

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

**(HYBRID COURT)**

**BEFORE SH. MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER  
AND SH. UDAYAN DASGUPTA, JUDICIAL MEMBER**

**I.T.A. No. 311/Asr/2023**  
Assessment Year: 2017-18

Ashwani Kumar,  
Ward No.16, H. No. 32,  
Chabutra Bazar, Udhampur  
Jammu & Kashmir

[PAN: ACXPK 8410D]

**(Appellant)**

Vs.

Addl. CIT, Range-2,  
Jammu (AO), Jammu

**(Respondent)**

Appellant by	:	None (Written submission)
Respondent by	:	Sh. Charan Dass, Sr. D.R.
Date of Hearing	:	02.07.2025
Date of Pronouncement	:	17.09.2025

**ORDER**

**Per Udayan Dasgupta, J.M.:**

This appeal is filed by the assessee against the order of the Id. CIT (A) NFAC, Delhi dated 07.09.2023 passed u/s 250 of the Income Tax Act, 1961 which has arisen from the order of the Addl. CIT, Range-2, Jammu imposing penalty of Rs.16,35,000/- u/s 271D of the Income Tax Act, 1961.

2. Grounds of appeal taken by the assessee in Form No. 36 are as follows:

- “1. *That the order under appeal is bad in law and facts of the case.*
2. *That substantial question of law regarding the interpretation of section 269SS was raised before the AO as well as appellate authority but the same was ignored without giving any reason and hence the order is liable to be quashed.*
3. *That the AO as well as appellate authority have erred in law by not accepting the reasonable cause for depositing the cash transaction.*
4. *Any other ground which will be raised and allowed at the time of 4 hearing.”*

3. Brief facts of the case are that the assessee is a retailer of cloths and textiles under the trade name of *Fancy Fabric* and is also engaged in rendering financial advice to his clients and derives income from *commission from master commodities and master Capital Services as a sub-broker of these two companies*. During the financial year 2016-17, the assessee has sold an inherited plot of land measuring 3 marla (*along with a residential house c on the said land*) located at ward no. 16, *Chabutra Bazar, Udhampur* to an agriculturist *Smt. Bimla Devi W/o Hem Raj, resident of village IND, tehsil Gool Gulab Garh, Distt. Udhampur*, for a total consideration of *Rs.19.94 lakhs* out of which *Rs.16,35,000/-* has been received in cash and subsequently the said cash has been deposited by the assessee in his Bank A/c No. xxxxxx001694 on *15.11.2016*.

4. Since, the provisions of section 269SS has been violated by the assessee by accepting cash from the buyer *Smt. Bimla Devi*, (*exceeding the stipulated limit of Rs.20,000/-*), the financial transaction was hit by section 269SS and as such show cause notice dated 3<sup>rd</sup> October, 2018 was issued by the *Addl. Commissioner of Income Tax, Range-2, Jammu on 03.10.2018* for imposing of penalty u/s 271D (*r.w.s. 274 of the Act*) for failure on his part to comply with the provisions of section 269SS. During the course of penalty proceedings, it was submitted by the assessee that the property sold was a very old and ancestral house in *Mohalla Chabutra, Udhampur, Jammu & Kashmir* which was constructed before 1965 and the total property was in dilapidated condition and there was no buyer available in the market because the property never had any proper approach or road link and on account of awkward location.

5. It was submitted by the assessee that eventuality a buyer has been found *Smt. Bimla Devi* who was a resident of *Gull Gulab Garh Distt. Udhampur* and was an *agriculturist by profession* and she expressed her desire to buy the said property against cash payment because she does not have any bank account of her own and she agreed to pay in cash only. As such, the sale deed was signed on 8<sup>th</sup> day of *November, 2016 at Udhampur on (Non-judicial stamp paper No. D 979482 to D 979485)* which was placed for registration before the *Sub-registrar, Udhampur on 15<sup>th</sup> November, 2016 (seven days later) (Jammu & Kashmir Govt. receipt Form*

*F.C.1 No. 8505722 dated 15.11.2016*) which was submitted as proof of registration along with the copy of the registered deed of sale. It was further stated by the assessee that the sale of the residential property supported by the registered sale deed, has been registered before the Sub-registrar, Udhampur against *cash receipt* from the buyer and immediately after registration, the amount has been deposited in the bank account of the assessee on the same date. He further stated that income tax return has been submitted in due course disclosing the long term capital gain on sale of property and he has also responded to the notice of cash transaction 2016 in the online portal of the income tax department giving description of the sale.

6. However, penalty has been imposed by the Id. Addl. CIT against which the matter was carried in appeal before the Id. first appellate authority and the said appeal has been dismissed by the Id. CIT(A) NFAC by observing as follows:

*“Section 269SS prohibits the acceptance or receipt of any loan or deposit or any consideration for transfer of immovable property 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. Where the provisions of section 269SS are violated by a taxpayer/assessee then penalty u/s 271D is to be levied. As per the second proviso the provisions of section 269SS are not applicable if the following conditions are satisfied:*

*(i) Bth the person receiving the payment and the person making a payment should have agricultural income*

*and*

*(ii) Both the persons should not have any income chargeable to tax under the Income Tax Act*

*Both the above conditions have to be met for the transaction to be exempt u/s 269SS.*

*5.1 in the instant case the appellant is the proprietor of M/s Fancy Fabrics which is a retail outlet of clothes and the assessee also receives commission from Master Commodity and Master Capital Service as he is the sub-broker of these companies and gets commission from day to day trading done by his clients. The assessee is also financial advisor of Mutual Funds and gets commission. The assessee has also filed ITR for the A.Y. 2016-17 disclosing income of Rs.3,71,000/- and paid tax of Rs. 10,434/- thereon. Therefore, the second condition in the proviso of section 26955 is violated.*

*5.2 The appellant in his submission has stated that the purchaser of the said immovable property is an agriculturist and having no taxable income. However, as noted above, both the purchaser and the seller should have agricultural income and should not have any income taxable under the Income Tax Act. In the instant case the appellant has taxable income therefore, the conditions stipulated in the second proviso to section 269SS are not satisfied. In view of the above these grounds of appeal are dismissed.”*

7. Now, the assessee is in appeal before the Tribunal on the grounds contained in the memorandum of appeal. In course of hearing before the Tribunal, the assessee has filed a written submission along with the copy of paper book and has requested for disposal of the appeal on basis of the written submissions.

8. As such, we proceed to dispose of the appeal on the basis of the written submission in consultation with the Id. DR who is present in the court.

9. We find that in the instant case, there is no doubt regarding the genuineness of the transaction of sale of immovable property which has been duly registered under the Transfer of Property Act, 1882 under the hand of the Sub-registrar, Udhampur, Jammu & Kashmir on 15.11.2016. The cash against such sale has been admitted to have been received by the seller and post registration of the sale on 15.11.2016, it is also admittedly pointed out that the cash has been deposited in the bank on the same date by the assessee. We further find that regular return has also been filed disclosing the transaction under the head capital gains. We also find that the assessee has also responded to the said cash deposit (*cash transaction, 2016 of the Income Tax Department*) vide transaction no. 369925219 and stated the same to be out of sale proceeds of ancestral properties.

10. At this stage, we also refer to the CBDT Circular No. 19 of 2015 dated 27.11.2015 which is reproduced as under:

11. *Departmental Circular No.19 of 2015, dated 27-11-2015:- (Para-54)*

*“54. Mode of taking or accepting certain loans, deposits and specified sums and mode of repayment of loans or deposits and specified advances.*

*54.1 Provisions contained in section 269SS of the Income-tax Act, before amendment by the Act, provided that no person shall take from any person any loan or deposit otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, if the amount of such loan or deposit is twenty thousand rupees or more. However, certain exceptions were provided in the section.*

54.2 Similarly, the provisions contained in section 269T of the Income-tax Act, before amendment by the Act, provided that any loan or deposit shall not be repaid, otherwise than by an account payee cheque or account payee bank draft or online transfer through a bank account, by the persons specified in the section if the amount of loan or deposit is twenty thousand rupees or more.

54.3 In order to curb generation of black money by way of dealings in cash in immovable property transactions, section 269SS of the Income-tax Act has been amended 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 (specified sum) otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount of such loan or deposit or such specified sum is twenty thousand rupees or more.

54.4 Section 269T of the Income-tax Act has also been amended to provide that no person shall repay any loan or deposit made with it or any specified advance received by it, otherwise than by an account payee cheque or account payee bank draft or by electronic clearing system through a bank account, if the amount or aggregate amount of loans or deposits or specified advances is twenty thousand rupees or more. The specified advance shall mean any sum of money in the nature of an advance, by whatever name called, in relation to transfer of an immovable property whether or not the transfer takes place.

54.5 Consequential amendments in section 271D and section 271E, to provide penalty for failure to comply with the amended provisions of section 269SS and 269T, respectively, have also been made.

54.6 Applicability: These amendments have taken effect from 1st day of June, 2015.”

12. The above CBDT Circular has been analyzed by the Hon'ble co-ordinate Bench Chennai in ITA No. 3329/Chny/2019 for A.Y. 2016-17 in the case of ITO v. Sh. R. Dhinagharan (HUF) where the Hon'ble Bench on an identical situation has taken

a view in the matter, that the provisions of section 269SS will not apply to the transaction that happens at the time of final payment at the time of registered sale deed and the payment has made before the Sub-registrar at the time of registration of property.

13. We also find that on an identical view has been taken in the case of *Wahid Ali v. JCIT in ITA No. 1916/Del/2022 dated 08.01.2024*.

14. As such, respectfully following the decision cited above and considering the fact that in the instant case, the genuineness of the transaction is not in dispute and the buyer of the property being an agriculturist (as certified by *Naib Tehsildar (Gool)* dated 13.11.2018), she had no bank account of her own and has insisted on making payment in cash only. The assessee was left with no choice but to accept the cash and deposit the same in bank account and the entire transaction has been duly registered under the stamp and sign of the sub-registrar, Udampur, Jammu & Kashmir, where the bonafide of the transaction is established beyond doubt.

15. During hearing, the ld. DR pointed out to an existing submission filed by the department which reads as follow:

D/R

**BEFORE THE HON'BLE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR**

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Name of the assessee	-	Sh. Ashwani Kumar
ITA No.	-	311/ASR/2023
AY	-	2017-18

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**WRITTEN SUBMISSION**

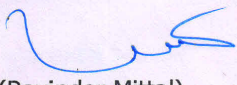
Kindly refer to the proceedings during the course of the hearing of the above referred appeal before the Hon'ble bench on 30.07.2024.

In this connection the following submission consideration of the Hon'ble bench.

1. The facts of the case, in brief, are that the assessee sold an immovable property during the financial year 2016-17 relevant to A.Y. 2017-18. Against total consideration of Rs. 19, 94,000/- an amount of Rs. 16, 35,000/- was received in case. Since this receipt is covered under the category of 'specified sum' as defined in explanation-(iv) to section 269SS, it violated the provision of this section and accordingly penalty u/s 271D was levied. The same has been upheld by the Ld. Commissioner of Income Tax (Appeal). The assessee's is appeal before this bench.
2. During proceedings before the Assessing Officer as well as Ld. CIT (A), the assessee could not justify this action. He merely stated that the buyer of the property insisted on cash payment as she did not have any bank account. Here noteworthy fact is that out of Rs. 19,94,000/- only Rs. 16,35,000/- was received in cash. This means that the balance amount of Rs.3,59,000/- was received otherwise then cash i.e. through cheque's or other banking channels. In the light of this crucial fact the explanation and excuses of the assessee fall flat.
3. During proceedings before the Assessing Officer, the assessee stated that the buyer insisted on cash payment as demonetization was announced. It may be submitted that the sale of the property occurred on 08.11.2016, during the time and demonetization were announced after 8PM on the day. This shows that the assessee's is coming up with baseless excuses and has no valid reason for accepting the payment in cash.
4. In the view of the above, there is no merit in the appeal of the assessee and the Hon'ble bench may kindly be pleased to dismiss the same.

**SUBMITTED**

Amritsar  
Dated :04.07.2024

  
(Ravinder Mittal)  
Sr. DR, ITAT, Amritsar

16. Referring to the above, the Id. DR submitted that out of total sale proceeds of Rs.19.94 lakhs, an amount of Rs.16.35 lakhs has received in cash and the balance amount of Rs.3.59 lakhs must have been received otherwise through cheque or other bank channels and as such, the explanation of the assessee is not apparently truth. He further submitted that there is a declaration that the buyer has insisted on cash payment because demonetization was announced and as per sale deed, the same is signed on 08.11.2016 whereas demonetization has been announced after 8 p.m. which proves that the assessee in this case has accepted SBN from the buyer and deposited the same on 15.11.2016.

17. The issues raised by the DR vide his written submissions are not the issues before the Hon'ble Bench, as such we do not comment on the same. The case before us is that whether there is violation u/s 269SS and whether penalty u/s 271D is attracted in case of the assessee where he has received cash against transfer of immovable property before the Registration Authority as full and final payment for registration of sale deed.

18. We have already referred to the views taken by the co-ordinate Bench in respect of identical issues and following the said view, we are also of the opinion that penalty should not be imposed for a mere technical default and the assessee in this case has shown reasonable cause and considering the memorandum explaining

intention of the amendment by the Finance Bill, 2016, we are of the opinion that the provisions of section 269SS will not apply in this case because it is neither an advance nor a loan and as such, we delete the penalty imposed u/s 271D of the Act, 1961.

19. In the result, the appeal filed by the assessee is allowed.

Order pronounced in accordance with Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 as on 17.09.2025

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
**Accountant Member**

**Sd/-**  
**(Udayan Dasgupta)**  
**Judicial Member**

*\*GP/Sr.PS\**

Copy of the order forwarded to:

- (1) The Appellant:
- (2) The Respondent:
- (3) The CIT concerned
- (4) The Sr. DR, I.T.A.T

True Copy

By Order