

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH : BANGALORE

BEFORE SHRI ARUN KUMAR GARODIA, ACCOUNTANT MEMBER AND

MS. BEENA PILLAI, JUDICIAL MEMBER

ITA No. 1917/Bang/2018
Assessment Year : 2011-12

M/s. Microzone Technologies Private Limited, No. G-8, Swastik Mezzanine Floor, 401/2, JC Road, Seshadripuram, Bangalore – 560 020. PAN: AACCM2485J	Vs.	The Additional Commissioner of Income Tax, Range 4 (1), Bangalore.
APPELLANT		RESPONDENT
Assessee by	:	None
Revenue by	:	Shri Praveen Karanth, Addl. CIT (DR)
Date of hearing	:	20.06.2019
Date of Pronouncement	:	28.06.2019

ORDER

Per Shri A.K. Garodia, Accountant Member

This appeal is filed by the assessee and the same is directed against the order of Id. CIT(A)-4, Bangalore dated 31.03.2018 for Assessment Year 2011-12.

2. The grounds raised by the assessee are as under.

“1. The order of the Learned Appellate Authority is bad in law and not in accordance with the provisions of the Income Tax Act, 1961.

2. The Learned Appellate Authority has failed to consider the fact that the nature of transaction in relation to receipt or payment of amount is in the nature of current account or in the ordinary course of business and it has been carried out between Private Limited Company and its Directors-cum-shareholder, hence, provisions of section 269SS cannot be made applicable.

3. The Learned Appellate Authority has failed to consider the provisions of section 273B of the Income Tax Act 1961, no penalty shall be levied if the failure to comply with the provisions of Section 269SS is due to reasonable cause.

4. The Learned Appellate Authority has failed to consider the fact that if there is no finding that transactions were not genuine and there is no mala-fide intention, the penalty could not be sustained in law due to failure of compliance of section 269SS.

5. For the above and such other grounds as may be urged at the time of hearing, your appellant prays your Honour to consider the facts and circumstances of the case and render justice.”

3. This appeal was fixed for hearing on 20.06.2019 and the notice of hearing was sent to assessee by RPAD and served on assessee as per acknowledgment card available on record. None appeared on behalf of the assessee on the appointed date of hearing and there is no request for adjournment and hence, this appeal was heard ex-parte qua the assessee. The Id. DR of revenue supported the order of CIT(A).
4. We have considered the submissions of Id. DR of revenue and gone through the orders of authorities below.
5. We find that as per ground no. 3 raised by assessee before CIT(A), this was the contention raised before CIT(A) that the AO has failed to consider the provisions of section 273B of the IT Act as per which no penalty shall be levied if the failure to comply with the provisions of section 269SS is due to reasonable cause. Similar ground is raised before us also as per ground no. 3 as reproduced above. The Id. CIT(A) has dismissed the assessee's appeal as per para 6 of his order which is reproduced hereinbelow for ready reference.

“6. The AO's Observation / findings and the assessee's submissions have been duly considered. The judicial position in the factual matrix of the present case has been duly analyzed.

The assessee's contentions are not found to be acceptable in the facts & circumstances emerging for consideration. It is clearly evident that, the apparent violation of the provisions of section 269SS was highlighted by the assessee's own auditor in the form 3CD, indicating acceptance of cash receipts above the threshold limit of Rs. 20,000/-. It is also apparent that the impugned amounts were shown under the account - head loans, thereby attracting the impugned provisions of section 271D of the I.T. Act. The assessee's submissions that the transaction were in the nature of day to day working capital cash requirements, is not adequately substantiated nor, does it explain as to why a separate account (besides loan account) was not maintained in this regard, in the assessee's books. The judicial pronouncement relied upon by the assessee are not found to be squarely applicable to the present facts, wherein the audit report and form 3CD, itself acclaims the alleged violation of section 269SS. The Assessee's case is also not explained by the exceptional circumstances, provided within the section 269SS/271D of the IT. Act, especially in view of the fact that sufficient banking facilities exist everywhere in Bangalore, where payments

through bank could be made at any given point of time, in the normal course of business.

In the background of the above discussion and given facts & circumstances, there appears to be no valid justification to have entered into the impugned loan transactions in cash. The assessee's grounds of appeal are therefore disallowed."

6. As per above para reproduced from the order of CIT(A), it is seen that Id. CIT(A) has disposed of the appeal of the assessee without referring to the provisions of section 273B of IT Act and hence, we feel it proper to restore back the matter to the file of CIT(A) for a fresh decision. Accordingly, we set aside the order of CIT(A) and restore the matter back to his file for fresh decision with the direction that he should decide the issue afresh and while doing so, he should keep in mind the provisions of section 273B also and he should pass a speaking and reasoned order on all aspects after providing adequate opportunity of being heard to both sides. In view of this decision, no adjudication on merit is called for at the present stage.
7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on the date mentioned on the caption page.

Sd/-
(BEENA PILLAI)
Judicial Member

Sd/-
(ARUN KUMAR GARODIA)
Accountant Member

Bangalore,
Dated, the 28th June, 2019.
/MS/

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|---------------|------------------------|
| 1. Appellant | 4. CIT(A) |
| 2. Respondent | 5. DR, ITAT, Bangalore |
| 3. CIT | 6. Guard file |

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Bangalore.