

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C”BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.1165/Bang/2024
Assessment Year: 2017-18

Kalahalli Thimmanayak Suresh D1, 4 th Floor, CSR Elegance Jaladarshani Layout Near Ramaiah Hospital Bangalore 560 054 PAN NO : BDBPS0958L	Vs.	ITO Ward-1(2)(1) Bangalore
APPELLANT		RESPONDENT

Appellant by	:	N O N E
Respondent by	:	Sri V. Parithivel, D.R.

Date of Hearing	:	19.11.2024
Date of Pronouncement	:	25.11.2024

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of the assessee is directed against the order of CIT(A)/NFAC dated 17.4.2024 vide DIN & Order No.ITBA/NFAC/S/250/2024-25/1064154082(1) for the assessment year 2017-18. The assessee has raised following grounds of appeal:

1. The order of the learned Commissioner of Income-Tax (A) – NFAC, Delhi passed under section 250 of the Income Tax Act for AY 2017-18 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 learned CIT(A) – NFAC, Delhi was not justified in law in upholding and confirming the penalty order passed by the learned Joint commissioner Income Tax Range 1(2), Bangalore, under the provision of section 269SS of the Act.

3. **Non-applicability of the provisions of Section 269SS of the Act to the facts of the present case.** It is a settled principle of law that section 269SS of the Act does not deal with the receipt of 'sale consideration of immovable property' in cash but would get attracted to sum received in cash as a loan or deposit or advance in an immovable property transaction. In other words, receipt of sale consideration received at the time of final payment does not fall under the ambit of section 269SS of the Act. Hence, there is no violation of provisions of section 269SS of the Act in the present case and therefore, penalty is not exigible in this case.

4. That as per **Sale Deed dt. 01.03.2017**, sale consideration of Rs. 68,00,000/- received by the assessee is as follows: -

S.No.	Date	Particulars	Amount (Rs.)
1.	01.03.2017	Cash	9,60,000/-
2.	21.02.2017	Corporation Bank, Loan Account Number 3CMORT/01/140001	21,78,162/-
3.	21.02.2017	Cheque No. 153068, dated 21-02-2017 payable to my ICICI Bank Account No. 056001507729 given by L.I.C. Housing Finance Limited bearing	32,61,838/-
4.	15.02.2017	ICICI Bank Account	4,00,000/-

		no. 056001507729	
-		TOTAL	68,00,000/-

5. The interpretation of prescribed transactions falling within the scope of Section 269SS of the Act by the Commissioner of Income Tax (Appeals) is erroneous. In this instance, after reviewing the sale deed dated 01.03.2017, both the Assessing Officer and CIT(A) have concluded that assessee has received sale consideration of Rs. 9,60,000/- in cash as part of sale consideration. Since this receipt doesn't fall under the categories of loan, deposit, or advance in an immovable property transaction, it cannot be deemed a violation of Section 269SS of the Act, warranting a penalty under Section 271D of the Income Tax Act.
6. Whereas perusal of notice of Show Cause Notice 08.11.2019, Penalty order u/s 271D of the Act dt. 28.01.2020, and impugned order U/s 250 of the Act, dt. 17.04.2024, relevant extract of which, are reproduced herein below for ready reference, reflect that the impugned penalty order under section 271D r.w.s. 269SS of the Act has been passed by the Assessing Officer on the ground that the assessee has received sale consideration of Rs. 9,60,000/- in cash as part of sale consideration and as per section 269SS of the I.T. Act, any sale consideration received in

cash more than Rs. 20,000/- results in violation of the section 269SS for which penalty u/s 271D of the I.T. Act is leviable.

Notice dt. 08.11.2019

"4. It is found from the information collected by the DIT(I&CI), Bangalore that you have sold the above property for Rs. 68,00,000/- and collected Rs. 9,60,000/- in cash as a part of sale consideration for the above flat. Please note that as per amended provision of section 269SS of the I.T. Act, any sale consideration received in cash more than Rs. 20,000/- results in violation of the section 269SS for which penalty u/s 271D of the I.T. Act is leviable. Since you have received the above amount of cash for the sale of above flat along with other co-owners. Hence you have violated the provision of section 269SS of the I.T. Act."

Order dt. 28.01.2020

"2. From the facts of the case and the absolute sale deed dated 01.03.2017 forwarded by the ACIT(HQ & TPS-1), for PCIT-1, Bangalore dated 24.05.2019 shows that the assessee has received Rs. 9,60,000/- in cash out of Rs. 68,00,000/- from the sale proceed of the above property from the above purchaser, in violation of provision of section 269SS of the IT Act 1961."

Order dt. 17.04.2024

"5. ...The assessee has sold a property on 01.03.2017 at a price of Rs. 68,00,000/- out

of which Rs. 9,60,000/- was collected in cash. The assessee has violated the provision of section 269SS, by receiving the sale proceeds of sale of an immovable property in case for more than Rs. 20,000/-. In the instant case, there has been a clear violation failing within the meaning of "specified sum" as per section 269SS which attract a penalty u/s 271D...."

7. It is not the case of the department that the transaction is not genuine or bonafide. The assessee in this case has no intention to evade the tax. The bonafides of the appellant stood established by the action of the appellant who has offered the partial sale consideration of Rs. 9,60,000/- received in cash while computing long term capital gains in his ITR and discharged the tax liability. There has been no loss to the Government exchequer. Thus, the present case cannot be considered for levying the penalty u/s 271D of the Act.

8. The findings of the learned CIT (A) – NFAC, Delhi to the extent against the appellant in the order passed are not in accordance with the law and consequently the order is required to be quashed on the facts and circumstances of the case.

9. The appellant craves leave of this Hon'ble Tribunal, to add, alter, delete, amend or substitute any or all of the above grounds of appeal as may be necessary at the time of hearing.

10. For these and other grounds that may be urged at the time of hearing of appeal, the appellant prays that the appeal may be allowed for the advancement of substantial cause of justice and equity.

2. The brief facts of the case are that the assessee had sold a property on 1.3.2017 situated at No.45, 2nd Cross, Near RMP Quarters, N Block, Kuvempunagar, Chamaraja mohalla, Mysore at a price of Rs.68,00,000/-, the receipts of which are as detailed below:-

S.No.	Date	Particulars	Amount (Rs.)
1.	01.03.2017	Cash	9,60,000/-
2.	21.02.2017	Corporation Bank, Loan Account Number 3CMORT/01/140001	21,78,162/-
3.	21.02.2017	Cheque No. 153068, dated 21-02-2017 payable to my ICICI Bank Account No. 056001507729 given by L.I.C. Housing Finance Limited bearing	32,61,838/-
4.	15.02.2017	ICICI Bank Account	4,00,000/-

		no. 056001507729	
		TOTAL	68,00,000/-

2.1 As can be seen from above, the assessee has received cash of Rs.9,60,000/- out of the total sales consideration amounting to Rs.68,00,000/-. Thereafter, the notices u/s 271D of the Act dated 12.9.2019, 22.10.2019 & 8.11.2019 were issued to the assessee as the assessee violated the provisions of section 269SS of the Act, which was amended by Finance Act, 2015 and applicable w.e.f. 1.6.2015 by receiving the sale proceeds of immovable property in cash more than Rs.20,000/-. As the assessee had not responded to

any of the aforesaid notices, the ld. JCIT, Range-1(2), Bangalore presumed that the assessee has no objection to levy of penalty u/s 271D of the Act in violation of section 269SS of the Act and accordingly, levied the penalty of Rs.9,60,000/- which is equal to the amount of cash received by the assessee on sale of immovable property. Aggrieved by the penalty order u/s 271D of the Act, dated 28.1.2020, the assessee preferred an appeal before CIT(A)/NFAC. The ld. CIT(A)/NFAC dismissed the appeal of the assessee as there was no response to the notices issued on three occasions even before the ld. CIT(A). Further, the ld. CIT(A) observed that there has been a clear violation falling within the meaning of “specified sum” as per section 269SS of the Act, which attracts penalty u/s 271D of the Act. Further, ld. CIT(A) is of the opinion that the assessee has also not brought out any material on record to substantiate any reasonable cause for the default. Accordingly, in view of the ld. CIT(A), the penalty u/s 271D of the Act has been levied correctly and accordingly he upheld the order of AO. Aggrieved by the order passed by the ld. CIT(A) u/s 250 of the Act, the assessee has filed the present appeal before this Tribunal.

2.2 Even before us, no one appeared on behalf of the assessee.

3. The ld. D.R. on the other hand supported the orders of the income tax authorities below and submitted that since the assessee had received cash of Rs.9,60,000/-, out of total sale proceeds of Rs.68,00,000/-, which is a clear violation falling within the meaning of “specified sum”, as per section 269SS of the Act, which attracts penalty u/s 271D of the Act.

4. We have heard the rival submissions and perused the materials available on record. It is not disputed that the assessee has sold a property on 1.3.2017 at a price of Rs. 68,00,000/-, out of which Rs.9,60,000/- was received in cash. The Authorities below are of the view that the assessee has violated the provision of section 269SS of the Act, by receiving the sale proceeds from sale of

immovable property in cash more than Rs.20,000/-. It is also an undisputed fact that the assessee could not represent his case not only before the authorities below but also even before us. In our opinion the Assessee didn't get any opportunity to demonstrate that there was reasonable cause for the said failure as per the provisions contained in Section 273B of the Act. On going through the statement of fact filed in Form-35 before the Id. CIT(A), we found that the assessee is a resident of Mysuru but staying in Mumbai. Therefore in our considered opinion, in the interest of justice and equity, we feel that one more opportunity should be granted to the assessee to demonstrate any reasonable cause for the default, if any before the AO. Accordingly, we remit the issue in dispute to the file of AO for fresh consideration and to decide in accordance with law after giving opportunity of hearing to the assessee. The assessee is directed to update email id, Mobile No. and the residence/office address on the income tax portal. The assessee is also directed to cooperate with the proceedings before the revenue authorities and to file the relevant submissions/documents/information, which would be essential and required by the revenue authorities for proper adjudication. We clarify that in case of further default, the assessee shall not be entitled for any leniency.

5. In the result, appeal filed by the assessee is partly allowed for statistical purposes.

Order pronounced in the open court on 25th Nov, 2024

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 25th Nov, 2024.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
- 5 Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**