

IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD “B” BENCH: HYDERABAD

BEFORE SHRI MANJUNATHA G, ACCOUNTANT MEMBER
AND
SHRI RAVISH SOOD, JUDICIAL MEMBER

ITA.No.474/Hyd./2024
Assessment Year 2017-2018

Yadagiri Tattari, Hyderabad – 500 047. Telangana. PAN ADDPT6140Q	vs.	The JCIT, Range-15, Hyderabad.
(Appellant)		(Respondent)

For Assessee :	CA A. Srinivas
For Revenue :	Shri D. Praveen, Sr. AR

Date of Hearing :	06.05.2025
Date of Pronouncement :	21.05.2025

ORDER

PER MANJUNATHA G. :

This appeal has been filed by the assessee-Society against the order dated 11.03.2024 of the learned CIT(A)-National Faceless Appeal Centre [in short the “NFAC”] Delhi, relating to the assessment year 2017-2018.

2. The assessee has raised the following grounds in the instant appeal :

1. *“The order of the Appellate Commissioner is contrary to law, facts and circumstances of the case.*
2. *The Appellate Commissioner ought not to have confirmed the levy of penalty u/s.271D amounting to Rs.23,94,166/-.*
3. *Any other grounds which the Assessee may urge either before or at the time of the hearing”.*

2.1. The assessee has also raised the following additional ground in the instant appeal :

“The JCIT, ought not to have assumed jurisdiction u/s.271 D of the Income Tax Act, 1961, without properly recording the reasons for assuming the jurisdiction, either by himself or by the A.O.”

3. Briefly stated facts of the case are that, the assessee is a resident individual, filed his return of income for the assessment year 2017-2018 on 31.03.2018 declaring total income of Rs.5,17,490/-. During the financial year relevant to assessment year under consideration, the assessee with two other parties sold an immovable property vide sale deed Document No.22140/2016 dated 29.08.2016 for a total consideration of Rs.71,82,500/-. The JCIT, Range-15, Hyderabad, initiated penalty proceedings u/sec.271D of the Income Tax Act, 1961 [in short “the Act”]

for violation of sec.269SS of the Act for accepting sale consideration in cash and accordingly, a show cause notice dated 27.08.2019 was issued and served on the assessee. Due to change in incumbent, an opportunity of being heard were given to the assessee vide it's letter dated 01.02.2020. There has been no compliance from the assessee to the said notice. Therefore, the JCIT, Range-15, Hyderabad passed order u/sec.271D of the Act on 28.02.2020 and levied penalty of Rs.23,94,166/- u/sec.271D of the Act for contravention of provisions of sec.269SS of the Act for accepting the sale consideration of property in cash.

4. Being aggrieved by the penalty order, the assessee preferred an appeal before the learned CIT(A). Before the learned CIT(A), the assessee challenged the penalty levied by the Assessing Officer u/sec.271D of the Act on the ground that, there is no violation of provisions of sec.269SS of the Act as alleged by the Assessing Officer because, the assessee has not received any consideration for transfer of property, but, referred to the consideration in the sale deed only for the technical purpose in order to register

the sale deed in the name of M/s. Sri Sai Ram Constructions. Therefore, levy of penalty u/sec.271D for alleged violation of sec.269SS of the Act is incorrect. The learned CIT(A) after considering the relevant submissions of the assessee and also taken note of relevant facts, rejected the explanation of assessee and uphold the penalty levied by the Assessing Officer on the ground that, the assessee is unable to substantiate his claim and is not able to controvert the reasons given by the Assessing Officer in the penalty order. The relevant observations of the learned CIT(A) are as under :

“4.2. I have perused all the material on record including the impugned order. The Facts of the case as per the Penalty Order are as under :

- a) From the facts on records, it was noted that the assessee, Sri. T. Yadagiri with two others parties had sold an Immovable property vide Sale Deed Document No.22140/2016 dated, 29.08.2016. The property was sold for a total sale consideration of Rs.71,82,500/- During this transaction, the vendors accepted entire amount Rs.71,82,500/- in cash, in contravention to the provision of Section 2695S of the Income tax Act, 1961 which attracts penalty u/s 2710. Section 269SS prohibits taking or accepting loan or deposit or any specified sum in excess of Rs.20,000/- otherwise than by an account payee cheque or account payee bank draft*

or use of electronic clearing system through a bank account.

- b) In the above section, the words "Specified sum" was introduced w.e.f., 1-6-2015 by the Finance Act of 2015. "Specified sum" has been defined in explanation(iv) under section 2695S as under "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." Section 271D prescribes penalty for taking or accepting any loan or deposit or specified sum. The penalty shall be equal to the amount so taken.*
- c) In this matter, as acceptance of cash during the above transaction fitted into the definition of "Specified sum", a show cause letter was issued to the assessee vide letter in F.No. Addl. CIT/R-15/269SS/2019-20 dated 27.08.2019. Due to change in incumbent, an opportunity of being heard was given to the assessee vide this office letter dated: 01.02.2020. However, there had been no compliance from the assessee, to the said notice.*
- d) On perusal of the sale deed it has been held by the AO that, the assessee Sri. T. Yadagiri with two others parties had sold an immovable property, for a total consideration of Rs.71,82,500/-. The proportionate share of consideration received by the assessee in cash comes to Rs.23,94,166/-; in contravention to the provision of Section 269SS of the Income-tax Act, 1961 attracting penalty u/s.271D.*
- e) Despite being given sufficient opportunity, there was no response from the assessee to justify receipt of cash accordingly, Penalty of Rs.23,94,166/- u/s.271D of the I.T. Act for the*

A.Y.2017-18 for violating the Provisions of section 269SS of the I.T. Act I.e., accepting cash of Rs.23,94,166/- against sale of Immovable property.

4.3.a) On perusal of the sale deed of the alleged property submitted by the appellant vide reply dated 10.01.2024, in para 3 of page no. 3, it is specifically mentioned that "Whereas the vendors herein, have in need of money for their family necessities and offered to sell the Residential plot Nos. 5, 6, 7 and 8 in survey No 697 total admeasuring 951.00 Sq. yards or 795.03 Sq Mtrs, situated at SATYA RAGHAVENDRA NAGAR, Malkajgiri Presently Greater Hyderabad Municipal Corporation, Malkajgiri Circle, North Zone, Malkajgiri Mandal, Ranga Reddy District, hereinafter called the "Schedule Property" for a mutually settled and agreed cost price of Rs 71,82,500/- (Rupees Seventy One Lakhs Eighty Two Thousand Five Hundred only) pr of the vendee/ attorney out of their own interest intends to dispose the schedule property to anyone else they can do so for which we do hereby empower them to sell the schedule property to such party/ parties on our behalf for which I do hereby confirm powers on them as follows :

THIS AGREEMENT OF SALE-GUM-GENERAL POWER OF ATTORNEY WITH POSSESSION WITNESSETH AS UNDER

That in pursuance of the said offer and acceptance We have this day received from the Vendee/Attorney the said entire sale consideration of Rs.71,82,500/- (RUPEES SEVENTY ONE LAKHS EIGHTY TWO THOUSANDS FIVE HUNDRED ONLY). Which is already received by Vendors that is paid by the Vendee. The receipt of which sum We do hereby admit, accept, and acknowledged and received the consideration amount We do hereby to convey our rights over the Schedule

Property and executed SALE DEED if required in future in favour of the Vendee/Attorney or in the name of his nominee/s whenever we called upon to do so and register the same in accordance with Law but at the expenses of the Vendee/Attorney."

b) The above statement confirms that there was receipt of sales consideration by the vendors. Further, an amount of Rs.3,59,075/- has been paid as Stamp Duty Value.

c) However, there is no mention of mode of payment of sales consideration in the sale deed.

d) Moreover, the appellants had failed to offer any explanation during the penalty proceedings for the queries raised by the AO regarding receipt of the alleged sales consideration as Cash.

e) Even during the appellate proceedings, the appellant has failed to prove the receipt of the alleged sales consideration through allowable modes as mentioned in section 269SS of the Act.

f) Instead to prove the same, the appellant after allowing numerous opportunities and finally after 4 years of imposition of the impugned penalty order under consideration have come up with a new explanation which is reproduced in para 4.1 of this order.

4.4. After, going through the impugned order under consideration, reply of the appellant and materials available on record, the undersigned has come to a conclusion that, the claim of appellant i.e. The appellant assessee, for technical purpose, in order to register the sale deed in the name of Mis Sri Sai Ram Constructions, have mentioned in the sale deed as consideration received to make the sale deed legal and to make proper title flow, where in fact assessee has not

received any consideration either in cash or through the bank as the same was transferred to his own firm M/s Sri Sal Ram Constructions," is merely afterthought, mischievous and fraudulent. It is pertinent to mention here that transfer of immovable property without consideration or for inadequate consideration also attracts the provision of section 56(2)(vii) of the Act."

5. CA A. Srinivas, Learned Counsel for the Assessee referring to additional grounds of appeal filed by the assessee submitted that, the JCIT ought not to have assumed jurisdiction to pass order u/sec.271D of the Act without properly recording the reasons for assuming jurisdiction either by himself or by the Assessing Officer. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of CIT vs., Jai Laxmi Rice Mills [2015] 379 ITR 521 (SC). Learned Counsel for the Assessee further submitted that, the assumption of jurisdiction by the JCIT without there being any pending assessment proceedings is incorrect. In this regard, he relied upon decision of ITAT, Indore Bench in the case of Shri Umakant Sharma, Jhabua vs., JCIT, Ratlam in ITA.Nos.364 to 366/Ind./2022, order dated 19.07.2023. Learned Counsel for the Assessee further submitted that, assessee has not received consideration in

cash as alleged by the Assessing Officer which is evident from the copy of sale deed where it only refers to consideration received for transfer of property, but, there is no details as to whether the said consideration was received in cash or other modes specified u/sec.269SS of the Act. Therefore, he submitted that, penalty levied by the Assessing Officer should be deleted. He relied upon the decision of ITAT, Hyderabad Bench in the case of Ramkumar Reddy Satty, Hyderabad vs., ACIT, Central Circle-1(2), Hyderabad in ITA.No.488/Hyd/2023, order dated 19.03.2024.

6. Shri D. Praveen, learned Sr. AR for the Revenue, on the other hand, supporting the order of the learned CIT(A) submitted that, the moment the Assessing Officer refers the case for the Range Head for initiation of penalty proceedings, it is understood that the Assessing Officer has satisfied that it is a fit case for initiation of penalty proceedings u/sec.271D of the Act and constitutes satisfaction as required to be recorded in light of the

decision of Hon'ble Supreme Court in the case of CIT vs., Jai Laxmi Rice Mills (supra). Further, as per the provisions of sec.271D, there is no requirement of any pending proceedings for initiation of penalty proceedings and further, the said proceedings can be initiated even after completion of assessment proceedings. Therefore, there is no merit in the grounds taken by the assessee in light of order of ITAT, Indore Bench in the case of Shri Umakant Sharma, Jhabua vs., JCIT, Ratlam (supra). Further, it is an undisputed fact that, assessee has received consideration in cash because, in the recitals of sale deed, there is no reference of receipt of consideration either by cheque/DD or electronic mode. Therefore, the Assessing Officer has rightly assumed that the assessee has received consideration in cash in contravention of sec.269SS of the Act which warrants penalty u/sec.271D of the Act. The learned CIT(A) after considering the relevant facts has rightly sustained the penalty levied by the Assessing Officer. Therefore, the order of the learned CIT(A) should be upheld.

7. We have heard both the parties, perused the material on record and the orders of the authorities below. The Competent Authority to initiate penalty proceedings u/sec.271D of the Act, 1961 is the Joint Commissioner of Income Tax. As per sec.271D of the Act, if a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of section 269SS, he shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted. On plain reading of sec.271D, it is undisputedly clear that, the Joint Commissioner of Income Tax shall direct a person to pay penalty a sum equal to the amount of the loan or deposit or specified sum. Therefore, it is necessary for us to consider the arguments of the Learned Counsel for the Assessee in light of certain judicial precedents on the issue of satisfaction of the Assessing Officer, jurisdiction of the Authority who initiated penalty proceedings and also levy of the penalty. Learned Counsel for the Assessee contended that, there is no satisfaction as required under Law before initiation of penalty proceedings either by the JCIT or the

Assessing Officer. In this regard, we find that admittedly there is no assessment proceedings in the present case. The JCIT initiated penalty proceedings on the basis of information available with the Department which shows the assessee has received consideration for transfer of property which falls under the definition of “specified sum” as defined u/sec.269SS of the Act. The JCIT initiated penalty proceedings on the basis of recommendation or information furnished by the Assessing Officer on being satisfied that there is a violation of sec.269SS of the Act in accepting the sale consideration in cash for transfer of property which warrants levy of penalty u/sec.271D of the Act. The said action of the Assessing Officer in forwarding the information to the JCIT constitutes satisfaction of the Assessing Officer before initiation of penalty proceedings and, therefore, in our considered view, there is a valid satisfaction from the Assessing Officer for initiation of penalty proceedings. In so far as case law relied upon by the Learned Counsel for the Assessee in the case of CIT vs., Jai Laxmi Rice Mills (supra) of the Hon’ble Supreme Court, we find that, in the case

before the Hon'ble Supreme Court during original assessment proceedings the Assessing Officer has recorded satisfaction for initiation of penalty proceedings. However, during subsequent proceedings in pursuance to the directions of the Tribunal, the Assessing Officer has failed to record satisfaction in order to initiate the penalty proceedings. Therefore, under those facts, the Hon'ble Supreme Court came to the conclusion that, in absence of required satisfaction before initiation of penalty proceedings u/sec.271D of the Act, the order passed imposing penalty u/sec.271D is invalid. In the present case, since there is no assessment proceedings and the Assessing Officer has forwarded information available with the Department to the JCIT for initiation of penalty proceedings u/sec.271D of the Act, in our considered view, the said action of the Assessing Officer constitute satisfaction and also satisfies the decision of Hon'ble Supreme Court in the case of CIT vs., Jai Laxmi Rice Mills (supra). Thus, we reject the ground taken by the assessee.

8. Having said so, let us come back to the second argument of the Learned Counsel for the Assessee in light of decision of ITAT, Indore Bench in the case of Shri Umakant Sharma, Jhabua vs., JCIT, Ratlam (supra). The Learned Counsel for the Assessee made an argument that unless there is a pending assessment proceedings, penalty proceedings u/sec.271D of the Act cannot be initiated. We are afraid to accept the arguments of the Learned Counsel for the Assessee going by the plain reading of sec.271D of the Act. In our considered view, upon reading of sec.271D, the only condition required for initiation of penalty proceedings is that, if a person takes or accepts any loan or deposit or specified sum in contravention of the provisions of section 269SS. As per said section, the assessee shall be liable to pay, by way of penalty, a sum equal to the amount of the loan or deposit or specified sum so taken or accepted. But, there is no reference to any pending proceedings required for initiation of penalty proceedings u/sec.271D of the Act. Therefore, the arguments of the Learned Counsel for the Assessee in light of decision of ITAT, Indore Bench in

the case of Shri Umakant Sharma, Jhabua vs., JCIT, Ratlam (supra), is devoid of merit and cannot be accepted. Thus, we reject the ground taken by the assessee.

9. Coming back to the third and last argument of the Counsel for the Assessee. Learned Counsel for the Assessee referring to recitals of document which is the basis for levy of penalty u/sec.271D of the Act submitted that, the said document only refers to consideration received for transfer of property on or before the date of registration, but, it does not mention mode of payment of sale consideration. Therefore, the Assessing Officer is wrong in assuming that the assessee has received consideration in cash. We find that, upon verification of the recitals of relevant sale deed, there is no dispute that, the mode of payment of sale consideration is not referred to in the said document. Further, it refers to only sale consideration of Rs.71,82,500/- which has already received by the vendors that is paid by the assessee, the receipt of which sum, has been acknowledged by the vendors. However, there is no

reference to the mode of payment i.e, whether the said consideration has been paid by way of cheque/DD or electronic mode or in cash. In fact, the Assessing Officer and the learned CIT(A) never disputed the above fact. However, they went on to levy penalty u/sec.271D of the Act on the ground that once there is no reference of mode of payment in the document, it is presumed that the said consideration is received in cash. In our considered view, the said findings of the Assessing Officer and the learned CIT(A) are totally incorrect going by the evidence on record. Since the document does not specify the mode of payment whether it is in cash or other modes and further, the assessee failed to offer any explanation during the penalty proceedings for the queries raised by the Assessing Officer regarding the receipt of the alleged sale consideration as cash, in our considered view, the matter needs to be set-aside to the file of Assessing Officer for further examination to ascertain whether the said sale consideration has been received in cash in contravention to provisions of sec.269SS of the Act. Thus, we set-aside the order of the learned CIT(A) and restore the

issue back to the file of Assessing Officer to reconsider the issue in light of our discussion hereinabove and decide the issue in accordance with law, after providing opportunity of being heard to the assessee.

10. In the result, appeal of the Assessee is allowed for statistical purposes.

Order pronounced in the open Court on 21.05.2025.

Sd/-
[RAVISH SOOD]
JUDICIAL MEMBER

Sd/-
[MANJUNATHA G]
ACCOUNTANT MEMBER

Hyderabad, Dated 21st May, 2025

VBP

Copy to

1.	Gouda Sankshema Sangam, 10-1-114, New Lingoiguda, Saroornagar, Hyderabad. PIN -500035. RR District. Telangana.
2.	The JCIT, IT Towers, AC Guards, Masab Tank, Hyderabad – 500 004. Telangana.
3.	The DR ITAT “B” Bench, Hyderabad.
4.	Guard File.

//By Order//

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