

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “A”, BANGALORE**

Before Shri George George K, JM & Shri Laxmi Prasad Sahu, AM

IT(IT)A No.585/Bang/2022 : Asst.Year 2017-2018

Smt.Anuradha Chivukula Challa No.12, Seshu, 12 th Cross Indiranagar 1 st Stage Bangalore – 560 038. PAN : BGAPC8765M.	v.	The Additional Commissioner of Income-tax, International Taxation, Range – 1 Bangalore.
(Appellant)		(Respondent)

Appellant by : Sri.Siddesh Nagaraj Gaddi, CA
Respondent by : Sri.K.Sankar Ganesh, JCIT-DR

Date of Hearing : 13.09.2022	Date of Pronouncement : 14.09.2022
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against CIT(A)’s order dated 08.06.2022. The order of the CIT(A) arises out of the order of A.O. imposing penalty u/s 271D of the I.T.Act. The relevant assessment year is 2017-2018.

2. The solitary issue raised is whether the CIT(A) is justified in confirming the penalty imposed u/s 271D of the I.T.Act.

3. The brief facts of the case are as follows:

The assessee is a NRI. During the relevant assessment year, the assessee had sold two immovable properties on 26.12.2016 and received part sale consideration in cash. The particulars of the transaction are detailed below:-

Sl. No.	Reg. with Code	No. SRO	Name of the buyer	Total sale consideration	Amount received in cash
1.	BGR-1-05475		Smt.Angammal & Sri Dhanapal	25,61,000	10,00,000
2.	BGR-1-05474		Sri Kandaswamy M & Sri Ramachandra H.R.	22,37,000	2,37,000
	Total			47,98,000	12,37,000

4. Information was received by the A.O. from JDIT (I&CI) with regard to the above receipt of cash by the assessee along with the sale deeds. Since there was violation of provisions of section 269SS of the I.T.Act, the A.O. initiated penalty u/s 271D of the I.T.Act. To the notices issued to the assessee calling for her explanation, there was no response. Therefore, the Inspector attached to the office of the A.O. was deputed to serve the notice physically on the assessee or her family members. The assessee reported that the notice was served on her father (Sri.Venkataiah), however, there was no reply given by the assessee. Since the assessee failed to offer satisfactory explanation, the A.O. imposed penalty u/s 271D of the I.T.Act amounting to Rs.12,37,000 (being the amount equal to the sum accepted by the assessee in contravention of provisions of section 269SS of the I.T.Act).

5. Aggrieved, the assessee filed an appeal before the first appellate authority. The assessee filed detailed submission

before the A.O and contended that there was a reasonable cause as mandated u/s 273B of the I.T.Act for deletion of the penalty. However, the CIT(A) was of the view that there is no good and sufficient reason for deletion of the penalty and confirmed the view of the A.O. in imposing penalty u/s 271D of the I.T.Act. The relevant finding of the CIT(A) reads as follows:-

“7. The submissions of the assessee are considered. The assessee is a non-resident and has sold two properties during FY 2016-17. The property registrations were conducted on 26.12.2016 when the assessee was available in India. The assessee has accepted a cash of Rs.10,00,000 from Smt.Aganmad and Shri Dhanpal from the first property transaction. Similarly, assessee has received a cash of Rs.2,37,000 from Shri Kandaswami and Shri H.R.Ramachandra from the second property transaction. The assessee ought to have received the entire consideration by banking transaction only. Any violation of the same is attracted u/s 269SS and for levy of penalty u/s 271D of the IT Act. To this extent the assessee has made a technical violation of the IT provisions.

8. The submission of the assessee explaining ‘good and sufficient reason’ for accepting cash consideration during property transaction are verified. It is seen that the assessee has entered into the transaction at the fag end of the demonetization period. The assessee claims that she was taken by surprise from the buyers while receiving consideration at the time of registration. The assessee could have delayed the registration by a day or two instead of accepting cash consideration and violating specific provision of IT Act. The assessee has also not pleaded any ignorance of the law. To this extent it is seen that the assessee has not been able to provide a compelling reason for having accepted part consideration in cash. The explanation cannot be accepted. The grounds of appeal are rejected.”

