IN THE INCOME TAX APPELLATE TRIBUNAL

NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND

SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.8/Nag./2024
(Assessment Year : 2018–19)

Swarnjitsingh Anand
Chandanbai Plots Near Bus Station
Shegaon, Dist. Buldhana 444 203
PAN – AAZPA2452R

…….. Appellant

v/s

Asstt. Commissioner of Income Tax
Range, Akola

…….. Respondent

Assessee by : Shri Abhay Agrawal
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 30/07/2024	Date of Order – 09/09/2024

O R D E R

PER V. DURGA RAO, J.M.

The present appeal has been filed by the assessee challenging the impugned order dated 07/11/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2018–19.

2. In its appeal, the assessee has raised following grounds:–

"1. On the facts and circumstance previeling in the case, the Id. CIT (A) Income Tax Department has erred in confirming the order passed by The Addicit/Jcit on the ground that the explanation submitted by the appellant has not been considered in justified manner, which violates the prnciple of natural justice.

2. On the facts and circumstance previeling in the case, the Id. CIT(A) Income Tax Department has erred in confirming the order passed by The Addl CIT/JCIT on the ground that the Hon'ble CIT Appeal has erroneously did not considered the fact that even though the amended provision has taken effect w.e.f. 01.06.2015 Since the transaction has taken place before pre–amended provision, the Hon'ble CIT appeal has grossly erred in treating the issue as per the new provision. This is a misinterpretation of the provisions of IT Act, hence, the penalty deserved to be quashed.

3. On the facts and circumstance previeling in the case, the Id. CIT (A) Income Tax Department has erred in confirming the order passed by The Addl CIT/JCIT on the ground that the penalty is confirmed only on the basis of presumption/assumption without rebooting the facts, legal status and the judicial pronouncements delivered by the higher forum of the Hon'ble courts.

4. On the facts and circumstance previeling in the case, the Id. CIT (A) Income Tax Department has erred in confirming the order passed by The Addl CIT/JCIT in as much as the appellate order is not passed in fair and judicious manner, but it is in favor of revenue and against the appellant.

5. The assessee craves right to add, alter, amend, modify, delete the grounds of appeal and right to make detailed submissions, clarifications and explanation on the grounds of appeals at the time of hearing."

3. Facts in Brief:– The assessee is a senior citizen who retired from Maharashtra State Electricity Board and his livelihood is based on income from Pension. During the assessment year under consideration, the assessee sold his house situated at Amravati City Area and Amravati Corporation, Mauza Pragane–Nandangaopeth, Taluka & District Amravati, on 19/01/2018, for a consideration of ₹ 13 lakh. The assessee has shown that he has received the payment by way of cheque on different dates, which are mentioned below:–

On 15/08/2014	*₹ 5 lakh*
On 05/11/2014	*₹ 5 lakh*
On 05/02/2015	*₹ 3 laikh*

4. The assessee received a total consideration of ₹ 13 lakh on account of sale of house on/or before 15/02/2015, and the registration has taken place on 19/01/2018. Insofar as receipt of cash is concerned, the assessee has filed

its relevant details. The Assessing Officer and the learned CIT(A) were of the opinion that once the amount is received on/or 15/02/2015, then why the registration of immovable property took place on 19/01/2018. In this regard, the assessee has given a detailed explanation before the learned CIT(A), however, the learned CIT(A) has not accepted the explanation of the assessee on the ground that the assessee is not able to substantiate receipt of sale consideration which is on/or before 15/02/2015.

5. Before us, the learned Counsel for the assessee furnished a detailed submissions which is reproduced below to understand the gamut of the case.

> "*Brief Background and Facts:-*
>
> *The appellant is a senior citizen who retired from the MSEB Department and now relies on a pension as his main source of income. Refer page 6 of paper book (Schedule S: Details of income from Salary).*
>
> *During AY 2018-19, the appellant sold a residential property located in Amravati City Area, and Amravati Corporation, Mauza Pragane-Nandangaon–peth, Tq & Dist. Amravati vide S. No. 22/1A, Plot no. 65, admeasuring area 118 sq. Mtrs, to Smt. Baby Sunil Verulkar. The property was sold vide registered document on 19.03.2018, vide Registry no.663/2018 before the Sub-Registrar-No. 3, Amravati. The property was sold for Rs. 13,00,000/- sale consideration.*
>
> *The appellant received the payment of Rs. 13,00,000 in cash, which was given by buyer from time to time prior to execution of the sale deed. Subsequently, a notice was issued to the appellant under section 269SS by JCIT Amravati Region. Despite the appellant's submission filed on 28/02/2020, the assessing officer (AO) disregarded it and imposed a penalty under section 271D on the same day, thereby violating the principles of natural justice.*
>
> *Appellant had no intention to invade taxes and acted in bona fide conduct Long-term capital gains was offered in ITR filed for AY 2018-19*
>
> *The appellant had no intention to invade tax and his bona fide conduct is proved from the fact that, the transaction was declared in ITR filed for AY 2018-19. Section 269SS was introduced aiming to prevent tax evasion and the circulation of black money in India. The amount received by the appellant does not qualify as black money since it was fully disclosed in his Return of Income (ROI), and the corresponding tax was paid accordingly (Refer to page 9 of paper book - Schedule B: Long Term Capital Gain). Therefore, the appellant had no intention of evading tax or generating black money. The appellant being layman was not aware of*

the amended provisions of section 269SS, otherwise he would not have accepted the sale amount in cash.

The intention of the legislature that provision of section 269SS/ 269T of the IT Act, 1961 were introduced with the intention to check the introduction of the black money. The CBDT Circular No. 19/2015 dated 27.11.2015 expressed the intention of the legislature, relevant extract reproduced under:

''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.'' (Emphasis Supplied)

Further it is evident that, the identity of the purchaser is not in doubt and is established from sale deed which is a registered document. Therefore, there being no intention on the part of the appellant to accept any unaccounted cash to evade tax. The bonafide conduct of the assessee constitutes a reasonable cause and hence, penalty u/s 271D cannot be levied .

There was a technical venial breach of provision of section 269SS

The appellant submits that there was a technical venial breach of provision. There was no mala fide intention to evade tax. The appellant submits that the levy of penalty is not automatic but discretionary. Reliance is placed on decision of the Hon'ble Supreme court in Hindustan Steel Ltd. v. State of Orissa[1972] 83 ITR 26 wherein it has been held as under:

> *"An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest, or acted in conscious disregard to its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to act in the manner prescribed by the statute.''*

Reliance is placed on decision of Hon'ble Jharkhand High Court in the case of OMEC Engineers v/s. CIT (2007) 294 ITR 599 (Jharkhand), referred to decision in the case of Hindustan Steel Ltd. v/s State of Orissa (1972) 83 ITR 26 (SC) and held as under:

> *'In the instant case, there was no finding of the Assessing Officer, 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). Further, there was 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 had proceeded on the basis that breach of condition provided under section 269SS would lead to penal consequences. In the facts and circumstances of the case, the imposition of penalty under section 271D merely on technical mistake committed by the assessee, which had not resulted in any loss of revenue, would be harsh and could not be sustained in law. [Para 23]"*

Reliance is placed on following judicial precedents:

Copy of judgment in Shri Baburao Rambhau Kapte V. Jt. Commissioner of Income Tax Chandrapur Range, Chandrapur (ITA no.39/Nag./2022) (ITAT Nagpur) (Refer Page 79-84 of paper book)

Copy of judgment in Noordeen Ahmed Amina V. ITO NFAC New Delhi.(ITA No.1118/Chny/2022) (ITAT Chennai) (Refer Page 85-90 of paper book)

Copy of judgment in Commissioner of Income-tax, Hissar v. Saini Medical Store ([2006] 150 TAXMAN 246 (PUNJ. & HAR.) (HC Punjab & Haryana) (Refer Page 91-95 of paper book)

There was no scrutiny assessment for AY 2018-19 and hence, no satisfaction was recorded before initiating penalty u/s 271D

The penalty prescribed under section 271D cannot be imposed as there was no scrutiny assessment for the assessment year 2018-19 and hence, no satisfaction was recorded before initiating penalty u/s 271D. Reliance is placed on decision of Hon'ble Supreme Court in case of Commissioner of Income-tax, Panchkula v. Jai Laxmi Rice Mills Ambala City (379 ITR 521) (SC)."

6. The learned Departmental Representative relied upon the orders of the authorities below.

7. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. We find that the assessee has sold its immovable property on 19/01/2018, and filed a return of income and paid capital gain also. It is very clear from the return of income

filed by the assessee wherein he offered entire sale consideration received the details of which are as follows:–

1	*From sale of land or building or both*				
	a	*i*	*Full value of consideration received / receivable*	*ai*	*1300000*
		ii	*Value of property as per stamp valuation authority*	*aii*	*2115000*
		iii	*Full value of consideration adopted as per section 50C for the purpose of capital gain (ai or aii)*	*aiii*	*2115000*
	b	*Deductions under section 48*			
		i	*Cost of acquisition with indexation*	*bi*	*144058*
		ii	*Cost of Improvement with indexation*	*bii*	*421705*
		iii	*Expenditure wholly and exclusively in connection with transfer*	*Biii*	*0*
		iv	*Total (bi + bii + biii)*	*Biv*	*1862294*
	c	*Balance (aiii – biv)*		*1c*	*252706*
	d	*Deduction under section 54/54B/54EC/54EE/54F/54GB (Specify details in item D below)*			

8. Insofar as the delay in registration of the immovable property sold by the assessee is concerned, in this regard, the assessee has explained before the learned CIT(A) and even before us that the delay occurred due to legal obstacles and certain unavailable contingencies, which took time and, therefore, the delay occurred in registering the property and ultimately the registration of property took place on 19/01/2018. However, the entire sale consideration in cash was received by the assessee well before registration of the property i.e., on 01/06/2015, i.e., prior to amendment of section 269SS of the Income Tax Act. Therefore, in our opinion, provisions of section 269SS in the present case are not applicable. Consequently, considering the overall

facts and circumstances of the case, we are of the opinion that when the assessee has sold the immovable property and the entire sale consideration has been offered for taxation by way of capital gain, penalty provisions under section 271D of the Act were not warranted in the present case which is hereby directed to be deleted. The grounds raised by the assessee are allowed and the entire penalty of ₹ 13 lakh is directed to be deleted in its entirety.

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

Order pronounced in the open Court on 09/09/2024

Sd/-	**Sd/-**
K.M. ROY	**V. DURGA RAO**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

NAGPUR, DATED: 09/09/2024

Copy of the order forwarded to:

(1) The Assessee;
(2) The Revenue;
(3) The PCIT / CIT (Judicial);
(4) The DR, ITAT, Nagpur; and
(5) Guard file.

True Copy
By Order

Pradeep J. Chowdhury
Sr. Private Secretary

Sr. Private Secretary
ITAT, Nagpur