

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'A' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri Manjunatha, G., Accountant Member

आयकर अपील सं./I.T.A. No.532/Chny/2022
निर्धारण वर्ष/Assessment Year: 2017-18

Nammalvar Lingusamy,
9, Janaki Nagar, Solai Krishnan Street,
Valasaravakkam, Chennai 600 087.

Vs. The Additional Commissioner of
Income Tax,
Non Corporate Range 20,
Chennai.

[PAN:ACBPN0214G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri J.K. Reddy, CA
प्रत्यर्थी की ओर से/Respondent by : Shri AR V Sreenivasan, Addl. CIT
सुनवाई की तारीख/ Date of hearing : 30.01.2024
घोषणा की तारीख /Date of Pronouncement : 07.02.2024

आदेश /O R D E R

PER V. DURGA RAO, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre [NFAC], Delhi, dated 31.03.2022 relevant to the assessment year 2017-18.

2. The appeal filed by the assessee is delayed by 24 days in filing the appeal and filed a petition for condonation of delay in support of an affidavit to which; the Id. DR has not raised any serious objection. Consequently, since the assessee was prevented by sufficient cause, the

delay in filing of the appeal stands condoned and the appeal is admitted for adjudication.

3. Brief facts of the case are that during the course of verification conducted by the DIT(I&CI), Chennai, it was found that the assessee sold an immovable property vide document No. 19206/2016 of SRO Virugambakkam dated 27.04.2016 and part of the sale consideration (₹.1,60,00,000/-) was received in cash. On receipt of the above information, since the above transaction was in violation of provisions of section 269SS of the Income Tax Act, 1961 ["Act" in short], the Assessing Officer [Addl. CIT] issued notice under section 274 r.w.s. 271D of the Act dated 09.09.2019 and served on the assessee on 12.09.2019. Though the assessee appeared before the Assessing Officer, but, could not offer any reasonable cause for accepting the sale consideration of the immovable property by cash. Therefore, by following various decision of the Hon'ble Jurisdictional High Court, the Assessing Officer levied penalty of ₹.1,60,00,000/- under section 271D of the Act dated 30.09.2019 for accepting the sale consideration of immovable property otherwise by way of an account payee cheque or account payee bank draft without reasonable cause and violating the provisions of section 269SS of the

Act. On appeal, the Id. CIT(A) confirmed the penalty levied under section 271D of the Act.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the consideration clause of the deed of sale had wrongly entered the transaction in mode of cash while in reality it was an adjustment of an existing debt through a journal entry. By relying upon the decision of the Hon'ble Madras High Court in the case of Anamallais Bus Transports (P.) Ltd. v. PCIT [2024] 158 taxmann.com 245 (Madras) and filing written submissions, the Id. counsel prayed for deleting the penalty.

5. On the other hand, the Id. DR has submitted that the case law relied on by the Id. counsel has no application to the facts of the present case in the absence of any cogent material evidence furnished either before the Assessing Officer or before the Id. CIT(A) or even before the Tribunal and pleaded for confirming the penalty levied under section 271D of the Act.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. As per the registered deed of sale, since the assessee sold an immovable property

and received part consideration in cash of ₹.1,60,00,000/-, the Assessing Officer has issued notice under section 274 r.w.s. 271D of the Act. As the assessee has received part consideration in cash, which is in violation of the provisions of section 269SS of the Act, the Assessing Officer levied penalty under section 271D of the Act. On appeal, though the assessee has raised various grounds before the Id. CIT(A), praying for deleting the penalty levied, but, before the Tribunal, the assessee has raised a different ground that the “consideration clause of the deed of sale had wrongly entered the transaction in mode of cash”. The written submissions of the Id. DR are reproduced as under:

In the present case the assessee has admitted in the sale deed before SRO admitting receipt of cash. Moreover as observed by CIT(A) in the last para of the order the details and evidences in support of his claim were not submitted. Only a vague claim was made that loan was outstanding in some group company. The confirmation filed by the lender also does not mention the creditors name specifically. Even before ITAT assessee has submitted only a balance sheet of M/s. Thirupathi Brothers Film Media Pvt. Ltd., 2013-14 as on 31.03.2014. He has not submitted the relevant balance sheets that as on 31.03.2016 and 31.03.2017, relevant entries passed in the books of the said company, evidence that the said company belongs to the seller etc. Thus it is submitted that the decision of the Hon'ble High Court in WP no 31682 of 2023 dt 07.12.2023 , in the case of M/s.Annamallais Bus Transports (p) Ltd, relied on by the assessee, has no application to the facts of the present case and it is prayed that the appeal may kindly be dismissed.

6.1 The written submissions filed by the assessee are reproduced as under:

I herewith submit the following in response to the Written Submission of the O/o. CIT DR (ITAT), dated 30.01.20024:

1. *A copy of the Audited Balance Sheet of M/s. Thirupathi Brothers Film Media Pvt. Ltd. for the FY 2013-14 along with the Schedule of “Other*

Current Liabilities” was submitted since it reflects the loan taken from Mr. Chukkapalli Srinivasa Prasad and statements for FY 2013-14 were submitted only to prove the year of loan taken by the group company M/s. Thirrupathi Brothers Film Media Pvt. Ltd. and copies of the bank statements were submitted to prove that the loan was received through Bank. In this regard we have also submitted confirmation letter from the bank which proves that the loan amount was received from Mr. Chukkapalli Srinivasa Prasad during the FY 20 13-14.

2. *A copy of the Memorandum of Compromise dated 07.01.2016 and a Decree passed by the Hon'ble Madras High Court, dated 08.01.2016 were submitted with respect to the suit filed by Mr.Chukkapatti Srinivasa Prasad in Hon'ble Madras High Court hearing CS No. 931 of 2015 against the Appellant, his brother Mr.Subash Chandra Bose and M/s.Thirrupathi Brothers Film Media Pvt. Ltd. (in which both were Directors) for recovery of the loan.*
3. *Further, as per the Decree dated 08.01.2016 it was directed that the Appellant and the group company M/s.Thirrupathi Brothers Film Media Pvt. Ltd. was to pay Rs.2 crores on or before 07.02.2016, Rs.2 crores on or before 07.03.2016, Rs.2.10 crores on or before 07.04.2016 and Rs. 1.10 crores on or before 01.05.2016. This proves beyond doubt that the liability as shown in the financials of the group company M/s. Thirrupathi Brothers Film Media Pvt Ltd. for the FY 2013-14 continued to be in existence during the FY 2016-17 relevant to the AY 2017- 18.*
4. *Since, neither the Appellant nor M/s.Thirrupathi Brothers Film Media Pvt. Ltd. could pay any of the instalments as stated above and to purchase peace from Mr.Chukkapalli Srinivasa Prasad against enforcing the Decree of the Hon'ble Madras High Court, the Appellant was forced to transfer his House Property to Mr.Chukkapalli Venu who is the uncle of Mr.Chukkapalli Srinivasa Prasad on the direction of Mr.Chukkapalli Srinivasa Prasad.*
5. *The property was not purchased by Mr. Chukkapalli Srinivasa Prasad since an amount of Rs. 1,46,99,384/- was to be paid to the bank to clear the Housing Loan taken by the appellant and hence, he requested his uncle Mr.Chukkapali Venu to settle the Housing Loan and get the property transferred in to his name. Hence, it is very clear that out of the total sale consideration of Rs.3,10,00,000/- an amount of Rs.1,46,99,384/- was paid directly for the closure of the Housing Loan by Mr.Chukkapali Venu and Rs. 1,60,00,000/- was adjusted against the Loan taken from Mr. Chukkapalli Srinivasa Prasad. However, in the sale deed prepared by the buyer Shri Chukkapalli Venu, the loan of Rs. 1.60 crores taken over was mentioned as paid in cash to the appellant, since the consideration should be settled in full for the sale deed to be effective as per the requirement of the Registration Department and also to have an unconditional title to the property conveyed. The appellant inadvertently did not notice the mention of 1.60 crores paid in cash and proceeded to register the sale deed.*
6. *Further, the origin of the loan which was now adjusted as part consideration was taken through bank as required & y Sec.26988 and this*

was proved by the Bank statements, Bank confirmation letter and the confirmation letters of Mr.Chukkapalli Venu and Mr.Chukkapalli Srinivasa Prasad, the copies of which were submitted to Honourable Bench.

- 7 *Under the above said facts and circumstances, the Appellant submits that the Written submission dated 30.01.2024 by the Ld.Sr. AR is irrational and not tenable and it is very evident that the decision of the Hon'ble Madras High Court in the case of M/s.Annamallais Bus Transports Pvt. Ltd. is clearly applicable to the present case of the Appellant.*

Hence, The Appellant prays the Hon'ble ITAT, Chennai Bench that the order of the Commissioner of Income Tax (Appeals) passed U/s.250 of the IT Act, 1961 dated 31.03.2022 for the assessment year 2017-18 may kindly be quashed, delete the penalty levied U/s. 271D of the Income Tax Act, 1961 amounting to Rs. 1,60,00,000/- and thus render justice.

6.2 Be that as it may, whatsoever details mentioned in the written submissions of the assessee viz., confirmation letter or audited balance sheet of M/s. Thirrupathi Brothers Film Media Pvt. Ltd., or the application of case law relied upon, but, last line in para 5 of the written submissions, the assessee has mentioned that the “appellant inadvertently did not notice the mention of 1.60 crores paid in cash and proceeded to register the sale deed”. In the grounds of appeal before the ITAT, the assessee has raised a ground viz., “3. That the Id. CIT(A) erred in failing to appreciate that the ‘Consideration Clause’ of the deed of sale had wrongly entered the transaction in mode of cash while in reality it is an adjustment of an existing debt through a journal entry”.

6.3 Based on the registered deed of sale, wherein, it has been mentioned that the assessee has received part of sale consideration of

₹.1,60,00,000/- in cash, which is, in violation of the provisions of section 269SS of the Act, the Assessing Officer initiated penalty proceedings and levied penalty under section 271D of the Act.

6.4 We have carefully perused the copy of the registered document No. 2767/2016 filed by the assessee, wherein, all the pages were duly signed by both the vendor and purchaser and in page 3/17; the following details of receipt of consideration are mentioned:

- a. *₹.1,60,00,000/- (Rupees one crore and sixty lakhs only) paid by way of cash on 26.04.2016.*
- b. *₹.1,46,99,384/- (Rupees one crore forty six lakhs ninety nine thousand three hundred and eighty four only) loan closure amount by cheque bearing No. 848089 dated 21.04.2016 drawn on Andhra Bank, Kodambakkam branch, Chennai.*
- c. *₹.3,00,616/- (Rupees three lakhs six hundred and sixteen only) paid by means of cheque bearing No. 000123 dated 27.04.2016, drawn on Kotak Mahindra Bank, Arcot Road, Chennai, at the time of execution of these document presents;*

As per registered deed of sale, it is clear that the assessee has received part of sale consideration of ₹.1,60,00,000/- in cash. However, the contention of the assessee is that the consideration clause of the deed of sale had wrongly entered the transaction in mode of cash while in reality it was an adjustment of an existing debt through a journal entry. The above contention of the assessee is not acceptable by any Court of Law, claiming to have wrong entry has been made in a document, which was duly signed by both the vendor and purchaser and registered by the Sub-

Registrar of the State Revenue Department in the absence of any material evidence. The assessee should have approached the Appellate Authority of the Tamil Nadu State Revenue Department for any modification/addition/deletion, etc., which was not done in this case. Under the above facts and circumstances, we are of the opinion that the Id. CIT(A) has rightly confirmed the penalty levied under section 271D of the Act and thus, the appeal filed by the assessee is dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on 07th February, 2024 at Chennai.

Sd/-
(MANJUNATHA, G.)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 07.02.2024

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/ Respondent, 3. आयकर आयुक्त/CIT, 4. विभागीय प्रतिनिधि/DR & 5. गार्ड फाईल/GF.