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

**BEFORE SHRI VIJAY PAL RAO, VICE PRESIDENT AND**  
**SHRI MADHUSUDAN SAWDIA, ACCOUNTANT MEMBER**

आ.अपी.सं / **ITA No.200/Hyd/2024**  
(निर्धारण वर्ष / Assessment Year: 2020-21)

Singanamala Sarala, Hyderabad. PAN:ALAPS3369R	<b>Vs.</b>	Asst. Commissioner of Income Tax, Central Circle-1(2), Hyderabad.
(Appellant)		(Respondent)
निर्धारिती द्वारा / Assessee by:	Shri A. Srinivas, C.A.	
राजस्व द्वारा / Revenue by::	Ms. M. Narmada, CIT-DR	
सुनवाई की तारीख / Date of hearing:	05/02/2025	
घोषणा की तारीख / Pronouncement:	16/04/2025	

**आदेश/ORDER**

**PER MADHUSUDAN SAWDIA, A.M. :**

This appeal is filed by Singanamala Sarala ("the assessee"), feeling aggrieved by the order passed by the Learned Principal Commissioner of Income Tax (Central), Hyderabad ("Ld. PCIT"), dated 13.02.2024 u/s. 263 of the Income Tax Act, 1961 ("the Act") for the A.Y. 2020-21.

2. The assessee has raised the following grounds :

*" 1. The order of the Pr.CIT, (Central), Hyderabad is contrary to law, facts and circumstances of the case.*

*2. The Pr.CIT, (Central), Hyderabad erred in passing the order u/s.263, dated. 13.02.2024.*

3. *The order of the Pr.CIT, (Central), Hyderabad dated. 13.02.2024, holding that the Assessment Order passed u/s.153C on 25/09/2021, is contrary to the legal position.*

4. *The Pr.CIT, (Central), Hyderabad, erred in giving directions to the A.O, asking him to record satisfaction, for non-compliance under the provisions of u/s.269SS/269ST of the Act.*

5. *The order of the Pr.CIT, (Central), Hyderabad, dated. 13.02.2024, holding that the approval passed u/s.153D by the Addl Commissioner, Central, Hyderabad, is contrary to the legal position, as the approval of the Addl. Commissioner is not the subject matter of the assessment order.*

6. *The Pr.CIT, (Central), Hyderabad, erred in giving directions to the Additional CIT, Central, Hyderabad for recording of satisfaction in non-compliance under the provisions of u/s.269SS / 269ST of the Act, as the same not the subject matter in the assessment order.*

7. *Any other grounds which the Assessee may urge either before or at the time of the hearing.”*

3. The brief facts of the case are that, the assessee is an individual, filed her Return of Income (“ROI”) for A.Y. 2020-21 on 17.10.2016 declaring total income at Rs.13,33,840/-. A search and seizure operation u/s.132 of the Act was conducted in the case of M/s. Suresh Productions group on 27.11.2019, wherein certain incriminating materials pertaining to the assessee were seized. Consequently, notice u/s.153C of the Act was issued to the assessee. In the assessment order passed in consequence to the notice issued u/s. 153C of the Act, the Ld. AO noted that the assessee had received sales consideration over and above the registered sale deed, in cash, which was not accounted for by the assessee amounting to Rs.9 Crores. Hence, the Learned Assessing Officer (“Ld. AO”) completed the assessment u/s.143(3) r.w.s. 153C of the Act on 25.09.2021 making the addition of Rs.9 Crores in the hands of the assessee, after obtaining approval from Addl. CIT, Hyderabad u/s.153D of the Act. Subsequently, on examination of the assessee's record, the Learned Principal

Commissioner of Income Tax (“Ld. PCIT”) found some irregularities in the order of Ld. AO which have been captured by the Ld. PCIT at para no.3 of his order, which is reproduced as under :

3. In the Assessment Order dt.25-9-2021, on the basis of information available in the seized material, Assessing Officer noted that that the assessee company had received sale consideration, over and above the registered sale deed, in cash, which is not accounted for, in the books of account of the company amounting to Rs.9,00,00,000/-. Therefore, an amount of Rs.9,00,00,000/-, being the difference between the sale consideration as per registered sale deed and actual sale consideration received by assessee from Shri.Radhakrishna Suryadevara, was treated as undisclosed income for the year under consideration. Accordingly, a sum of Rs.9,00,00,000/- is added back to the income returned by the assessee.

3(a)As per the Assessment Order for the A.Y.2020-21, the assessee had received cash of Rs.9.00 crores as on-money against sale consideration from Shri.Radhakrishna Suryadevara which attracts the provisions of Section 269SS of the Act.

3(b)The Assessing Officer failed to record satisfaction with regard to the non-compliance of the provisions of Section 269ST of the Act which attracts penal provisions u/s.271DA of the Act.

3(c) Non-recording of the above satisfaction during the course of assessment proceedings is fatal as per the ratio laid down by Hon'ble Supreme Court in the case of **CIT Vs Jai Laxmi Rice Mills Ambala City**, in Civil Appeal No.1457/2008, the ratio of which is followed by Jurisdictional High Court in the case of **Srinivasa Reddy Reddeppagari Vs JCIT, Central Range-2, Hyderabad** in Writ Petition W.P.No.44285 of 2022.

3.1 Hence, the Ld. PCIT found that, the order passed by the Ld. AO was erroneous in so far as the same is prejudicial to the interest of the revenue. Accordingly, the Ld. PCIT treated the order passed by the Ld. AO and the approval granted by Addl. CIT , as erroneous and prejudicial to the interest of the revenue, and issued show cause notice u/s.263 of the Act on 28.12.2023 to the assessee. After considering the submission of the assessee the Ld. PCIT passed order u/s.263 of the Act on 13/02/2024 setting aside the order of Ld. AO and order of approval of Ld. Addl. CIT with a direction to the Ld. AO to record the satisfaction and to take consequential action.

4. Aggrieved with the order of Ld. PCIT, the assessee is in appeal before us. The Learned Authorised Representative (“Ld. AR”) relying on the decision of co-ordinate bench of ITAT in the case of Sri Adithya Homes Pvt. Ltd. Vs. ACIT in ITA No.230 & 231/Hyd/2023 dated 21.07.2023, submitted that, instead of issuing direction to the Ld. AO to record the satisfaction, the Ld. PCIT himself should have record the satisfaction and pass the order of penalty. The Ld. AR further submitted that, the Ld. PCIT has no power u/s.263 of the Act to issue such direction, hence, the order passed by the Ld. PCIT u/s.263 is bad in law and liable to be quashed.

4.1 In their alternate argument, the Ld. AR submitted that, the impugned amount of Rs.9 Crores has already added by the Ld. AO in the hands of the assessee. He further submitted that, once the impugned amount is treated as income, it loses the character of loan / deposit, hence, the provisions of section 269SS of the Act cannot be applied in their case. As the provision of section 269SS of the Act are not applicable to their case, no penalty u/s.271D can be levied on the assessee. In support of their submission, the Ld. AR relied on the decision of co-ordinate bench of ITAT in the case of Skill Promoters (P) Ltd. Vs. ACIT in ITA Nos.114 to 116/Hyd/2024 dated 03.07.2024. The Ld. AR also submitted that, the impugned amount had been treated as income in the hands of the assessee and there is no loss of revenue to the department, hence no penalty is liable to be levied on the assessee. Finally, the Ld. AR prayed before the bench to set aside the order of Ld. PCIT.

5. Per contra, the Learned Department Representative (“Ld. DR”) relied on the order of Ld. PCIT. The Ld. DR, further relying on the decision of Hon'ble Andhra Pradesh High Court in the case of Grandhi Sri Venkata Amarendra Vs. JCIT dated 04.10.2024 submitted that, the Ld. AO has to record the satisfaction

in his order for levy of penalty u/s.271D of the Act, although the order of penalty u/s.271D of the Act is not to be levied by the Ld. AO. Further, relying on the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Surendra Prasad Agarwal (2005) 275 ITR 113 (All), she submitted that, if the Ld. AO has not recorded his satisfaction in assessment order, then the order of the Ld. AO become erroneous and prejudicial to the interest of the revenue. In the present case, the Ld. AO failed to record his satisfaction, hence, in accordance with the decisions of Hon'ble Andhra Pradesh High Court and Hon'ble Allahabad High Court (supra), there is no infirmity in the invocation of section 263 of the Act by Ld. PCIT by treating the order of the Ld. AO as erroneous and prejudicial to the interest of the revenue. Finally, the Ld. DR prayed before the bench to uphold the order of Ld. PCIT.

