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IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'B' Bench, Hyderabad

BEFORE SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER

आ.अपी.सं / **ITA No.525/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2019-20)

Shri Ahmed Bin Amer Bilwail, Hyderabad. PAN:ARSPB6760F	Vs.	Addl. Commissioner of Income Tax, International Taxation, Hyderabad.
(Appellant)		(Respondent)
□□□□□□□□□□ □□□□□□/Assessee by:		Shri K.A.Sai Prasad, C.A.
□□□□□□ □□□□□□/Revenue by::		Shri Madan Mohan Meena, DR
□□□□□□ □□ □□□□□□/Date of hearing:		02/09/2024
□□□□□□ □□ □□□□□□/ Pronouncement:		03/09/2024

□□□□/ORDER

PER MADHUSUDAN SAWDIA, A.M:

This appeal is filed by Shri Ahmed Bin Amer Bilwail, Hyderabad ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals), Delhi-42 ("Ld. CIT(A)"), dated 23.08.2022 for the A.Y. 2019-20.

2. Brief facts of the case are that the assessee sold three plots to three different buyers on 16/05/2018 for cash at the rate of Rs. 6,68,000/- each through Sri Sultan Abdullah Bin Ali Al Kesari, a power of attorney holder ("POA"). When these facts were came to the notice of the Learned Additional

Commissioner of Income Tax (Ld. Addl.CIT”), he levied penalty u/s 271D of the Income Tax Act,1961(“ the Act”), due to contravention of Section 269SS of the Act vide his order dated 26/06/2019.

3. Aggrieved with the order of Ld. Addl.CIT, the assessee filed appeal before Ld. CIT(A), who affirming the decision of the Ld. Addl. CIT dismissed the appeal of the assessee.

4. Aggrieved with the order of Ld. CIT(A), the assessee is in appeal before us. The solitary ground raised by the Ld. AR in this appeal is with regards to the levy of penalty u/s. 271D of the Act. The Ld. AR submitted that the total cash of Rs. 25,86,000/- had been received by POA of the assessee against sale of 3 plots. He further submitted that, the said cash had been received by the POA at the time of registration of the plots before the Registrar. He also submitted that, if the cash is received at the time of registration of the plots before the Registrar, the provisions of section 269SS are not violated. Therefore the penalty u/s.271D is not leviable in such cases. In support of his argument he relied on the decision of co-ordinate bench of ITAT, Hyderabad in the case of Sri Shaikh Jafar, Kurnool, ITA No. 484/Hyd/2024 dated 16/07/2024 and Katasani Thirupal Reddy, ITA No.372/Hyd/2023 dated 05/07/2024. Relying on the said decisions of coordinate bench of ITAT(Supra), the Ld. AR prayed before the bench to delete the penalty u/s 271D of the Act levied by the Ld. Addl.CIT.

5. Per Contra Ld. DR relied on the orders of revenue authorities and prayed before the bench to uphold the penalty u/s 271D levied by the Ld. Addl.CIT.

6. We have heard the rival contention and also gone through the records in the light of the submissions made by the either side. There is no dispute about the facts that the total cash of Rs. 25,86,000/- had been received by POA of the assessee against sale of 3 plots. As per the contention of Ld.AR, as the said cash had been received by the POA at the time of registration of the plots before the Registrar, the provisions of section 269SS are not violated. Therefore the penalty u/s 271D is not leviable in such cases, as per the findings of the of co-ordinate bench of ITAT, Hyderabad in the case of Sri Shaikh Jafar Kurnool(Supra) and Katasani Thirupal Reddy(Supra). The Ld. AR also submitted the copy of the registered sale deed of one plot. On going through said registered sale deed, we observed that although the registered sale deed had been registered on 16/05/2018, it was executed on 02/05/2018 as per page no. 1 of the said registered sale deed. Further at para No. 4 & 5 at page No. 2 of the said registered sale deed, it has been mentioned that the vendor has already received the sale consideration from the purchaser. The relevant page Nos. 1 & 2 of the said registered sale deed are produced as under:

“ SALE DE ED

THIS DEED OF SALE is made and executed on this the 2ND day of May 2018 the 2018 by:-

SRI. AHMED BIN AMER BILWAL, SON OF SRI. AMER BILWAIL, aged about 43 years, Occupation: NRI Employee, Resident of H.No. 18-10-72, Barkas, Keshavgi, Hyderabad. Presently Resident of TOURIST CLUB AREA TOWARDS MENA ROAD, NEXT TO SEDAR, SHOWROOM SWEET PALACE, BUILDING FLAT NO. 301 - 050 4426472. [Aadhaar No. 4716 5062 3864].

(HEREINAFTER CALLED THE 'VENDOR')

IN FAVOUR OF

SMT. BYRAPAKA PREMA KUMARI, WIFE OF SRI. B. JEEVA RATHNAM, aged about 48 years, Occupation: House Wife, Resident of H.No.10-5- 796/3/2/A, Sai Nagar, SSBHS School, Thukaramgate, Secunderabad. PAN NO. DDEPB 2465J, [Aadhaar No.3794 1447 4363].

(HEREINAFTER CALLED THE 'PURCHASER')

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The terms 'THE VENDOR' and 'THE PURCHASER' herein used shall wherever the context so admits mean and include their respective heirs, executors, successors, legal representatives, administrators and assignees etc., as the parties themselves.

WHEREAS the Vendor is the sole and absolute owner of the Open Plot No.24, in Survey Nos. 17/2 and 18/2, admeasuring 267 Sq.yds., or 223.24 Sq.Mtrs., Situated at Chengi Cherla Village and Gram Panchayat, Ghatkesar Mandal, Ranga Reddy District. By Virtue of Regd. Doct. No.19356/2014, Regd. at S.R.O. L. B. Nagar.

WHEREAS the Vendor has offered to sell the above said Open Plot No.24, in Survey Nos. 17/2 and 18/2, admeasuring 267 Sq.yds., or 223.24 Sq.Mtrs., Situated at Chengi Cherla Village, Under Boduppal Municipality, Medipally Mandal, Medchal Malkajgiri District. Malkajgiri District. Free from all encumbrances for a total consideration of Rs.6,68,000/- and the Purchaser agreed to purchase the same for the said consideration.

WHEREAS the Vendor has already received from the said Purchaser the said consideration of Rs.6,68,000/- (Rupees Six Lakhs Sixty Eight Thousand Only) the receipt of which the Vendor hereby admits and acknowledges.

NOW THEREFORE this Deed of sale witnesses that in pursuance of the said agreement and in consideration of the sum of Rs.6,68,000/- already received by the Vendor from the Purchaser

the said Vendor as absolute owner of the said property described in the schedule hereto and more clearly delineated in the plan annexed with the boundaries thereof shown in red colour does hereby transfer, convey and assign free from encumbrances all the said property to hold the same to the said Purchaser as absolute owner together with appurtenances belonging hereto and all the estate, right, title, interest and claim whatsoever of the Vendor in or to the said property hereby conveyed. The Purchaser shall hold and enjoy the same as absolute owner.”

Therefore, it is abundantly clear that the POA had received the cash on or before 02/05/2018 and did not receive the cash at the time of registration of the plots before the Registrar. Therefore the decisions of the co-ordinate bench of ITAT, Hyderabad in the case of Sri Shaikh Jafar, Kurnool(Supra) and Katasani Thirupal Reddy(Supra) are not applicable in the case of the assessee. Therefore in our opinion the cash received by the POA of the assessee is in contravention of section 269SS of the Act and the assessee is liable for penalty u/s 271D of the Act. Accordingly, we dismiss the appeal of the assessee.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 3rd Sept., 2024.

Sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Sd/-

(MADHUSUDAN SAWDIA)
ACCOUNTANT MEMBER

Hyderabad.
Dated: 03.09.2024.

* Reddy gp

Copy of the Order forwarded to :

1.	Shri Ahmed Bin Amer Bilwail, C/o Katrapati & Associates, 1-1-298/2/B/3, 1 st Floor, Ashok Nagar, Street No.1, Hyderabad-500 020
2.	Addl. CIT, International Taxation, Hyderabad.
3.	CIT (International Taxation), Hyderabad.
4.	DR, ITAT, Hyderabad.
5.	Guard file.

BY ORDER,