

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

BEFORE

**SHRI LALIET KUMAR, JUDICIAL MEMBER
AND
SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

ITA No.618/Hyd/2024		
Assessment Year: 2016-17		
Bhagawan Sri Balasaibaba Central Trust, Sri Nilayam Fort, Andhra Pradesh. Kurnool. PAN : AAATB3818R.	Vs.	The Income Tax Officer, Exemption Ward, Tirupati.
(Appellant)		(Respondent)
Assessee by:	Shri Pawan kumar Chakrapani, CA	
Revenue by:	Shri Jeevan Lal Lavidiya, CIT-DR	
Date of hearing:	15.10.2024	
Date of pronouncement:	16.10.2024	

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 22.05.2024 for the AY 2016-17.

2. The assessee has raised the following grounds :

“1. The impugned order of the learned Authorities below in so far as it is against the Appellant is opposed to law, weight of evidence, natural justice, probabilities, facts and circumstances of the Appellant’s case.

2. The Appellant denies himself liable to be levied an amount being Rs. 6,37,00,000/-, as penalty under section 271D of the Act, under the facts and circumstances of the case.

3. Whether the learned Authorities below are justified in levying a penalty of an amount being Rs. 6,37,00,000/-, by invoking the provision of section 271D of the Act, under the facts and circumstances of the case.

4. Whether the learned Authorities below are justified in levying penalty of Rs. 6,37,00,000/-, by invoking the provision of section 271D of the Act, even when the provisions of section 269SS of the Act, are not contravened, under the facts and circumstances of the case.

5. Whether the learned Authorities below are justified in levying the penalty of Rs. 6,37,00,000/-, by invoking the provision of section 271D of the Act, even when it has been demonstrated that the Appellant has not accepted any loan or advance or a specified sum as advance or otherwise in relation to transfer of property, under the facts and circumstances of the case.”

3. Facts of the case, in brief, are that the assessee has received an amount of Rs.6,37,00,000/- in cash as an advance amount, contravening Section 269SS of the Income Tax Act, which mandates that any loan or deposit exceeding Rs. 20,000/- must be received through an account payee cheque or bank draft. Hence, penalty proceedings u/s 271D of the Act was initiated on the assessee on 27.10.2022 by the Assessing Officer. Thereafter, the Assessing Officer issued show cause notice dt.16.01.2023 to respond as to why the order imposing penalty u/s 271D of the Act

should not be passed. In response, assessee filed reply on 02.02.2023. However, the Assessing Officer found the reply of the assessee as not acceptable or invalid explanation for the said cash transaction. Hence, the Assessing Officer levied penalty equal to the amount of the cash received, Rs. 6,37,00,000/- under Section 271D of the Act and accordingly, passed penalty order u/s 271D of the Act dt.24.04.2023.

4. Feeling aggrieved with such order, assessee filed appeal before the Ld. CIT(A) / NFAC, who dismissed the appeal of assessee.

5. Feeling aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

6. Before us, ld.AR submitted that in the present case, satisfaction was not recorded by the Assessing Officer while passing assessment order. The ld.AR contended that as the sale transaction with Shri Ratan Singh and others for purchase of property for Rs.12,50,00,000/- did not materialize, the amount of Rs.3,32,00,000/- given as advance was returned back on various dates and the same was deposited in the bank account of the assessee and hence, provisions of Section 269SS of the Act cannot be applicable. To support his case, ld.AR relied upon the decision of jurisdictional High Court in the case of Srinivasa Reddy Reddeppagari Vs. JCIT and another (W.P.No.44285 of 2022

dt.26.12.2022) and contended that the order of ld.CIT(A) should be quashed in view of the said decision.

7. Per contra, ld.DR submitted that in this case, assessee has received back the amount allegedly paid by it for purchase of two properties situated at Pappalaguda Village, Rangareddy District and Bangalore and admittedly, the said amount was received in cash which is in violation of Section 269SS of the Act and therefore, penalty imposed by the JCIT is in accordance with law. The ld.DR further submitted that recording of satisfaction was not mandatory for the Assessing Officer as the order was passed by the JCIT. He further submitted that the order of jurisdictional High Court relied upon by the ld.AR is not applicable to the facts of the present case.

8. We have heard the rival submissions and perused the material on record. In the present case, Assessing Officer had levied penalty of Rs.6,37,00,000/- u/s 271D of the Act as the assessee has violated the provisions of Section 269SS of the Act as the assessee has accepted the same by way of cash, being the advance amount received back during the relevant assessment year. On appeal, the ld.CIT(A) confirmed the penalty levied by the Assessing Officer, as the amount of advance given was received back by the assessee in cash. On perusal of the record, we find that the case of the assessee is covered with the decision of the jurisdictional High Court and also with the decision of coordinate Bench of the Tribunal in the case of Sri Raja Reddy Nalla Vs. ACIT

in ITA No.520/Hyd/2022 dt.31.05.2023, wherein the Tribunal on identical facts vide Paragraphs 12 to 18 5 held as under :

"12. We have heard the rival arguments made by both the sides, perused the orders of the AO and the learned CIT (A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us by both sides. We find the AO in the instant case levied penalty of Rs.40.00 lakhs [u/s 271D](#) of the I.T. Act on the ground that the assessee has violated the provisions of [section 269SS](#) by accepting cash of Rs.40.00 lakhs being his share for sale of the immovable property. We find the learned CIT (A) confirmed the penalty levied by the Assessing Officer, the reasons of which have already been reproduced in the preceding paragraph. Before deciding the issue ITA No 520 & 522 of 2022 Sri Raja Reddy Nalla & Venkateshwar Reddy Pacchica on merit as per grounds of appeal, we would first like to adjudicate the additional ground raised by the assessee challenging the validity of the levy of penalty [u/s 271D](#) in absence of recording of satisfaction in the body of the assessment order.

13. A perusal of the assessment order nowhere shows that the Assessing Officer has recorded his satisfaction for initiating penalty proceedings [u/s 271D](#) of the I.T. Act. We find an identical issue had come up before the Hon'ble jurisdictional High Court in the case of [Srinivasa Reddy Reddeppagari vs. Jt. CIT](#) vide writ petition No.44285 of 2022 dated 26.12.2022. In that case penalty proceedings were initiated by issue of a show-cause notice [u/s 274](#) r.w.s. 271D on the ground that the assessee has violated the provisions of [section 269SS](#) of the I.T. Act which attracts levy of penalty [u/s 271D](#) of the I.T. Act. Before the Hon'ble High Court, the assessee, through the writ petition challenged the penalty levied [u/s 271D](#) on the ground that no satisfaction was recorded by the Assessing Officer in the assessment order as to imposition of penalty. It was argued that non-recording of satisfaction is fatal. The decision of the Hon'ble Supreme Court in the case of [CIT vs. Jayalakshmi Rice Mills Ambalacity](#), reported in (2015) 64 Taxmann.com 75 (S.C), was relied upon. Accordingly, the Hon'ble jurisdictional High Court held that provisions of [section 271D](#) and [271E](#) are pari materia to each other and the recording of satisfaction is a must. The relevant observation of the Hon'ble High Court reads as under:

"13. We have considered the rival submissions made at the bar.

14. Issue raised in the writ petition is whether without satisfaction being recorded in the assessment order, penalty Order dated 08.07.2015 passed by the Kerala High Court in ITA.Nos.83 & 86 of 2014 ::9::

can be levied by the Joint Commissioner under [Section 271D](#) of the Act ?

ITA No 520 & 522 of 2022 Sri Raja Reddy Nalla & Venkateshwar Reddy Pacchica

15. Insofar the present case is concerned, we find that in the assessment order dated 24.03.2022 passed under [Section 153A](#) of the Act, return of income filed by the petitioner was accepted by the assessing officer and accordingly, the total income was

assessed. In the return of income, petitioner had admitted receiving total income of Rs.80,84,180.00 which was also accepted by the assessing officer.

16. Subsequently, respondent No.1 took the view that petitioner had sold immovable properties for a total sale consideration of Rs.92,13,000.00 out of which he had accepted cash to the tune of Rs.87,80,000.00 which was in violation of [Section 269SS](#) of the Act, attracting penalty under [Section 271D](#) of the Act.

17. Before we advert to the reply submitted by the petitioner, we may mention that under [Section 269SS](#) of the Act, no person shall take or accept from any other person (referred to as a 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 the amount of such loan or deposit or specified sum is twenty thousand rupees or more. However, as per the first proviso, the rigor of [Section 269SS](#) is not applicable to the Government, banking company, post office savings bank or cooperative bank etc. As per the second proviso, this provision would also not be applicable where both the depositor and the receiver are having agricultural income and neither of them has any income chargeable to tax under the Act.

18. [Section 271D](#) of the Act deals with penalty for failure to comply with the provisions of [Section 269SS](#) of the Act. [Section 271D](#) of the Act being relevant is extracted hereunder:

Penalty for failure to comply with the provisions of [section 269SS](#). 271D. (1) If a person takes or accepts any loan or deposit [or specified sum] in contravention of the provisions of [section 269SS](#), he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit [or specified sum] so taken or accepted.] [(2) Any penalty imposable under sub- section (1) shall be imposed by the [Joint] Commissioner.]

19. Thus, what sub-section (1) of [Section 271D](#) provides for is that if a person takes or accepts any loan or deposit or specified amount in contravention of the provisions of [Section 269SS](#), he shall be liable to pay by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted. Sub-section (2) clarifies that any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.

20. It would be useful to refer to [Section 271E](#) of the Act also at this stage which deals with penalty for failure to comply with the provisions of [Section 269T](#) of the Act. Be it stated that [Section 269T](#) of the Act ITA No 520 & 522 of 2022 Sri Raja Reddy Nalla & Venkateshwar Reddy Pacchica provides that no branch of a banking company or a cooperative bank and no other company or cooperative society and no firm or other 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 drawn in the name of the person who had made the loan or deposit or who had paid the specified advance or by use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, if such an amount is twenty thousand rupees or more. As in the case of [Section 269SS](#), [Section 269T](#) of the Act also does not

apply to the Government, banking company, post office savings bank etc. [Section 271E](#) of the Act reads as under:

Penalty for failure to comply with the provisions of [section 269T](#). 271E. [(1)] If a person repays any [loan or] deposit [or specified advance] referred to in [section 269T](#) otherwise than in accordance with the provisions of that section, he shall be liable to pay, by way of penalty, a sum equal to the amount of the [loan or] deposit [or specified advance] so repaid. [(2) Any penalty imposable under sub-section (1) shall be imposed by the [Joint] Commissioner.]

21. Thus, sub-section (1) of [Section 271E](#) of the Act provides that if a person repays any loan or deposit or specified advance referred to in [Section 269T](#) of the Act otherwise than in accordance with the provisions of that section, he shall be liable to pay by way of penalty a sum equal to the amount of the loan or deposit or specified advance so repaid. Sub-section (2) clarifies that any penalty imposable under sub-

section (1) shall be imposed by the Joint Commissioner.

22. From an analysis of [Sections 271D](#) and [271E](#) of the Act, it is seen that both the provisions are *pari materia* to each other. While [Section 271D](#) of the Act would be attracted on a person accepting loan or deposit or specified sum in contravention of [Section 269SS](#) of the Act, penalty under [Section 271E](#) of the Act would be imposable on a person who makes or repays the loan or deposit or specified advance in contravention of [Section 269T](#). Therefore, in a way, the two provisions are complimentary to each other.

23. In [Jai Laxmi Rice Mills Ambala City](#) (supra), Supreme Court considered the question as to whether penalty proceedings under [Section 271D](#) of the Act is independent of the assessment proceeding? In the facts of that case, it was found that the penalty order was issued following the assessment order. However, in appeal, Commissioner of Income Tax (Appeals) had set aside the original assessment order with a direction to frame assessment *de novo*. In the fresh assessment order, no satisfaction was recorded by the assessing officer regarding initiation of penalty proceedings under [Section 271E](#) of the Act. It was noticed that the penalty order was passed before the appeal of the assessee was allowed by the Commissioner of Income Tax (Appeals). It was in that context that Supreme Court held as follows:

ITA No 520 & 522 of 2022 Sri Raja Reddy Nalla & Venkateshwar Reddy Pacchica The Tribunal as well as the High Court has held that it could not be so for the simple reason that when the original assessment order itself was set aside, the satisfaction recorded therein for the purpose of initiation of the penalty proceeding under [Section 271E](#) would also not survive. This according to us is the correct proposition of law stated by the High Court in the impugned order.

As pointed out above, insofar as, fresh assessment order is concerned, there was no satisfaction recorded regarding penalty proceeding under [Section 271E](#) of the Act, though in that order the Assessing Officer wanted penalty proceeding to be initiated under [Section 271\(1\)\(c\)](#) of the Act. Thus, insofar as penalty under [Section 271E](#) is

concerned, it was without any satisfaction and, therefore, no such penalty could be levied. These appeals are, accordingly, dismissed.

24. Reverting back to the facts of the present case, we find that petitioner had submitted reply to the show cause notice on 02.06.2022. In his reply, petitioner mentioned that no satisfaction was recorded by the assessing officer in the assessment order as to infraction of [Section 269SS](#) of the Act. Therefore, no penalty could be levied under [Section 271D](#) of the Act without recorded satisfaction. In this connection, reference was made to the decision of the Supreme Court in [Jai Laxmi Rice Mills Ambala City](#) (1 supra) wherein it was clarified that provisions of [Section 271E](#) are in pari materia with the provisions of [Section 271D](#) of the Act. However, this aspect of the matter was not considered by respondent No.1 while passing the impugned order. Respondent No.1 relying upon the Kerala High Court decision in [Grihalaxmi Vision](#) (2 supra) noted that competent authority to levy penalty is the Joint Commissioner. He has also referred to an earlier decision of the Supreme Court in [CIT V. Mac Data Ltd.](#)³ wherein it was observed that assessing officer has to satisfy himself as to whether penalty proceedings should be initiated or not. Assessing officer is not required to record his satisfaction in a particular manner or reduce it into writing. Therefore, respondent No.1 imposed the penalty under [Section 271D](#) of the Act.

25. We are afraid respondent No.1 had completely overlooked the decision of the Supreme Court in [Jai Laxmi Rice Mills Ambala City](#) (1 supra). In [the said decision](#) as extracted above, Supreme Court had concurred with the view taken by the High Court holding that satisfaction must be recorded in the original assessment order for the purpose of initiation of penalty proceedings under [Section 271E](#) of the Act. We have already discussed above that provisions of [Section 271E](#) and [271D](#) of the Act are in pari materia. When there is a decision of the Supreme Court, it is the bounden (2013) 352 ITR 1.

duty of an adjudicating authority, be it an income tax authority or any other civil authority or for that matter any court in the country, to comply with the decision of the Supreme Court.

26. [Article 141](#) of the Constitution of India is clear that law declared by the Supreme Court shall be binding on all courts within the territory of ITA No 520 & 522 of 2022 Sri Raja Reddy Nalla & Venkateshwar Reddy Pacchica India. This is further clarified in [Article 144](#), which says that all authorities, civil and judicial, in the territory of India shall act in aid of the Supreme Court. We are therefore, of the unhesitant view that respondent No.1 overlooked the relevant considerations while passing the impugned order dated.29.11.2022.

27. Further, issue in the present writ petition is not the competence of the Joint Commissioner in issuing the order of penalty. Therefore, reference to [Grihalaxmi Vision](#) (2 supra) was wholly unnecessary.

28. Consequently, we set aside the impugned order dated 29.11.2022 and remand the matter back to the file of respondent No.1 to pass a fresh order in accordance with law after giving a reasonable opportunity of hearing to the petitioner.

29. Writ Petition is accordingly allowed. No costs."

14. Since admittedly there is no recording of satisfaction by the Assessing Officer in the body of the assessment order for initiating penalty proceedings s 271D of the I.T.Act, therefore, respectfully following the decision of the Hon'ble jurisdictional High Court in the case of Srinivas Reddy Reddeppagari vs. Jt. CIT (Supra) the penalty levied by the Assessing Officer and sustained by the CIT (A) is liable to be quashed. We hold accordingly and direct the Assessing Officer to cancel the penalty levied s 271D of the I.T. Act, 1961. Since the assessee succeeds on this legal ground, the grounds challenging the levy of penalty of Rs.40.00 lakhs s 271D on merit become academic in nature and therefore, not adjudicated.

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

ITA No.522/Hyd.2022 - Sri Venkateshwar Reddy Pacchica (A.Y 2019-20)

16. The ground raised by the assessee are as under:

"1. The Commissioner of Income tax - Appeals -11, Hyderabad [herein after denoted as Hon CIT -A] erred in confirming the penalty order of Additional Commissioner of Income Tax, Central Circle -1, Aayakar ITA No 520 & 522 of 2022 Sri Raja Reddy Nalla & Venkateshwar Reddy Pacchica Bhavan Hyderabad [herein after termed as Ld. Add. CIT] of levy of penalty under section under section 271D of Income tax Act, 1961/ for short - the Act].

2. The Hon.CIT-A had erred in summarily rejecting the judicial views submitted by the appellant.

3. The Hon. CIT -A had erred in opining that that the appellant had not disclosed the cash portion of the consideration. The learned CIT-A failed to appreciate the fact that the appellant had already disclosed Rs.40.00 lakhs with the Department - which disclosure date was much before the date of registration of property.

4. The Ld.CIT-A had erred in forming an opinion that the taxpayer ought to have full and complete knowledge of all provisions tax laws, which is contrary to the popular judicial views. The leaned CIT-A failed to appreciate basic practical premise that income tax law is a highly dynamic and ever-changing law and that there is high probability for knowing a provision fully well by an average taxpayer till a transaction or two covered by a section are undertaken.

5. For the grounds pleaded above or for such other additional grounds that may be pleaded at the time hearing the appellant prays for the deletion of the said penalty amount levied under section 271D or to grant such other relied as the Hon'ble Bench may deem fit and proper under the facts and circumstances of the case. "

17. The assessee has also raised an additional ground which reads as under:

"1. The levy of penalty w/s 271D of the I.T. Act, 1961 at Rs.40,00,000 is wholly unsustainable based on the facts and in law as the Assessing Officer has not recorded his satisfaction about initiation of penalty proceedings w/s 271D of the said Act."

18. After hearing both the sides, we find the grounds raised by the assessee are identical to the grounds raised in ITA No.520/Hyd/2022 including the additional ground. We have already decided the issue and the appeal filed by the assessee has been allowed. Following similar reasoning, the appeal filed by the assessee is allowed."

9. The coordinate Bench of this Tribunal has already delivered a decision on facts identical to those of the present case, ruling in favor of the assessee. Furthermore, the said decision has not been stayed or overruled by any higher judicial forum. In view of these circumstances, we respectfully following the decision of the coordinate bench of the Tribunal in the case of Raja Reddy Nalla (supra) delete the penalty levied by the Assessing Officer and confirmed by the Id. CIT(A). Thus, the appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 16th October, 2024.

Sd/-

Sd/-

(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER	(LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 16.10.2024.

TYNN/sps

Copy to:

S.No	Addresses
1	Bhagawan Sri Balasaibaba Central Trust, #64-43-B-17A, Sri Nilayam, Fort, Kurnool – 518001, Andhra Pradesh.
2	The Income Tax Officer, Exemption Ward, Tirupati.
3	Pr.CIT(Exemptions), Tirupati.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order