



IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI

BEFORE DR.MANISH BORAD, ACCOUNTANT MEMBER
AND
SHRI MANOMOHAN DAS, JUDICIAL MEMBER

आयकर अपील सं. / ITA No.135/GTY/2024
निर्धारण वर्ष / Assessment Year: 2017-18

Kenneth Blah, Karen Cottage, Behind P and T Quarters, Central Nongrim Hills, Meghalaya – 793003	Vs.	ITO, Ward-2, Shillong
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

Assessee by:	Shri J.P. Gupta, FCA
Department by:	Shri Kaushik Roy, JCIT
Date of hearing:	28.11.2024
Date of Pronouncement:	20.01.2025

आदेश / ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER :

The captioned appeal pertaining to Assessment Year 2017-18 at the instance of assessee is directed against the order dated 15.04.2024 passed by National Faceless Appeal Centre, Delhi u/s.250 of the Income-tax Act, 1961 (in short 'the Act') which in turn is arising out of Penalty Order dated 16.03.2022 passed u/s.271D of the Act.



2. The sole grievance of the assessee is that the Id.CIT(A) erred in confirming the penalty of Rs.85.00 lakh levied u/s.271D of the Act for the alleged contravention of section 269SS of the Act for receiving of specified sum in cash more than Rs.20,000/- on account of sale of immovable property.

3. Facts in brief are that the assessee is a State Govt. Employee and resident of State of Meghalaya and belong to Scheduled Tribe community and the income earned by him from the activity carried out in State of Meghalaya as defined in section 25 of Article 366 of the Constitution of India is exempt from tax u/s.10(26) of the Act. During the year under consideration, assessee sold immovable property and received sale consideration in cash and the same was deposited in the bank account. For A.Y. 2017-18, assessee furnished the return showing income of Rs.33,440/- and claimed exemption of income of Rs.47.00 lakh u/s.10(26) of the Act. The case selected for scrutiny through CASS on account of abnormal increase in cash deposit followed by validly serving of notices u/s.143(2) and 142(1) of the Act. Ld. AO after getting the information in lieu of notices u/s.133(6) of the Act issue to the banks where the assessee was maintaining bank accounts, noticed that sum of Rs.84.00 lakh has been deposited in cash in various bank accounts. On further investigation, it was revealed that the source of the alleged cash is the sale



consideration of Rs.85.00 lakh received by the assessee from sale of immovable property, however, since the assessee belonged to Khasi Scheduled Tribal and was eligible for exemption u/s.10(26) of the Act, ld. AO made no addition on cash of cash deposits from sale of immovable property. However, ld. AO initiated the penalty proceedings u/s.271D of the Act for the contravention of section 269SS of the Act.

4. Thereafter, penalty proceedings were carried out and vide order dated 16.03.2022 penalty of Rs.85.00 lakh was levied. In the course of penalty proceedings, it was contended by the assessee that he belong to Scheduled Tribe Community eligible for exemption u/s.10(26) of the Act and stated that since income is exempt from tax, section 271D is not applicable.

5. In appeal, the ld.CIT(A) confirmed the penalty levied by the Assessing Officer u/s.271D of the Act by holding as under :

"5. Findings:

The appeal is delayed. In Forms 35, the appellant has submitted as follows:

"Not knowing that an appeal had to be filed online."

The delay is condoned only in the interest of natural justice and the matter is taken up for adjudication as hereunder.



The Grounds of appeal, the facts and circumstances of the case, the submissions of the assessee and the case laws adduced have been carefully considered.

The facts of the case are that the assessee sold immovable property and received the sale consideration in cash. Section 269SS of the Act prohibits receipt of any amount otherwise than by cheque or through banking channels in relation to transfer of immovable property.

Any person is barred from receiving any amount other than by cheque or through banking channels in relation to transfer of immovable property.

The cause of such infraction of the law by the assessee has been claimed to be ignorance of the law. This cannot constitute "reasonable cause". It is not the assessee's case that he is unlettered or uneducated; in fact he is a government servant. It is not as if this provision of the law is so technical that it does not lend itself to understanding by the common educated citizen. Though the assessee happens to belong to a tribe and thus exempted from tax u/s 10(26) on his income, he cannot claim that provisions of the Income Tax Act do not apply to him. In fact the Income Tax Act itself contains a provision that his income is exempted from tax. However, such exemption from tax cannot render his exempt from the consequences of infraction of the other provisions of the Income Tax Act which apply to him since he is not exempted from them under the Income Tax Act.

Another submission he has made is that accepting cash for sale of immovable property is a common practice of Khasi residents. This contention does not constitute "reasonable cause" either because it is not as if the tenets followed by Khasi residents prohibit receipt of amount by cheque or through banking channels in relation to transfer of immovable property.

Accordingly, the penalty has been rightly imposed.

Grounds of appeal are accordingly rejected.

6. As a result, the appeal is dismissed.”



6. Aggrieved assessee is now in appeal before this Tribunal.

7. Ld. Counsel for the assessee firstly referred to the paper book containing details of about Agreement for sale of land situated at Shillong (Meghalaya), copy of bank statement, caste certificate issued by the Government of Meghalaya and the submissions filed before the lower authorities. He also referred to the exceptions provided in section 269SS of the Act and stated that the said provisions are not applicable on the assessee because the income of the assessee is exempt from tax by virtue of section 10(26) of the Act and since the provisions of section 269SS are not applicable, there is no case for the AO to invoke section 271D of the Act.

8. On the other hand, ld. Departmental Representative vehemently argued supporting the orders of the lower authorities.

9. We have heard the rival contentions and perused the record placed before us. The issue for our consideration is that whether the ld.CIT(A) was justified in confirming the penalty of Rs.85.00 lakh levied u/s.271D of the Act by the AO. Alleged penalty has been levied on account of receipt of sale consideration in cash above Rs.20,000/- from sale of land-cum-residence at Gold Links Mawryngkang Village



of East Khasi Hills, Meghalaya. Admittedly, the assessee belonged to Scheduled Tribe community and is eligible for exemption u/s.10(26) of the Act and even the AO has allowed the exemption in the assessment proceedings. Section 269SS of the Act has a direct bearing on the case before us and the same reads as under :

“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:

[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;

[(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."



10. Going from the above provisions, we notice that second proviso to section 269SS of the Act provided that 269SS 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 or both having agricultural income and neither of them has income chargeable to tax under this Act. In the instant case, income of the assessee is also not chargeable to tax by virtue of section 10(26) of the Act. However, the alleged receipt is not from Agricultural income. Revenue has also not brought the fact that whether the person purchased the land also enjoys the benefit of exemption. It is also an admitted fact that provisions of section 269SS of the Act amended from 01.04.2015 prior to which only loans and advances were covered u/s.269SS. Considering all these aspects and majorly that the income of the assessee being exempt from tax had certainly made assessee understood that there are no tax implications on the transaction being carried out. For such circumstances, section 273B comes to the rescue of the assessee where the penalty is not to be imposed in certain cases where there was reasonable cause for the said failure. Section 273 provides that penalty in certain cases is not leviable if there is a '*reasonable cause*'.



For better understanding, the provisions of section 273B are reproduced below :

“Penalty not to be imposed in certain cases.

273B. *Notwithstanding anything contained in the provisions of clause (b) of sub-section (1) of section 271, section 271A, section 271AA, section 271B , section 271BA, section 271BB, section 271C, section 271CA, section 271D, section 271E, section 271F, section 271FA, [section 271FAA,] section 271FAB, section 271FB, section 271G, section 271GA, section 271GB, [section 271GC,]section 271H, section 271-I, section 271J, clause (c) or clause (d) of sub-section (1) or sub-section (2) of section 272A, sub-section (1) of section 272AA or section 272B or sub-section (1) or sub-section (1A) of section 272BB or sub-section (1) of section 272BBB or clause (b) of sub-section (1) or clause (b) or clause (c) of sub-section (2) of section 273, no penalty shall be imposable on the person or the assessee, as the case may be, for any failure referred to in the said provisions if he proves that there was reasonable cause for the said failure.”*

11. On perusal of the above provision, we note that various types of penalties referred to in section 273B of the Act also includes the penalty u/s.271D of the Act. The assessee has shown ‘reasonable cause’ as he belongs to Schedule Tribe community and the assessee is eligible to claim exemption of tax on the income earned by him u/s.10(26) of the Act. Considering the facts and circumstances of the case, we are of the view that in the present case, the facts of the case are fit to be covered under the category of ‘reasonable cause’ referred to in section 273B of the Act. Therefore, finding of the ld.CIT(A) is set aside and the AO is directed to delete the penalty of Rs.85.00 lakh levied u/s.271D of the Act.



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

Order pronounced on this 20th day of January, 2025.

Sd/-

Sd/-

(MANOMOHAN DAS)
JUDICIAL MEMBER

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक / Dated : 20th January, 2025

Satish

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The Pr. CIT concerned.
4. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, “, Guwahati” बेंच,
/ DR, ITAT, Guwahati Bench
5. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Assistant Registrar