



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT
BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER.

&

DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकरअपीलसं./ ITA No. 263/RJT/2024

निर्धारणवर्ष / Assessment Year: (2016-17)

(Hybrid Hearing)

Bharatbhai Ravatbhai Khachar 819 – Star Chambers, Harihar Chowk, Rajkot - 360001	Vs.	The ITO, Ward – 1(2)(1), Aayakar bhavan, Race Course Ring Road, Rajkot – 360001
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AIKPK7760M		
(Appellant)		(Respondent)

Appellant by : Shri D. M. Rindani, Ld. AR

Respondent by : Shri Abhimanyu Singh Yadav, Ld. Sr. DR

Date of Hearing : 10/02/2025

Date of Pronouncement : 06/05/2025

आदेश / ORDER

PER DINESH MOHAN SINHA, JM:

Captioned appeal filed by the assessee, pertaining to assessment year(A.Y.) 2016-17, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), order dated 01.03.2024, which in turn arises out of a penalty order passed by Assessing officer u/s 271D of the Income Tax Act, 1961, vide order dated 28.09.2022.

2. Grounds of appeal raised by the assessee are as follows:

“1. The Learned Commissioner of Income-tax (Appeals), Income Tax Department NFAC, Delhi erred in confirming penalty of Rs. 19,26,450/- levied by the AO u/s. 271D of the Act by holding that there was violation of sec. 269SS of the Act in respect of impugned amount.



2. *The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime up to the hearing of this appeal”*

3. Brief facts of the case that, during the assessment proceedings for AY 2016-17 completed at National Faceless Assessment Centre (NFAC) that during the year, the assessee have accepted cash of Rs. 19,26,450/- in relation to transfer of immovable property(s) during the FY 2015-16 in contravention of the provision(s) of section 269SS of the Income-tax Act, 1961. Penalty u/s. 271D of the IT Act is leviable on such default. As the assessee has received cash of Rs. Rs.19,26,450/- from the purchasers in relation to transfer of immovable properties during the FY 2015-16 in contravention of the provision(s) of section 269SS of the Income-tax Act, 1961. Therefore, penalty proceedings u/s. 271D of the IT Act for the violation of provision of section 269SS of the IT Act were initiated. Accordingly to give fresh opportunity, notice/show cause notice u/s. 274 r.w.s. 271D of the IT Act dated 18/08/2022 was given online through ITBA as to why an order imposing a penalty should not be passed under section 271D of the Income-tax Act, 1961 in view of the contravention of the provision(s) of section 269SS of the Income-tax Act, 1961. The assessee in his reply vide dated 14/09/2022 and requested to drop the penalty as the lands sold are agriculture in nature. The reply/submission of the assessee has carefully seen and not found to be convincing on account of the following reasons

a. The assessee himself has admitted that he does not fall in exemption category as his income is chargeable to tax but has pleaded on the ground that there was *bona-fide* belief that he is not liable for section 26955 as he has sold agricultural land and also the provision was very new and he was not aware of it. The plea taken by the assessee is not acceptable as ignorance of law can't be a reason for committing default. As per



provision of section 269SS, every person after 01.06.2015 has received payment more than the specified limit is liable for penalty.

b. Further in response to cash receipt of Rs.442955/-, the assessee has taken plea that the cash received is nothing but receipt of cash given for acquisition of property which was subsequently cancelled due to technical reason of relevant entries in revenue records are not passed in favour of the assessee. Therefore the purchase deed which was executed in the favour of the assessee is cancelled. In this regard, it will be appropriate to mention here that the assessee has failed to submit any corroborative evidences viz purchase deed therefore, the receipt is from cancellation of deed remains unexplained. In absence of details, it can't be said that the receipt is from cancellation of deed, therefore the cash received is fall within the bracket of specified sum liable for penalty u/s 271D of the Act.

c. The plea of the assessee in respect of payment received of Rs.15,95,252/- related to sale consideration of agricultural land that the payment is received from small agriculturist who may not be available with bank account. Once again the assessee has failed to provide any details from where it could be ascertained that the purchaser were not available with bank account. It is the onus of the assessee to prove that the purchaser were not available with bank account. Further the assessee has given details of payment received where he has shown one payment of Rs. 72400/- has been received before amendment of section 269SS, therefore is not liable for penalty u/s 271D of the Act. The assessee though has claimed for money received before amendment of section 269SS, but he has not provided any details from where the claim of the



assessee could be substantiated. Therefore plea of the assessee can't be accepted.

d. In view of the discussion made here above, it is clear that the assessee has received specified sum in cash of Rs.442955/- and Rs. 15,95,252/- on transfer of property having survey no.228 of Gundda and 74/1 of Amreli respectively. The transactions have been made in violation of section 269SS of the Act thereby attracting penalty u/s 271D of the Act. I am satisfied that it is a fit case to levy penalty u/s. 271D of the Act. In view of above discussed facts, I hereby levy penalty u/s. 271D of the I. T. Act to the tune of Rs. 1926450/- (Rs. Nineteen Lakh Twenty Six Thousand Four Hundred Fifty only) i.e. a sum equal to the amount of specified sum so accepted.

4. That the assessee filed an appeal against the order of the Ld. AO before the Ld. CIT(A), vide order dated 28.09.2022. That the Ld. CIT(A) dismissed the appeal with following observation:

“5. In response to the notices u/s. 250 of the Income Tax Act sent by NFAC, online written submissions were filed. The appeal is decided on merits based on the written submissions, statement of facts narrated in Form no. 35, penalty order and all other material available on record.

On perusal of the appellant's submission, on facts, the following findings emerge:

i. There is admission on the part of the appellant that the relevant provisions of section 269SS being new, he was unaware of the same and he under took the transaction on a bona fide belief that he was not liable to be hit by such provisions. The said contention cannot be accepted as there is no exception provided in law to under take actions which go against the statutory provisions even under bona fide intentions.

ii. The appellant has also contended that the payment received of Rs.15,95,252/- in relation to sale of agricultural land, is from small agriculturists whomay not be available with bank accounts. Once again law does not give scope for presumptions and assumptions, and any such contention has to be looked at strictly from the yardstick of supporting evidences. Prima facie the claim seems to be misleading, as



the land is situated at Amreli, which as a matter of common knowledge is fairly covered with banking operations.

iii. The appellant has further contended that a sum of Rs. 72,400/- was received before amendment to section 269SS, and therefore is outside the purview of the penalty u/s 271D of the Act. Once again it is totally unsubstantiated claim and is summarily rejected for want of any corroborating details.

iv. With regard to receipt of Rs. 4,42,955/- for sale of land at Gundda, the appellant has claimed that the said transaction was subsequently cancelled. However, he has failed to establish that the receipt of cash was on account of cancellation of deed. In the absence of any supporting to that extent, this remains a mere claim, which cannot be entertained.

8. Additionally, the appellant has relied on few case laws which are clearly distinguishable from his case. In Narendrakumar Chunilal Soni, the Honorable Tribunal has provided relief primarily on two grounds that, i. the purchasing party did not have access to banking facilities and, ii. the purchasing party was examined on the above and other aspects during the assessment proceedings, and no adverse view was taken by the assessing officer. It is clear that in the appellants case both the observations supra are not applicable. In Noordeen Ahmed, the Honorable Tribunal on noting that the substantial payment was in cheque and only a minor amount was in cash, observed that the transaction on the whole cannot be categorized as one oriented towards generation of black money and to that extent section 269 SS should not be invoked. Again, the appellants case is clearly distinguishable as in his case the entire payment is in cash and to that extent taking recourse to the decision of the Honourable Chennai tribunal is not in order.

9. In view of the above discussion, I find no infirmity in the action of imposing penalty u/s 271D in the appellant's case. The appellant has not demonstrated any reasonable cause for violating the provisions of section 269SS of the Act. The transactions are clearly involution of section 269SS of the Act and therefore, I confirm the penalty u/s 271D of the Act, to the tune of Rs. 19,26,450/-. Grounds 1 to 5 are dismissed”

5. That the appeal filed by the assessee against the impugned order of the Ld. CIT(A), vide order dated 01.03.2024, before the Tribunal.

6. During the course of hearing, the Learned Appellant Representative (hereinafter to as the “Ld. AR”) of the assessee submitted that, total amount of Rs. 19,26,450/- out of Rs. 4,18,000/- was refund on account of cancellation of deed of property sale (relevant documents are placed on record at page no. 24-26 of paper book). The assessee is agriculturist, therefore, section 269SS does not apply. The Ld. AR also stated that Rs. 15,08,400/- received in cash for sale



of agriculture land, rest of amount of Rs. 72,400/- was received prior to amendment to section 296SS of the Act. There is reasonable cause behind acceptance of cash in agricultural Land sold.

7. On the contrary, the Learned Senior Department Representative (hereinafter referred to as the “Ld. Sr. DR”) for the revenue relied on the order of the Ld. CIT(A).

8. We have heard both the parties and perused the material available on record. We note that the Rs. 72,400/- cash received prior to initiation of section 269SS and Rs.4,18,000/- were record on account of cancellation of property transaction, hence, that is, does not cover for levied penalty u/s. 269SS of Rs. 4,18,000/- and for sale of agriculture land, the assessee has also submitted the cancellation evidences in the support municipal documents (placed on record.) that is paper book of Rs. 15,08,400/- a property sale money was received in cash.

i. We note that the Section 269SS is amended with effect from 01-06-2015 and at time of presenting the Finance Bill 2015 explanatory notes are also presented in the Parliament and the relevant explanatory notes relevant to Section 2695S is produced as under.

“In order to curb generation of black money by way of dealings in cash in immovable property transactions it is proposed to amend section 269SS, of the Income-tax Act so as to provide that no person shall accept from any person any loan or deposit or any sum of money, whether as advance or otherwise, in relation to transfer of an immovable property otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the loan or deposit or such specified sum is twenty thousand rupees or more.”

ii. The assessee further relied on the judgement of in the case of Hon’ble High Court of Gujarat CIT, Ahmedabad- IV v. Maa Khodiyar Construction, in



Tax Appeal No. 325 of 2014, vide order dated 28.04.2014, No penalty for cash loans exceeding Rs. 20,000 from agriculturists living in remote areas when transaction were not doubted, are held that;

“For not inviting the rigour of penalty u/s. 271D of the Act as consequence, on the part of the assessee, the reasonable cause needs to be shown. What is pleaded by the respondent was that all these persons were agriculturists and that the genuineness of the transactions at no point of time had been doubted by the Revenue. They stayed in remote areas. Both the authorities, therefore, were of the opinion that reasonable cause had been sufficiently made out and when the very transactions were never doubted by the Revenue authorities. The breach is to be treated as a mere technical or venial breach.”

iii. Hon’ble ITAT, Visakhapatnam Bench, Smt. Vijapurapu Sudha Rao v. ITO, Visakhapatnam, in ITA No. 111 of 2023, vide order dated 29.11.2023, are held that;

“Where assessee received payment in cash for sale of immovable property, since cash received by assessee had been deposited by assessee into bank account and assessee had also offered capital gains to tax, penalty imposed under section 271D was unsustainable in law”

9. We have gone through carefully the submission on behalf of the assessee and various facts of the case including findings of the Ld.CIT(A), where the order of the AO was confirmed, and other material brought on record. We note that the penalty levied u/s. 271D for failure to comply with the provision of section 29SS speaks that the matter of taking or accepting survey loan deposited and specified. We perused the facts of the case and find that the amount is neither taking or accepting loan or deposited and specified amount, however, The Ld. AR has not doubted about the transaction of sale of land. Section 269SS of the Act requires consideration alongwith Sections 271D and 273B of the Act, any loan or deposit, if accepted by any person otherwise than by an account payee cheque or account payee bank draft from any person exceeding rupees twenty thousand rupees or more. Section 269SS of the Act prohibits the same after the 30th June 1984.



Section 271D makes such person who received the amount in contravention of provision of Section 269SS liable for penalty, a sum equal to the amount of loan or deposit so accepted.

Section 273B of the Act provides/that no penalty shall be imposable on the assessee, for any failure to comply with provisions if he proves that there was reasonable cause for the said failure

10. We note that provisions of section 269SS of the Act was amended by the Finance Act 2015, with effect from 01.06.2015, wherein any specified term has been added, for any deposit or loan the amount of Rs. 2,00,000/- was substituted by the Finance Act 2023 w.e.f. 01.04.2023 for Rs. 2,00,000/- ,here in the assessee's case, as per the findings of the AO, the assessee has accepted the sum from the purchase of the immovable property in cash in contravention of the provision of section 269SS of the Act and findings of the AO is reproduced below:

“The plea of the assessee in respect of payment received of Rs.15,95,252/-related to sale consideration of agricultural land that the payment is received from small agriculturist who may not be available with bank account. Once again the assessee has failed to provide any details from where it could be ascertained that the purchaser were not available with bank account. It is the onus of the assessee to prove that the purchaser were not available with bank account. Further the assessee has given details of payment received where he has shown one payment of Rs. 72400/- has been received before amendment of section 269SS, therefore the payment is not liable for penalty u/s 271D of the Act. The assessee though has claimed for payment received before amendment of section 269SS, but he has not provided any details from where the claim of the assessee could be substantiated. Therefore plea of the assessee can't be accepted.”

11. During the penalty proceedings, the assessee submitted its reply stating that he sold land which was agricultural in nature hence penalty should not be levied. However, the assessing officer rejected his contention and held as follows:



“It is clear that the assessee has accepted the specified sum from the purchaser of the immovable property in cash in contravention of the provisions of section 269SS of the Income-tax Act, 1961. The penalty u/s 271D is leviable in respect of the transactions of acceptance of loan, accept from any other person, 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, therefore, the penalty u/s 271D is hereby initiated in this case for the A.Y. 2016-17.”

12. Agriculturist and banking facilities are not available. We direct the AO to verify the above statement of the assessee, that assessee is an agriculturist and banking facilities are not available in his village, and adjudicate the issue in accordance with law.

13. In the result, the appeal filed by the assessee is allowed, for statistical purpose.

Order pronounced in the open court on 06/05/2025.

Sd/-
(Dr. A. L. SAINI)
ACCOUNTANT MEMBER

Rajkot

दिनांक/ Date: 06/05/2025

Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. Pr. CIT
5. DR/AR, ITAT, Rajkot
6. Guard File

(True Copy)

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER

By Order

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot