

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य एवं श्री एस बालाकृष्णन लेखा सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

(In आयकर अपील सं./ I.T.A. No.351/Viz/2024)
(निर्धारण वर्ष / Assessment Year: 2017-18))

Vegesna Hare Ramaraju, Visakhapatnam. PAN: ACCPV9401E (अपीलार्थी/ Appellant)	Vs.	Income Tax Officer, Ward-3(1), Visakhapatnam. (प्रत्यर्थी/ Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Sri GVN Hari, AR
प्रत्यर्थी की ओर से / Respondent by	:	Dr. Aparna Villuri, Sr. AR
सुनवाई की तारीख / Date of Hearing	:	10/10/2024
घोषणा की तारीख/Date of Pronouncement	:	23/10/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)-NFAC"] in DIN & Order No. ITBA/NFAC/S/250/2024-25/1067347569(1) dated 06/08/2024 arising out of the order passed U/s. 271D of the Income Tax Act, 1961 ["the Act"] for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is an individual having income from salary being an employee from RINL, Visakhapatnam. The assessee filed his return of income for the AY 2017-18 electronically on 02/07/2017 admitting a total income of Rs. 8,40,380/-. The case of the assessee was selected for scrutiny under CASS for the reason "large value cash deposits during demonetization period as compared to returned income". The Ld. AO completed the assessment U/s. 143(3) of the Act on 18/12/2019 by accepting the return filed by the assessee. During the assessment proceedings, the Ld. AO observed that the assessee has sold the immovable property for a sale consideration of Rs. 17,07,000/- and received the same in cash violating the provisions of section 269SS of the Act. Accordingly, the Ld. AO initiated the penalty proceedings U/s. 274 r.w.s 271D of the Act and issued notice dated 24/02/2021. In response to the notice, the assessee filed his reply before the Ld. AO. On perusal of the submissions made by the assessee, the Ld. AO observed that *since the assessee is found in violation of the provisions of section 269SS of the Act by accepting the sale consideration otherwise than by account payee cheque to the tune of Rs. 17,07,000/-, penalty U/s. 271D is leviable. Therefore,*

section 271D r.w.s 269SS of the Act is applicable and penalty of Rs. 17,07,000/- is being imposed upon the assessee...". Thus, the Ld. AO imposed the penalty and passed the order U/s. 271D of the Act, dated 11/02/2022. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, before the Ld. CIT(A)-NFAC, the assessee has made his submissions and contended that the Ld. AO is not justified in levying the penalty of Rs. 17,07,000/- U/s. 271D of the Act. Further, the assessee submitted before the Ld. CIT(A)-NFAC that the Ld. AO ought to have considered that the case of the assessee falls within the scope of "reasonable cause" as provided U/s. 273B of the Act. Further, the assessee also contended before the Ld. CIT(A)-NFAC that the penalty levied U/s. 271D of the Act is invalid in the absence of any satisfaction recorded in the assessment order. The Ld.CIT(A)-NFAC after considering the submissions of the assessee held that *the appellant's claim that satisfaction was not recorded in the assessment order is not at all related to the penalty proceedings completed U/s. 271D of the Act.* Thus, the Ld. CIT(A)-NFAC dismissed the appeal of the assessee. Aggrieved by the order of

the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts of the case.*
2. *The Ld. CIT(A) ought to have cancelled the penalty on the ground that the Assessing Officer did not record any satisfaction in the assessment order.*
3. *The Ld. CIT(A) ought to have held that penalty levied vide order dated 11/02/2022 is barred by limitation.*
4. a) *Without prejudice to the above, the Ld. CIT(A) is not justified in sustaining the penalty of Rs. 17,07,000/- levied U/s. 271D of the Act.*
b) *The Ld. CIT(A) ought to have held that the case of the appellant falls within the scope of reasonable cause contemplated U/s. 273B of the Act.*
5. *Any other ground that may be urged at the time of appeal hearing.”*

4. At the outset, the Ld. Authorized Representative [AR] submitted that the assessee has received the disputed amount of Rs. 17,07,000/- as the sale consideration and deposited the same in his bank account which clearly shows the genuineness of the transaction. The Ld. AR submitted that the cash receipts were also considered while computing capital gains and taxes paid accordingly. The Ld. AR therefore pleaded that the penalty levied by the Ld. AO-NFAC and confirmed by the Ld. CIT(A)-NFAC is not sustainable in law and hence the same may be deleted. The Ld.

AR relied on various case laws viz., decision of the ITAT, Bangalore 'B' Bench in the case of Sri Padmanabha Mangalore Chowta vs. Addl/Joint CIT in ITA No. 147/Bang/2022 (AY 2017-18), dated 7/3/2023; IT(IT)A No. 585/Bang/2022, dated 14/9/2022 in the case of Anuradha Chivukula Challa vs. Addl. CIT and decision of the ITAT, Ahmadabad Bench in the case of Narendra Kumar Chunilal Soni vs. JCIT in ITA No. 195/Ahd/2022, dated 17/5/2023. The Ld. AR heavily relied on the decision of this Bench in the case of ACIT vs. Kanchumarthi Venkata Sita Ramachandra Rao in ITA Nos. 245 & 246/Viz/2020, dated 30/08/2022 and also the decision of this Bench in the case of Smt. Vijapurapu Sudha Rao vs. ITO in ITA No. 111/Viz/2023 (AY 2017-18), dated 29/11/2023 as well as the this Tribunal's order in the case of Nymisha Kundam vs. ITO in ITA No. 210/Viz/2022, dated 28/05/2024.

5. Per contra, the Ld. Departmental Representative heavily relied on the orders of the Ld. Revenue Authorities and argued in support of their decision.

6. We have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. The core issue involved in the grounds raised by the assessee is with

respect to validity of levy of penalty U/s. 271D on account of receipt of cash in relation to transfer of immovable property by the assessee attracting the provisions of section 269SS of the Act. The admitted facts are that the assessee has received cash for the sale of immovable property from the buyer to the extent of 17,07,000/-. Section 269SS of the Act as amended by Finance Act, 2015 wef 1/6/2015 stipulates that no person shall take or accept from any other person, 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. The “specified sum” has been defined in the section 269SS of the Act as follows:

“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.”

7. From the plain reading of the above section, it is noted that any person is barred from receiving from any amount otherwise by cheque or through banking channels in relation to transfer of the immovable property. Section 269SS of the Act prohibits receipt of any amount by way of cash in relation to the transfer of any immovable property. On this aspect the Memorandum

explaining the provisions of Finance Bill 2015 with respect to amendment proposed w.e.f 1/6/2015 in section 269SS is relevant and reproduced below:

“In order to curb generation of black money by way of dealings in cash in immovable property transactions it is proposed to amend section 269SS, of the Income-tax Act so as 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 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.”

8. The objective of the amendment proposed in 269SS of the Act is to curb generation of black money. In the instant case the fact is that cash received by the assessee has been deposited by the assessee into the bank account, hence does not attract the provisions of section 269SS of the Act since there is no suppression of cash receipts by the assessee. The assessee has also offered the capital gains to tax. Further, the explanation given by the assessee for receipt of sale consideration of Rs. 17,07,000/- constitutes a “reasonable cause” as contemplated in section 273B of the Act and the assessee has accepted the cash under inevitably unavoidable circumstances as explained by the Ld. AR in his arguments and immediately on receipt of the cash,

the assessee deposited the same in the bank account which contemplates the genuineness of the transaction and moreover the assessee has paid the tax on capital gains thereon. Under these circumstances, respectfully following the decision of the Division Bench of this Tribunal in the case of Nymisha Kundam vs. ITO (supra), wherein the facts of that case are similar to that of the facts in case on hand, we are of the considered view that the penalty levied by the Ld. AO-NFAC U/s. 271D and confirmed by Ld. CIT(A)-NFAC is unsustainable in law and accordingly the orders of the Ld. AO-NFAC and Ld. CIT(A)-NFAC are set aside and thereby we delete the penalty. It is ordered accordingly.

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

Order pronounced in the open court on 23rd October, 2024.

Sd/- (एस बालाकृष्णन) (S.BALAKRISHNAN) लेखा सदस्य/ACCOUNTANT MEMBER	Sd/- (दुव्वूरु आर.एल रेड्डी) (DUVVURU RL REDDY) न्यायिकसदस्य/JUDICIAL MEMBER
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Dated :23/10/2024
OKK - SPS

आदेश की प्रतिलिपि अग्रेषित /Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Vegesna Hare Rama Raju, F.No. 201, Viswas Pride, Ashok Nagar, Road No.2, Kurmannapalem, Visakhapatnam, Andhra Pradesh.

2. राजस्व/The Revenue – Income Tax Officer, Ward-3(1), infinity Towers, Sankaramatam Road, Visakhapatnam, Andhra Pradesh-530016.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam