

आयकरअपीलीयअधिकरण, विशाखापटणमपीठ, विशाखापटणम
IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM "DIVN" BENCH, VISAKHAPATNAM
श्रीविजयपालराव, उपाध्यक्षएवंश्रीएसबालाकृष्णन, लेखासदस्यकेसमक्ष

BEFORE SHRI VIJAY PAL RAO, HON'BLE VICE PRESIDENT
&
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

आयकरअपीलसं./ I.T.A. No. 88/Viz/2025
(निर्धारणवर्ष/ Assessment Year: 2019-20)

Rama Prasad Kesaboyina, Mangalagiri. PAN: AIZPK3246M (अपीलार्थी/ Appellant)	Vs.	Joint Commissioner of Income Tax-2, Guntur. (प्रत्यर्थी/ Respondent)
अपीलार्थीकीओरसे/ Assessee by	:	Shri Krishna, AR
प्रत्यर्थीकीओरसे/ Revenue by	:	Dr. Aparna Villuri, Sr. AR
सुनवाईकीतारीख/ Date of Hearing	:	23/04/2025
घोषणाकीतारीख/Date of Pronouncement	:	13/05/2025

O R D E R

PERS. BALAKRISHNAN, AM:

This appeal filed by the assessee is against the order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ("Ld. CIT(A)") vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1071719694(1), dated 31/12/2024

for the AY 2019-20 arising out of the order passed U/s. 271D of the Income Tax Act, 1961, dated 25/09/2023.

2. Brief facts of the case are that the assessee being an individual, a search operation was conducted by Circle Inspector of Police, Mangalagiri Police Station in the house of the assessee on 16/07/2019 and found that the assessee is in possession of Rs. 28,40,000/- cash and gold ornaments worth 208 grams. On the basis of the enquiry by Deputy Director of Income Tax (Inv) it was found that as per the submission of the assessee the cash and ornaments are found to be in order. In this process, the assessee has submitted a cash book for the relevant assessment year and on perusal of the same, it was observed by the Ld. AO that the assessee has made transactions contravening the provisions of section 269SS of the Act. Thereafter, the Ld. DDIT (Inv) directed the Joint Director of Income Tax (Inv), Vijayawada that the seizure of cash and gold is not warranted and also directed to forward information to the jurisdictional Assessing Officer (JAO) for initiation of penalty U/s. 271D and 271E of the Act. Consequently, penalty proceedings U/s. 271D of the Act were initiated and a show cause notice U/s. 274 r.w.s 271D of the Act was issued and duly

served on the assessee on 31/03/2023. Since the assessee has not submitted any satisfactory explanation to the Ld. AO, the Ld. AO issued a final show cause notice on 02/09/2023. However, no explanation has been furnished by the assessee. Thereafter, the Ld. AO concluded that the assessee has no explanation for defending his failures to comply with the provisions of section 269SS of the Act and levied a penalty of Rs. 40,41,001/- U/s. 271D of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the Ld. CIT(A). The assessee made various submissions before the Ld. CIT(A) and also filed a petition under Rule 46A of the IT Rules, 1962 for admission of the additional evidence before the Ld. CIT(A). The Ld. CIT(A) observed from the submissions of the assessee that the assessee has received loans from deposits of specified sums in cash contravening the provisions of section 269SS of the Act from various parties on various dates amounting to Rs. 40,41,001/- without satisfactorily explaining his failure to comply with the provisions of section 269SS of the Act. He therefore dismissed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A), NFAC is erroneous on law and on facts of the case.*
2. *The Ld. CIT(A)-NFAC erred in sustaining the penalty of Rs. 40,41,001/- levied under section 271D fo the Act by the AO.*
3. *The Ld. CIT(A), NFAC erred in not considering the additional evidence petition.*
4. *The Ld.CIT(A), NFAC erred in cojnfirming the erroneous view taken by the AO that the amount subjected to levy of penalty is amount accepted by the assessee, as long during the year.*
5. *The Ld. CIT(A), NFAC erred in concluding that the assessee accepted loans during the year without considering the factual submission by the assessee that the amount in question is recovery of loans given in earlier periods.*
6. *The Ld. CIT(A), NFAC erred in applying provisions of section 271D r.w.s 269SS of the Act since the amount is not covered under section 269SS since the amount is not loans accepted but recovery of loans given in earlier periods.*
7. *Any other ground that may be raised during the appellant proceedings with the kind prior permission from the Hon’ble ITAT.”*

3. The only grievance of the assessee is that the Ld. CIT(A) has erred in applying the provisions of section 271D of the Act since the amount is not loans accepted by the assessee but only recovery of loans given in earlier periods. The Ld. AR submitted that the assessee has granted loans during the earlier years which were received in cash by the assessee towards repayment of such loans during the impugned assessment year. He argued that section 269SS can be invoked only when loans/deposits are received in cash. He also further submitted that for the recovery of loans given to different persons in earlier periods, section 269SS cannot be invoked for levying of any penalty U/s. 271D of the Act. He therefore pleaded that the Ld. Revenue Authorities, without taking

into consideration the reply furnished by the assessee including the details of cash transactions / cash flow statement provided by the assessee clearly stating that the amounts are repayment of loans and not receipt of loans, erred in levying the penalty. He therefore pleaded that the penalty cannot be levied in the case of the assessee and shall be deleted.

4. Per contra, the Learned Departmental Representative (“Ld. DR”) heavily relied on the orders of the Ld. Revenue Authorities.

5. We have heard both the sides and perused the material available on record. It is the case of the Ld. AO that the assessee has received an amount of Rs. 40,41,001/- from various persons on various dates during the FY 2018-19 by way of cash violating the provisions of section 269SS of the Act. However, the Ld. AR’s submission before the Ld. Joint Director of Income Tax (Inv) which is placed in paper book page No. 24, the Ld. AR demonstrated that the amounts were received as repayment of loans given in earlier period to various parties. Section 269SS is referred below for reference:

“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.”*

On the plain reading of section 269SS, we observed that no person shall take or accept any loan or deposit or any specified amount otherwise through banking channels if the amount is Rs. 20,000/- or more. The contention of the assessee is that it is not the acceptance of loan but it is only acceptance of repayment of loans given to various persons during the earlier years. Further, as submitted by the Ld. AR, the assessee has filed statement of cash receipts confirming the recovery of loans during the FY 2018-19 amounting to Rs. 46,17,001/-. Further, we find that the Ld. AO without assigning any valid reason has not considered the amount of Rs. 5,76,000/- and resorted to levy the penalty on the balance of Rs. 40,41,001/-. Further, the Ld. CIT(A) has also failed to consider the additional evidence provided by the assessee. The Ld CIT(A) also has not made findings or observation on the additional

evidence filed by the assessee. Neither he has called for remand report from the Ld AO. In these circumstances, we observe that the Revenue has not made any categorical finding establishing that the assessee has received loans violating the provisions of Sec 269SS, we are of the considered view that penalty cannot be levied U/s. 269SS of the Act for receipt of repayment of loans by the assessee. We are therefore inclined to direct the Ld. AO to delete the penalty levied U/s. 271D of the Act amounting to Rs. 40,41,001/-.

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

Pronounced in the open Court on 13th May, 2025.

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

Sd/-
(S. BALAKRISHNAN)
लेखासदस्य/ACCOUNTANT MEMBER

Dated :13/05/2025

OKK - SPS

आदेशकीप्रतिलिपिअग्रेषित/Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee –Rama Prasad Kesaboyina, RR Towers, Flat No.518, Mangalagiri, Andhra Pradesh – 522503.
2. राजस्व/The Revenue: Joint Commissioner of Income Tax-2, Lakshmpuram Main Road, Guntur, Andhra Pradesh-522006.
3. The Principal Commissioner of Income Tax,
4. आयकरआयुक्त (अपील)/ The Commissioner of Income Tax
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम/ DR,ITAT, Visakhapatnam
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam