

(2024) 04 ITAT CK 0017

Income Tax Appellate Tribunal (Delhi H Bench)

Case No: Income Tax Appeal No. 2561/DEL/2022

Finesse International Design Pvt.
Ltd.

APPELLANT

Vs

Addl. CIT

RESPONDENT

Date of Decision: April 2, 2024

Acts Referred:

- Income Tax Act, 1961 - Section 132A, 250, 269ST, 271D, 271DA

Hon'ble Judges: Kul Bharat, J; Dr. B. R. R. Kumar, (AM)

Bench: Division Bench

Advocate: Ashwani Kumar, Ankur Aggarwal, Siddharth Bhimsingh Meena

Final Decision: Allowed

Judgement

1. The present appeal has been filed by the assessee against the order of Id. CIT(A)-23, New Delhi dated 12.09.2022.

2. Following grounds have been raised by the assessee:

"1. That the order dated 12.09.2022 passed u/s 250 of the Income-tax Act, 1961 (hereinafter called "the Act") by the Ld. Commissioner of Income-Tax (Appeals) -23, Delhi is against law and facts on the file in as much as he was not justified to partly uphold the action of the Learned Assessing Officer by restricting the penalty levied u/s 271DA of the Act to Rs. 12,60,300/- as against Rs.25,78,300/- levied by the Ld. Assessing Officer for alleged splitting of bills made by the Appellant Company during the year under consideration and alleged contravention of the provisions of Section 269ST on cash receipts of Rs. 2,00,000/- or more in AY 2018-19 by ignoring the facts and circumstances of the case and submissions filed on behalf of the Appellant Company."

3. The grounds of appeal are related to levy of penalty u/s 271DA of the Income Tax Act, 1961 on cash receipts of Rs.2,00,000/- by the assessee. Penalty order u/s 271D of the Act has been passed in consequence to the proceedings of search and seizure operation that was conducted on Sh. Rishi Kishan Mehra and Shantanu Mehra, Directors of M/s Finessee international Design Pvt. Ltd. on 29.05.2018 u/s 132A. During the search operation, incriminating documents related to the assessee were found and seized. Thereafter, proposal for initiating penalty proceedings u/s 271D of the Act was received from the Assessing Officer by the Addl. CIT, Central Range-1, New Delhi. On examination of the impounded documents and Assessment order, it was noted by the Addl. CIT, Central Range-1, New Delhi that the assessee company has violated provisions of section 269ST of Income Tax Act, 1961 by way of cash receipts of Rs.2,00,000/- or more from a single persons by splitting the invoices against sale of goods at its stores.

4. Aggrieved, the assessee filed appeal before the Id. CIT(A).

5. The Id. CIT(A) deleted the penalty levied made on account of transactions through the bank and confirmed the transactions made through cash.

6. The Id. CIT(A) confirmed the penalty holding that the details of the customers from whom payment in cash exceeding Rs.2,00,000/- has been examined. The Id. CIT(A) held that the assessee has issued two bills to the customer bifurcating it below Rs.2,00,000/- and the purpose of bifurcating the bills into two is obvious i.e. circumventing the provisions of section 269ST. The Id. CIT(A) held that no person issues two bills to the same customer for two different items. The Id. CIT(A) opined that if anyone goes to a shop and purchases 10 items, the bill is one for all the items and the payment is also made in one go.

7. Heard the arguments of both the parties and perused the material available on record.

8. The details are as under:

8	Rohan Kiara	2 pair Lehnga, Choli Dupatta, 2 pair Sherwani, Kurta Churidar and 2 pair Waistcoat Kurta Churidar	10.11.2017	1153000

9. In the instant case, the items purchased are marriage dresses and of different items.

10. The provisions of Section 271DA are as under:

“Penalty for failure to comply with provisions of section 269ST.

271DA. (1) If a person receives any sum in contravention of the provisions of section 269ST, he shall be liable to pay, by way of penalty, a sum equal to the amount of such receipt:

Provided that no penalty shall be imposable if such person proves that there were good and sufficient reasons for the contravention.

(2) Any penalty imposable under sub-section (1) shall be imposed by the Joint Commissioner.”

11. Legislative Intention behind introduction of Section 269ST:

“Various legislative steps have been taken by the Finance Act, 2017 to curb black money by discouraging cash transaction and by promoting digital economy. These prominently include placing restriction on cash transaction by introduction of new sections 269ST & 271DA to the Income-tax Act”

2. Chapter XX-B which contains the sections 269SS/T/ST, is titled as “Requirement as to mode of acceptance, payment or repayment in certain cases to Counteract Evasion of Tax.”

12. We have examined the judicial proposition on this issue. The Hon’ble Apex Court in the case of Hindustan Steel Ltd Vs. State of Orissa (83 ITR 26) held that held that penalty may not be imposed when there is technical or venial breach of the provisions of the Act.

13. Good cause’ as defined Lexicon

“Reason which is found to be adequate or proper and justified by a court or a competent authority dealing with the matter.”

‘Sufficient cause’

“The expression ‘sufficient cause’ implies no negligence nor inaction nor want of bonafides on the part of the party”.

14. Reliance is being placed on the following case laws with regard to good and sufficient cause:

Ø CIT vs. Mysore Fertilizer Co. 145 ITR 91 (Mad.)

Ø CIT vs. Chembara Peak Estates Ltd. 183 ITR 471 (Ker.) CIT vs. Jaipur Electro P. Ltd. 183 ITR 476 (Raj.)

Ø CIT vs. Bhikaji Ramchandra 183 ITR 478 (Bom.)

15. The Co-ordinate Bench of ITAT Guwahati in the case of Addl. CIT Vs. Smt. Prahati Baruah in ITA No. 418/Guwahati/1998 has held as under:

“5. Further, section 269T was inserted in the Income- tax Act, 1961, originally by the Income-tax (Second Amendment) Act, 1981 with effect from July 11, 1981. The scope and effect of section 269T have been elaborated the C.B.D.T.'s Circular No. 345, dated June 28, 1982 at para 2.1 & 2 .2. A reading of the same shows that the introduction of section 269T and section 271E in the statute are to prevent proliferation of black/unaccounted money deposited with banks and other persons by introducing the system of repayment through account payee cheques and drafts and, thus ensure that the identity of the payees is established . In the instant case, it cannot be held that there was any such intention of the assessee to hide the identity of the lender. In the facts and circumstances of the case, the identity of the lender to whom repayment has been made is known to the Department and the genuineness of the loan transaction is not in doubt . Hence, in our considered opinion, it cannot be held that the breach of law, if any was deliberate. The default, if any, at most be said to be a technical default. It has been held by the Hon’ble Apex Court in the case of Hindustan Steels vs. State of Orissa [1972] 83 ITR 26 that penalty cannot be levied merely because the authorities are empowered to levy and when there is technical or venial breach of the provisions of the Act, the authorities competent to impose penalty shall be justified in refusing to impose the penalty.”

16. Hence, keeping in view, the entire facts and peculiar circumstances of the case, we hold that no penalty is leviable in this case.

17. In the result, the appeal of the assessee is allowed.