

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI GEORGE GEORGE K, VICE PRESIDENT AND
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

ITA No.1192/Bang/2024
Assessment Year : 2017-18

Smt. Pushpalatha, No.130, 2 nd Main, Judicial Layout, Shivanagar, Thalagattapura, K. R. Road, Bengaluru – 560 062. PAN : BCVPP 7207 C	Vs.	ITO, Ward – 3(2)(1), Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri. Hemant Pai, CA and Shri. R. Krishnamurthy, Advocate
Revenue by	:	Shri. V. Parithivel, JCIT(DR)(ITAT), Bengaluru.

Date of hearing	:	23.07.2024
Date of Pronouncement	:	26.07.2024

ORDER

Per George George K, Vice President:

This appeal at the instance of the assessee is directed against the order of CIT(A) dated 19.04.2024, passed under section 250 of the Income Tax Act, 1961 (hereinafter called ‘the Act’). The relevant Assessment Year is 2017-18.

2. Brief facts of the case are as follows:

Assessee is an individual. Assessee had sold a property on 15.06.2016. Out of the sale consideration of Rs.90 lakhs, she had received in cash a sum of

Rs.49,10,000/-. For Assessment Year 2017-18, assessee filed the return of income on 11.02.2018 declaring total income of Rs.3,92,783/- and had also disclosed the capital gains arising on the sale of property. The assessee in the return of income claimed exemption under section 54 of the Act with regard to investment made from sale proceeds of the property. The assessment was selected for scrutiny by issuance of notice under section 143(2) of the Act. The Assessment Order was passed under section 143(3) of the Act (Order dated 09.12.2019) accepting the returned income.

3. However, during the course of assessment proceedings, it was noticed by the AO that assessee was in receipt of cash of Rs.49,10,000/- on account of sale of property on 15.06.2016. The AO was of the view that accepting cash on account of sale of immovable property was in contravention of provision of section 269SS of the Act which was amended by Finance Act, 2015 w.e.f. 01.06.2015, whereby the amount of cash received of more than Rs.20,000/- on account of sale of property was also included as violation of section 269SS of the Act. Accordingly, assessee was issued show cause notice under section 274 of the Act r.w.s. 271D of the Act on 11.01.2022. In response, assessee submitted as follows:

"I pushpalatha, I have sold my house property during the FY 2016-17 for Rs. 90,00,000/- and the same has been declared in my IT return and also assessment has been done by the ITO 3(2)(4), Bangalore on 09.12.2019. I am a housewife, I have received part of the sale consideration by way of cash due to lack of knowledge about cash transaction. I have Invested the total LTCG on purchase of new residential property and the same has been assessed by the ITO. Kindly consider the above facts and drop penalty proceedings."

4. The AO rejected the above explanation of the assessee and held that there is no "reasonable cause" for accepting the cash on account of sale of immovable property and imposed penalty under section 271D of the Act for a sum of

Rs.49,10,000/- (being the cash accepted in contravention to the provisions of section 269SS of the Act).

5. Aggrieved, assessee filed appeal before the First Appellate Authority (FAA). Before the FAA, assessee reiterated the submissions made before the AO. The CIT(A), after extracting the relevant provisions of the Act, held that assessee herself had accepted the fact that she has violated the provisions of section 269SS of the Act, out of ignorance of law and the same does not constitute “reasonable cause” as mandated under section 273B of the Act. Accordingly, the penalty imposed by the AO was confirmed by the CIT(A).

6. Aggrieved by the order of the CIT(A), assessee has filed the present appeal before the Tribunal. During the course of argument, assessee had raised several legal grounds such as (i) Order of penalty under section 271D of the Act is time barred (ii) there is no recording of satisfaction in the Assessment Order for initiation of penalty under section 271D of the Act (iii) the Order passed by the jurisdictional JCIT is bad in law since the correct authority ought to be NFAC. To the above contentions, the learned DR submitted that he needs time to file a report and sought adjournment of the case. Then the learned AR submitted that he is not pressing the legal grounds and is only pressing the issue on merits as to whether the CIT(A) is justified in confirming the imposition of penalty under section 271D of the Act. Moreover, we find that there are no corresponding grounds in the memorandum of appeal for raising the aforesaid legal issues. Therefore, we confine our adjudication only to the issue on merits and dismiss the aforementioned legal issues submitted during the course of hearing.

7. The learned AR submitted that there was no agreement for sale and the amount of Rs.49,10,000/- has been received as part of the sale consideration while executing the sale deed. Therefore, it was submitted that provisions of section

269SS of the Act will not have application. In this context, the learned AR relied on the Orders of the Tribunal in the case of ITO Vs. Shri. R. Dhinagharan (HUF) in ITA No.3329/Chny/2019 (Order dated 29.12.2023) and in the case of Ramkumar Reddy Satty Vs. ACIT in ITA No.488/Hyd/2023 (Order dated 19.03.2024).

8. The learned DR, on the other hand, submitted that Explanation (iv) to section 269SS of the Act defines the meaning of “specified sum” as any sum of money receivable as advance or otherwise with respect to transfer of an immovable property, whether the transfer takes place or not. It was submitted by the learned DR that the term “otherwise” is wide enough to cover not only advance received during the course of sale transaction but would also cover sale consideration received during the execution of sale deed.

9. We have heard the rival submissions and perused the material on record. Admittedly, assessee had received cash amounting to Rs.49,10,000/- towards sale consideration for transfer of her immovable property. It is the contention of the learned AR that receipt of such sale consideration is not covered under the provisions of section 269SS of the Act as the scope of said section is limited to receipt of money in the nature of advance. To adjudicate the issue, we need to examine the relevant provision of section 269SS of the Act, which reads as follows:

“269SS. Mode of taking or accepting certain loans, deposits and specified sum.

*No persons 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*

Explanation. — For the purposes of this section, —

.....

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

(Emphasis supplied)

10. The doctrine of *Ejusdem Generis* is a latin maxim meaning “of the same kind and nature”. According to the Black’s Law Dictionary, “the principle of *Ejusdem Generis* is where general words follow an enumeration of persons or things by particular and specific words. Not only these general words are construed but also held as applying only to persons or things of the same general kind as those specifically enumerated.”. We are of the view that the word “otherwise” used under section 269SS of the Act cannot include “sale consideration” as the word “otherwise” should be read in accordance with the principle of *Ejusdem Generis*. The word “otherwise” should draw its colour from other words used in the provisions contained in section 269SS of the Act i.e., “money receivable as an advance”. Invoking the doctrine of *Ejusdem Generis*, we are of the view that the term “otherwise” should be interpreted in a narrow sense and it must include the words similar to “money receivable, as advance”. In other words, the term “otherwise” cannot be given a wider interpretation. The Hon’ble Supreme Court in the case of Kamlesh Kumar Sharma Vs. Yogesh Kumar Gupta reported in (1998) 3 SCC 45 held that wherever there is term “otherwise” the word is to be given a restricted meaning. The relevant finding of the Hon’ble Apex Court reads as follows:

“13. We find, after giving our careful consideration that in case the appellant's' argument is accepted by giving wider interpretation to the word "otherwise", it would thwart the very object of the Act.... The word "otherwise" has to be read as ejusdem generis, that is to say, in group

similar to death, resignation, long leave vacancy, invalidation, person not joining after being duly selected.... Hence the word "otherwise" cannot be given the wide and liberal interpretation which would exclude a large number of expected applicants who could be waiting to apply for the vacancies occurring in the succeeding year in question."

11. Further, the Hyderabad Bench of the Tribunal in the case of Suman Savings and Investments Pvt. Ltd., reported in (1987) 23 ITD 345 (Hyd.), had accepted the Department's contention that the principle of *Ejusdem Generis* should be applied to the term "otherwise" in section 40A(8)(c)(iv) of the Act and that it should be interpreted within the context in which it is used. The relevant finding of the Hyderabad Bench of the Tribunal reads as follows:

"9. We are not persuaded by the contention of Sri Parthasarathy that the term 'otherwise' occurring in sub-cl. (iv) of cl. (c) of Explanation to sub-s. (8) of s. 40A would cover the chit fund business. The Legislature in its superior wisdom has used the term 'otherwise' in juxtaposition with 'loans' and 'advances'. There is force in the contention of the learned departmental representative that the principle of ejusdem generis should be applied and the term should be interpreted in the context in which it is used. There are several methods of financing in addition to making loans or advances, as for instance, by making deposits for a fixed term, by underwriting or standing as surety or guaranteeing the loan for a fee or a commission. In our view, in the context in which the term 'otherwise' occurs in the said sub-cl. (iv), it is only such other modes of financing which are envisaged but not the chit transactions which are totally alien in this context."

12. Further, we find that the AO could have initiated penalty proceedings only under section 269ST of the Act instead of section 269SS of the Act. Section 269ST of the Act places restriction on the assessee who receives an amount of Rs.2,00,000/- or more. In the instant case, the amount received as consideration for the transfer of immovable property would be covered under the rigor of section 269ST of the Act and not under section 269SS of the Act. On identical facts, the Chennai Bench of the Tribunal in the case of ITO Vs. Shri. R. Dhinagharan (HUF) (supra) had held that the consideration received on execution of the sale deed

would not be covered under section 269SS of the Act but only an advance in relation to sale of property. The Chennai Bench of the Tribunal, after considering the relevant provisions of the Act and the Circular issued by the Board, had held as under :

“12. We have heard the rival contentions, and gone through the facts and circumstances of the case. We find that the Revenue has challenged the correctness of the decision rendered by the CIT(A) vide order dated 30.09.2019 in deleting the penalty levied u/s 271D of the Act vide penalty order dated 12.06.2019. The CIT(A) had deleted the penalty on two counts namely on the non-applicability of the provisions of Section 269SS of the Act to the facts of the present case and on the ground of reasonable cause within the scope of Section 273B of the Act. We noted that the provisions of Section 269SS of the Act was amended w.e.f. 01.06.2015 to include the ‘specified sum’ within its ambit and the said term was defined in Explanation to the said Section which is reproduced as under:

o “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.

The Budget Speech of the Hon'ble Finance Minister while placing the Finance Bill, 2015 highlighting the intention of the amendment relevant for decision making in the present appeal is captured below:

3. A. Measures to curb black money

3.1 With a view to curbing the generation of black money in real estate, it is proposed to amend the provisions of section 269SS and 269T of the Income-tax Act so as to prohibit acceptance or repayment of advance in cash of Rs. 20,000 or more for any transaction in immovable property. It is also proposed to provide a penalty of an equal amount in case of contravention of such provisions.

The Memorandum forming part of Finance Bill, 201.5 highlighting the intention of the amendment is captured below:

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.

*The Notes on Clauses forming part of Finance Bill, 2015
highlighting the intention of the amendment is captured below:*

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.

12.1 In the present case, the sale consideration was received in cash at the time of execution of multiple sale deeds from different persons for the sale of plots and accepted as genuine in the assessment order completed on 23.05.2018 and admittedly there was no advance received by the seller. The amended provisions of Section 269SS of the Act was applied by the A.O to the facts of the present case only to the sale consideration received as 'specified sum' and on such presumption the JCIT levied penalty u/s 271D of the Act. The intention of the amendment is very clear right from the Budget speech of the Finance Minister that the said amendment is brought into the statute in Section 269SS of the Act would get attracted to sum received in cash as an advance in an immovable property transaction and not to the completed transaction namely cash received as a sale consideration at the time of execution of the registered sale deed. In fact, the statute brought in another amendment in Section 269ST of the Act from the assessment year 2017-18 with a view to cover all situations of cash transaction Rs. 2 Lakhs or over other than the situation captured in Section 269SS of the Act. This provision has been explained with more clarity by the

CBDT Circular No.19 of 2015, dated 27.11.2015 and the relevant circular reads as under:-

Departmental Circular No.19 of 2015, dated 27-11-2015:-

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

54.1 Provisions contained in section 269SS of the Income-tax Act, before amendment by the Act, provided 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 were provided in the section.

54.2 Similarly, the provisions contained in section 269T of the Income-tax Act, before amendment by the Act, provided 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.

54.3 In order to curb generation of black money by way of dealings in cash in immovable property transactions, section 269SS of the Income-tax Act has been amended 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(specified sum) 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.

54.4 Section 269T of the Income-tax Act has also been amended 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.

54.5 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, have also been made.

54.6 Applicability: These amendments have taken effect from 1st day of June, 2015.

From the above provisions, Memorandum explaining the intention of amendment by Finance Bill, 2015 including the definition of 'sum specified' brought in the Explanation to Section 269SS of the Act, it is clear that the intention for bringing this provision was to curb the generation of black money in real estate prohibiting acceptance or repayment of advance in cash of Rs.20,000/- or more for any transaction in immovable property. This was explained by Hon'ble Finance Minister while placing the Finance Bill, 2015 in her budget speech highlighting the intention of the amendment that the amendment in Explanation to Section 269SS i.e., 'sum specified' means only applicable for advance receivable, whether as advance or otherwise means advance can be in any manner. Hence, this provision will not apply to the transaction that happens at the time of final payment at the time of registration of sale deed and payment is made before sub-registrar at the time of registration of property. In the present case before us, it is an admitted fact that all sale deeds were registered and cash payment was made at one go before the subregistrar at the time of registration of sale deeds of plots. Hence, in our view, there is no violation of provisions of section 269SS of the Act in the present case in the given facts and circumstances of the case and hence, penalty is not exigible in this case. Hence, we confirm the order of CIT(A) deleting the penalty but on entirely different ground i.e., on jurisdictional issue only. Accordingly, the appeal of the Revenue is dismissed."

13. Similar view has been held by the Hyderabad Bench of the Tribunal in the case of Ramkumar Reddy Satty Vs. ACIT (supra). The Hyderabad Bench of the Tribunal followed the Order of the Chennai Bench of the Tribunal in the case of ITO Vs. Shri. R. Dhinagharan (HUF) (supra).

14. Further, on the facts of the present case, we find there is “reasonable cause” as mandated under section 273B of the Act, for the failure to comply with section 269SS of the Act. Section 269SS of the Act was amended by the Finance Act, 2015, wherein the term “specified sum” was introduced to include amount received for transfer of immovable property as a measure to curb generation of black money. The relevant extract of the memorandum of Finance Bill, 2015, reads as follows:

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.

[Clauses 66, 67, 69 & 70]

15. In the present case, there was no intention, whatsoever, to generate unaccounted money/black money as the assessee had recorded the receipt of entire cash in the registered sale deed and duly disclosed the same in the return of income filed. Assessee had also claimed exemption under section 54 of the Act towards construction of residential house. In this context, it is pertinent to note that the claim made by the assessee under section 54 of the Act has been allowed by the AO in the assessment completed. Copy of the bank statement and the Assessment Order dated 09.12.2019 is placed on record. Therefore, it is clear that there is no unaccounted money / black money in the transaction. Moreover, we find that in this case there was no agreement to sell executed between the parties as is evident from the sale deed. Therefore, the assessee had no legal right to enforce the sale. All the payments were made through DD and cheques and cash was paid to the assessee only on the date of sale deed being executed. Hence, denial by the assessee to receive the consideration in cash would have resulted in failure of sale of the said property. Moreover, the amendment effected by Finance Act, 2015, to section 269SS of the Act, which had laid a restriction for receiving cash for transfer of immovable property would not have come to the knowledge of the assessee who is a woman having elementary education and no knowledge of tax laws. She would have not been under a belief that there was contravention of any provision of the Act. On identical facts, the following judicial pronouncements

had held that there is “reasonable cause” as mandated under section 273B of the Act :

- a. *Smt. Vijapurapu Sudha Rao reported in [2023] 157 taxmann.com 669 (Visakhapatnam - Trib.)*
- b. *Smt. Anuradha Chivukula Challa in IT(IT)A No.585/Bang/ 2022 : Asst.Year 2017-2018 dt. 14.09.2022*
- c. *Sri Padmanabha Mangalore Chowta in ITA No.1147/Bang/2022 dt. 07.03.2023*
- d. *Narendrakumar Chunilal Soni ITA No. 195/A11d/2022 dt. 17.05.2023*
- e. *Kanchumarthi Venkata Sita Ramachandra Rao, Rajahmundry reported in 2022 (9) TMI 53 - ITAT VISAKHAPATNAM*

16. In view of the aforesaid reasoning and judicial pronouncements cited, we hold that on the facts of the instant case, penalty under section 271D of the Act, is not warranted and we delete the same. It is ordered accordingly.

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

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(WASEEM AHMED)
Accountant Member

Sd/-

(GEORGE GEORGE K)
Vice President

Bangalore.

Dated: 26.07.2024.

/NS/*

Copy to:

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|---------------|-------------------------|
| 1. Appellants | 2. Respondent |
| 3. DRP | 4. CIT |
| 5. CIT(A) | 6. DR, ITAT, Bangalore. |
| 7. Guard file | |

By order

Assistant Registrar,
ITAT, Bangalore.