

आयकर अपीलीयअधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन, लेखा सदस्य के समक्ष

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

आयकर अपील सं./ I.T.A. No.210/Viz/2022

(निर्धारण वर्ष / Assessment Year : 2016-17)

Nymisha Kundum,
Narsipatnam.
PAN: AYZPD 6914 B
(अपीलार्थी/ Appellant)

Vs. Income Tax Officer,
Ward-1(1),
Rajahmundry.
(प्रत्यर्थी/ Respondent)

अपीलार्थी की ओर से/ Assessee by

: Sri GVN Hari, AR

प्रत्यर्थी की ओर से / Revenue by

: Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing

: 09/05/2024

घोषणा की तारीख/Date of
Pronouncement

: 28/05/2024

ORDER

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)-NFAC"] in DIN & Order No. ITBA/NFAC/S/250/2022-23/1043662684(1), dated 29/06/2022

arising out of the order passed U/s. 271D of the Income Tax Act, 1961 [“the Act”] for the AY 2016-17.

2. At the outset, it is noticed from the appeal record that there is a delay of 53 days in filing the appeal before the Tribunal. Explaining the reasons for belated filing of the appeal, the assessee filed an affidavit along with a petition seeking condonation of delay and the contents of the said affidavit are as under:

“1
 2. *The appellant suffered from Fibula Fracture and was advised to take bed rest from 25/08/2022 to 10/10/2022 (copy of medical certificate is enclosed herewith). As such, during this period, the appellant was not in a position to attend any other matters. During this period, the Chartered Accountant of the appellant was busy and did not inform the appellant about the time limit for filing the appeal. As soon as the appellant recovered, the appellant met her Chartered Accountant and took necessary steps and filed the appeal on 20/10/2022*

3.”

3. On perusal of the contents of the affidavit filed by the assessee, we find that the assessee was prevented by a reasonable and sufficient cause in filing the appeal beyond the prescribed limit with a delay of 53 days. Therefore, we hereby condone the delay of 53 days in filing the appeal before the Tribunal and proceed to adjudicate the appeal on merits in the following paragraphs.

4. Briefly stated the facts of the case are that the assessee, an individual, filed her return of income on 18/11/2016 for the AY 2016-17 declaring total income of Rs. 5,39,580/-. Later on, the case was selected for scrutiny under CASS for the reason “whether the cash deposits have been made from disclosed sources”. During the course of assessment proceedings, the assessee was asked to furnish the sources of cash deposits. In response, the assessee furnished the information as called and for and explained that there were cash deposits of Rs. 13,57,600/- in the bank account and the source for the same was the sale of immovable property on 19/08/2015 vide Document No. 3631/2015 and 3632/2015. The assessee also paid capital gains on the sale consideration of the said property. Accordingly, the Ld. AO completed the assessment U/s. 143(3) of the Act on 24/11/2018 and determined the total income at Rs. 5,78,580/-. Thereafter, by observing that on sale of the immovable property, the assessee has received full value of consideration in cash of Rs. 15,41,000/-, which is in violation of the provisions of section 269SS of the Act, penalty proceedings U/s. 271D of the Act was initiated by the Ld. AO and issued notices to the assessee. In response, the assessee made written submissions and explained the reasons for accepting the sale consideration in cash. The explanation given by the assessee was

extracted in the order passed U/s. 271D of the Act, dated 05/02/2022. The assessee also relied on the decision of the ITAT in the case of Venkata Narayana Raju Pasuparthi vs. Addl. CIT (ITA No. 229 of 2019). However, the Ld. AO did not consider the submissions of the assessee as well as the explanation given by the assessee and passed the penalty order by concluding that since the assessee has received sale consideration of Rs. 15,41,000/- violating the provisions of section 269SS of the Act, penalty of Rs.15,41,000/- was levied on the assessee 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.

5. On appeal, the Ld. CIT(A)-NFAC passed an ex-parte order and upheld the penalty levied by the Ld. AO. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before us by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Ld. CIT(A) is not justified in sustaining the penalty of Rs. 15,41,000/- levied by the Ld. AO U/s. 271D of the Act.*
3. *The Ld. CIT(A) ought to have held that the case of the appellant falls within the scope of reasonable cause as specified in section 273B of the Act.*
4. *Any other ground that may be urged at the time of appeal hearing.”*

Further, the assessee has also raised an additional ground which reads as under:

“The penalty order U/s. 271D of the Act passed on 5/2/2022 is liable to be quashed as invalid in the absence of any satisfaction recorded by the AO in the assessment order dated 24/11/2018 U/s. 143(3) of the Act.”

6. At the outset, the Ld. Authorized Representative [AR] the assessee received the disputed amount of Rs. 15,41,000/- 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.

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

8. 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 for the sale of immovable property from the buyer to the extent of 15,41,000/-. 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.”

9. 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.”

10. 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. 15,41,000/- 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 tax on capital gains 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.

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

Pronounced in the open Court on 28th May, 2024.

Sd/-

(दुव्वूरु आर. एल रेड्डी)
(DUVVURU RL REDDY)

न्यायिकसदस्य/JUDICIAL MEMBER

Sd/-

(एस बालाकृष्णन)
(S.BALAKRISHNAN)

लेखा सदस्य/ACCOUNTANT MEMBER

Dated :28.05.2024

OKK - SPS

आदेश की प्रतिलिपि अग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Nymisha Kundum, D.No. 1-180, Behind Heritage Fresh, Santhi Nagar, Balighattam, Narsipatnam, Andhra Pradesh – 531116.
2. राजस्व/The Revenue – Income Tax Officer, Ward-1(1), O/o. ITO, Aayakar Bhavan, Veerabhadrapuram, Rajahmundry, Andhra Pradesh – 533105.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam