

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

**BEFORE,
SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.2310/Del/2023
(ASSESSMENT YEAR 2017-18)**

Smt. Renu Bala C/o DS Legal & Associates B-50, LGF, South Extension-II New Delhi-110049 PAN:AKHPI2292K (Appellant)	Vs.	Addl. CIT Range-II, Faridabad (Respondent)
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Assessee by	Shri Shantanu Jain, Adv.
Respondent by	Shri Vivek Vardhan, Sr. DR

Date of Hearing	21/05/2024
Date of Pronouncement	12/07/2024

ORDER

PER S.RIFAUR RAHMAN, AM:

1. This appeal has been filed by the Assessee against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC) Delhi ["Ld. CIT(A)", for short], dated 31/01/2023 for Assessment Year 2017-18.

2. The brief facts of the case are, during the assessment proceedings, the Assessing Officer observed that assessee had received cash of Rs.18,25,000/- of the total sale consideration on 06/10/2016 during the Financial Year 2016-17 relevant to the Assessment Year 2017-18. The Assessing Officer observed that the assessee has violated the provision of section 269SS of the Income Tax Act, 1961 ('the Act' for short), after satisfied by the Assessing Officer on the violation of the provisions of section 269SS of the Act, penalty proceedings u/s 271D of the Act was initiated by issue of notice dated 12/04/2019. In response, the assessee has denied receipt of any cash loan of Rs.18,25,000/- during the current year and also submitted a statement of oath and further submitted as under:

"1.) The assessee, when she was unmarried, had applied for a EWS/Janta category plot under the Rohini Residential Scheme 1981 of Delhi Development Authority, Delhi and Application No 38565/FDR No-09509/Rohini Registration Receipt No 10/8 Rs. 750/- (Rs. Seven Hundred and Fifty Only) dt 15/03/1981. (Copy of Application Receipt attached-Annexure-II),

2.) The assessee was entitled for the allotment of plot of 26 Sq Mts under the Rohini Residential Scheme 1981 of Delhi Development Authority, Delhi (Copy of the Scheme downloaded from DDA website attached-Annexure-III).

3.) The assessee entered an agreement to sell future ownership rights of the plot against the abovementioned application booking receipt to Mrs. Raj Rani on 04/06/2007 for a total sale consideration of Rs. 18,25,000/- (Rs.

Eighteen lacs Twenty Five thousand only) and received the sale consideration in installments as advance during the period from 04/06/2007 to 12/10/2010(Copy of Receipt attached-Annexure-IV). This was not a cash loan. Since the amount was received before 01.06.2015 as advance against sale of future rights in the property therefore, it is not in the nature of Specified sum, which was introduced under Section 26955 through Finance Act, 2015 w.e.f 01.06.2015 and is applicable for A.Y-2016-17 onwards.

It is also mentioned in the Sale deed registration no-1894 dt 10/06/2016 that the consideration has been received by the assessee from the buyer, through Separate legal receipt, in cash, in advance (Copy of Sale Deed enclosed-Annexure-V).

4.) The assessee was allotted the Plot under the scheme on 12/06/2012 (Relevant Extract of the Draw List attached- Annexure-VI) and It can be verified at https://dda.org.in/ddanew/pdf/hot_links/rohini_draws/alltralews.pdf

As assessee informed me that after getting the allotment she transferred the possession of plot to Mrs Raj Rani.

5.) On repeated requests by the assessee, Buyer Mrs. Raj Rani agreed to complete the registration process in the office of sub registrar. Finally on 10.06.2016 the registration process was completed in sub registrar office, New Delhi.”

3. After considering the above submissions, the Assessing Officer rejected the same and observed that the assessee had received cash well before the transfer of property and, further observed that whole transaction was in lieu of the sale of property and transfer of property taken place at the time of registration of the property which was completed on 10/06/2016, since, the transfer of property was effected after the applicability of provision i.e.,01/06/2015, therefore, the provision will be applicable in this

case. He observed that the assessee has accepted the cash exceeding Rs.20,000/- other than account payee cheque, account payee bank draft and assessee also does not fall in the exempted category. Hence, second proviso to section 269SS does not apply in the case of the assessee. Therefore, it is substantiated that the assessee has failed to discharge its onus for rebutting the findings of the Department, therefore, it was a clear case of violation of the provisions of section 271D of the Act. Accordingly, he proceeded to levy penalty u/s 271D of the Act to the extent of Rs.18,25,000/-.

4. Aggrieved with the above order, the assessee preferred an appeal before the NFAC, Delhi against the imposition of penalty. After considering the detailed submissions of the assessee and grounds of appeal, the Ld. CIT(A) sustained the penalty imposed by the Assessing Officer and dismissed the appeal filed by the assessee.

5. Aggrieved with the above order, the assessee raised the following grounds of appeal:-

“1. That the Ld. CIT(A) has erred in law and on facts in upholding the penalty order of the Ld. AO passed under Section 271D of the Act.

1.1 That the Ld. CIT(A) has failed to consider the fact that the penalty order suffers from perversity in as much as the appellant did not receive

nor taken any cash loan or specified sum during the Financial Year 2016-17 relevant to Assessment Year 2017-18 and thus the notice needs to be quashed and as such the penalty needs to be set aside.

2. That on the facts and circumstances and in law the notice issued by Ld. AO is bad and without jurisdiction and liable to be quashed and as such the penalty order needs to be set aside.

2.1 That the Ld. CIT(A) has failed to take into consideration the fact that the notices issued are without jurisdiction in as much that the penalty initiated is for taking cash loan of Rs. 18.25 Lacs whereas penalty imposed for taking specified sum and thus the notice so issued is liable to be quashed and as such the penalty order needs to be set-aside.

3. That the impugned order passed against the Assessee is illegal and invalid in the eyes of law, as such the same is liable to be quashed and set aside.

4. That the penalty so imposed is barred by limitation of law.

5. The Appellant craves leave for adducing necessary evidence, amendments, modifications and explanations including written one to the aforesaid grounds and also additional grounds in the course of hearing of the appellate proceedings.”

6. At the time of hearing, the Ld. AR brought to our notice page 17 to page 19 of the first appellate order and brought to our notice penalty imposed by the Assessing Officer which was sustained by the Ld. CIT(A) rejecting the various submissions made by the assessee. In this regard, he submitted that amendment to section 269SS was made on 01/06/2015 and assessee has received substantial amount of payment before the amended date of 01/06/2015. He submitted that assessee has received various installment of payments during the period of Financial Years 2007

to 2010. In this regard, he brought to our notice page 6 & 7 of the Paper Book submitted before the Assessing Officer wherein the assessee has brought to the knowledge of the Assessing Officer that assessee has received the cash prior to 01/06/2015 and also submitted that assessee has not received any cash loan/cash receipt during the Financial Year 2016-17 relevant to Assessment Year 2017-18 against the sale of property. Therefore, applying the amended provisions of section 269SS retrospectively in this case is not proper. He relied on the decisions of the Co-ordinate Bench in the case of ACIT vs. Ruhil Developers Private Limited, in ITA No.7128/Del/2018 dated 30/08/2022.

7. On the other hand, the Ld. DR relied on the findings of the Assessing Officer and he brought to our notice page 2 of the penalty order and further relied on the conclusions of the Ld. CIT(A).

8. Considered the rival submissions and material placed on record, we observed that assessee has registered the sale agreement during the current assessment year, however, with regard to receipt of sale consideration it is brought to our notice

that the assessee has received sale consideration by way of cash settlement in the form of various installments during the Financial Years 2007-2010. It is also brought to our notice that during the year assessee has completed the registration formalities and has not received any cash payment during the current year under consideration. However, we observed that the Assessing Officer and Ld. CIT(A) observed that assessee as per the document submitted before them has received cash and the same was recorded in the documents for registration, therefore, they came to the conclusion that assessee has received cash settlement against the transfer of property registered during the year. Both the authorities have confirmed that the provisions of section 269SS was amended and applicable on the specified amount in the registered document w.e.f 01/06/2015. The issue before is whether the receipt of cash by the assessee prior to amendment made in section 269SS are applicable retrospectively or not. We observed that the similar issue was considered and decided by the Co-ordinate Bench in the case of Ruhil Developers Private Limited (supra) and the same is reproduced below:-

"18. In this connection, we find that the Act squarely covered the issue of loans & deposits till the passes the Finance Act, 2015 w.e.f. 01.06.2015. It was only after 01.06.2015 in addition to the loan or deposit, "any specified sum" was also brought under the ambit of Section 269SS. The earlier provisions could not envisage the utilization of provisions of Section 269SS for the advances" taken or accepted. This mischief has been addressed w.e.f. 01.06.2015 only by adding the words "any specified sum". In a stricter sense "any specified sum" means any sum of money receivable, whether as advance or otherwise in relation to transfer of immovable property, whether or not the transfer takes place. In one way, the "specified sum" restricted the applicability of the provision to the advances taken or accepted or receivable only in relation to transfer of immovable property. However, at this juncture, it would be suffice to hold that the similar transactions entered by the assessee w.e.f. 01.06.2015 would be liable to the provisions of Section 269SS as well as Section 271D. For the sake of ready reference, the relevant portion of the Finance Act, 2015 is reproduced as under:

REQUIREMENT AS TO MODE OF ACCEPTANCE, PAYMENT OR REPAYMENT IN CERTAIN CASES TO COUNTERACT EVASION OF TAX

[Mode of taking or accepting certain loans, deposits and specified sum.

269SS. No person shall take or accept from any other person (herein referred to as the depositor), 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, if-

(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause

(a) together with the amount or the aggregate amount referred to in clause (b), is twenty thousand rupees or more:

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,-

(a) the Government;

(b) any banking company, post office savings bank or co-operative bank;
 (c) any corporation established by a Central, State Provincial Act; (d) any Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

[Provided further that the provisions of this section 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.]

(b) Explanation. For the purposes of this section, -

[(i) "banking company" means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949), applies and includes any bank or banking institution referred to in section 51 of that Act;]

(ii) "co-operative bank" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949 (10 of 1949);

(iii) "loan or deposit" means loan or deposit of money;

(iv) "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer an immovable property, whether or not the transfer takes place."

19. Since, the amendment to the provisions of Section 26955 have been brought w.e.f. 01.06.2015 with regard to the "advances" received in relation to transfer of immovable property, and since the appeal before us pertains to the A.Y. 2013-14 and since the amendment is not retrospective in operation, we hereby hold that the appeal of the revenue is liable to be dismissed."

9. Respectfully following the above decisions, we are in agreement that the amendment to section 269SS is applicable prospectively, therefore, the specified amount mentioned in the Act is applicable only to those cash receipts by the assessee after the amendment. In this case the assessee has received cash settlement by various installments received from the purchaser prior to the

amendment and not received any cash during the year under consideration. Therefore, we are inclined to allow the grounds raised by the assessee, therefore, appeal filed by the assessee is allowed.

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

Order pronounced on 12th July, 2024.

Sd/-

**(SUDHIR PAREEK)
JUDICIAL MEMBER**

Dated:12/07/2024

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

ASSISTANT REGISTRAR
ITAT, NEW DELHI