

आयकर अपीलिय अधिकरण, 'सी' न्यायपीठ, चेन्नई
**IN THE INCOME TAX APPELLATE TRIBUNAL
'C' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं
श्री अमिताभ शुक्ला, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND
SHRI AMITABH SHUKLA, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.52/Chny/2024
निर्धारण वर्ष/Assessment Year: 2017-18

Smt. John Sushila George, 21/276 - Shine Cottage, Unniyoorkonam, Kulasekharam, Kanyakumari District-629 161.	v.	The ACIT, Ward-4, Nagercoil.
[PAN: DCAPS 9353 H]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Shri B. Ramakrishnan, FCA
प्रत्यर्थी की ओर से /Respondent by	:	Shri P. Sajit Kumar, JCIT
सुनवाईकीतारीख/Date of Hearing	:	21.05.2024
घोषणाकीतारीख /Date of Pronouncement	:	05.07.2024

आदेश / ORDER

PER ABY T. VARKEY, JM:

This is an appeal preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)/NFAC, (hereinafter in short "the Ld.CIT(A)"), Delhi, dated 11.12.2023 for the Assessment Year (hereinafter in short "AY") 2017-18.

2. The main grievance of the assessee is against action of the Ld.CIT(A) confirming the penalty levied u/s.271D of the Income Tax Act, 1961 (hereinafter in short "the Act") on 29.12.2017 admitting total



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income of Rs.22,700/-. Later, the case of the assessee was selected for scrutiny under CASS and the assessment was completed by the AO u/s.143(3) of the Act on 25.07.2019 accepting return of income of Rs.22,700/-. The AO during the course of assessment proceedings noted that assessee had sold immovable properties and received consideration in cash other than by account payee cheque or bank draft or use of ECS through a bank account which according to the AO was in violation of mode of transaction specified u/s.269SS of the Act. Pursuant thereto, the Addl.CIT initiated penalty proceedings u/s.271D of the Act for violation of sec.269SS of the Act and issued notice to the assessee and pursuant thereto, assessee filed the reply as under:

"During the FY 2016-17 relevant to AY 2017-18, she had made four sale transactions. First one executed on 25.10.2016 for which she accepted cheque for Rs.24,00,000/- and deposited into her Bank account. Unfortunately the Cheque No.049876 dated 19.10.2016 given by purchaser credited in her Bank account only on 24.10.2016 i.e after six days. The sale deed registration was postponed and materialized on 28.10.2016 only. This delay compelled her mind to accept cash for the future sales. Moreover, her husband was not available there at the time and held up at his working place due to hectic work and she managed all those things lonely. Also, she had reported the sale amount in her return of income and she paid stamp duty for the amount she received and mentioned in the sale deed and the transactions were genuine. But the default was merely technical and venial in nature".

3. Thereafter, the Addl.CIT noted that assessee had transacted/sold immovable property (agricultural land) to Shri J. Sajikumar on various dates between 28.10.2016 and 15.11.2016 for an amount of Rs.14,57,000/- and therefore, he imposed penalty of the same amount vide penalty order dated 25.02.2020, which was confirmed by the Ld.CIT(A), against which, the assessee is before us.



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4. We have heard both the parties and perused the material available on record. The assessee an individual who earns agricultural income has sold her agricultural land for Rs.38,57,000/- and out of which, she received Rs.24 lakhs in cheque (*which was credited after six days of deposit of cheque in assessee's bank account*) and Rs.14,57,000/- was received in cash; And the Ld.Add.CIT has imposed penalty u/s.271D of the Act, in respect of cash received by the assessee. The main contentions of the assessee is that the assessee as well as the buyer (Shri J. Sajikumar) are both engaged in agricultural activity and both of them (i.e. vendor as well as buyer) didn't had any income other than income from agricultural activity. Hence, according to the assessee, 2nd proviso of sec.269SS of the Act comes to the aid of the assessee, wherein, it is provided that sec.269SS of the Act, shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom, the loan or deposit or specified sum is taken or accepted are both having agricultural income and neither of them has any income chargeable to tax under this Act. Further, the assessee brought to the notice of the Addl.CIT as well as the Ld.CIT(A) that the assessee out of Rs.14,57,000/- received from the buyer of the agricultural land had deposited Rs.13 lakhs in her bank account and balance was used for her personal use. And that the full consideration on sale of property was shown in the document registered



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with the Sub-Registrar Office and the same was also duly reflected in the ITR filed dated 29.12.2017. Thus, it was asserted by the assessee that assessee had no intention of evading the tax. It was also brought to the notice of the authorities below that assessee was engaged in agricultural activity and received agricultural income of Rs.1,85,000/-. It was also brought to the notice of the both authorities that the buyer of the property (Shri J. Sajikumar) was also engaged in the agricultural activity and since, he could not arrange the full consideration in his bank account before the due date of registration, he paid part of the consideration in cash to show his bona fide of purchasing the land, since the cheque dated 19.10.2016 could not be credited on presentation, and only after six days, the amount was credited in the assessee's bank account. Because of this incident, assessee insisted that sale consideration should be handed over before the registration take place (before this incident, once the registration got postponed). Therefore, the buyer brought cash and since her husband was abroad, she took cash from the buyer of the property and since, Shri J. Sajikumar was also an agriculturist, she pleaded that penalty should not be levied on the assessee. We note that the assessee had asserted before the Ld.CIT(A) that both the assessee as well as the buyer were having agricultural income and neither of them had any income chargeable to tax under the Act and therefore, the second proviso to sec.269SS of the Act, would come to their aid and penalty may not be



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levied for violation of sec.269SS of the Act. However, the Ld.CIT(A) has not made any endeavor to see whether the assessee's assertion is correct or not. The details of the buyer's name, address, PAN, ITR details are available in the registered sales document, which was produced by the assessee. However, without making any enquiry whatsoever, the Ld.CIT(A) has brushed aside the claim of the assessee which action of the First Appellate Authority cannot be countenanced. Be that as it may. It is noted that assessee is a house wife, assessee's husband is abroad and she had sold the agricultural land and has received Rs.24 lakhs in cheque for one property and for sale of another property registration got postponed, because, the cheque given by the buyer could not be credited in the assessee's bank account and only after six days money got credited in her account. This incident raised apprehension in her mind and therefore, she insisted on cash payment for the sale of agricultural land and the buyer had given cash of Rs.14,57,000/-, which has been duly shown in the sale deed which has been registered in the Sub-Registrar Office. Thus, considering the over-all facts, we note that there was a reasonable cause for assessee accepting the cash from the buyer who is also an agriculturist and for that we rely on the judgment of the Hon'ble Gujarat High Court in the case of CIT v. Maa Khodiyar reported in [2014] 45 taxmann.com 566 (Gujarat), wherein, the Hon'ble Gujarat High Court has held as under:



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8. Further the Jurisdictional High Court in the case of Maa Khodiyar Construction (cited supra) held that no penalty is leviable u/s. 271D for cash loans exceeding Rs. 20,000/- from agriculturists living in remote areas when transaction were not doubted. Invoking section 273B of the Act as follows:

"... 9. Section 269SS of the Act at this stage requires consideration alongwith Sections 271D and 273B of the Act. Any loan or deposit, if accepted by any person otherwise than by an account payee cheque or account payee bank draft from any person exceeding rupees twenty thousand rupees or more. Section 269SS of the Act prohibits the same after the 30th June 1984. Section 271D makes such person who received the amount in contravention of provision of Section 269SS liable for penalty, a sum equal to the amount of loan or deposit so accepted. Section 273B of the Act of course carves out the way in certain cases and provides that no penalty shall be imposable on the person or the assessee, as the case may be. for any failure referred to in the said provisions which includes Section 271D if he proves that there was reasonable cause for the said failure.

10. What is therefore necessary to prove is the reasonable cause by the assessee on its having failed to abide by the conditions incorporated in the said provision of Section 269SS.

11. Reverting to the facts of the instant case, a sum of Rs. 42.75 lakhs has been taken by way of loan by the respondent from ten different persons. Admittedly, this was by way of loan in cash exceeding rupees twenty thousands and the same therefore contravenes the provision of Section 269SS of the Act.

12. For not inviting the rigour of penalty u/s. 271D of the Act as consequence, on the part of the assessee, the reasonable cause needs to be shown. What is pleaded by the respondent was that all these persons were agriculturists and that the genuineness of the transactions at no point of time had been doubted by the Revenue. They stayed in remote areas. Both the authorities, therefore, were of the opinion that reasonable cause had been sufficiently made out and when the very transactions were never doubted by the Revenue authorities. The breach is to be treated as a mere technical or venial breach.

13. We notice that the requirement of Section 273B is for the assessee to prove that there was a reasonable cause for its having failed to abide by the provisions of Section 269SS. As emerges from the record, not only the substantiating evidence like 7/12 Extracts were produced. But, also additionally, transactions were reflected in the accounts of assessee and the advancement of loan to the assessee had been reflected in the books of account of those persons from whom the loan had been received. The identity of those persons has also been well established. The assessee also had given satisfactory reason for taking such loan. His bona fide belief that such transactions would not attract provision of Section 269SS on the ground that they were agriculturists and lived in remote villages also was one of the grounds which has weighed with both the authorities.

14. In view of forgoing discussion, we are of the opinion that no error has been committed by both the authorities below in deleting the penalty. It is true that the respondent has income from other business and these transactions were not between agriculturists having only agriculture income, not liable to tax which have been exempted from such rigor of law and yet, the cause advanced is when found to be sufficiently reasonable, no interference would be desirable."

8.1. The Hon'ble Jharkhand High Court in the case of OMEC Engineers (cited supra) interpreted the expression 'sufficient cause' in the context of levy of penalty and deleted the same as follows:



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"...22. The words 'reasonable cause' have not been defined under the Act but they could receive the same interpretation which is given to the expression 'sufficient cause'. Therefore, in the context of the penalty provisions, the words 'reasonable cause' would mean a cause which is beyond the control of the assessee. 'Reasonable cause' obviously means a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fides. Before imposition of penalty under section 271, the Assessing Officer must be satisfied, not arbitrarily but judiciously, that the assessee has without reasonable cause failed to comply with the provisions.

23. In the instant case, as noticed above, there is no finding of the assessing authority, the appellate authority or the Tribunal that the transaction made by the assessee in breach of the provisions of section 269SS was not a genuine transaction. On the contrary, the return filed by the assessee was accepted after scrutiny under section 143(3) of the Act. Further, there is no finding of the appellate authority that the transaction in breach of the aforesaid provisions made by the assessee was mala fide and with the sole object to disclose the concealed or undisclosed money. The authorities have proceeded on the basis that breach of condition provided under section 269SS of the Act shall lead to penal consequences. In our view, in the facts and circumstances of the case, the imposition of penalty merely on technical mistake committed by the assessee, which has not resulted in any loss of revenue, shall be harsh and cannot be sustained in law."

5. In the light of the judicial precedents and taking into consideration the overall facts of the case, we find that there is a reasonable cause for not levying penalty u/s.271D of the Act, since the buyer as well as the seller are both agriculturists and the genuineness of the transaction at no point of time has been doubted by the Revenue. Therefore, sec.273B of the Act also comes to the aid of the assessee, so we direct deletion of the penalty.

6. In the result, appeal filed by the assessee is allowed.

Order pronounced on the 05th day of July, 2024, in Chennai.

Sd/-

(अमिताभ शुक्ला)

(AMITABH SHUKLA)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(एबी टी. वर्की)

(ABY T. VARKEY)

न्यायिक सदस्य/JUDICIAL MEMBER



ITA No52/Chny/2024 (AY 2017-18)
Smt. John Sushila George

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चेन्नई/Chennai,
दिनांक/Dated: 05th July, 2024.

TLN, Sr.PS

आदेश की प्रतिलिपि अग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF