

आयकर अपीलीय अधिकरण
कोलकाता 'डी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'D' BENCH, KOLKATA**

श्री जॉर्ज माथान, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI GEORGE MATHAN, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 584/KOL/2025
Assessment Year: 2011-12**

Sandeep Kumar Sethia <i>(Appellant)</i>	Vs.	ITO, Ward-44(2), Kolkata <i>(Respondent)</i>
PAN: AMAPS8265R		

Appearances:

Assessee represented by : Miraj D Shah, AR.

Department represented by : S.B. Chakraborty, Sr. DR.

Date of concluding the hearing : 09-July-2025

Date of pronouncing the order : 03-October-2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-NFAC, Delhi [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2011-12 dated 10.12.2024, which has been passed against the penalty order u/s 271D of the Act, dated 29.09.2014.



1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 24 days. An application seeking condonation of delay has been filed by the assessee stating as under:

"1. Whereas the appeal for the AY 2011-12 arising from the appellate order passed by the Ld. CIT(Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 10/12/2024 which was served on 10/12/2024. The appeal was thus to be filed by 08/02/2025. However, the appeal is being filed on 24.03.2024 hence there is a delay of 44 days in filing the appeal.

2. It is submitted that the assessee did not receive any alert about the passing of Appellate order from the Ld. CIT(Appeals). Hence, the assessee was not aware of the passing of the appellate order.

3. The Assessee received a call from the Jurisdictional assessing officer's office for collection of demand. The assessee informed the assessing officer that the appeal was pending. The assessing officer then informed the assessee that the assessee's appeal was dismissed and also provided a copy of Appellate order wherein the assessee become aware of that the appellate order passed.

4. The assessee immediately notified their Counsel regarding the whole scenario. The Counsel of the assessee then took immediate steps and the assessee is now filing this by filing appropriate condonation petition.

5. It is submitted that considering the above facts and circumstances of the case the assessee humbly prays that the delay in filing of appeal may be condoned considering the above circumstances.

6. It is humbly submitted that the delay of 44 days in filing of the appeal was not due to any malafide intention or negligence on our part but was due to the above said fact, thus the delay was not intentional. It is therefore requested that the delay in filing of the appeal be condoned.

7.(Reliance has been placed upon several judicial pronouncement by the assessee in this para)...

8. Considering the judicial decisions as cited above and the facts of the case the delay in filing of appeal, be condoned and the appeal be admitted for hearing of merits.

9. For these acts of kindness, the appellant assessee shall always be obliged."

1.2. In para 7 of the petition, the assessee has mentioned several judicial pronouncements in support of allowing the request for condonation of delay. Considering the application for condonation of delay and the reasons stated therein, we are satisfied that the assessee



had a reasonable and sufficient cause and was prevented from filing the instant appeal within statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication.

2. The assessee is in appeal before the Tribunal raising the following grounds of appeal:

“1. That the Order passed u/s 250 is bad in law as well as on facts of the case.

2. The Hon'ble CIT(A) erred in law and on facts by failing to annul the penalty under section 271D, violating principles of natural justice by not providing a reasonable opportunity to the Appellant.

3. The Hon'ble CIT(A) erred in upholding the penalty order despite the Show Cause Notice dated 26.09.2014 being issued on a Friday evening with an unreasonably short response time till 29.09.2014 (Monday), effectively denying the Appellant a single working day for compliance.

4. The Hon'ble CIT(A) erred in sustaining the penalty order without appreciating that the Ld. AO failed to provide a reasonable opportunity for the Appellant to demonstrate no violation of Section 269SS of the Income Tax Act, 1961.

5. The Hon'ble CIT(A) erred in upholding the penalty order without appreciating that Section 269SS applies only to loans and deposits and not to advance payments for the purchase of plots.

6. That the appellant craves to leave, add, amend or adduce any of the grounds of appeal during the course of appellate proceedings.”

3. Brief facts of the case are in this case, the assessee had filed the return of income for the A.Y.2011-12 on 29.03.2012 declaring total income of Rs.1,97,760/-. Assessment proceedings were completed u/s 143(3) on 30.03.2014 assessing the total income at Rs. 2,34,660/-. During the course of assessment proceedings, it was noticed by the Ld. AO that the appellant had received cash totalling Rs. 2,59,42,000/- from 34 parties for brokering land/purchase deal with M/s Pushpanjali Pvt. Ltd in violation of provisions of section 269SS of the IT Act. Accordingly, penalty proceedings u/s 271D were initiated and penalty



order u/s 271D of the Act was passed by the JCIT, Range-44, Kolkata on 29.09.2014 levying penalty of Rs. 2,59,42,000/-. Aggrieved by the penalty order, the appellant filed the appeal, before the Ld. CIT(A), who vide his order dated 10/12/2024 dismissed the appeal by giving his findings as under:

“6. Decision:-

I have perused facts of the case, penalty order, submission of the appellant and after considering the same, the appeal is adjudicated as under:

6.1 Ground No. 1 and 2 raised by the appellant are general in nature challenging the jurisdiction of JCIT imposing penalty submitting that the JCIT had no jurisdiction to pass the order u/s 274(1) & 274(2) of the Act as amount of penalty exceeded Rs. 20,000/-. These Ground of appeal are without any substance in them as the Ld. JCIT has followed the provisions of Act in passing the penalty order. It is noticed from the record that appellant has been given reasonable opportunity of being heard before passing the penalty order. Further, as per specific provisions of sec 271D (2) of the Act, any penalty under the said section has to be imposed only by JCIT and not by the ITO. Hence, citation of provisions of sec 274(2) of the Act by the appellant has no legal relevance. Accordingly, Grounds No.1 & 2 of the appeal are dismissed.

6.3 Ground No. 3 to 6 are related to the penalty levied u/s 271D by Ld. JCIT. The appellant has submitted that he had received cash towards sale of rights in the property as booking advance from the persons who were interested to acquire plots and this cash received was not in the nature of loan or deposit. However, It is noticed that no evidence has been filed by the appellant regarding the same. No confirmation has been filed by the appellant to prove that he had received the cash towards booking advance (for sale of rights in the plots) from the parties. It is pertinent to mention here the fact that in the return of income filed by the appellant, he has shown income from commission received from two parties namely Atmosphere cooling Solution Ltd and Ashika Stock Broking Ltd. However, the plot purchase deal with the parties has been claimed to have been made with M/s Pushpanjali Pvt Ltd. If the appellant's claim is presumed to be correct that he has taken advance from parties for purchase of plot for M/s Pushpanjali Pvt Ltd then he would have shown commission/brokerage income from M/s Pushpanjali Pvt. Ltd. also in his return of income. However, the appellant has not shown any brokerage/commission income from the said company. Moreover, if the owner of said plots was M/s Pushpanjali Pvt. Ltd, then the advance for the same would have been taken by the company and the cash received would not have been shown by the appellant in his books of



accounts. Hence, claim made by the appellant is not found to be correct. Further, as regards to appellant's claim that the cash received represents consideration for sale of right in the land, is also not found correct as the appellant couldn't furnish any evidence to prove that he was having any right in the land for which he received cash as sale of right. Further, no documentary evidence has been filed by the appellant to substantiate his claim that he had received cash from various parties as advance for sale of plots to them. Therefore, it is clear that the appellant has received deposits from the parties in cash exceeding Rs. 20,000/- from each of them and he could not submit any evidence to prove that the cash received was not deposit as specified in sec 269SS of the Act and he is just making castles in the air without any basis.

Since, it is clear that the appellant had received cash from 34 parties exceeding Rs. 20,000/- from each of them as deposit and has violated provisions of section 269SS of the Act and therefore, I am of the view that Ld. JCIT has rightly levied penalty u/s 27D of the Act in the case of the appellant for violation of provisions of sec 269SS of the Act. Accordingly, Grounds No. 3 to 6 are dismissed.

6.4 Ground No. 7 is general in nature and need no adjudication.

7. In the result, the appeal is dismissed.”

4. Aggrieved with the order of the Ld. CIT(A), the assessee has filed the appeal before the Tribunal.

5. Rival submissions were heard and the record and the submissions made have been examined. The Ld. DR relied upon the order of the Ld. CIT(A). The Ld. AR submitted that the advance was taken for the sale of property, notices under section 133(6) and summons under section 131 were issued for examination/verification of the parties and no addition was made in the assessment order in respect of the amounts received. It was also submitted that till assessment year 2014-15, the provision did not include advance for property and in this regard, he relied upon the decision in the case of **Arati Sarraf v JCIT, Range Rourkela, Rourkela** ITA No. 375/CTK/2023 A.Y. 2017-18 order dated 13.05.2024, specifically page 7 thereof (page 19 of the paper book), the relevant extract from which is as under:

“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 8 ITA No.375/CTK/2023 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 where 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.

13. In the result, appeal of the assessee is allowed.”

6. The Ld. AR also relied upon the decisions in the following other cases:

1. *Commissioner of Income-Tax vs. Kharaiti Lal And Co.* 2004 (3) TMI 32- P&H), Order Dated 18.03.2004
2. *Commissioner of Income-Tax vs. Idhayam Publications Limited* 2006 (1) TMI 97 (Madras) Order Dated 23-1-2006
3. *Dy. Commissioner of Income Tax Central Circle-4 Surat vs. M/S. Sai Ram Developers (ITAT Ahmedabad Bench)*, Order Dated 5/4/2013
4. *Kanaklata Mallick Vs Jcit, ITAT Cuttack Bench*, Order Dated 10/07/2024

7. We have considered the submission made and also gone through the facts of the case. The Ld. AO noted that the assessee had received



cash from 34 parties with whom he made agreement to assign all his claim, right, interest in respect of plot of land for a consideration as per the details mentioned in each agreement. Another agreement was made on 01/04/2010 with Mrs Pushpanjali Private Ltd for purchase of more or less 98 Cottahs land lying and situated at Rajarhat for a consideration of ₹ 2,75,00,000/- of which M/s. Pushpanjali Pvt. Ltd. was the absolute owner of the piece of land. The assessee paid money by several cheques to M/s. Pushpanjali Pvt. Ltd. and the bank statement was also filed in support of the contention; the details of such payment being as mentioned on page 4 of the assessment order. Subsequently, the agreement with M/s. Pushpanjali Pvt. Ltd. was cancelled for failure to develop/plot the scheduled property and to hand over the plots by 03/03/2011 to the prospective buyers and a letter dated 31/03/2011 received from M/s. Pushpanjali Pvt. Ltd. was also filed before the Ld. AO. Since the agreement was cancelled, the money received from 34 parties was refunded by M/s. Pushpanjali Pvt. Ltd. and no commission income accrued to the assessee since no nomination had been made by the assessee in favour of any 3rd party. It was submitted that since the advance was received for sale of land and the provisions of section 269SS were amended w.e.f. 01/06/2015 to include “any specified sum” which, as per the Explanation thereof 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”, the amended provisions are not applicable for A.Y. 2014-15, i.e. the impugned assessment year.

8. We have considered the submissions made, gone through the facts of the case and perused the record and the order of the Ld. CIT(A). Even though the assessee was not the owner of the land at the time of



receipt of advance, but as is mentioned in the assessment order that the he had filed agreements before the Ld. AO for purchase of plots and the money received in respect thereof and as is mentioned in the penalty order, the agreements were cancelled and the money was refunded to the prospective buyers in the form of shares in M/s. Pushpanjali Pvt. Ltd. subsequently on 31.03.2011, since the owner of the land could not fulfil the agreement and the sale did not materialise. Hence, respectfully following the findings in the case of Arati **Sarraf (supra)** and other decisions relied upon by the Ld. AR, we are of the view that the provisions of section 269SS are not attracted to the facts of the case and the penalty levied by the Ld. AO, which is confirmed by the Ld. CIT(A), is hereby cancelled and in the result the appeal of the assessee is allowed.

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

Order pronounced in the open Court on 3rd October, 2025.

Sd/-

[George Mathan]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 03.10.2025

Bidhan (Sr. P.S.)



keeping is a million Copy of the order forwarded to:

1. **Sandeep Kumar Sethia, 3rd Floor, Room No.82, Bangur Building, 161/1, M.G. Road, Barabazar, Kolkata, West Bengal, 700007.**
2. **ITO, Ward-44(2), Kolkata.**
3. CIT(A)-NFAC, Delhi.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
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By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata