

ITR 688, he submitted that the additional ground raised by the assessee should be admitted for adjudication.

7. The learned DR, on the other hand, strongly opposed the admission of the additional ground and submitted that the assessee at this juncture should not be allowed to raise the additional ground. Alternatively, he submitted that he may be granted time to go through the same and obtain a report from the Assessing Officer.

8. After hearing both the sides and considering the fact that the additional ground raised by the assessee is purely legal in nature and all material facts are already available on record and no new facts are required to be investigated, the additional ground raised by the assessee is admitted for adjudication.

9. The learned Counsel for the assessee argued both on merit as well as on the additional ground which is legal in nature and filed the following written submissions:

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Date: 27-04-2023

To
The Hon'ble Income Tax Appellate Tribunal
A-Bench, Hyderabad
CGO Towers
Secundrabad

Hon'ble Sirs,

Sub: In the Appeal of Nalla Raja Reddy - PAN:AAXPN3602Q- Asst. Year :
2019-2020- Proceedings u/s 254 of the Income Tax Act, 1961 against the
penalty order passed under section 271D of Income Tax Act, 1961- Reg.

Appeal No: ITA No: 520/Hyd/2022 A.Y.2019-20

With reference to the above subject, we submit the following few lines for
your kind consideration and necessary action.

1. During the previous year relevant for the assessment year 2019-20 (i.e.,
year of search) , the appellant along five others have decided to sell a
piece of agriculture land that was owned by them to meet some urgent
business commitments. A party was identified, and that party has paid
Rs.2,00,00,000 as advance in July 2018 in cash. The transaction was
negotiated by one Sri J Sampath Rao, and it is this person who collected
the advance amount in cash on behalf of all the five owners. Though the
appellant was aware about the offer, but he was not aware about
collection of advance in cash at the time of its actual collection. The

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appellant and other four co-owners have broadly permitted Sri J Sampath Rao to identify and negotiate a prospective vendee. The identification of a vendee, the crystalizing of the deal and the receipt of advance – all the three aspects have happened in such a quick succession that the appellant could not keep pace with these developments. The appellant was left with no time or opportunity to carry the matter of land sale deal to his tax consultant and to ascertain the income tax related nuances involved in a property sale. The receipt of Rs.2,00,00,000 and its distribution (of a proportionate share) to appellant, seizer of a portion of the said cash advance in a search action conducted under section 132 of Income tax Act, 1961[for short – the Act] on 08-08-2018 – all happened in a lightning speed and, as already submitted, the things did not leave room to discuss with the tax consultant to understand the income tax ramifications of sale of an immovable property.

. It humbly submitted that the appellant, in the immediate past (at least from April, 2015 onwards) did not sell any immovable property (except the sale in the year 2017-18 of a small property whose sale consideration was Rs.6,10,000). The appellant further submits that since, in the past, immovable properties were rarely sold by him, he had hardly got an opportunity to learn about some changes that had taken place in some of

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the sections of Income Tax that deal with the real estate transactions. However, it may be mentioned here that though the amount was received in cash, the same was duly disclosed in his income tax return and offered to tax under the head capital gains. The assessee is existing taxpayer on the rolls of the Department and details of the income assessed for past 10 assessment years is as follows:

S.No	Fin. Year	Acknowledgment No	Returned Income
1	2020-2021	798596690311221	99,57,450
2	2019-2020	315898591290321	98,50,290
3	2018-2019	303715331140220	1,46,37,210
4	2017-2018	463898480150419	1,36,61,050
5	2016-2017	463897290150419	86,01,280
6	2015-2016	463825700150419	25,48,660
7	2014-2015	463808741150419	13,57,990
8	2013-2014	463881731150419	10,91,230
9	2012-2013	463881161150419	36,21,530
10	2011-2012	129934150190314	2,52,700

3. The provision, as was learnt, was introduced basically to address the tax evasion or circulation of black money. In this case, the appellant is on the rolls of the Department for past many decades, and he has already disclosed the said sale advance amount as a part of sale consideration while computing the amount of capital gains. Therefore, in this transaction of receipt of cash, there was no effort to dodge the tax liability nor was there any effort to create black money.

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4. Further, it may kindly be noted that the due date for filing the return had not expired for the impugned assessment year when the said amount was received. Even in the assessment proceedings, at the stage when the original assessment proceedings was conducted, though this amount was treated as unexplained income and taxed under section 69, yet the Hon. CIT-A, on filing an appeal, had held that the said amount of Rs.40,00,000 is part of sale consideration and negated the observation of the learned AO that it was an unexplained amount. Thus, the said amount of Rs.40,00,000 was duly offered to tax though received in cash.
5. It is further submitted that the practice of receiving cash on sale of immovable properties was prevalent in this country for centuries. This age-old practice of acceptance of cash when coupled with the fact that a normal person [i.e., other than persons who deal in real estate more regularly], very rarely sells his immovable property in his lifetime, had hardly provided any opportunity to learn about latest changes like changes that were made in section 289SS etc., that have a tremendous bearing on dealing in real estate transactions. Moreover, as can be seen from the date of amendment these changes were made in the Act a very few years ago.

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6. In this country we have a maze of complex and complicated laws and regulations. Further most of the laws are dynamic and ever changing, thereby day by day make these laws appear as labyrinths where the point of entry and exit are difficult to understand. This dizzy position remains same in case of most of the persons including as highly qualified person such as a CA, CWA, CS or a lawyer (assuming that they are not practicing in field of direct tax laws) , IITan or Post Graduate in Management form IIM. Therefore, looking at the myriad of laws , Hon. Courts of this country, in a catena of case laws held that if taxpayer is genuinely not aware of provision of law , then in such case no penalty must be levied. Though knowing the law of land is an imperative for every citizen but at the same time it would amount to asking too much if a citizen is asked to know about a law or laws that is / are too dynamic/ every changing, awfully inextricable and are extremely difficult to comprehend by a person of average intelligence.

- In the case of *Chirag Family Trust'* 1996,58 ITD 382 Ahd,it was held that a *bona fide* ignorance of newly inserted provisions of law, would not lead to levy of penalty.
- In the case of *Sunilchandra Vohra's case* [2009] 32 SOT 365 (MUM.), it was held that *bona fide* ignorance of the law regarding

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applicability of provisions of the Act is a valid ground for not imposing penalty for concealment.

- In the case of DCIT v Ajay Kumarlal 2011 12 taxmann .com 491(Ahd), it was held that ignorance of law of a newly introduced provision is a bonafide cause for non levy of penalty.
- In the case of Hon'ble Supreme Court in the case of *Motilal Padampat Sugar Mills Co. Ltd. v. State of Uttar Pradesh* [1979] 118 ITR 326 **held that there is no presumption that every person knows the law.**In this regard reference may be made to the case of T Ashok Pai v.CIT[2007] 161 Taxman 340 (SC)
- In the case of P V Devassy V CIT 1972 84 ITR Ker, the appellant was under bonafide belief that he is required to file the return after registration to the firm is granted. In this case the Hon'ble Court has discussed about the concept of ignorance of law and the same was taken as a reasonable cause for not filing the return. ITAT's order deleting the penalty was upheld.
- In the case of Sunil Chandra Vohra v ACIT 2009 32SOT 365 (Mum), it was observed that "**the tax laws in this country are so complex and complicated that even a person specialized in this field, including tax administrators, may not understand the law in the correct perspective or a particular provision may go unnoticed because of the number of amendments made to the tax enactments from year-to-year. Under these circumstances, it would be a travesty of truth and justice to hold that the assessee ought to have known the correct law and comply therewith, even though he was not aware of the provisions.**"

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Assessee's explanation about ignorance of law was accepted as a bonafide and reasonable cause.

7. It is further submitted that on the basis of facts and position of law as enumerated above, in the humble opinion of the appellant, there existed a reasonable cause in inadvertently missing to comply with the provisions of section 269SS. But for the unawareness of recently introduced law there was no other motive. In *Azadi Bachao Andolan vs. Union of India* [2001] 116 TAXMAN 249 (DELHI)

... .. *The word 'reasonable' has in law the prima facie meaning of reasonable with regard to those circumstances of which the actor, called on to act reasonably, knows or ought to know. The reasonable cause can be reasonably said to be a cause which prevents a man of average intelligence and ordinary prudence, acting under normal circumstances, without negligence or inaction or want of bona fides.*

8. It is further humbly submitted that for the purpose of imposing penalty satisfaction should be recorded by AO in the assessment order regarding infraction of law although penalty is imposable by JT/Asst.Commissioner. Non recording of satisfaction was held fatal to the proceeding under section 271E. This was so held in the case of CIT v/s jaya Laxmi Rice Mills Ambala City [2015] 64 taxmann.com 75 (SC).

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Penalty imposable under section 271E is in parimateria with penalty under section 271D in this respect. Hence the principle enunciated by the Apex Court is applicable. In the case of appellant as well , in the assessment order, the learned AO did not record the satisfaction calling for the levy of the penalty under section 271D. That being the case, it would not be as per the said Judgment of Supreme Court to levy penalty under section 271D. It may further kindly be noted an additional ground is raised before Hon'ble ITAT bench vide covering letter dt 20.04.2023 citing that the learned AO did not record the reasons for initiating penalty in the assessment order.

9. The above factual position and judicial precedents are summarised hereunder for the kind convenience of the Hon.Bench:
 - 9.1 The appellant , a regular assessee on the records of Department for more than a decade, had inadvertently and honestly without the knowledge of some recent changes made in Section 269SS , had accepted the cash (actually, the cash was accepted by one middle person). As the appellant rarely transacts in immovable properties, he had hardly any opportunity or occasion to learn about the said recent developments in the Act. Moreover, in this country, receipt of cash as consideration while selling immovable properties, was an age old practice , practiced for decades and

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decades. Courts in the country have held that it is not necessary to expect that all citizens must be aware of the law – more particularly so in the case of more complex and more dynamic laws like income tax act .

9.2 Now knowing the law itself could be a reasonable cause for a non-compliance of the mandate of particular section as held by the Delhi High Court in the case of Azadi Bachaov Andolan's case (supra).

9.3 The assessing officer did not record the reasons for initiation of penalty under section 271D in his assessment order which, according to Hon.Apex Court as well as Jurisdictional High Court is mandatory to do so – lest the penalty cannot be levied.

9.4 Finally, when a receipt culminates into income that is taxable/ taxed as per the provisions of the Act in the hands of the assessee, on the very same receipt, no penalty can be levied under section 271D.

10. For the above reasons the penalty levied under section 271D may kindly be deleted.

11. Already in the course of search action, substantial amounts were offered to tax to buy peace and to avoid litigation and taxes were paid by standing on the word that was given at the time of search action. For past three financial years no contract works were received by the flag ship

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construction company of the appellant resulting in earning of very little income. The action of levy of a penalty by Addl. CIT had further pushed the appellant from the pan into flames. Therefore, it is humbly prayed to delete the penalty or to grant such other relief as the Hon'ble. Bench may kindly decide in the facts and circumstances of the case.

Thanking you

Yours faithfully,

For Nalla Raja Reddy

PAH

Copy to Departmental Representative of Income tax Department, CGO
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10. Referring to the copy of the assessment order, he submitted that there is no satisfaction recorded by the Assessing Officer for initiation of penalty proceedings u/s 271D of the I.T. Act. Referring to the decision of the Hon'ble jurisdictional High Court in the case of Srinivasa Reddy Reddeppagari vs. Jt. CIT vide writ petition No.44285 of 2022 dated 26.12.2022, he submitted that the Hon'ble jurisdictional High Court relying on various decisions including the decision of the Hon'ble Supreme Court in the case of CIT vs. Jayalakshmi Rice Mills reported in (2015) 64