

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH: BANGALORE****BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.1147/Bang/2022
Assessment Year: 2017 – 18

Sri Padmanabha Mangalore Chowta 601, Divyashree Apartment Bajai Kapikad Road Mangalore 575 004 PAN NO : ALWPC3991R	Vs.	The Addl/Joint Commissioner of Income-Tax Range-1 Mangalore
APPELLANT		RESPONDENT

Appellant by	:	Shri V. Srinivasan, A.R.
Respondent by	:	Shri Gudimella VP Pavan Kumar, D.R.

Date of Hearing	:	07.03.2023
Date of Pronouncement	:	07.03.2023

O R D E R**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by the assessee is directed against order of NFAC dated 15.11.2022 for the assessment year 2017-18. The assessee has raised following grounds of appeal:-

1. The orders of the authorities below in so far as levying penalty u/s 271D of the Act against the appellant are opposed to law, equity, weight of evidence, probabilities, facts and circumstances of the case.

2. The order of penalty passed u/s 271D of the Act is without jurisdiction in as much as the impugned order has been passed by the National Faceless Assessment Center, which has been upheld by the learned CIT[A] observing that the impugned order was passed by the A.O., with the approval of the JCIT instead

of being passed by the JCIT to whom powers are vested for imposition of penalty and therefore, the impugned order deserves to be cancelled.

3. Without prejudice to the above, the levy of penalty u/s 271D of the Act is bad in law in as much as the appellant has demonstrated reasonable cause u/s 273B of the Act for accepting cash of Rs. 15,70,000/- as part of the sale consideration and thus, the learned CIT[A] is not justified in sustaining the levy of penalty under the facts and in the circumstances of the appellant's case.

3.1 The learned CIT[A] failed to appreciate that the bonafides of the appellant stood established by the action of the appellant in immediately depositing the cash so received in his bank account and offering the same while computing long term capital gains in the return of income voluntarily filed for the year under appeal under the facts and in the circumstances of the appellant's case.

4. The levy of penalty u/s 271-D of the Act is bad in law in as much as the appellant has not committed any default u/s.269SS actionable u/s 271-D of the Act-and the National Faceless Assessment Center has not established that the appellant committed any such default actionable u/s.271D of the Act, deliberately and consequently, the impugned penalty order passed for the venial and assumed technical breach deserves to be cancelled having regard to the ratio of the decision of the Hon'ble Supreme Court in the case of HINDUSTAN STEEL LIMITED V. STATE OF ORISSA reported in 83 ITR 26 [SC].

5. Without prejudice to the above, the authorities below failed to appreciate that the appellant bonafidely believed that such acceptance of cash was not in violation of law, which bonafide beliefs is also accepted by the decisions of the Hon'ble Rajasthan High Court in the case of CIT V. LOKPAT FILM EXCHANGE [CINEMA] reported in 304 ITR 172 [Raj] and also the decision of the Hon'ble ITAT, Ahmadabad Bench, in the case of ITO V. UNIVERSAL ASSOCIATES reported in TIOL-498/ITAT-AHM and consequently, the penalty levied u/s.271D of the Act, for the alleged violation u/s.269SS of the Act, requires to be cancelled having regard to the ratio of the decision of the Hon'ble Supreme Court in the case of VEGETABLE PRODUCTS reported in 88 ITR 192

6. Without prejudice to the above, the penalty levied by the learned Na FAC, Delhi without the same being initiated by the learned A.O. during the course of assessment proceedings specifically in the order is bad in law, as the learned Addl/JCIT gave the first notice only on 24/11/2020 i.e. after 13 months from the date on which the assessment is completed and therefore, even assuming the learned Addl/JCIT was competent to initiate for the alleged default for the violation of section 269SS of the Act, under Chapter XXI of the Act, the initiation and levy are bad in law in view of the limitation prescribed in section 275[1][c] of the Act and therefore, the penalty levied requires to be annulled.

7. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and

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Justice rendered and the appellant may be awarded costs in prosecuting the appeal and also order for the refund of the institution fees as part of the costs.

2. At the time of hearing, the assessee has not pressed ground No.6, hence, this ground is dismissed as not pressed. Ground Nos.1 & 7 are general in nature, which do not require any adjudication.

3. Now we will consider ground Nos.2 to 5 cumulatively. Facts of the case are that the assessee is an individual whose assessment has been completed for the assessment year 2017-18 on 31.10.2019 u/s 143(3) of the Income-tax Act,1961 ['the Act' for short] accepting the returned income of Rs.3,39,520/-. There was an audit objection raised by ITO IAP-13, Mangalore vide objection no.CIT(Audit), Bengaluru/2020-21/ITO/IAP-13 Mangalore/10054/01/2020-21/IAP-13 dated 28.7.2020 that the assessee has sold an immovable property for a consideration of Rs.19.2 lakhs and received sale consideration of Rs.15.70 lakhs in cash. The acceptance of cash was in violation of section 269SS read with section 271D of the Act. Since the assessee violated the provisions of section 269SS of the Act, ITO Ward-1(1), Mangaluru referred the matter for initiation of penalty u/s 271D of the Act vide letter dated 23.11.2020. Accordingly, notice u/s 271D of the Act was issued by Additional/JCIT, Range-1 Mangaluru on 24.11.2020 to the assessee. The assessee filed a reply to the said show cause notice issued u/s 271D of the Act dated 24.11.2020 vide its letter dated 14.12.2020, which reads as follows:

".....During the registration they gave me DD amounting to Rs.3,50,000/- and loose case of Rs. 75,70,000/- and I could not cancel the sale deed and I have no option but to receive the cash. The above cash was deposited to Canara Bank, K. R. Puram, Branch Bangalore by my wife to my bank account in Canara Bank, Kuntikana and Shivabagh Branch....."

For the sake of natural justice, another show cause notice u/s 271D of the Act vide dated 27.05.2021 was issued to the assessee as to

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why an order imposing a penalty should not be made under section 271D of the Income Tax Act, 1961. In response to the same, the assessee has furnished his reply vide letter dated 16.09.2021 and submitted as under:

".....I wish to state that, it was learn that my matter was settled by the Commissioner of Income Tax (Audit, Bengaluru. Further I request your good office to kindly refer my matter with the jurisdictional Addl. CIT, Mangalore regarding settlement letter issued by the CIT (Audit), Bengaluru. Hence I request your good off to kindly drop the penalty proceedings initiated u/s 271D of the Income Tax Act,1961,....."

3.1 The A.O. after considering the above reply of the assessee observed that assessee has no reasonable cause for receiving an amount of Rs.15.70 lakhs in cash in violation of section 269SS of the Act. In view of this, he levied penalty of Rs.15.70 lakhs, which is equal to the amount of cash received by assessee i.e. Rs.15.70 lakhs. Against this assessee went in appeal before Id. CIT(A). The Id. CIT(A) confirmed the levy of penalty u/s 271D of the Act. Against this assessee is in appeal before us.

4. We have heard the rival submissions and perused the materials available on record. Admittedly, in this case, the assessee was a retired person. Earlier he worked as a clerk in a private concern. The assessee bought the property on 9.7.2004 by investing his past savings at the time of retirement in Bengaluru and the assessee has been staying in Mangaluru. The assessee got an information by neighbours around the assessee's property that a construction activity has been started in the plot owned by him and on his visit to the plot, he was surprised to see that an unauthorized construction work was being carried out at the assessee's plot. The assessee owing to health problem decided not to pursue the matter legally and as advised by assessee's well wishers to resolve the matter amicably by mutual discussion and negotiation with the person who is carrying out unauthorized construction at the assessee's plot, it

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was decided to sell the said property to the said person. Accordingly, assessee sold that property to the unauthorized occupant of the assessee's plot. At this moment, assessee was very disparate and out of total consideration of Rs.19.20 lakhs, assessee received Rs.3.5 lakhs by demand draft and balance amount of Rs.15.70 lakhs in cash. This cash receipt of Rs.15.70 lakhs has been deposited into assessee's Canara bank account along with DD amount and the same has been considered to compute the capital gain on which the assessee paid the tax also. The assessee has filed return for assessment year 2017-18 u/s 139(1) of the Act on 4.7.2007 and declared the long term capital gain out of sale of the impugned property and paid the tax liability on it. The assessee's case was selected for limited scrutiny through CASS and completed the assessment u/s 143(3) of the Act without any further addition. However, the penalty proceedings were invoked with regard to violation of section 269SS of the Act for receiving an amount of Rs.15.70 lakhs in cash and penalty u/s 271D of the Act levied to the equal amount of cash received by assessee at Rs.15.70 lakhs. The assessee in this case has no intention to evade the tax and it has truly disclosed all the details for the purpose of assessment and there was no loss to the Government exchequer. Due to compulsion, assessee received an amount of Rs.15.70 lakhs in cash. As decided by the Tribunal in the case of Akash Education & Development Trust Vs. ADIT in ITA No.737/Bang/2021 dated 18.4.2022 wherein it was held that *"it is not a deliberate and intentional violation of the provisions of section 269SS of the Act. Penalty like 271D of the Act will not be imposed unless the party concerned has acted deliberately in defiance of law or was guilty of contumacious or dishonest conduct or acted in conscious disregard of its obligation and penalty will not be imposed merely because it is lawful to do so. Imposition of penalty for failure to perform statutory obligation is only a discretionary power of the authority exercising judicial functions in consideration of all the relevant*

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circumstances. If the assessee acted on genuine belief that penal provisions have no application to deposits when it is between the trustee and assessee, then penalty could not be levied. In the present case, in our opinion, there exists reasonable cause in accepting loan in cash. Therefore, the assessee is exonerated from levy of penalty.”

4.1 In the present case also, the assessee has accepted the cash due to compelling circumstances and had the assessee waited for the demand draft to receive, assessee might have suffered further loss from the unauthorized occupant of the assessee's plot. The assessee in this case settled the dispute with the unauthorized occupant by selling the property to them to avoid any further litigations as the assessee has been staying in Mangalore and also a retired person, having not much strength to fight with unauthorized occupant of the assessee's plot and the assessee pleaded that this is the reasonable cause for accepting an amount of Rs.15.70 lakhs by cash. As per section 273B of the Act, no penalty would be leviable if the person concerned proves that there is reasonable cause or said failure clearly indicates the bonafideness of the assessee, then it gives a discretion to the authority to impose the penalty or not to impose penalty. Such discretion has to be exercised in a just and fair manner having regard to the entire facts and material existing on record. Ordinarily, a plea has to be ignorance of law cannot support the breach of a statutory provision. But the fact of such technical breach due to ignorance of the relevant provision of law on account of bonafide belief coupled with the fact that the transaction in question is genuine and bonafide transaction are undertaken during the regular course of its business will not result in levy of penalty u/ 271D of the Act. Now there is no allegation by the department that assessee has evaded any tax emerged from this transaction by not disclosing the same to the department. On the other hand, it is

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evident that assessee duly declared the sale transaction of the plot in its return of income and discharged the tax liability.

4.2 In our opinion, the explanation given by the assessee constitutes a reasonable cause as contemplated in section 273B of the Act. The expression “reasonable cause” has to be considered pragmatically and as its transaction openly done, to meet the exigency of business, it can be said to constitute “reasonable cause”. The bonafide business transaction cannot be considered for levying the penalty u/s 271D of the Act. In the present case, it is not the case of department that the transaction is not genuine and explanation given by assessee is not bonafide. In view of this, provisions of section 269SS of the Act cannot be applied as the assessee’s transaction is genuine and also constituted with “reasonable cause” and in such case, default on the part of assessee is merely a technical and venial nature and no penalty u/s 271D of the Act could be levied. In view of this, we delete the penalty levied u/s 271D of the Act.

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

Order pronounced in the open court on 7th Mar, 2023

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Chandra Poojari)
Accountant Member

Bangalore,
Dated 7th Mar, 2023.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(Judicial)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

**Asst. Registrar,
ITAT, Bangalore.**