/- paid by the buyer in cash and Rs.1,00,000/- through cheque so that buyer could get signed the documents of bayana with the assessee for submitting it to the bank. The amount of Rs.10,000/- and Rs.11,000/- paid by the broker as well as the buyer were also out of withdrawals made by the buyer from his bank account. The assessing officer did not enquire anything and

concluded that Rs.21,000/- was paid in cash for selling the property and so notice u/s 271D was sent which was never received by the assessee and it was only later on assessee aimed to know that an order u/s 271D is also passed exparte on the bayana paid of Rs.21,000/- in two instalments due to which penalty has been levied.

4. Upon assessee's appeal, ld. CIT (A) confirmed the penalty.
5. Against this order, assessee is in appeal before us. We have heard both the parties and perused the records.
6. Ld. Counsel for the assessee submitted that assessee has almost received the entire amount in cheque. However a miniscule amount is paid in cash due to the reason that the buyer did not have that much amount remaining in the bank as he had already withdrawn the same from the bank. In this regard, ld. Counsel for the assessee placed reliance on the decision of ITAT in the case of Noordeen Ahmed Amina vs. ITO in ITA No.1118/Chny/2022 for AY 2018-19 vide order dated 26.07.2023 wherein the Tribunal has held as under :-

“ Proceeding further, from the facts, it emerges that the assessee has sold property for sale consideration of Rs.50 lacs out of which substantial sale consideration to the extent of Rs.45 lacs has been received in cheques whereas only a small sale consideration of Rs.5 lacs has been received in cash. The sale transaction is duly evidenced by the registered agreement/deed. Considering the fact that the provisions of Sec.269SS are mainly to curb generation of black money by way of dealings in cash in immovable property transactions which is absence in the present case, we would hold that it is

not a fit case for levy of impugned penalty. Therefore, we delete the same.

8. The appeal stand allowed in terms of our above order.”

Accordingly, he pleaded to set aside the orders of authorities below and delete the penalty.

7. Per contra, ld. Dr for the Revenue relied upon the orders of the authorities below.

8. Upon careful consideration, we find that the buyer in this case has paid almost entire amount by cheque but only a small amount is paid in cash. The reasonable cause made in this regard is that the amount was already withdrawn from the bank by the buyer and no amount remained in the bank. In these circumstances, we find that the case laws referred by the assessee as above duly supports the case of the case. In our considered opinion and on the facts & circumstances of the case, penalty levied under section 271D is not leviable. Accordingly, we set aside the orders of the authorities below and delete the penalty.

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

**Order pronounced in the open court on this 8<sup>th</sup> day of May, 2024.**

**Sd/-  
(SUDHIR PAREEK)  
JUDICIAL MEMBER**

**sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 8<sup>th</sup> day of May, 2024  
TS**

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- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A).
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**