6. Aggrieved, the assessee filed the present appeal before the Tribunal, raising following grounds:-

“1. The impugned penalty order passed by the Learned CIT(A) and Assessing Officer, to the extent prejudicial to the

Appellant, is not justified in law and on facts and circumstances of the case;

2. The Learned CIT(A) and AO have erred in law and on facts in appreciating that there is no violation of the provisions of section 26988 of the Act;

3. The Learned CIT(A) and AO has erred in law and on facts in not appreciating that penalty is not leviable under section 271D of the Act;

4. Since the Appellant has disclosed cash receipts in her return of income and offered the same to tax on suo moto basis, there is no question of levying penalty under section 271D read with section 26988 of the Act;

5. The Learned CIT(A) and AO have erred in law and on facts by not applying the provisions of section 273B of the Act, and also not appreciating the detailed explanations, clarification submitted by the Appellant in support of the genuine and bona fide transaction;

6. The Learned CIT(A) and AO have erred in law in not appreciating the fact that it was a case of distress sale;

7. The Learned CIT(A) and AO have erred in law and on facts in not appreciating that the transaction entered with respective buyers were genuine and bona fide;

8. The Learned AO has erred in raising demand vide issue of notice under section 156 of the Act;
(Total tax effect: Rs.12,37,000/-)

On the basis of above grounds and other grounds which may be urged at the time of hearing with the consent of the Honourable Tribunal, it is prayed that the order passed under section 250, to the extent it is against the Appellant, be quashed and relief sought be granted.

7. The learned AR has filed a paper book comprising of 84 pages inter alia enclosing therein the case laws relied on, copy of the passport of the assessee, the income-tax return filed by the assessee, copies of the sale deed, etc. The learned AR has also filed a brief written submission narrating the compelling

reasons for accepting cash in respect of the above said sale of properties.

8. The learned Departmental Representative, on the other hand, submitted that the assessee has not made out a case of reasonable cause as mandated u/s 273B of the I.T.Act for waiver of penalty. In this context, the learned DR relied on the judgment of the Hon'ble Madras High Court in the case of Vasan Healthcare (P.) Ltd. v. ACIT reported in (2019) 411 ITR 499 (Madras). It was submitted that the SLP filed by the assessee before the Hon'ble Apex Court was rejected.

9. We have heard rival submissions and perused the material on record. The assessee is a NRI. She is depending on her father, who is aged 87 years for negotiations of sale of the properties. The assessee had submitted passport details evidencing the date of arrival and the date of departure. It is relevant to note from the said details that the assessee had arrived in Bangalore on 24.12.2016 and departed from Bangalore on 04.01.2017. The above sale deeds were executed within the said period of 10 days. The properties sold were held by the assessee from the year 1994. The assessee was finding it difficult to sell these properties since 50% of the interest in the subject properties were initially held by her estranged husband. Pursuant to the judgment of divorce dated 22.03.2006, the Oak Land Country Circuit Court Family Division in the state of Michigam, United States of America has annulled the marriage and upon arbitration, the subject properties were allotted to the assessee. Despite the above arrangement, many buyers were hesitant to buy

subject properties directly from the assessee as the name of the husband was part of the documents purchasing them. The disposal of the property was also challenging due to the slump in the real estate market pursuant to the introduction of RERA and other factors. Finally when the assessee's father found a buyer, the assessee decided to fly down to Bangalore to complete the formalities. On the date of execution of sale deed, the cash was paid. Considering the age of father, the assessee accepted the cash and closed the deal once and for all. The intention of the assessee was not to defraud the revenue by violating the provisions of the Act or by evading taxes. The same is evident from the fact that the cash receipts have been duly disclosed in the sale deed as well as the income tax returns. The copies of the sale deeds are enclosed in the paper book filed by the assessee. As mentioned earlier, due to paucity of time, the urgency and considering various factors that go into finalizing the transaction, the assessee was forced to accept cash to go ahead with the execution of the sale deed. The above facts clearly stipulated a 'reasonable cause' as mandated u/s 273B of the I.T.Act for violation of the provisions of section 269SS of the I.T.Act.

10. The decision relied on by the learned DR is distinguishable on facts. The assessee in the case relied on by the learned DR, could not discharge the onus as mandated u/s 273B of the I.T.Act to show that he could not get loan by account payee cheque or demand draft, whereas, in the peculiar facts of the instant case, since the assessee was a NRI, who had come for a short visit to India, had to complete

the said sale transaction. Hence, there is 'reasonable cause' as mandated u/s 273B of the I.T.Act on facts of the instant case. The Hon'ble Jharkhand High Court in the case of OMEC Engineers v. CIT reported in (2007) 294 ITR 599 (Jhar) had deleted the penalty by considering the urgency of the assessee to make payment, who had borrowed money in violation of provisions of section 269SS of the I.T.Act. The relevant finding of the Hon'ble High Court reads as follows:-

"22. The words " reasonable cause" have not been defined under the Act but they could receive the same interpretation which is given to the expression " sufficient cause" . Therefore, in the context of the penalty provisions, the words " reasonable cause" would mean a cause which is beyond the control of the assessee. " Reasonable cause" obviously means a cause which prevents a reasonable man of ordinary prudence acting under normal circumstances, without negligence or inaction or want of bona fides. Before imposition of penalty under section 271, the Assessing Officer must be satisfied, not arbitrarily but judiciously, that the assessee has without reasonable cause failed to comply with the provisions.

23. In the instant case, as noticed above, there is no finding of the assessing authority, the appellate authority or the Tribunal that the transaction made by the assessee in breach of the provisions of section 269SS was not a genuine transaction. On the contrary, the return filed by the assessee was accepted after scrutiny under section 143(3) of the Act. Further, there is no finding of the appellate authority that the transaction in breach of the aforesaid provisions made by the assessee was mala fide and with the sole object to disclose the concealed or undisclosed money. The authorities have proceeded on the basis that breach of condition provided under section 269SS of the Act shall lead to penal consequences. In our view, in the facts and circumstances of the case, the imposition of penalty merely on technical mistake committed by the assessee, which has not resulted in any loss of revenue, shall be harsh and cannot be sustained in law.

24. After considering the entire facts and circumstances of the case, the reference is answered in favour of the assessee and against the Revenue. Consequently, we hold that imposition of penalty under section 271D against the assessee cannot be sustained in law."

11. Similar view has been held by the following judicial pronouncements:-

- (i) CIT v Sunil Kumar Goel (2009) 315 ITR 163 (P&H)
- (ii) CIT v. Smt.M.Yesodha (2013) 351 ITR 265 (Mad.)
- (iii) Rajiana Kheti Store v. ITO (2008) 20 SOT 3 (Asr) (URO).

12. In the light of the above said reasoning and the judicial pronouncements, cited supra, we delete the penalty imposed u/s 271D of the I.T.Act.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced on this 14th day of September, 2022.

Sd/-
(Laxmi Prasad Sahu)
ACCOUNTANT MEMBER

Sd/-
(George George K)
JUDICIAL MEMBER

Bangalore; Dated : 14th September, 2022.
Devadas G*

Copy to :

- 1. The Appellant.
- 2. The Respondent.
- 3. The CIT(A)-12, Bangalore.
- 4. The CIT (International Taxation), Bangalore.
- 5. The DR, ITAT, Bengaluru.
- 6. Guard File.

Asst.Registrar/ITAT, Bangalore