

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH: CHENNAI**

श्री एबी टी. वर्की, न्यायिक सदस्य एवं  
श्री जगदीश, लेखा सदस्य के समक्ष

**BEFORE SHRI ABY T. VARKEY, JUDICIAL MEMBER AND  
SHRI JAGADISH, ACCOUNTANT MEMBER**

आयकर अपीलसं./ITA Nos.2165 & 2166/Chny/2024  
निर्धारणवर्ष/Assessment Years: 2017-18 & 2018-19

Mr. R. Anbuvelrajan, 13/25, Krishnamachari Avenue, Adyar, Chennai-600 020.	v.	The Addl.CIT, Central Range-1, Chennai-34.
[PAN: AGZPA 9406 B]		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)
अपीलार्थी की ओर से/ Appellant by	:	Mr. M. Karunakaran, Advocate
प्रत्यर्थी की ओर से /Respondent by	:	Mr. P.K.Senthil Kumar, Addl.CIT
सुनवाईकीतारीख/Date of Hearing	:	14.11.2024
घोषणाकीतारीख /Date of Pronouncement	:	29.01.2025

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

These are appeals preferred by the assessee against the order of the Learned Commissioner of Income Tax (Appeals)-18, (hereinafter in short "the Ld.CIT(A)"), Chennai, both dated 27.09.2023 for the Assessment Years (hereinafter in short "AY") 2017-18 & 2018-19 confirming the penalty levied u/s. 271D of the Income Tax Act, 1961 (hereinafter in short "the Act") of Rs.2.05 Crs. (for AY 2017-18) and

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Rs.1.85 Crs. (for AY 2018-19) for the alleged violation of provisions of Sec.269SS of the Act. Since both the parties agreed that the penalty levied for both the assessment years u/s.271D of the Act for violation of Sec.269SS are similar, therefore, the decision of AY 2017-18 will apply *mutatis mutandis* with that of AY 2018-19.

**2.** At the outset, the assessee has filed petition for condonation of delay of '262' days along with affidavit, perusal of which reveals that since there were glitches in the computer, assessee didn't receive the impugned order confirming the penalty, which led to delay in filing of the appeals. Therefore, the assessee pleads for leniency. After going through the contents of the affidavit and petition for condonation of delay, we find that the assessee doesn't stand to gain by not filing the appeals. The action of the assessee can't be termed to be deliberate and therefore, we condone the delay of 262 days in filing of both the appeals and proceed to adjudicate the grounds of appeals raised by the assessee.

**3.** Before advertent to the grounds raised in these appeals, it is first relevant to set out the background facts in context. The brief facts relating to the case are that, the assessee, an aggregator of lands, is engaged in the real estate business. A search u/s.132 of the Act was carried out in the premise of Dr. Maya Vedamurthy on 02.03.2018 which resulted in discovery of certain loose sheets containing Memorandum of

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Understanding (MoU) between the assessee and Shri M. Vedamurthy on 03.07.2014, in terms of which the assessee was engaged to liaison and negotiate the acquisition of land on his behalf. The said document also contained the terms of payment. Since these documents *inter alia* related to the assessee, the AO made post search enquiries from him and his statement was recorded u/s 131 of the Act on 06.06.2018. The assessee is noted to have explained that, he was a middleman who was negotiating the purchase of 2.65 acres of land for Shri M. Vedamurthy from many sellers i.e. small land owners. He further stated that, Shri M. Vedamurthy had paid aggregate sum of Rs.7.35 crores, out of which Rs.6.10 crores were paid in cash, which the assessee would immediately handover to the land brokers in the presence of Shri M. Vedamurthy. The assessee further explained that, since he was only the middleman and the advance was paid by Shri M. Vedamurthy through him immediately to the land brokers, these amounts were not shown in his accounts. The assessee further offered commission income of Rs.85,00,000/- in AY 2016-17 for facilitating this transaction. The assessee is noted to have also submitted that, this particular acquisition of land by Shri M. Vedamurthy was not completed, because the land was not clear due to TNEB erecting high transmission lines on the said land parcel.

**4.** In light of the above, the AO issued notices u/s.153C of the Act dated 11.11.2019 reopening the assessments for AY 2016-17 & 2017-18.

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It was brought to our notice that for AY 2016-17, the assessee had originally filed return of income on 15.10.2016 declaring total income of Rs.29,16,160/-. Pursuant to the notice u/s 153C of the Act, the assessee is noted to have offered commission income of Rs.85 lakhs in the return of income filed in response thereto. The income returned u/s 153C of the Act was accepted by the AO. For AY 2017-18, the assessee filed his return of income on 04.12.2019 admitting his total income at Rs.9,59,930/- u/s 153C of the Act, as originally declared u/s 139 of the Act. For AY 2018-19, the assessee filed return of income on 13.10.2018 admitting total income at Rs.15,63,190/-. The assessments for AYs 2017-18 & 2018-19 were also completed at the same income as declared by the assessee. However, the AO noted that, the assessee had received a sum of Rs.85 lacs, Rs.2.05 Crs. & Rs.1.85 crores in cash, by way of advance from Shri M. Vedamurthy (spouse of Dr.Maya Vedamurthy) in AYs 2016-17, 2017-18 & 2018-19 respectively, towards purchase of immovable property at Siruseri Village, Tiruporur Taluk, which according to the AO, was in violation of provisions of Sec.269SS of the Act. He accordingly, initiated penalty proceedings u/s 271D of the Act.

**5.** The assessee is noted to have taken a stand across all the assessment years that he was a land aggregator who worked for commission and that he had received aggregate commission of Rs.85 lakhs for facilitating the impugned transaction, which he had offered to

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tax as his undisclosed income in AY 2016-17, and that, the cash of Rs.6,10,00,000/- was not received by him from Mr. M Vedamurthy in his own proprietary capacity but, was disbursed immediately to the facilitators/brokers for acquiring large pieces of land in the presence of Shri M. Vedamurthy.

**6.** It was brought to our notice that, post completion of assessment for AYs 2016-17, 2017-18 & 2018-19 on 27.12.2019, the Addl. CIT issued notice u/s.274 r.w.s.271D of the Act dated 12.03.2021 asking the assessee to show cause as to why an order imposing penalty u/s.271D of the Act should not be made for receiving cash of Rs.85 lacs, Rs.2.05 Crs. & Rs.1.85 Crs. in AYs 2016-17, 2017-18 & 2018-19 respectively, in violation of Section 269SS of the Act. After considering the explanation put forth by the assessee, the Addl. CIT is noted to have not levied any penalty upon the assessee for violation of Section 269SS of the Act in AY 2016-17, as done in AYs 2017-18 & 2018-19, which are impugned before us.

**7.** In the orders impugned in the present appeal, the Addl. CIT is noted to have referred to the MoU dated 03.07.2014 between the assessee [first party] and Shri M. Vedamurthy [second party], husband of Dr. Maya Vedamurthy, who was searched on 02.03.2018. According to the Addl. CIT, Shri M. Vedamurthy had paid cash of Rs.6,10,00,000/-

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towards purchase of the land parcel to the assessee, which the latter had also accepted in his sworn statement dated 27.06.2018. Taking note of the details of the schedule of payments given by the assessee, the Addl. CIT observed that the assessee was in receipt of cash of Rs.2.05 crores and Rs.1.85 crores in AYs 2017-18 & 2018-19 respectively. According to the Addl. CIT, the receipt of this sale consideration fell within the meaning of 'specified sum' as defined in Section 269SS of the Act and the fact that the assessee had paid these sums immediately to the brokers will not rescue him from the rigors of Section 269SS of the Act. The Addl. CIT therefore concluded that, since the assessee had received part sale consideration towards transfer of immovable property in cash amounting to Rs.2.05 crores and Rs.1.85 crores in AYs 2017-18 & 2018-19 respectively, then irrespective whether the transfer ultimately took place or not, or that the payer had offered the impugned sum as their income or not, the assessee was liable to be penalized under Section 271D read with Section 269SS of the Act. The Addl. CIT is accordingly noted to have levied penalty of Rs.2.05 crores and Rs.1.85 crores u/s 271D of the Act in AYs 2017-18 & 2018-19 respectively.

**8.** Being aggrieved by the above orders of the Addl. CIT, the assessee preferred appeal before the Ld. CIT(A) who confirmed the same. Now the assessee is in appeal before us.

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9. In the several grounds raised in the appeal, the assessee has in sum & substance assailed the action of lower authorities levying the impugned penalty on several fronts. The Ld. AR for the assessee has first contended that, the impugned order was barred by limitation as the impugned proceedings u/s 271D of the Act was initiated after a lapse of four years. The assessee has further contended that even the date on which the impugned orders were passed were barred by limitation. The assessee further urged that, even on merits, the provisions of Section 269SS did not apply to the impugned issue and therefore pleaded that the penalty be set aside. The main argument of the assessee was that, he was only the broker / middleman and not the 'seller' in the transaction who had received the advance in his own right and therefore he could not be subjected to penalty in terms of Section 269SS of the Act. Referring to the MOU as well as the sworn statement, the Ld. AR for the assessee argued that, it was not in dispute that the assessee was the agent of Shri M Vedamurthy and was assisting him in acquiring land of 2.65 acres. The cash paid by Shri M Vedamurthy was immediately handed over to the land brokers through whom the land was being purchased and that the assessee never received any advance in his own right. Further, the contention that the assessee was only a land broker was evidenced by the fact that the commission income offered by the assessee in this land dealing had been accepted and assessed to tax by the Revenue. The Ld.

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AR accordingly submitted that, the advance paid by Shri M Vedamurthy through the assessee to the land brokers for the small land owners cannot be regarded as 'advance received towards sale consideration' by the assessee, as wrongly held by the lower authorities to subject the assessee to the rigors of Section 269SS of the Act. The Ld. AR accordingly contended that the impugned penalty ought to be set aside.

**10.** On the other hand, the Ld. DR appearing for the Revenue supported the order of the lower authorities. He particularly relied upon the findings rendered by the Ld. CIT(A) holding that, even if the recipient was not the buyer or seller in the transaction involving transfer of immovable property, then also such recipient would be liable to the rigors of penalty u/s 269SS of the Act, in absence of any such exception being laid down the said provision.

**11.** We have heard both the parties and perused the material placed before us. Before adverting to the facts of the case, let us first have a look at the relevant penal provisions of Section 269SS, which is in dispute before us. The said provision is noted to read as under:-

"No person shall take or accept from any other person (herein referred to as the depositor), any loan or deposit or any specified sum, otherwise than by an account payee cheque or account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed, if,—

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(a) the amount of such loan or deposit or specified sum or the aggregate amount of such loan, deposit and specified sum; or

(b) on the date of taking or accepting such loan or deposit or specified sum, any loan or deposit or specified sum taken or accepted earlier by such person from the depositor is remaining unpaid (whether repayment has fallen due or not), the amount or the aggregate amount remaining unpaid; or

(c) the amount or the aggregate amount referred to in clause (a) together with the amount or the aggregate amount referred to in clause (b),

is twenty thousand rupees or more:

Provided that the provisions of this section shall not apply to any loan or deposit or specified sum taken or accepted from, or any loan or deposit or specified sum taken or accepted by,—

(a) the Government;

(b) any banking company, post office savings bank or co-operative bank;

(c) any corporation established by a Central, State or Provincial Act;

(d) any Government company<sup>65</sup> as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);

(e) such other institution, association or body or class of institutions, associations or bodies which the Central Government may, for reasons to be recorded in writing, notify in this behalf in the Official Gazette:

Provided further that the provisions of this section shall not apply to any loan or deposit or specified sum, where the person from whom the loan or deposit or specified sum is taken or accepted and the person by whom the loan or deposit or specified sum is taken or accepted, are both having agricultural income and neither of them has any income chargeable to tax under this Act:

Provided also that the provisions of this section shall have effect, as if for the words "twenty thousand rupees", the words "two lakh rupees" had been substituted in the case of any deposit or loan where,—

(a) such deposit is accepted by a primary agricultural credit society or a primary co-operative agricultural and rural development bank from its member; or

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(b) such loan is taken from a primary agricultural credit society or a primary co-operative agricultural and rural development bank by its member.]

Explanation.—For the purposes of this section,—

(i) "banking company" means a company to which the provisions of the Banking Regulation Act, 1949 (10 of 1949) applies and includes any bank or banking institution referred to in section 51 of that Act;

(ii) "co-operative bank", "primary agricultural credit society" and "primary co-operative agricultural and rural development bank" shall have the meanings respectively assigned to them in the Explanation to sub-section (4) of section 80P;

(iii) "loan or deposit" means loan or deposit of money;

(iv) "specified sum" means any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer takes place."

**12.** Reading of the above provision shows that the prohibition postulated in this provision applies to a person who accepts from another person any loan or deposit or specified sum otherwise than by an account-payee cheque or account-payee bank draft. The provisions are not absolute. The first proviso, attached to the section, excludes government, banking companies, post office savings bank; corporations established by a Central or State Governments; the second proviso exempts persons having agricultural income, whose income is not chargeable to Income-tax Act. The category of exemptions is also not exhaustive. By implication there may be certain cases in which the provision may not apply. For example, if a servant or agent accepts the deposits or receives the loan or receives the specified sum on behalf of

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his master or principal then such agent or servant cannot be treated to be a person receiving the specified sum because such agent or servant is working only in fiduciary capacity or intermediary. The amount is actually deposited on behalf of the master or the principal as the case may be and thus the violation of section 269SS is to be considered in the case of the master or the principal for whom and on whose behalf of the specified sum was received.

**13.** The term 'specified sum' is noted to have been defined in Clause (iv) of the Explanation to Section 269SS, to mean any sum of money receivable, whether as advance or otherwise, in relation to transfer of an immovable property, whether or not the transfer ultimately takes place. It is well understood that, in a 'transfer' of a capital asset by way of immovable property, there are two parties involved, viz. buyer and seller. Accordingly, in relation to the transfer of an immovable property, any advance or deposit or earnest money etc., would be received by the seller from the buyer. The specified sum as defined in Clause (iv) of the Explanation to Section 269SS of the Act is meant to act as a deterrent for the sellers to transfer their immovable property in cash. In such a scenario, if the seller receives monies in cash for transferring his immovable property, then the entire monies would essentially have to be paid by way of penalty u/s 269SS r.w.s.271D of the Act, to the

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Government. The term 'specified sum' is therefore applicable in the context of the 'seller' of the property. The broker or agent, who is facilitating the transfer of immovable property, cannot be said to be the recipient of the 'specified sum' as he is not receiving the same in his own capacity but for and on behalf of his Principal. Only because the payment was routed through him, i.e. he received the payment from the buyer and immediately handed over the same to the seller will not make him the recipient of the 'specified sum' as neither the sum of money was receivable by him nor is it an advance given to him nor is he the transferor of the immovable property. Thus, in light of the foregoing analogy we can say that the liability on account of the violation of section 269SS cannot be fastened on the servant or the agent. Accordingly, the inference drawn by the Ld. CIT(A) that, any and all parties to a transaction of transfer of immovable property, including brokers, would be liable to the rigors of Section 269SS of the Act, cannot be countenanced. In our considered view, only the person who is the owner of the advance or monies received in relation to transfer of immovable property can be subjected to the rigors of Section 269SS of the Act.

**14.** The above view can further be verified by examining the proviso of section 271D which provides that if a person takes or accepts any loan or deposit or specified sum in contravention of section 269SS then he shall

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be liable to pay, by way of penalty, a sum equal to the amount of loan or deposit or specified sum so taken or accepted. If a servant or agent takes the specified sum and hands it over to the Principal i.e. the contracting party in contravention of section 269SS then, he cannot be treated to be a person taking or accepting the specified sum because he has not taken or accepted the specified sum for himself but on behalf of somebody else and, therefore, penal provision of section 271D cannot be attracted in his case.

**15.** In this regard, gainful reference may be made to Section 226 of the Indian Contract Act, stating that the obligations arising from the acts of the agent are discharged by the principal. This provision is as under:

"Contracts entered into through an agent, and obligations arising from acts done by an agent, may be enforced in the same manner and will have the same legal consequences, as if the contracts had been entered into and the acts done by the principal in person."

**16.** In view of the above provision of the Indian Contract Act, it is clear that the act of an agent is to be considered as an act of the Principal. Accordingly, the liability of the agent has to be limited and it cannot be held liable for any act done on behalf of the Principal. Hence, in light of the discussions made in the foregoing, we are of the considered view that an agent in a transaction of transfer of immoveable property between a buyer and seller, cannot be held liable for penal consequence u/s 269SS

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of the Act for receiving, for and on behalf, and handing over the money to his Principal.

**17.** In light of the above therefore, we now revert back to the facts of the present case to ascertain as to whether the assessee in the present case could be said to be recipient of the 'specified sum' in his own right or was he only an agent, as contended by his Ld. AR before us. On perusal of the terms of the MoU dated 03.07.2014, it is noted that the recital makes it clear that the assessee mediates and liaisons for identifying and acquiring different parcels of land from various parties and make the said land into a composite land. Shri M Vedamurthy, the second party to the agreement, had therefore allotted only the scope of necessary mediation and liaison to acquire the said land from the concerned owners to the first party, i.e. the assessee. Further, the scope of work laid down therein clearly reveals that the assessee was acting as a broker for identifying land, negotiating terms and fixing sales consideration with the land owners for and on behalf of the buyer and ensure smooth transfer of title from the sellers to the buyer. The relevant clauses of the MoU, as taken note of by us, is as follows:

- a) "The First Party is primarily a real estate business person who has been dealing with properties all over Tamilnadu. The First Party is well versed with the process of mediation and liaison for identifying and acquiring major extents of lands owned in different parcels by various parties and to make the said lands into a composite land.
- b) The Second Party is interested in purchasing a property measuring about 2 acres 65 cents in Siruseri Village, Thiruporur taluk and

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developing the same, since the Second Part finds it as a prospective option of investment in view of the remarkable progress of developments happening in and around the said area.

- c) The First Party has identified the said lands and offered the same to the Second Party and the Second Party has physically inspected the said lands with due diligence and considered all necessary factors for finalising the purchase of the said lands. The Second Party has decided to allot the scope of necessary mediation and liaison required for acquiring the said lands from the concerned owners/claimants to the First Party-since the First Party is conversant with the parties from whom the lands can be procured. Further, the Second Party has offered the said scope to the First Party since the Second Party intends to ensure the smooth and assured transfer of the said lands into the name of the Second Party or their nominees.

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The Second Party assigns the following scope in favour of the First Party

- i. Proper identification of lands
- ii. Negotiating terms and conditions with the actual owners or appropriate claimants of the lands and negotiate with them for purchasing the lands
- iii. Covering the scope of basically verifying title of the seller by engaging a legal professional
- iv. Fixing appropriate sale considerations in lines with the market
- v. Making site inspections
- vi. Ensuring the interest of the Second Party and facilitate/liaise for smooth transfer of the title and ownership of the property to and in favour of the Second Party or their nominees by complying with the applicable legal provisions and procedures."

**18.** It is further noted that, the above MoU was confronted to the assessee and his statement or note was recorded u/s 131 of the Act, on 06.06.2018. On perusal of the statement, we find that the assessee had clearly stated that he was a land aggregator and was acting as the middleman between Shri M Vedamurthy and many sellers, for which he had entered into an MoU with his Principal, i.e. Shri M Vedamurthy. The assessee is also noted to have stated that he would hand over the cash to

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the land brokers in presence of his Principal, Shri M Vedamurthy, and give him acknowledgement for the receipt of cash. The relevant questions and the answers given by him, is noted as under:

“Q10. Please state what is the purpose of above Memorandum of Understanding entered between yourself and Sri.M.Vedamurthy?

Ans. Madam, I have entered into Memorandum of Understanding with Sri.M.Vedamurthy towards purchase of 2 acres and 65 cents land property at Siruseri village, Thiruporur Talk at the rate of 4.2 crores per acre. I am a land aggregator who is the middleman between one common buyer (Sri.M. Vedamurthy) and many sellers (small land owners).

.....

Q12. Please state what is the total amount received by you in cash from Sri.M.Vedamurthy towards purchase of land property at Siruseri village as per MOU dated 03.07.2014 to till date.

Ans. Out of Rs.7.35 crores, I have received an amount of Rs. 6.10 crores in cash from Shri.M.Vedamurthy. Though I used to give acknowledgement for receipt of cash, I immediately handed over the cash to the land brokers in presence of Sri.M.Vedamurthy.”

**19.** Further, as noted from the facts discussed in the preceding paragraphs, even the Revenue had acknowledged and accepted the assessee to be a land broker and had assessed the commission income offered by him to tax in AY 2016-17. Hence, we find merit in the Ld. AR’s plea that the Revenue cannot blow hot and cold at the same time i.e. tax the commission income on one hand and thereafter treat the assessee to be the owner of the purported ‘specified sum’ and levy penalty as well. We also note that the Revenue has not disputed the fact that, the impugned land in question was not owned by the assessee. Further,

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pursuant to the MoU, the assessee had attempted to obtain the land parcels for Shri M Vedamurthy but ultimately the transaction did not go through and that the monies were refunded. This fact is noted to have been stated by the assessee in his sworn statement as well in as much as the details thereof were also provided. It is also not the Revenue's case that any of the land parcels at Siruseri Village, Thiruporur Taluk, was conveyed in favour of Shri M Vedamurthy. Overall therefore, we note that the contemporaneous facts on record shows that the assessee had acted as a broker for the Shri M Vedamurthy, who had given cash advances to the land sellers through the assessee and later on since the transaction did not go through, the land seller or the broker had refunded back the money to the Principal, i.e. Shri M Vedamurthy. It is therefore noted that the assessee was never the 'recipient' in real sense of the advances nor was he the owner of the same in his own independent right and rather he had acted on behalf of his Principal, which was Shri M Vedamurthy and it is through him that the buyer had made payments to the intended sellers. We thus find merit in the assessee's contention that he was never in receipt of the 'specified sum' in as much as he was not transferring any immovable property to the buyer.

**20.** It is noted that the lower authorities had factually erred in holding that, the assessee was in 'receipt' of part 'sale consideration' and therefore, irrespective of whether the transfer ultimately took place or

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not, since he was in receipt of the 'specified sum', he is liable to be penalized u/s 269SS r.w.s. 271D of the Act. As noted above, there was no 'sale consideration' involved in true sense, as no transfer ever took place. Having regard to the facts as already narrated in the preceding paragraphs, the sums impugned in this appeal were paid by Shri M Vedamurthy by way of 'advance'. Although it is indeed true that the provisions of Section 269SS would still apply in case of an 'advance', whether or not the transfer took place, but as held above, it would apply in the hands of the 'recipient' of the monies in real sense i.e. the person who would be transferring the immoveable property. As noted above, the assessee was not the 'recipient' but only the agent or facilitator through whom the payment was made, he cannot be subject to provisions of Section 269SS of the Act.

**21.** We have taken cognizance of the Revenue's argument that, there was no explicit language used in Section 269SS of the Act that, it would apply only to 'buyer' and 'seller' of immoveable property. The lower authorities failed to appreciate that the provision would apply 'in relation to transfer of immovable property' and that is broad enough to encompass not only vanilla transaction of buy & sell of immovable property, but even extinguishment of rights in immovable property viz., where occupier or tenant is vacated therefrom, or where there is a long-term lease in the nature of 'transfer' between lessor and lessee etc.,

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Hence, there can be several situations of transfer of immovable property which can be envisaged, apart from simple conveyance of immovable property between a buyer and seller. The provisions of Section 269SS would apply to recipient of monies in relation to transfer of immovable property viz., who actually receives the monies in his own independent right. We are therefore unable to countenance the Revenue's argument that even a broker, who receives from a principal and immediately pays the monies to the other principal, shall be regarded as 'recipient' of monies in relation to transfer of immovable property.

**22.** Further, on the facts of the present case, we also find that there is a 'reasonable cause' as mandated u/s 273B of the Act, as Section 269SS of the Act was amended by the Finance Act 2015, wherein the term 'specified sum' was introduced to include amount received for transfer of immovable property, whereas the MoU pursuant to which the advances were paid, in the present case, admittedly was entered into on 03.07.2014 viz., prior to the introduction of the aforesaid amendment, we agree with the Ld. AR that this amendment would not have come to the knowledge of the assessee who is a middle man having elementary education and no knowledge of tax laws. The assessee would have not been under a belief that there was any contravention of any provision of the Act. Further, since the assessee was only the middleman and was

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never the recipient of the monies in real sense, his conduct cannot be treated to be contumacious or malafide.

**23.** In view of the aforesaid reasoning on the facts of the case, we are of the considered opinion that penalty u/s 271D of the Act was not imposable on the assessee and therefore we direct the AO to delete the same.

**24.** Since, on merits, we have deleted the penalty levied u/s 271D of the Act, the other legal contentions raised as to the validity of the impugned penalty orders have become academic in nature and is therefore not being separately adjudicated upon.

**25.** In the result, both the appeals of the assessee stand allowed.

Order pronounced on the 29<sup>th</sup> day of January, 2025, in Chennai.

**Sd/-**

(जगदीश)

**(JAGADISH)**

लेखासदस्य/**ACCOUNTANT MEMBER**

**Sd/-**

(एबीटी. वर्की)

**(ABY T. VARKEY)**

न्यायिकसदस्य/**JUDICIAL MEMBER**

चेन्नई/Chennai,

दिनांक/Dated: 29<sup>th</sup> January, 2025.

**TLN, Sr.PS**

आदेशकीप्रतिलिपिअग्रेषित /Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT, Chennai / Madurai / Salem / Coimbatore.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF