

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.145/CTK/2025

(निर्धारण वर्ष / Assessment Year : 2017-2018)

Suresh Kumar Divakar, Paradise Chamber, Main Road, Budharaja S.O Sadar, Sambalpur- 768004	Vs	ACIT, Circle -1(1), Sambalpur
PAN No. : AGUPD 1872 B		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
निर्धारिती 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	:	25/09/2025
घोषणा की तारीख/Date of Pronouncement	:	25/09/2025

आदेश / O R D E R

Per Bench :

This is an appeal filed by the assessee against the order of the Ld.CIT (A), National Faceless Appeal Centre (NFAC), Delhi dated 03/02/2025 passed in Appeal No. NFAC/2016-17/10125205 for the assessment year 2017-2018 confirming the penalty levied under section 271D of the Act for the violation of the provision of section 269SS of the Act.

2. It was the submission that the assessee had sold a piece of land for a consideration of Rs.22,05,000/-. The assessee had received the sale consideration in cash. The AO had initiated penalty proceedings u/s.269SS of the Act and had levied penalty u/s.271D of the Act for the violation of the provisions of Section 269SS of the Act. It was the submission that the receipt of cash in respect of immovable property is hit by the provisions of section 269ST of the Act and the penalty provision is

271DA of the Act. It was the submission that this issue is now squarely covered by the decision of the coordinate bench of this tribunal in the case of **Arati Saraf in ITA NO. 375/CTK/2023 dated 13/05/2024 wherein para 11 and 12** the coordinate bench of this Tribunal has 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 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.

3. It was the submission that as the penalty has been levied under the wrong section, the penalty is liable to be cancelled.

4. In reply, the Ld. Sr. DR vehemently supported the orders of the AO and CIT(A).
5. We have considered the rival submissions. As it is noticed that the penalty has been levied in respect of the sale consideration received by the assessee on the sale consideration of immovable property, admittedly the provisions of section 269ST of the Act applies and not 269SS of the Act. Consequently, the penalty in relation to the provisions of section 269SS of the Act would not apply. In these circumstances, as the penalty has been levied u/s.271D of the Act for the violation of the provisions of section 269SS of the Act, respectfully following the decision of the coordinate bench of this Tribunal in the case of **Arati Saraf**, referred to supra, the penalty as levied by the AO and as confirmed by the Ld.CIT (A) stands deleted.
6. In the result, the appeal of the assessee is allowed.

Order dictated and pronounced in the open court on 25/09/2025.

Sd/-

(राजेश कुमार)

(RAJESH KUMAR)

लेखा सदस्य/ ACCOUNTANT MEMBER

Sd/-

(जार्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य / JUDICIAL MEMBER

दिनांक Dated 25/09/2025

Prakash Kumar Mishra, Sr.P.S.

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

1. अपीलार्थी / The Appellant- Suresh Kumar Divakar ,
Paradise Chamber, Main Road, Budharaja S.O Sadar,
Sambalpur-768004
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 अपीलीयअधिकरण,कटक/ITAT, Cuttack