

आयकर अपीलीय अधिकरण, कटक न्यायापीठ, कटक

IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.375/CTK/2023

(निर्धारण वर्ष / Assessment Year : 2017-2018)

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| Arati Saraf, Qtr.No.34/40, Bundia Colony, R.Kudopali, Brajarajnagar, Jharsuguda-768225 | Vs | JCIT, Range Rourkela, Rourkela |
| PAN No. :DBTPS 2700 A | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |
| निर्धारिती की ओर से /Assessee by | : | Shri P.K.Mishra, Advocate |
| राजस्व की ओर से /Revenue by | : | Shri S.C.Mohanty, Sr. DR |
| सुनवाई की तारीख / Date of Hearing | : | 13/05/2024 |
| घोषणा की तारीख/Date of Pronouncement | : | 13/05/2024 |

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi, dated 21.11.2023, in DIN & Order No.ITBA/NFAC/S/250/2023-24/1058110164(1) for the assessment year 2017-2018, confirming the penalty levied u/s.271D of the Act of Rs.5,22,000/- for violating the provisions of section 269SS of the Act.

2. Before us, the assessee has challenged the levy of penalty on the grounds that the proceedings were initiated without jurisdiction and also there was a reasonable cause for accepting the cash in violation to provisions of Section 269SS of the Act.

3. Brief facts of the case are that the AO has received information from DIT(I&CI), Bhubaneswar that the assessee has received a sum of Rs.5,22,000/- in cash as sale consideration against the immovable property sold by her during the year. Thus, the assessee has violated the provisions of Section 269SS of the Act. Accordingly, the AO referred the matter to the JCIT for levy of penalty u/s.271D of the Act and the JCIT Range-Rourkela levied penalty u/s.271D of the Act vide order dated 25.08.2022 for an equal amount to the amount of cash received on sale consideration of Rs.5,22,000/-.

4. Aggrieved, the assessee preferred appeal before the Id. CIT(A), who confirmed the order of the Id. CIT(A) by holding that the assessee has not placed any material to show that there was a reasonable cause in accepting the sale consideration in cash.

5. Before us, the Id.AR of the assessee submitted that the assessee has performed her daughter's marriage on 11.03.2016, wherein she had incurred huge debts. In order to repay the debts she was forced to dispose off the property and received the consideration in cash which was paid to clear the dues and since under this urgent circumstances, the consideration is received in cash, her case is duly covered under the reasonable cause as provided u/s.273B of the Act. He further contended that clause (iv) in Explanation to Section 269SS of the Act has been inserted defining the term "specified sum", according to which if any sum/advances is received in relation to the transfer of property then the provisions of Section 269SS of the Act could be invoked. He further stated

that Section 269ST of the Act was brought into the statute w.e.f.01.04.2017, which is applicable where any transaction of the amount of Rs.2 lakhs or more made in cash, penalty would be leviable of an equal amount u/s.271DA. Accordingly, the Id. AR of the assessee contended that the term "specified sum" as introduced w.e.f.01.06.2015 does not hits assessee's transaction more particularly when the assessee has not received any advance payment rather has received the entire sale consideration in one row at the time of getting the document registered before the sub-registrar. Ld. AR also submits that in the present case, there was no assessment proceedings either pending or carried out against the assessee in which the satisfaction could be recorded for violation of the provisions of Section 269SS of the Act, and, therefore, when no proceedings were pending before the AO, the jurisdiction assumed by the AO for referring the matter to the JCIT u/s.271D of the Act, is illegal and barred by limitation, therefore, requested for cancellation of penalty so levied.

6. On the other hand, Id. Sr.DR supported the order of the lower authorities and argued that the term "specified sum" as inserted in Explanation to Section 269SS of the Act relates to any sum of money receivable as advance or otherwise in relation to transfer of immovable property whether or not the transfer takes place clearly covered the transaction of the assessee where she has accepted cash against the sale of immovable property. Therefore, he requested for the confirmation of the levy of penalty u/s.271D of the Act.

7. We have considered the rival contentions and perused the material available on record. With regard to the contention raised by the Id. AR that the penalty has been levied without the jurisdiction, we find that in Section 271D of the Act, there is no compulsion that before levy of penalty any satisfaction is to be recorded in any proceedings so also in Section 269SS of the Act, there is no reference of pendency of any proceedings before initiation of proceedings. The Hon'ble Rajasthan High Court in the case of CIT Vs. Hissaria Bros. reported in [2007] 291 ITR 244 (Raj.), held that "penalty proceedings for default in not having transactions through the bank as required under sections 269SS and 269T of the Act are not related to the assessment proceedings but are independent of it, therefore, the completion of appellate proceedings arising out of the assessment proceedings or the other proceedings during which the penalty proceedings under Sections 271D and 271E of the Act may have been initiated has no relevance for sustaining or not sustaining the penalty proceedings". Accordingly, we are of the view that since the proceedings u/s.269SS of the Act are independent proceedings and for violating the provisions of Section 269SS of the Act, the penalty is leviable u/s.271D of the Act, therefore, the contention of the Id. AR that the penalty proceedings has been initiated without jurisdiction does not hold water and, thus, this contention is dismissed.

8. With regard to reasonable cause, from the records, we find that the assessee since inception of the proceedings before the AO has submitted that the payment was received in cash due to urgency of

making payment of the debts taken at the time of marriage of her daughter, which is a bonafide reason and duly covered under reasonable cause u/s.273B of the Act. It is further seen that the transaction has been disclosed, therefore, there was no loss to the revenue. With regard to the contention that the term "specified sum" as provided in the explanation to Section 269SS of the Act does not apply to the sale consideration received in cash at the time of registration of sale deed, we find that the provisions of Section 269SS of the Act was amended w.e.f.01.06.2015 wherein in explanation to the said Section the term "specified sum" was inserted which reads 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.

9. While inserting the above clause into the Act vide Finance Bill 2015, the memorandum forming part of the Finance Bill, 2015 highlighted the reasons that the insertion and amendment in Section 269SS to this effect and reads as under :-

B. MEASURES TO CURB BLACK MONEY

Mode of taking or accepting certain loans, deposits and specified sums and mode of repayment of loans or deposits and specified advances

The existing provisions contained in section 269SS of the Income-tax Act provide that no person shall take from any person any loan or deposit otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is twenty thousand rupees or more. However, certain exceptions have been provided in the section. Similarly, the existing provisions contained in section 269T of the Income-tax Act provide that any loan or deposit shall not be repaid, otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, by the persons specified in the section if the amount of loan or deposit is twenty thousand rupees or more.

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.

It is also proposed to amend section 269T of the Income-tax Act so as to provide that no person shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is twenty thousand rupees or more.

The specified advance shall mean any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not the transfer takes place. It is further proposed to make consequential amendments in section 271D and section 271E to provide penalty for failure to comply with the amended provisions of section 269SS and 269T, respectively. These amendments will take effect from 1st day of June, 2015.

10. The Notes on Clauses forming part of Finance Bill, 2015

highlighting the intention of the amendment is as under :

Clause 66 of the Bill seeks to substitute section 269SS of the Income-tax Act relating to mode of taking or accepting certain loans and deposits.

The existing provision contained in section 269SS provides that no person shall take from any person any loan or deposit otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account if the amount of such loan or deposit is twenty thousand rupees or more.

It is proposed to substitute the said section so as to provide that no person shall take from any person, any loan or deposit or specified sum, otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account if the amount of such loan or deposit or specified sum is twenty thousand rupees or more.

It is also proposed to define "specified sum" as any sum of money receivable, whether as advance or otherwise in relation to transfer of an immovable property whether or not the transfer materialises

These amendments will take effect from 1st June, 2015.

11. In the present case, as is evident from para 4 of the penalty order that the AO has received information that the assessee has received cash of Rs.5,22,000/- in cash from Shri Sushil Kumar Nayak in relation to transfer of immovable property vide document No.10861600866 of Registering office, Jharsuguda. From this observation, it is very much clear that the sale consideration was received by the assessee in cash at the time of getting the sale deed document registered before the sub-registrar. From the perusal of the amendment made in Section 269SS of the Act, where the term "specified sum" has been inserted, it is clear that it is applied only where any advance against the sale of immovable property transaction was received whether or not such transaction has been converted into final sale. The statute has also introduced in Section 269ST w.e.f. Assessment Year 2017-2018 to cover of the cash transaction of Rs.2 lakhs or above, which are not covered in Section 269SS of the Act and provided the levy of penalty u/s.271DA of the Act for violation of provisions of Section 269ST of the Act.

12. In the instant case, the AO has invoked the provisions of Section 269SS of the Act and levied the penalty u/s.271D of the Act for taking cash at the time of sale of immovable property. As discussed above, provisions of Section 269ST and Section 271DA has been introduced which are meant for the violation of making cash transaction above Rs.2.00 lacs, which was not invoked by the AO though the transaction referred is fallen under the provision of Section 269ST of the Act. From the perusal of the intention of the legislature as explained in the

memorandum and notes on clauses, while amendment made vide Finance Bill 2015, it is clear that intention for bringing this provision was to curb the generation of black money in real estate transaction for prohibiting the acceptance of the payment of advance in cash of Rs.20000/- or more. The “specified sum” as defined is applicable only for “advance” receivable whereas the “advance otherwise” means advance can be of any manner. Therefore, this provisions is not applicable to the transactions where no advance payment in cash has been received and the cash transactions have happened at the time of registration of the sale deed. The present case of assessee also falls in this category where admittedly entire cash was received by assessee in one go at the time of execution of sale deed. Therefore, in our considered view there is no violation of the provisions of Section 269SS of the Act which has been wrongly invoked in this transaction. Accordingly, the penalty levied is hereby deleted.

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

Order dictated and pronounced in the open court on 13/05/2024.

Sd/-
(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(MANISH AGARWAL)

लेखा सदस्य/ ACCOUNTANT MEMBER

कटक Cuttack; दिनांक Dated 13/05/2024

Prakash Kumar Mishra, Sr.P.S.

आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant-
Arati Saraf,
Qtr.No.34/40, Bundia Colony,
R.Kudopali, Brajarajnagar,
Jharsuguda-768225
2. प्रत्यर्थी / The Respondent-
JCIT, Range Rourkela, Rourkela

3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR,
ITAT, Cuttack
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack