

**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.5/Nag./2024**  
(Assessment Year : 2019-20)

Asha Vinod Tatte  
Vard no.2, Near Police Stetion  
Shirkhaed, Morshi, Amravati 444 707  
PAN – BFTPT7567N

..... Appellant

v/s

Income Tax Officer  
Ward-1, Amravati

..... Respondent

Assessee by : Shri Kishore P. Dewani  
Revenue by : Shri Abhay Y. Marathe

Date of Hearing – 24/09/2024

Date of Order – 01/10/2024

**ORDER**

**PER K.M. ROY, A.M.**

The assessee has filed this appeal challenging the impugned order dated 30/10/2023, passed by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*learned CIT(A)*], for the assessment year 2019-20.

2. The assessee has raised following grounds:-

*"1. The learned CIT(A) erred in not condoning the delay in filing the appeal and adjudicating the grounds of appeal on merits in respect to order imposing penalty u/s 271D of I.T. Act, 1961 at Rs.6,51,000/-.*

*2. The learned CIT(A) has dismissed the appeal without providing reasonable opportunity of being heard and consequent order passed is bad in law and unjustified.*

*3. Levy of penalty u/s 271D of I.T. Act 1961 is prima facie invalid and bad in law as per facts and evidence on record. Denial of condonation of delay is thus unjustified and unwarranted.*

*4. Order imposing penalty u/s 271D of I.T. Act 1961 is illegal, invalid and bad in law in the absence of any satisfaction in the assessment proceedings in the case of assessee.*

*5. In levy of penalty u/s 271D on amount of Rs.6,51,000/- includes Rs.6,00,000/- paid by cheque by purchaser which is not in violation of provisions of sec. 269SS of I.T. Act 1961. Levy of penalty is unjustified and excessive.*

*6. Order imposing penalty u/s 271D is illegal, invalid and bad in law.*

*7. Any other ground shall be prayed at the time of hearing."*

3. The core issue arising out of the aforesaid grounds of appeal relates to levy of penalty of ₹ 6,51,000, under Section 271-D of the Income Tax Act, 1961 ("*the Act*") for the violation of provisions of Section 269-SS of the Act.

4. Short facts of the case are, the assessee is an agriculturist and resides at Village Post Shirkhed. She has no income exigible to tax and has no obligation to submit income tax return in past / subsequent years. During the year, she sold agricultural land for ₹ 20 lakh to one Shri Pratik Deshmukh. The sale deed was registered on 15/03/2018. The assessee received ₹ 6,51,000, in cash and hence the Assessing Officer alleged that the assessee has apparently violated the provisions of section 269SS r/w section 271D of the Act by initiating penalty proceedings. The assessee was asked via show cause notice dated 09/03/2022 to submit supporting documents in support of her claim that both parties are agriculturist. Hearing date was fixed on or before 15/03/2022. But assessee has not submitted any supporting document till date. Therefore reply dated 15/01/2021 of the assessee is not accepted. Since the assessee has failed to prove that there was reasonable cause as per

the provisions of section 273B of the Act for not filing return of income as required under sub-section (1) of section 139 or by the provisos to that sub-section before the end of the relevant assessment year. Since the assessee failed to prove that the said transaction that there was any reasonable cause for receiving the cash payment. Therefore, the Assessing Officer levied penalty of ₹ 6,51,000, under Section 271-D of the Act for violation of provisions of section 269-SS of the Act, vide order dated 26/03/2022. The assessee preferred an appeal against the Assessing Officer's order before the learned CIT(A), which came to be dismissed. Hence, the present appeal was filed on the grounds that the impugned penalty order passed by the Assessing Officer was illegal, invalid, bad-in-law.

5. The learned Counsel for the assessee, Shri Kishore P. Dewani, argued that the assessee has sold agricultural land to Shri Pratik Deshmukh. Assessee as well as buyer are agriculturists and are not having any income exceeding the taxable limits for the assessment year 2019-20. Surplus on sale of agricultural land is not exigible to tax agricultural land is not capital asset in terms of section 2(14) of Act. Sale consideration of property is ₹ 20 lakh. Transaction of sale of agricultural land between agriculturist is beyond the scope of provisions of section 269SS of Act, in terms of 2<sup>nd</sup> proviso to section 269SS of Act. No violation under section 269-SS for which the assessee can be visited with penalty under section 271-D of the Act. The learned Counsel further argued that the assessment framed in the case of assessee subsequent to imposition of penalty under section 271D wherein Nil income determined as agricultural land sold was not a capital asset and no

income was exigible to tax. The assessment of buyer completed subsequent to levy of penalty and income determined at ₹ Nil, as assessee is not having any income exigible to tax other than agricultural activity. Levy of penalty under section 271D is on assumption that assessee had received cash of ₹ 6,51,000, and the same is factually incorrect as entire payment for purchase of agricultural land is by other than cash from the bank account of buyer as well as his relatives. Submission of above fact considered in the assessment of buyer in assessment framed on 13/12/2022. The learned Counsel submitted that penalty levied under section 271D is without recording satisfaction in the course of assessment proceedings and thus levy of penalty is bad in law. In support of his arguments, the learned Counsel relied upon the following case laws:–

- i) *CIT v/s Jai Laxmi Rice Mills, [2015] 379 ITR 521 (SC); and*
- ii) *Shri Bhowmick Raj Singh v/s JCIT, ITA no.128/Rpr./2016, A.Y. 2010-11, order dated 02/01/2011, reported as (Rai-Trib.) 2024 ITL 275.*

6. The learned Departmental Representative vehemently supported the order of the authorities below.

7. We have given a thoughtful consideration to the arguments made by the rival parties and perused the material available on record. The provisions of section 271-D of the Act have been perused. To deal with the issue, it is pertinent to take note of the provisions of section 269-SS of the Act which are as follows:–

*"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 or through such other electronic mode as may be prescribed, 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 or 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:

<sup>91</sup>[Provided also that the provisions of this section shall have effect, as if for the words "twenty thousand rupees", the words "two lakh rupees" had been substituted in the case of any deposit or loan where,—

(a) such deposit is accepted by a primary agricultural credit society or a primary co-operative agricultural and rural development bank from its member; or

(b) such loan is taken from a primary agricultural credit society or a primary co-operative agricultural and rural development bank by its member.]

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;

<sup>92</sup>[(ii) "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the Explanation to sub-section (4) of section 80P;

(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 of an immovable property, whether or not the transfer takes place."

A plain reading of the aforesaid provisions shows that the section has a specific bar to receive a sum more than 20,000/- from any other persons by way of loan or deposit. The provisions of the said Section does not deal with the receipt of 'sale consideration of immovable property' in cash, but only deals with loan or deposit. Therefore, the provisions of section 269-SS of the Act was wrongly interpreted by the authorities below, while imposing the penalty in the matter at hand, wherein the subject matter was receipt of sale consideration in cash in respect of selling the immovable properties. Consequently, we hold that Assessing Officer had committed an error in invoking provisions of section 269-SS r/w section 271-D of the Act and imposing of the penalty. Accordingly, the penalty imposed by the Assessing Officer, confirmed by the CIT(A) is hereby quashed.

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

Order pronounced in the open Court on 01/10/2024

**Sd/-**  
**V. DURGA RAO**  
**JUDICIAL MEMBER**

**Sd/-**  
**K.M. ROY**  
**ACCOUNTANT MEMBER**

**NAGPUR, DATED: 01/10/2024**

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.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Sr. Private Secretary  
ITAT, Nagpur