

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी. दुर्गा राव, न्यायिक सदस्य एवं श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।
Before Shri V. Durga Rao, Judicial Member &
Shri Manoj Kumar Aggarwal, Accountant Member

आयकर अपील सं./I.T.A. No.389/Chny/2022
निर्धारण वर्ष/Assessment Year: 2018-19

M/s. Prashanth Fertility Research
Centre Pvt. Ltd., Door No. 76 & 77,
Harrington Road, Chennai 600 031.

Vs. The Joint Commissioner of
Income Tax,
Corporate Range 5,
Chennai 600 034.

[PAN:AACCP2513J]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri D. Anand, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 03.05.2023
घोषणा की तारीख /Date of Pronouncement : 17.05.2023

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) 18, Chennai, dated 22.03.2022 relevant to the assessment year 2018-19 passed under section 271DA of the Income Tax Act, 1961 ["Act" in short].

2. Facts are, in brief, that the assessee is running a Fertility and Research Centre. An inspection was carried out on 12.06.2018 in the premises of the assessee company in order to verify the SFT compliance

and it was noticed that the assessee had shown cash receipt of ₹. 2 lakhs and more in respect of sales during the financial year 2017-18. The Assessing Officer has observed that this is in contravention to section 269ST of the Act, which attracts penalty proceedings under section 271DA of the Act and the total number of such transaction for the period from 01.04.2017 to 31.03.2018 was 6 Nos. and total amounting to ₹.15,29,855/-. Accordingly, a notice under section 271DA of the aCt dated 08.10.2018 has been issued. In response to the notice, the AR of the assessee appeared before the Assessing Officer and furnished copies of the 6 instant cases where the transaction has exceeded ₹. 2 lakhs and also submitted his explanation. The Assessing Officer has not accepted the explanations of the assessee on the ground that the assessee company is a fertility research centre, wherein, the nature of business is more of the nature of pre-fixed appointments and prolonged period of treatment, whereby, there is remote changes of emergency treatment as a measure of life saving as stated by the AR. The other submissions made by the assessee was also not accepted by the Assessing Officer and accordingly levied penalty of ₹.15,29,855/-.

3. The assessee carried the matter in appeal before the Id. CIT(A) and filed written submissions as under:

“Submission:

The undisputed facts of the case is that

- 1. The transaction under question is genuine*
- 2. The transaction is duly recorded in books of the parties to the transaction*
- 3. Identity and confirmation of parties to the transaction is on record.*
- 4. No black money/tax evasion/malafide intention is involved in the transaction.*

For better appreciation of the fact of the case the assessee begs to reproduce the section 271DA

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

Provided that no penalty shall be impossible if such person proves that there was good and sufficient reasons for the contravention."

From the reading of the said section, it could be seen that the levy of penalty is not absolute and that the ingredients of 273B is in built in the section. Thus, if a reasonable cause is given than the penalty is not leviable. The appellant is in health industry and the ultimate object of the assessee is to save lives of its patients. Humanitarian considerations demands that the assessee cannot in certain circumstances, demand a specified mode of payment when the patients are desperate for the treatment. It is in these conditions that the assessee is compelled to accept certain payments in cash due to unavoidable circumstance. However, it could be seen that the transaction are duly recorded in books and the identity of the parties to the transaction are on record. Further, it is not the case of the department that the assessee was evading taxes or was concealing income. The genuineness of the transaction is never in dispute.

As could be seen from the impugned 6 transactions, all the aforesaid remittances are made by patients who are not Indian nationals and by persons who do not have banking facilities in India. It is only to facilitate such instances the appellant was certified to receive foreign exchange. Thus, this by no stretch of imagination could be construed as contravention of section 269ST. The intent and purport is straight and clear.

In the above circumstances, considering the assessee field of operation, the nature of transaction, the assessing officer ought to have seen that there was no contravention of section 269ST, assuming without conceding that there was a contravention the AO should have taken a liberal approach and should have considered the payments received as good and sufficient reason to

invoke the saving provision and restrained from levying penalty. The intention of the legislature and its object is quiet conspicuous and plain that the penalty is not leviable if the assessee proves that there were good and sufficient reasons for the Contravention. In the instant case the department had not impeached that the transaction are not genuine. Similarly no transaction was noticed outside the books of accounts. The facts and circumstances of the instant case clearly indicated that there was a reasonable cause and therefore, no penalty was leviable. It is settled law that reasonable cause can 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 fide.

The assessee relies on the following case laws in support of his submission:

Hon. Supreme Court's in the case of Hindustan Steel Ltd vs State of Orissa reported in 83 ITR 26 held that, an order imposing penalty for failure to carry out a statutory obligation is the result of quasi criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. The penalty will not also be imposed merely because of it is a statutory obligation is a matter of discretion of authority to be exercised judicially and on a consideration of all relevant circumstances. Even if a minimum penalty is prescribed the authority competent to impose penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act or when there is breach flows from the bona fide belief that the offender is not liable to act in the manner prescribed by the statute.

The Hon'ble Bombay High Court in CIT vs Triumph International Finance (345 ITR 270).

"It is not established that there is a deliberate and intentional violation of the provisions by the assessee in order to hide any income or to evade any payment of tax. Even if the assessee has technically contravened provisions of section 269ST, in absence of finding to effect that repayment of loan/ deposit was not a bona fide transaction and was made with view to evade tax, no penalty under section 271E could be imposed for contravening provisions of section 269ST".

The assessee in the above circumstances submits that the learned first appellate authority may be pleased to construe that the aforesaid transactions are not willful or deliberate but were consequence of circumstances and therefore humbly submit that a liberal view be taken and pray that the penalty of Rs.15,29,855/- levied under section 271DA be deleted and justice rendered. Should the learned CIT(A) still suspect the bonafide

claim of the assessee than the assessee may be given a personal hearing to state its case.”

4. After considering the explanations of the assessee, the Id. CIT(A) has passed detailed order as under:

Decision:

7. *This appeal is against the levy of penalty of Rs.15,29,855/- u/s 271DA of the Act for violation of the provisions of section 269ST.*

7.1. *The AO found that the appellant had entered into 6 transactions in violation of the provisions of section 269ST by accepting the fees exceeding Rs.2 lakhs by way of cash. When the appellant was called upon by the AO to show cause as to why penalty under section 271DA should not be levied for violation of the provisions of section 269ST, the appellant submitted that in respect of two transactions, the amount was received in US dollar and in respect of the balance, the appellant had no explanation. It has submitted that the contravention is not less than 0.1% of the total turnover of the appellant company and therefore there was no malafide intention on the part of the appellant. The AO found that the amount in respect of 2 transactions is recorded only in Indian rupees (INR) even though it is claimed as received in US dollar. The AO further found that the appellant is running a fertility research centre which involves prolonged period of treatment and there is remote chances of any emergency treatment involved to accept cash. As there was clear violation of the provisions of section 269ST the AO has levied a penalty u/s 271DA of Rs. 15,29,855/- equivalent to the value accepted by the appellant.*

7.2 *Before me, the appellant submitted that the transactions are genuine and duly recorded in the books of accounts and identity and confirmation of the parties to the transaction is on record and there was no black money involved nor any tax evasion. It was further submitted that the patients involved in all the 6 transactions are all not Indian nationals and they do not have any banking facilities in India and therefore the appellant had received the amount in cash. According to the appellant, the AO should have taken a liberal view when there was good and sufficient reason for the contravention.*

Reliance is placed on the decision of the Hon'ble Supreme Court in the case of Hindustan steel Ltd. (83 ITR 26) and Bombay High Curt in the case of Triumph International Finance. (345 ITR 270), The appellant therefore prayed for deletion of the penalty imposed under section 271DA of the Act

7.3 *I have considered the submissions of the appellant and the findings of the AO. The fact that there was contravention of the provisions of section*

269ST to the extent of Rs. 15,29,855/- is not in dispute. The only point for consideration is therefore to consider whether there was reasonable cause for the default within the meaning of section 273B of the Act. A perusal of the provisions of section 273B shows that the penalty under section 271DA is not included therein which would mean that even if the appellant had reasonable cause for the default, penalty is leviable u/s 271DA. Further, the appellant's submission is that the persons involved are all non residents and they do not have any banking facilities in India, Normally these affluent non-residents who approach for fertility related issues would use their credit card or debit card for all their expenses in India like hotel, travel, etc. The appellant could have asked those persons to use their credit/debit card for making the payments instead of accepting the cash. As it cannot be considered as technical or venial breach, the decision quoted Hindustan Steel Ltd (supra) is not applicable to the assessee; further it was not on the penalty of the nature of section 269ST. If the appellant's explanation that the transaction is genuine and therefore no penalty could be levied is accepted, then, the provisions themselves would become inoperative as all such transactions involving violation of section 269ST would have been included in the turnover and would be genuine only. Only genuine transactions in violation of section 269ST are covered u/s 271DA. If they are not genuine, then section 68, related penalty and prosecution will come into play. The provisions of section 269ST was introduced for a specific purpose and therefore if there is any violation of the said provisions, penalty would automatically lie. In view of the above reasons, the decision cited Triumph International Finance (supra) will not apply to the assessee. I have therefore no other alternative except to confirm the penalty levied u/s 271DA of the Act. The penalty of Rs. 15,29,855/- levied u/s 271DA is confirmed and the grounds raised are dismissed.

5. On being aggrieved, the assessee carried the matter in appeal before the Tribunal.

5.1 The Id. Counsel for the assessee has submitted that the assessee is running a hospital, wherein, six instances of foreign nationals, who does not have banking facilities in India and have remitted the payment in foreign currency, which were duly entered in the books of account and shown in the return of income and therefore, the provisions of section

273B of the Act has no application.

5.2 It was further submitted that once a patient comes to the hospital, it is the duty of the Doctor, who are running hospital has to attend them and bills will be raised after treatment and cannot ask whether payment will be made by cheque or card or cash. In this case, in six instances, the patients are not able to pay bills by cheque or credit card or debit card being foreign nationals. The assessee was compelled to accept the payment in cash. There is a reasonable cause to accept the cash and the assessee's case is not covered under section 271DA of the Act.

6. On the other hand, the Id. DR has submitted that the assessee is running a fertility centre. It is not like a regular hospital, where there are cases of emergency to be attended immediately. Therefore, accepting the payment in cash is in contravention of section 269ST. Thus, penalty is leviable under section 271DA of the Act and strongly supported the orders of authorities below.

7. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The assessee is running a multi speciality hospital in the name of Prashanth Fertility and Research Centre Pvt. Ltd. There are six instances, where the assessee

has accepted cash payment and according to the Assessing Officer, it was in contravention of section 269ST of the Act. Therefore, the Assessing Officer levied penalty of ₹.15,29,855/-. The case of the assessee is that the patients treated by the assessee were foreign nationals though have neither banking facilities in India nor had credit card/debit card, etc. Under these circumstances, the assessee has to accept the payment in cash, which were duly entered in the books of account and shown in the return of income. The case of the assessee is that its case is covered by the proviso to section 271DA of the Act and no penalty can be levied. For the sake of convenience, the provision of section 271DA of the Act is reproduced as under:

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.*

8. As per the above section 271DA of the Act, the proviso provides that no penalty can be levied if there is a good and sufficient reason for the contravention. In the present case, we find that the assessee, being an hospital after serving the patients of foreign nationals raised the payment and the patients are unable to pay the bills by cheque or debit card since they does not have banking facilities in India. Under these circumstances, we are of the considered opinion that there is reasonable

cause for the assessee to accept the cash payment and moreover, the contravention is not even less than 0.1% of the total turnover of the assessee company. In the instant case, it is not the case of the Department that the transactions are not genuine and similarly, no transaction was noticed outside the books of accounts. In view of the above, the penalty levied under section 271DA of the Act is deleted.

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

Order pronounced on 17th May, 2023 at Chennai.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 17.05.2023

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.