

आयकर अपीलीय अधिकरण, कटक न्यायपीठ, कटक

**IN THE INCOME TAX APPELLATE TRIBUNAL CUTTACK BENCH CUTTACK
(THROUGH VIRTUAL HEARING)**

श्री जार्ज माथन, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष ।

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND**

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

आयकर अपील सं/ITA No.12/CTK/2025

(निर्धारण वर्ष / Assessment Year : 2016-2017)

Rajender Prasad Goel, Plot No.D/12, Flat No.202, Accrux Sankalp Apartment, BJB Nagar, Bhubaneswar-751014	Vs	ITO, Ward-2(1), Bhubaneswar
PAN No. : AEPPG 2151 P		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारित की ओर से / Assessee by	:	Shri P.K.Mishra, Advocate
राजस्व की ओर से / Revenue by	:	Shri Vijay Singh, Sr. DR
सुनवाई की तारीख / Date of Hearing	:	14/08/2025
घोषणा की तारीख/Date of Pronouncement	:	14/08/2025

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order, dated 28.11.2024 passed by the Id. CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the assessment year 2016-2017, thereby confirming the levy of penalty u/s.271D of the Act

2. It was submitted by the Id AR that the assessee had sold a property. Admittedly the assessee had received cash of rs.3,40,000/- . It was submitted that the Assessing Officer initiated proceedings u/s.271D of the Act. It was the submission that provisions of Section 271D of the Act related to violation of the provisions of Section 269SS of the Act, which relates to loan and advances. It was the submission that the coordinate bench of the Tribunal in the case of Arati Saraf, passed in ITA

No.375/CTK/2023, dated 13.05.2024 , wherein the coordinate bench of the Tribunal has in para 11 & 12 held as follows :-

11. *In the present case, as is evident from para 4 of the penalty order that the AO has received information that the assessee has received cash of Rs.5,22,000/- in cash from Shri Sushil Kumar Nayak in relation to transfer of immovable property vide document No.10861600866 of Registering office, Jharsuguda. From this observation, it is very much clear that the sale consideration was received by the assessee in cash at the time of getting the sale deed document registered before the sub-registrar. From the perusal of the amendment made in Section 269SS of the Act, where the term "specified sum" has been inserted, it is clear that it is applied only where any advance against the sale of immovable property transaction was received whether or not such transaction has been converted into final sale. The statute has also introduced in Section 269ST w.e.f. Assessment Year 2017-2018 to cover of the cash transaction of Rs.2 lakhs or above, which are not covered in Section 269SS of the Act and provided the levy of penalty u/s.271DA of the Act for violation of provisions of Section 269ST of the Act.*

12. *In the instant case, the AO has invoked the provisions of Section 269SS of the Act and levied the penalty u/s.271D of the Act for taking cash at the time of sale of immovable property. As discussed above, provisions of Section 269ST and Section 271DA has been introduced which are meant for the violation of making cash transaction above Rs.2.00 lacs, which was not invoked by the AO though the transaction referred is fallen under the provision of Section 269ST of the Act. From the perusal of the intention of the legislature as explained in the memorandum and notes on clauses, while amendment made vide Finance Bill 2015, it is clear that intention for bringing this provision was to curb the generation of black money in real estate transaction for prohibiting the acceptance of the payment of advance in cash of Rs.20000/- or more. The "specified sum" as defined is applicable only for "advance" receivable whereas the "advance otherwise" means advance can be of any manner. Therefore, this provisions is not applicable to the transactions were no advance payment in cash has been received and the cash transactions have happened at the time of registration of the sale deed. The present case of assessee also falls in this category where admittedly entire cash was received by assessee in one go at the time of execution of sale deed. Therefore, in our considered view there is no violation of the provisions of Section 269SS of the Act which has been wrongly invoked in this transaction. Accordingly, the penalty levied is hereby deleted.*

3. It was the submission that the order of the Id. CIT(A) is liable to be quashed.

4. In reply, Id. Sr. DR vehemently supported the order of the Id. Assessing Officer and Id.CIT(A).

5. We have considered the rival submissions. A perusal of the penalty order clearly shows that in para 3, the Id.AO recognizes that the assessee had sold the property vide its sale deed. The Assessing Officer also recognizes that the assessee has received cash of Rs.3,40,000/-. The Assessing Officer, however, proceeded with applying the provisions of Section 269SS of the Act and the penalty u/s.271D of the Act. A perusal of the facts in the present case clearly shows that the provision of Section 269SS of the Act applies to loans and advances. The correct penalty i.e. liable to be levied for violation of provisions of Section 269ST of the Act, is Section 271DA and not Section 271D of the Act. As the penalty has not been levied under the correct provisions, respectfully following the decision of the coordinate bench of the Tribunal in the case of Arati Saraf, referred to supra, on identical findings, the penalty levied by the Assessing Officer and confirmed by the Id.CIT(A) in the present appeal of the assessee stands deleted.

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

Order dictated and pronounced in the open court on 14/08/2025.

Sd/-

(राजेश कुमार)

(RAJESH KUMAR)

लेखा सदस्य/ **ACCOUNTANT MEMBER**

दिनांक Dated 14/08/2025

Prakash Kumar Mishra, Sr.P.S.

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / **JUDICIAL MEMBER**

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

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कटक / DR, ITAT, Cuttack
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

(Assistant Registrar)**आयकर अपीलीय अधिकरण, कटक/ITAT, Cuttack**