

**आयकर अपीलीय अधिकरण, हैदराबाद पीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**Hyderabad 'SMC' Bench, Hyderabad**

**Before Shri Manjunatha, G. Accountant Member**

आ.अपी.सं / **ITA No. 677/Hyd/2024**  
(निर्धारण वर्ष / Assessment Year: 2017-18)

Shri Noone Krishnamurthy Tirupati PAN:AERPK3117P (Appellant)	Vs.	Asstt. C. I. T. Circle 1(1) Tirupati (Respondent)
निर्धारिती द्वारा / Assessee by:		Advocate H Guruswamy
राजस्व द्वारा / Revenue by::		Smt. Vishnu Priya, DR
सुनवाई की तारीख / Date of hearing:	21/08/2024	
घोषणा की तारीख / Pronouncement:	21/08/2024	

**आदेश/ORDER**

This appeal filed by the assessee is directed against the order dated 27/06/2024 of the learned CIT (A)-NFAC Delhi, relating to A.Y.2017-18.

2. The assessee raised the following grounds:

*"1. The impugned Order u/s. 250 of the Act dated: 27-06-2024 passed by the Ld. CIT(A), National Faceless Appeal Centre, Delhi, (NFAC) is opposed to law, facts and circumstances of the case.*

*2. The Ld. CIT(A) has erred in dismissing the assessee's appeal and confirming the Penalty imposed of Rs.30,00,000/- by NFAC vide order dated 27-06-2024 without appreciating the fact that the NFAC has assumed the*

*jurisdiction on the basis of alleged Show Cause Notice dated 07-09 2021 alleged to have been issued by JCIT Range -1 Tirupathi who had no jurisdiction in view of Faceless Penalty Scheme launched on 12-01-2021.*

*3. The Ld. CIT(A) has erred in passing the appellate order confirming the Penalty order u/s 271D of the Act dated 28-01-2022 without appreciating the fact that the Penalty so levied was barred by limitation of time.*

*4. The Ld. CIT(A) has erred in passing the appellate order confirming the Penalty order u/s 271D of the Act dated 28-01-2022 placing reliance on the decision of the Honourable Kerala High Court in the case of Grihalakshmi vision vs. Addl. CIT in ITA No.83 and 86 of 2014 passed on 07-08-2015 without appreciating the fact that the said decision was not applicable in view of the later other judicial decisions including the Honourable Apex Court decision.*

*5. The Ld. CIT(A) has erred in passing the appellate order confirming the Penalty order u/s 271D of the Act dated 28-01-2022 without appreciating the fact that the Foundational satisfaction Note was not found mentioned in the assessment order dated 01-12-2019 as regards to contravention of Section 2695S.*

*6. The Ld. CIT(A) has erred in passing the appellate order confirming the Penalty order u/s 271D of the Act dated 28-01-2022 without appreciating the fact that the alleged Penalty Notice dated 07-09-2021 issued by JCIT, Range -1 Tirupathi was barred by limitation of time by 615 days.*

*7. The Ld. CIT(A) has erred in passing the appellate order confirming the Penalty order u/s 271D of the Act dated 28-01-2022 based on the time limit provided u/s 275(1)(c) without appreciating the fact that the limitation of time is reckonable from the date of knowledge of the alleged contravention or on the date of assessment order as has been held by various judicial decisions.*

*8. Without prejudice to Ground No. 2 to 7, it is further urged that the Ld. CIT(A) has erred passing the appellate order confirming the Penalty order u/s 271D of the Act dated 28 01-2022 without appreciating the fact that the alleged Notice dated 07-09-2021 appears to have been issued after inordinate delay of |1100 from the date of knowledge of the AO.*

9. *Without prejudice to Ground No. 2 to 7, it is further urged that the Ld. CIT(A) has erred in passing the appellate order confirming the Penalty order u/s 271D of the Act dated 28 01-2022 without appreciating the fact that the Penalty proceedings u/s 271D are not liable to be initiated at the sweet will of the Authorities with inordinate delay in the guise of the fact that the Penalty proceedings u/s 271D of the Act are independent than the assessment proceedings.*

10. *Without prejudice to Ground No. 2 to 7, it is further urged that the Ld. CIT(A) has erred in passing the appellate order confirming the Penalty order u/s 271D of the Act dated 28 01-2022 on the ground of non-submission of the reasonable cause u/s 273B on merits without appreciating the facts that the foundational notice alleged to have been issued on 07-09-2021 was not provided to the assessee for rebuttal by way of effective submissions.*

11. *Without prejudice to Ground No. 2 to 7, it is further urged that the Ld. CIT(A) has erred in passing the appellate order confirming the Penalty order u/s 271D of the Act dated 28 01-2022 without appreciating the fact that no draft assessment order was provided to the assessee as required under the Faceless Scheme.”*

3. The brief facts of the case are that the assessee has filed his return of income for the A.Y 2017-18 on 12.10.2017 declaring total income of Rs.15,00,360/-. The assessment has been completed u/s 143(3) of the I.T. Act, 1961 on 1.12.2019 by accepting the returned income. Thereafter, a show cause notice u/s 274 r.w.s. 273D of the I.T. Act, 1961 dated 7.9.2021 was issued and served on the assessee and called the assessee to explain as to why penalty u/s 271D shall not be levied for contravention of section 269SS of the I.T. Act, 1961. In the said show cause notice, the Jt./Addl./Commissioner of Income Tax, observed that during the financial year relevant to A.Y 2017-18,

the appellant has sold an immovable property for a sale consideration of Rs.30.00 lakhs vide copy of sale deed No.3113/2016 dated 25/06/2016 and received the entire consideration in cash. As per provisions of section 269SS of the I.T. Act, 1961, no person shall take or accept any loan or deposit or 'specified sum' otherwise than by an account payee cheque or account payee draft or by use of electronic clearing system through bank account. For the purpose of this section, specified sum means any sum receivable whether as advance or otherwise in relation to transfer of an immovable property whether or not the transfer takes place. Therefore, the Assessing Officer opined that there is a contravention of provision of section 269SS of the I.T. Act, 1961 for accepting sale consideration in cash for sale of property and thus, issued a show cause notice calling upon the assessee to explain as to why penalty shall not be imposed. In response the assessee submitted that, the Assessing Officer in the course of assesment proceedings has not recorded any satisfaction in respect of contravention of the provisions of section 269SS of the I.T. Act, 1961. Further, the amount received towards sale of property cannot be considered as any other specified sum for levy of penalty u/s 271D of the I.T. Act, 1961. Therefore, requested the Assessing Officer to drop penalty proceedings. The Assessing Officer after considering the relevant submissions of the assessee and also taken note of relevant provisions opined that the reasons given by the assessee for accepting cash towards sale of property does not come under

reasonable cause as provided u/s 273B of the I.T. Act, 1961 and thus opined that there was a contravention of provisions of section 269SS of the I.T. Act, 1961 which warrant levy of penalty u/s 271D of the I.T. Act, 1961. Therefore, rejected the explanation furnished by the assessee and levied penalty of Rs.30.00 lakhs u/s 271D of the I.T. Act, 1961.

4. Aggrieved by the penalty order, the assessee preferred an appeal before the learned CIT (A). Before the learned CIT (A), the assessee submitted that there is no satisfaction as required under law by the Assessing Officer at the time of assessment proceedings and thus, the penalty proceedings initiated by the Jt./Addl. CIT is invalid in law. The assessee has also challenged the penalty levied by the Assessing Officer u/s 269SS of the I.T. Act, 1961 and argued that 'specified sum' does not include sale consideration received towards sale of property. The learned CIT (A) after considering the relevant submission of the assessee and also taken note of certain judicial precedents rejected the explanation furnished by the assessee and upheld the penalty levied u/s 271D of the I.T. Act, 1961.

5. Aggrieved by the order of the learned CIT (A), the assessee is in appeal before the Tribunal.

6. The learned Counsel for the assessee submitted that the learned CIT (A) is erred in sustaining penalty levied by the

Assessing Officer u/s 271D of the Act without appreciating the fact that the Assessing Officer has not recorded satisfaction during assesment proceedings before initiating penalty proceedings u/s 271D of the Act. The learned Counsel for the assessee further submitted that even the Assessing Officer who initiated penalty proceedings has not recorded satisfaction as required under law before initiating penalty. Therefore, the whole penalty proceedings become vitiate and liable to be quashed. The learned Counsel for the assessee further submitted that the consideration received towards sale of property cannot be considered as 'specified sum' as defined u/s 269SS of the I.T. Act, 1961 and thus, for the purpose of section 271D, said transaction cannot be considered as contravention of provisions of section 269SS of the Act. Therefore, he submitted that the penalty levied by the Assessing Officer should be deleted.

7. The learned DR, on the other hand, supporting the orders of the learned CIT (A) submitted that it is a clear case of contravention of provisions of section 269SS of the I.T. Act, 1961 which is evident from the consideration received in cash towards sale of property. Further, as per provisions of section 269SS of the I.T. Act, 1961, specified sum has been defined which include amount received towards advance or otherwise in relation to transfer of any property whether or not the transfer takes place. Them Assessing Officer and the learned CIT (A) after considering

the relevant submissions has rightly levied penalty u/s 271D of the Act and their orders should be upheld.

8. I have heard both the parties, perused the material available on record and gone through the orders of the authorities below. I find that this issue is squarely covered in favour of the assessee by the decision of the ITAT Hyderabad Benches in the case of Katasani Tirupati Reddy vs. Income Tax Officer in ITA No.372/Hyd/2023 order dated 5.7.2024 where the Tribunal by following the decision of the ITAT Chennai Benches in the case of Income Tax Officer vs. Shri R. Dhinagharan (HUF) in ITA No.3329/Chny/2019 dated 28.12.2033 held that 'specified sum' as per Explanation to section 269SS of the Act is only applicable for the advance receivable or advanced received in relation to transfer of any immovable property, but not to consideration received towards transfer of property. The relevant findings of the Tribunal is as under:

*"6. We have gone through the record in the light of the submissions made on either side. Case of the assessee is that in the transaction in ques on he received the sale consideration of Rs. 21.42 Lacs in cash in view of the pressing need of health care of his mother and since the amendment has come into force only a month earlier, he was not properly advised as to the bar of receiving cash under the amendment act. Admittedly the sale took place on 3/7/2015 whereas the amendment in ques on has come into force w.e.f. 1/6/2015. Assessee suffered loss in this transaction and such a position is not disputed by the Department. In the circumstances, the assessee not receiving proper advice as to the non-desirability of receiving the sale consideration in cash and his explanation cannot be brushed aside.*

7. Apart from this, the relevant word "specified sum" has been defined under explanation (iv) to sec on 269SS, which is reproduced 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."*

8. The meaning of the "specified sum" has also been dealt with by a Co-ordinate Bench of the Tribunal in the case of *ITO vs. Shri. R. Dhinagharan (HUF)*, ITA No. 3329/Chny/2019, dated 28/12/2023, wherein the ITAT took the view that the 'sum specified' as per Explanation to Sec on 269SS of the Act, only applicable for advance receivable, namely, 'as advance or otherwise' means advance can be in any manner, and therefore, this provision will not apply to the transaction that happens when the final payment at the me of registration of sale deed and payment takes place before sub-registrar for registration of property. Relevant part of para-No.12.1 of the decision of the ITAT is as under :

*"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 Sec on 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 me of final payment at the me of registration of sale deed and payment is made before sub-registrar at the me 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 sub-registrar at the me of registration of sale deeds of plots. Hence, in our view, there is no violation of provisions of sec on 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."*

*9. In the present case before us, it is an admitted fact that the assessee received the amount of cash of Rs.9,38,000/- not as advance, but as the final payment in front of the Sub-Registrar at the time of registration for sale of property. While respectfully following the view taken by the Coordinate Bench of the Tribunal in the case of R. Dhinagharan(HUF) (supra), we hold that there is no violation of provisions of section 269SS of the Act in the present case in the given facts and circumstances and hence, penalty under section 271D of the Act is not leviable. Hence, we allow the grounds raised by the assessee."*

9. In view of the matter and by following the decision of the Hyderabad Benches of the ITAT in the case of Katasani Thirupati Reddy (Supra), we direct the Assessing Officer to delete the penalty levied u/s 271D of the I.T. Act, 1961.

10. In the result, appeal filed by the assessee is allowed.  
Order pronounced in the Open Court on 21<sup>st</sup> August, 2024.

Sd/-

**(MANJUNATHA, G.)  
ACCOUNTANT MEMBER**

Hyderabad, dated 21<sup>st</sup> August, 2024.

**Vinodan/sps**

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3	Pr. CIT - Tirupati
4	DR, ITAT Hyderabad Benches
5	Guard File

*By Order*