

आयकर अपीलीय अधिकरण, हैदराबाद पीठ में
**IN THE INCOME TAX APPELLATE TRIBUNAL
HYDERABAD BENCHES "B", HYDERABAD**

BEFORE
SHRI RAMA KANTA PANDA, VICE PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER

आ.अपी.सं / **ITA No. 219/Hyd/2022**
(निर्धारण वर्ष / Assessment Year: 2018-19)

Gopinath Kanduri, Income Tax Officer,
Kadapa Vs. Ward-1,
[PAN No. AEJPK9142E] Kadapa

अपीलार्थी / Appellant

प्रत्यर्थी / Respondent

निर्धारिती द्वारा/Assessee by: Shri S. Rama Rao, AR
राजस्व द्वारा/Revenue by: Ms. Sheetal Sarin, DR

सुनवाई की तारीख/Date of hearing: 07/08/2023
घोषणा की तारीख/Pronouncement on: 13/09/2023

आदेश / ORDER

PER K. NARASIMHA CHARY, J.M:

Aggrieved by the order dated 09/05/2022 passed by the learned Commissioner of Income Tax (Appeals)- National Faceless Appeal Centre (NFAC), Delhi ("Ld. CIT(A)"), in the case of Gopinath Kanduri ("the assessee") for the assessment year 2018-19, assessee preferred this appeal.

2. Brief facts of the case are that assessee is an individual, deriving income from medical profession. During the financial year 2017-18, the assessee besides deriving income from medical profession, also derived income from capital gains on sale of plots situated at Ramaraju Palli Village, Kadapa. The gross receipts from sale of the property aggregated to Rs. 1,25,58,000/-. The said amount was declared for the purpose of computing the capital gains and filed the return of income on 18/01/2019, disclosing an income of Rs. 4,55,250/-. Accordingly learned Assessing Officer finalized the assessment under section 143(3) of the Act. Learned Assessing Officer, however, on a perusal of the cash book and ledger, found that some of the amounts of sale consideration were received in cash to the tune of Rs. 94,38,000/-. He, therefore, reached a concluded that the assessee violated the provisions under section 269SS of the Income Tax Act, 1961 (for short "the Act"), initiated penalty proceedings under section 271D of the Act and levied a penalty of Rs. 94,38,000/-.

3. Aggrieved by such a finding of the learned Assessing Officer, assessee preferred appeal before the CIT(A), and submitted that the sale is genuine and the amounts were genuinely received from the purchase of the property which is proved from the registered documents, the purchasers were new to the assessee and since the assessee was more than 70 years as on the date of such sale, he did not think it safe to receive the sale consideration otherwise than cash because none of the purchasers who paid in cash had bank accounts nor were the banking facilities available at such place, this is the only transaction entered into by the assessee with the purchasers and since they were strangers, assessee could not run the risk of postponing the receipt of the sale consideration, the entire amount is declared for tax which evidences the fact that the assessee had no intention to evade the tax, and therefore, levy of penalty may be deleted.

4. Learned CIT(A) observed that there is a clear violation of the provisions of section 269SS of the Act and such a section does not

recognize the genuineness of transaction, safety factors or the lack of banking facilities as exceptions. According to the learned CIT(A), what is relevant is whether the seller and purchaser had access to banking facility or not. Learned CIT(A) further brushed aside the argument advanced on behalf of the assessee that with the promulgation of the provisions under section 269ST of the Act, the provisions under section 269SS of the Act will have no application. Learned CIT(A) accordingly, upheld the levy of penalty and dismissed the appeal.

5. Assessee, is therefore, aggrieved and filed this appeal contending that the learned Assessing Officer accepted the return of income, admitting the capital gains and, therefore, the transaction is not only the genuine, but does not cause any prejudice to the Revenue. Lack of banking facilities at the place where the sale took place and also the purchaser is not having any bank account is the reason for accepting the sale consideration in cash in respect of the plots, and since the assessee declared the entire sale consideration for the purpose of tax, no motive could be attributed to the assessee to reject the contention of the assessee that the reasons for accepting the cash include the safety factor and the lack of banking facilities. If it were not true, the assessee does not stand to gain by accepting the cash towards the sale consideration. According to the learned AR, this constitutes sufficient cause under section 273B of the Act and, therefore, no penalty shall be imposed in this case. Learned AR placed reliance on the decision of the Hon'ble Jharkhand High Court in the case of OMEC Engineers vs. CIT (2007) 294 ITR 599, JCIT vs. BD Patel in Tax Appeal No. 1226/2009, DCIT vs. Akhilesh Kumar Yadav (2012) 26 Taxmann.com 264 (Agra-Trib), CIT vs. Suneel Kumar Goyal (2000) 183 taxman 53 (Punjab and Haryana) and ACIT vs. Shreenathji Corpn(2015) 56 Taxmann.com 439 (Gujarat) and a host of decisions by the Tribunal in support of his contention.

6. Per contra, learned DR relied on the orders of the authorities below and submitted that as rightly pointed out by the learned CIT(A), the plea

taken by the assessee as to the genuineness of transaction or no prejudice to the interest of Revenue apart from the lack of banking facilities or the purchasers not having bank accounts are not recognized by the provisions under section 269SS of the Act, and therefore, the assessee cannot escape the clutches of the provisions in section 271D of the Act. Learned DR placing reliance on the decision reported in the case of PCIT vs. Sahara India Financial Corporation Limited (2020) 119 taxman.com 285 (SC) where the Hon'ble Supreme Court granted SLP against the order of the Hon'ble High Court of Delhi deleting penalty on the ground that the depositors belonged to rural areas where adequate banking facilities were not available. He also placed reliance on the decision reported in Al Ameen Educational Trust vs. CIT (2021) 131 Taxmann.com 127 (SC) where under the Hon'ble Apex Court dismissed the SLP as withdrawn against the High Court's ruling that where assessee failed to discharge its burden in proving that there was a reasonable cause in accepting cash deposits from staff members in its bank account. He further placed reliance on the decision reported in ADI vs. Kum AB Shanthi (2002) 122 taxman 574 (SC) where under the Hon'ble Apex Court upheld the constitutionality of the provisions under section 269SS and 271DD of the Act. Likewise, he placed reliance on two more decisions, where the SLP was dismissed by the Hon'ble Apex Court.

7. We have gone through the record in the light of the submissions made on either side. Facts are not in dispute. Assessee happens to be a medical practitioner, aged more than 70 years at the time of the sale transactions. Assessee sold the same by making it into plots and in that process he received sale consideration from three purchasers in cash. Assessee declared the same in his books and also took cognizance of the same while computing the capital gains. Learned Assessing Officer on a perusal of the cash book, ledger and other books of the assessee, accepted the return of income, admitting the capital gains. Learned Assessing

Officer did not raise any doubt about the genuineness of the transaction and by considering the cash receipts also he concluded the assessment.

8. As could be seen from the orders of the authorities below, the sole basis for levy of penalty is the technical violation of the provisions under section 269SS of the Act. Assessee offered explanation that the place where the sale took place happens to be a place where no banking facilities were available and also that none of these purchasers who paid in cash had any bank account. At the same time such purchasers were strangers to him, and he would not believe them for registering the property without receiving the sale consideration. Since he happens to be a busy medical practitioner, the purchasers were strangers, there were no banking facilities at the place of registration and also finally that the purchasers did not have any bank account, in view of the situation where he cannot postpone the sale, he had no option but to receive the sale consideration in cash.

9. There is also no dispute that the assessee made entries in his books showing this receipt of sale consideration in cash along with the receipts in cash towards advances. While computing the capital gains the assessee took into consideration the entire sale consideration including the cash component also. Learned Assessing Officer did not find any discrepancy in the books of accounts of the assessee or in the computation of the capital gains. Without raising any objection whatsoever, the learned Assessing Officer concluded the assessment, accepting the computation of the capital gains as reflected in the sale deeds and also in the books of accounts of the assessee. It is therefore clear that no attempt to evade the tax could be attributed to the assessee. Chapter XXB of the Act requires certain mode of acceptance, payment or repayment in certain cases to counter evasion of tax. This cannot be lost sight of.

10. When the assessee went to a far-off place where the property was situated to sell the same to various persons, no banking facilities were

available at such place and 3 of the prospective purchasers did not have bank accounts at the time, the assessee had only one option either to conclude sale by receiving the sale consideration in cash or to return without such sale. In such situation if the assessee accepts the sale consideration in cash, diligently and enters the same in his books of account and also declares the same while computing the capital gains, no malice could be attributed to the assessee with an attempt to evade the tax. Undoubtedly it is a transaction in technical violation of the provisions under section 269SS of the Act.

11. In a number of cases it was held that where there was no finding of learned Assessing Officer that the transaction made by the assessee in breach of provisions of section 269SS of the Act was not a genuine transaction and on the contrary, return filed by the assessee was accepted after scrutiny under section 143(3) of the Act, imposition of penalty merely on technical mistake committed by the assessee, which had not resulted in any loss of Revenue, was harsh and could not be sustained in law. Precisely this is the finding returned by the Hon'ble High Courts in the cases of OMEC engineers (supra), Suneel Kumar Goyal (supra) and Shreenathji (supra). This view is taken by the Tribunal in a number of cases like Devinder Gupta & sons (HUF) vs. CIT in ITA No. 5394 /Del/ 2019, Sattar sons packaging Private Ltd vs. ACIT in ITA No. 2077/Hyd/ 2018, Sh. Venkata Narayana Raju vs. Additional CIT in ITA No. 229/Hyd/2019, Akhilesh Kumar Yadav (supra) etc.

12. Having regard to the circumstances pleaded by the assessee coupled with the facts that the transaction was a genuine transaction and the assessee entered the cash receipts into his books of accounts and also declared the same while computing the capital gains, we are of the considered opinion that it constitutes sufficient cause, and while following the provisions under section 273B of the Act, and also the establishing consistent view taken on this aspect in the cases referred to above, we

take a benign view and direct the learned Assessing Officer to delete the penalty levied under section 271D of the Act of the Act.

13. In the result, appeal of the assessee stands allowed.

Order pronounced in the open court on this the 13th day of September, 2023.

Sd/-
(RAMA KANTA PANDA)
VICE PRESIDENT

Sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Hyderabad,
Dated: 13/09/2023

TNMM

Copy forwarded to:

1. Gopinath Kanduri, 1-441-17, Beside Lakshmi Towers, Maruthi Nagar,
Near RTC Bus Stand, Kadapa.
2. Income Tax Officer, Ward-1, Kadapa.
3. PCIT
4. DR, ITAT, Hyderabad.
5. GUARD FILE

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ASSISTANT REGISTRAR
ITAT, HYDERABAD