6. We have heard the rival contentions and also gone through the record in the light of the submissions made by either side. In the present case, the Ld. AO has made an addition of Rs.9 Crores on account of on money received by the assessee over and above the amount recorded in books of account of the assessee on account of sale of property. The Ld. AO did not record any satisfaction in his order for levy of penalty u/s271D of the Act on account of contravention of provisions of section 269SS of the Act. Consequently, the Ld. PCIT exercised his jurisdiction u/s.263 of the Act and directed the Ld. AO to record his satisfaction for initiation of penalty u/s.271D of the Act. The first argument of the assessee before us is that, the Ld. PCIT has no power u/s.263 of the Act to issue direction to Ld. AO to record satisfaction. The Ld. AR argued that, the Ld. PCIT himself should have record satisfaction and initiate the penalty proceedings. In support of their submission, the Ld. AR relied on the decision of co-ordinate bench of ITAT in the case of Sri Adithya Homes Pvt. Ltd. Vs. ACIT (supra), the relevant portion of the order is reproduced as under :

*“ 24. We do not agree with the above said direction issued by the Id.PCIT to the Assessing Officer to initiate the penalty proceedings under section 271(1)(c) of the Act. The law does not permit the delegation of authority by the Id.PCIT to Assessing Officer for the purpose of imposition of penalty. Firstly, it is for the Id.PCIT to record satisfaction and then initiate penalty proceedings. Since no satisfaction has been recorded by the Id.PCIT, therefore, it would not be appropriate for him to direct the Assessing Officer to record his satisfaction and initiate the penalty proceedings against the assessee.*

*25. In our view, if the Id.PCIT records his satisfaction then penalty proceedings should also be completed by him alone and he cannot direct the Assessing Officer after recording his satisfaction to complete the proceedings. Our above said view is fortified by the judgements relied upon by the assessee which are as under :*

- 1. ACIT Vs. JKD Costa reported in (1982) 133 ITR 7 (Delhi High Court).*
- 2. ACIT Vs. Achal Kumar Jain reported in (1983) 142 ITR 606 (Delhi High Court.)*
- 3. CIT Vs. Keshrimal Parasmal reported in (1986) 157 ITR 484 (Rajasthan High Court)*
- 4. CIT Vs. CRK Swamy reported in (2002) 254 ITR 158 (Mad.)*
- 5. CIT Vs. Rakesh Nain Trivedi reported in (2016) 282 CTR 205 (Punjab & Haryana High Court.)*
- 6. Harish Jain Vs. PCIT reported in (2023) 221 TTJ 276 (Jaipur).*
- 7. CIT Vs. Vegetable Products Limited reported in (1973) 88 ITR 192 (SC). 26.”*

6.1 On perusal of the above, we found that, the co-ordinate bench of ITAT has given their findings in light of provisions of section 271(1)(c) of the Act, however, the issue before us is related to penalty u/s.271D of the Act. Further more, the power of levy of penalty has been specifically given to Ld. PCIT u/s271(1)(c) of the Act, however, no such power to levy penalty has been given to Ld. PCIT u/s.271D of the Act. Hence, the case relied on by the Ld. AR in the case of Sri Adithya Homes Pvt. Ltd. Vs. ACIT (supra) is not applicable to the facts of the case before us and is rejected.

6.2 The Ld. AR also relied on the decision of co-ordinate bench of ITAT in the case of Skill Promoters Pvt. Ltd. Vs. ACIT (supra) and the argument made by the Ld. AR are two fold(s). The first argument of the Ld. AR is that, if the alleged amount has been treated as income in the hands of the assessee, then, the same loses the character of loan / deposit and hence the provision of section 269SS of the Act are not applicable to the assessee and accordingly, there cannot be any levy of penalty u/s. 271D of the Act in the hands of the assessee. In their alternate submission, the Ld. AR submitted that, the power of levy of penalty u/s.271D of the Act lies on the Learned Joint Commissioner of Income Tax (“Ld. JCIT”) and it is the Ld. JCIT who has to record satisfaction. There is no occasion of any satisfaction to be recorded by the Ld. AO. Hence, the allegation of the Ld. PCIT for invocation of section 263 that no satisfaction has been recorded by the Ld. AO is not sustainable and the order passed by the Ld. PCIT is liable to be quashed.

6.3 As far as the contention of Ld. AR that, if the alleged amount is added as income, it loses the character of loan / deposit, the Ld. DR brought to our notice to the provisions contained in section 269SS of the Act, which is to the following effect :

***“ 269SS. [ Mode of taking or accepting certain loans, deposits and specified sum. [Substituted by Finance Act, 2015 (No. 20 of 2015), dated 14.5.2015.]***

*- 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, 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. 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" shall have the same meaning as assigned to it in Part V of the Banking Regulation Act, 1949, (10 of 1949);*

*(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.]”*

6.4 On perusal of the provisions of section 269SS of the Act, we found that, section 269SS covered “specified sum” apart from loan and deposit and the case of the assessee is covered under “specified sum” which is defined under Explanation (iv) to section 269SS of the Act. Hence, the contention of the Ld. AR that if the alleged amount is taken as income, it loses the character of loan / deposit and no penalty can be levied u/s.271D of the Act, is not accepted, because the alleged addition in the case of the assessee does not fall under loan / deposit, it fall under the category of “specified sum”. Further,

nowhere under section 269SS of the Act, it has been mentioned that, if the alleged amount is added as income, the same will be treated out of the purview of section 269SS of the Act. Hence, we do not find any merit in the contention of the assessee and accordingly, reject this contention of the assessee.

6.5 The other contention of the Ld. AR that, it is the Ld. JCIT who has the authority to levy penalty u/s.271D of the Act and accordingly, Ld. JCIT has to record the satisfaction and not the Ld. AO. In this regard, the Ld. DR brought to our notice, the para no. 9 of the decision of Hon'ble High Court of Andhra Pradesh in the Writ Petition in the case of Grandhi Sri Venkata Amarendra Vs. JCIT (supra), the relevant portion of the order is reproduced as under :

*“ 9. In our view, the satisfaction of the Assessing Officer is required to be recorded because the officer, who passed the assessment order would not be levying the penalty under section 271D of the Act, unless it is recorded in the assessment order, he cannot refer the file to superior officer i.e. Joint Commissioner, for initiating levy of penalty. Unless the Assessing Officer, who is the primary authority, based on the material before it, during assessment proceedings, arrives at a finding that there has been a violation of the provisions, like in the present case, of Section 269SS, there will not be any occasion to the Joint Commissioner, who is not the Assessing Officer, to exercise his jurisdiction to levy penalty under section 271D. Following the decision of the Hon'ble Supreme Court in the case of Jai Laxmi Rice Mills referred supra, we set aside the order passed under section 271D of the Act.”*

6.6 Further, the Ld. DR also brought to our notice, the para no. 18 and 19 of the decision of Hon'ble Allahabad High Court in the case of CIT Vs. Surendra Prasad Agarwal (supra) which are to the following effect :

*“ 18. It is well-established that the AO has to initiate proceedings for imposition of penalty during the course of the assessment itself. If he fails to initiate or record his satisfaction for the initiation of the penalty proceedings during the course of the assessment proceedings, it would be a case where the assessment order can be said to be erroneous as he has not decided a*

*point nor recorded a finding on an issue which ought to have been done, or decides it wrongly as held by this Court in the case of [Saraya Distillery](#) (supra). Thus, the omission of the ITO to initiate penalty proceedings during the course of the assessment renders the assessment order erroneous and prejudicial to the interest of the Revenue.*

*19. In this view of the matter, we are in respectful agreement with the view taken by the Madhya Pradesh High Court in the case of [Indian Pharmaceuticals](#) (supra)."*

6.7 On perusal of both the decisions of Hon'ble Andhra Pradesh High Court and Hon'ble Allahabad High Court (supra), it is abundantly clear that, the Ld. AO has to record satisfaction while passing the assessment order and if no satisfaction is recorded by the Ld. AO, then, the order of the Ld. AO will become erroneous so as to prejudicial to the interest of revenue. In the case before us, no satisfaction has been recorded by the Ld. AO in his order. Therefore, in our considered opinion, the order of the Ld. AO is erroneous so far as it is prejudicial to the interest of revenue. Accordingly, we do not find any irregularity in the exercise of jurisdiction of Ld. PCIT u/s.263 of the Act. Hence, we uphold the order of Ld. PCIT and dismiss the appeal of the assessee.

7. In the result, the appeal of the assessee is dismissed.

**Order pronounced in the open Court on 16<sup>th</sup> April, 2025.**

**Sd/-  
(VIJAY PAL RAO)  
VICE PRESIDENT**

**Sd/-  
(MADHUSUDAN SAWDIA)  
ACCOUNTANT MEMBER**

Hyderabad.  
Dated: 16.04.2025.

\* Reddy gp

**Copy of the Order forwarded to :**

1. Singanamala Sarala, Plot No.36/A, Navodaya Colony, Road No.2, Banjara Hills, Hyderabad-500034
2. ACIT, Central Circle 1(2), Hyderabad.
3. Pr. CIT (Central), Hyderabad.
4. DR, ITAT, Hyderabad.
5. Guard File.

BY ORDER,