IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "A", MUMBAI
BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER AND
SHRI GAGAN GOYAL, ACCOUNTANT MEMBER
ITA No. 1568/Mum/2021 (A.Y. 2018-19)
ITA No. 1569/Mum/2021 (A.Y. 2015-16)

ACIT, CC-2(1),
804, 8th Floor,
Old CGO Building, M.K. Road,
Mumbai-400020. ...... Assessee

Vs.

M/s Lilavati Kirtilal Mehta Medical Trust,
A-791, Bandra Reclamation,
Bandra (W), Mumbai-400050.
PAN: AAATL1398Q ..... Respondent

Assessee by	:	Smt. Shailja Rai, CIT-DR
Respondent by	:	Sh. Vijay Mehta
Date of hearing	:	31/05/2022
Date of pronouncement	:	30/08/2022

ORDER

PER GAGAN GOYAL, A.M:

These appeals by the Revenue are directed against the orders of Ld. Principal Commissioner of Income Tax (Appeals)-48, Mumbai [hereinafter referred to as ('Ld. Pr.CIT(A)') dated 16.08.2021 & 20.07.2021 for the Assessment Year (AY) 2018-19 & 2015-16 respectively. In ITA No. 1568/Mum/2021, the Revenue has raised the following grounds of appeal:

"1. Whether on the facts and circumstances of the case and in law, the Ld. Pr.CIT(A)-48, Mumbai has erred in deleting the penalty of Rs. 13,21,06,882/- levied u/s 271DA of the Income Tax Act, 1961 without appreciating that the exceptions to section 269ST is not applicable to the assessee and that the assessee failed to provide any reasonable cause for contravention of section 269ST."

2. In ITA No. 1569/Mum/2021, the Revenue has raised the following grounds of appeal:

Grounds of appeal		Tax effect relating to each Ground of appeal (see note below)
1.	Whether on the facts and circumstances of the use and in law, the Ld Pr.CIT(A)-48, Mumbai had erred in deleting the addition of Rs.38,51,83,495/- on the basis on the order of the Hon'ble ITAT dated 12.06.2019 wherein the Hon'ble ITAT had restored the registration granted u/s. 12A without appreciating the facts that AN appeal is filed to the Bombay High Court against the said order of the Hon'ble ITAT and the matter is subjudice.	Rs. 38,51,83,495/-
2.	Whether on the facts and circumstances of the case and in law, the Ld Pr.CIT(A)-48, Mumbai had erred in deleting the addition of Rs. 78,79,641/- on account of disallowance of legal expenses without appreciating the facts that these expenses were incurred to settle the dispute among the trustees and these expenses are not incurred for the benefit of the trust.	Rs. 78,79,641/-
Total tax effect (see note below)		Rs. 39,30,63,136/-

3. Brief facts of the case are that the assessee-trust is engaged in providing healthcare facilities by their hospital located at Bandra West, Mumbai. An instruction under section 131 was carried out by the DDIT(I&CI), Unit-1(2),

Mumbai at the premises of the assessee on 20.02.2018 during the inspection, it was noticed that the in the Financial Year (FY) 2017-18, the assessee has received cash payments from its 654 patients in cash amounting to Rs. 2,00,000/- or more, thereby violating provisions of section 269ST of the Income Tax Act.

4. In view of this a show cause notice was issued to the Assessee dated 21.03.2018 to show cause as to why the penalty u/s 271DA r.w.s. 274 should not be levied for the violation of provisions of Section 269ST of the Act. The Assessee raised various contentions before the Addl. CIT in support of its claim. However, the Additional CIT though considered the submission made by the assessee but did not accept the same. The Addl. CIT rejected all such contentions of the Assessee and held that the Assessee company had violated the provisions of Section 269ST by accepting cash receipts above Rs. 2 lakhs and levied a penalty of Rs. 13,21,06,882/- under section 271DA r.w.s. 274 vide order dated 29.08.2018. The Assessee preferred an appeal against this penalty order before the office of Ld. Pr.CIT (A).

5. Against the appeal of assessee, Ld. Pr. CIT(A) allowed the appeal in favour of assessee and reversed the order of Addl. CIT, Central Range-2. Against this order of Ld. Pr. CIT(A), Revenue preferred this appeal before us.

6. We have gone through the penalty order passed by Addl.CIT, Central Range-2 under section 271DA r.w.s. 274 of the I.T. Act, 1961 and order of Ld. Pr. CIT(A) under section 250 of the I.T. Act.

7. Section 271DA of the Act was inserted in the statute with effect from 1ST April 2017 to provide for the levy penalty by joint commissioner for contravention of provisions of section 269ST as follows:

"S. 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."

(Emphasis supplied)

Thus, for the levy of penalty of section 271DA of the Act, the precondition is that there should be violation of the provisions of section 269ST of the Act i.e, the assessee should have received amount of two lakh rupees or more otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account without good and sufficient reasons.

Section 269ST of the Act was introduced vide Finance Act, 2017 with effect from 1 April, 2017. Relevant extract stating the rationale behind the introduction of the said section as stated in the memorandum as released along with Finance Act is reproduced as under:

"In India, the quantum of domestic black money is huge which adversely affects the revenue of the Government creating a resource crunch for its various welfare programmes. Black money is generally transacted in cash and large amount of unaccounted wealth is stored and used in form of cash.

In order to achieve the mission of the Government to move towards a less cash economy to reduce generation and circulation of black money, it is proposed to insert section 269ST."

Hence it is clear that the sole objective behind the introduction of the section 269ST is to curb black money large amount of unaccounted wealth is stored and used in form of cash resulting into tax evasion."

8. The Assessee submits that the spirit and intent of the entire provision of Section 269ST of the Act, is to ensure monies are routed through Banking channels, which in the instant case has been complied in all respects in as much as the amounts were deposited into the bank accounts of the assessee. Accordingly, based on the various judicial precedents, there is no violation of the

provisions of section 269ST of the Act and consequently, no penalty under section 271DA of the Act is warranted.

Receipt in cash for 'Good & Sufficient Reasons

The Assessee states that Finance Act, 2017, inserted a proviso to section 271DA itself to the effect that, no penalty shall be imposable if such person roves that there were good and sufficient reasons for the contravention of section 269ST.

The question as to what constitutes good and sufficient reasons has been effectively dealt by the Hon'ble Supreme Court in the case of Supreme Court in Arjun Singh v. Mohindra Kumar & Ors., AIR 1964 SC 993. Relevant text of the same is reproduced below:

“but we might observe that we do not see any material difference between the facts to be established for satisfying the two tests of "good cause" and "sufficient cause". We are unable to conceive of a "good cause” which is not "sufficient" as affording an explanation for non-appearance, nor conversely of a "sufficient cause" which is not a good explanation for non one and we would add that, either of these is not different from "good and sufficient cause" which is used in this context in other statutes. **If, on the other hand, there is any difference between the two it can only be that the requirement of a "good cause" is complied with on a lesser degree of proof than that of "sufficient cause".** [Emphasis

Supplied]

Good cause' as defined by The Law Lexicon (3rd Edition):

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

Sufficient cause' as defined by The Law Lexicon (3rd Edition): "The expression 'sufficient cause' implies no negligence nor inaction nor want of bonafides on the part of the party"

"Sufficient cause means some cause beyond the control of the party and for successfully invoking the aid of the court the claimant must have acted with due care and attention."

"The expression sufficient cause implies the presence of legal and adequate reason. The word 'sufficient' means 'adequate', 'enough', "as much as may be necessary to answer the purpose intended." Etc.

The Assessee would like to reiterate that the reasons for acceptance of cash are discussed in para 3.3 and para 3.14 to 3.20 and your Honor would appreciate that the Assessee had no malafide intentions and it had immediately deposited all the cash collected into the bank account. Thus mere technical violation of provisions of section 2695T without any malafide intentions and without there being any compelling circumstances behind the conscious contravention of section 269ST, It would be "Good and Sufficient cause" so as to come out of penal action u/s/271DA.

Without prejudice to the above, the Assessee submits that Section 269ST was introduced with intent to move towards a less cash economy to reduce generation and circulation of black money, The Assessee submits that it is cognizant of the Government's intent of curbing black money and the Assessee

itself is a huge supporter of such a cause. The Assessee submits that it had no intention to circulate any black money and the only intention behind the acceptance of cash receipts was due to presence of medical emergency. Therefore, the sole objective behind the introduction of section 269ST of the Act has not been contravened by the Assessee and consequently no penalty under section 271DA is warranted."

9. Attention is also invited to circular dated 3 July 2017 for clarification of section 263ST of the Act. Relevant extract from the said circular is reproduced as under:

"With a view to promote digital economy and create a disincentive against cash economy, a new section 269ST has been inserted in the Income-tax Act, 1961 (the Act) vide Finance Act, 2017. The said section inter alia prohibits receipt of an amount of two lakh rupees or more by a person, in the circumstances specified therein, through modes other than by way of an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account. Penal provisions have also been introduced by way of a new section 271DA, which provides that if a person receives any amount in contravention to the provisions of section 269ST, it shall be liable to pay penalty of a sum equal to the amount of such receipt.

Subsequently, representations have been received from non-banking financial companies (NBFCS) and housing finance companies (HFCS) as to whether the provisions of section 269ST of the Act shall apply to one instalment of loan repayment or the whole amount of such repayment. In this context, it is clarified that in respect of receipt in the nature of repayment of loan by NBFCs or HFCS,

the receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for a loan shall not be aggregated for the purposes of determining applicability of the provisions section 269ST." The above circular clearly states that the new section 269ST of the Act was introduced with a view to promote digital economy and create a disincentive against cash economy and in a view of difficulties faced by NBFC and HFC, receipt of one instalment of loan repayment in respect of a loan shall constitute a 'single transaction' as specified in clause (b) of section 269ST of the Act and all the instalments paid for a loan shall not be aggregated for the purpose of determining applicability of the provisions of the said section. Thus, the said circular was issued by considering the practical difficulties as faced by the non- banking financial companies and housing finance. Hence it was clear that the said section was only introduced to curb flotation of black money/ promote digital economy and not for the purpose of providing unnecessary hardship or problems in the business of the taxpayers. For the aforesaid reasons, the CBDT understood the practical difficulties as faced by NBFC and HFC and grant relief to them in regard to one of the conditions as specified in section 269ST of the Act.

10. In the present case in hand, the assessee accepted such payments of Rs.2,00,000/- or more in cash only to cater to the medical needs and/or emergencies of several patients with different disabilities and/or disorders and not for the purpose of circulating bank money being the sole objective of introduction of the aforesaid section. The assessee submits that section 269ST of the Act clearly states that no person shall receive an amount of two lakh rupees or more. The assessee submits that on perusal of the cash received from the

patients during the year, it is evident that in most of the cases the assessee has received upto two lakh rupees and the balance amount has been received through other modes such as cheque/ NEFT/ credit card/Debit card etc. Thus, it is evident that there was no intent of violating the provisions of section 269ST of the Act. On the contrary it is an interpretation error wherein the provisions of section 269ST of the Act have been misunderstood to permit upto Rs. 2,00,000/- rather than upto Rs. 1,99,999/-. In view of the above, the assessee submits that cash payments as made by patients in bona-fide situations should not be treated as contravention of section 269ST of the Act. Further, any amount received beyond the permissible limit of Rs. 1,99,999/- is on account of error in interpretation of law and consequently penalty should not be levied under section 271DA of the Act. Without prejudice to the above, the assessee submits that penalty to be levied only on amount received in excess leading to violation of 269ST, even if it is held that penalty is leviable in the instant case under section 271DA of the Act, the penalty should be levied only on the amount which is received in violation of the provisions of Section 269ST of the Act Le the amount in excess of two lakh rupees, being the statutory limit prescribed by the law. Reliance in this regard is placed on decision of Hon'ble Rajasthan High Court in case of CIT v Ajanta Dyeing & Printing Mills [2003] 130 Taxman 442/164 TTR SOS (Ra) wherein it was held as under that: "We are of the opinion that in case, any loan is there exceeding Rs. 20,000 and for that purpose any penalty is to be imposed in accordance with the provisions of section 271D for violation of section 269SS, the permissible amount of Rs. 20,000 has to be adjusted.

11. As observed above the intention of the legislature was to curve the quantum of domestic black money and evasion of tax. **Nowhere in the order of**

Addl. CIT imposing penalty under section 271DA read with section 274 of the Act, he made any allegation about the intentions of the assessee that he wants to circulate black money in the guise of cash, which is *sine qua non* to apply this section. Secondly, in this case assessee has not received cash directly rather patients and their families directly deposited the amount in assessee's bank account which amounts to around Rs. 8 Cr.

12. Relying on the decision of Hon'ble Rajasthan High Court as mentioned (supra), the amount received in excess of Rs. 1,99,999/- only can be considered for the purposes of section 269ST which comes out to be Rs. 10,27,021/- only.

13. In addition to above, we have considered and relied upon the following precedents of various High Courts including the Jurisdictional High Court of Mumbai as under:

> "The Hon'ble Bombay High Court in the case of CTT vs Ajitnath AY 2018-19 ay HiTech Builders P Ltd has examined identical provision wherein it is held that "there is a reasonable cause for not complying with section 26955 and penalty under section 271D is not imposed in case where journal entries constitute a recognized mode of recording of transactions and in absence of any adverse finding by authorities that journal entries were made with a view to achieve purpose outside normal business operations or there was any involvement money,"
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> Further, Hon'ble Bombay High Court in the case of CIT vs Triumph International Finance Ltd held that, "penalty under section 271E could not be imposed for contravening provisions of section 269T in the absence of finding to effect that repayment of loan/deposit was not a bona fide transaction and was made with view to evade tax."
>
> Also, in the case of Asst. Director of Inspection vs Kum. A.B. Shanthi Hon'ble Supreme Court has held that, section 273B provides that notwithstanding anything contained in the provisions of section 271D no penalty shall be imposable on the person for any failure referred to in the said provision if he proves that there was reasonable cause for such failure then the penalty may not be levies.

Hon'ble Gauhati HC in case of CIT v Bhagwati Prasad Bajoria (HUF) [2003] 133 Taxman 426 (Gau.), wherein mens rea was held to be an important criteria for levying penalty u/s 271D of the Act. Relevant extract of the said judgement is reproduced as under:

> *"transaction of loan had found place in the books of account of the assessee as well as lender of the loan. None of the authorities had reached to the conclusion that the transaction of the loan was not genuine and it was a sham transaction to cover up the unaccounted money. It appeared that the assessee felt need of the money and, thus, he approached the money lender for advancement of the money and the transaction was reflected in the promissory notes executed by the assessee in favour of the lender. When there is an immediate need of money, the person concerned cannot get such money from the nationalized bank to satisfy the immediate requirement. To satisfy the immediate requirement of money the person normally approaches the money lender in his friend or relative who could lend money to him to satisfy his immediate requirement. In such circumstances, it could not be said that the assessee had entered into a transaction to avoid the payment of tax or to defraud the revenue. The element of mens rea was not borne out from the nature and the manner in which the transaction was carried out."*

The Hon'ble Supreme Court in the case of Supreme Court in Arjun Singh V. Mohindra Kumar & Ors., AIR 1964 SC 993, Relevant rest of the same is reproduced below:

> "……but we might observe that we do not see any material difference between the facts to be established for satisfying the two tests of "good cause" and "sufficient cause". We are unable to conceive a "good cause" which is not "sufficient" affording an explanation for non appearance, nor conversely of a "sufficient cause" which is not d post one and we would add that, other of these is not different from "good and sufficient cause" which is used in this context in other Statutes If, on the other hand, there is any difference between the two it can only be that the requirement of a "good cause" is complied with on a lesser degree of proof than that of "sufficient cause".

Hon. Supreme Court's in the case of Hindustan Steel Ltd v State of Orissa [1972] 83 ITR 26 (SC) wherein it has been held that an order imposing penalty for failure to carry out a statutory obligation is the result of a 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 it's obligation. The penalty will not also be imposed merely because of it is lawful to do so. Whether penalty should be imposed for failure to perform 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.

Hon'ble Gauhati HC in case of CIT v Bhagwati Prasadi Bajoria (HUF) [2003] 133 Taxman 426 (Gau.), wherein mens rea was held to be an important criteria for levying penalty u/s 271D of the Act. Relevant extract of the said judgement is reproduced as under:

"...transaction of loan had found place in the books of account of the assessee as well as lender of the loan. None of the authorities had reached to the conclusion that the transaction of the loan was not genuine and it was a sham transaction to cover up the unaccounted money. It appeared that the assessee felt need of the money and, thus, he approached the money lender for advancement of the money and the transaction was reflected in the promissory notes executed by the assessee in favour of the lender. When there is an immediate need of money, the person concerned cannot get such money from the nationalised bank to satisfy the immediate requirement. To satisfy the immediate requirement of money the person normally approaches the money lender or his friend or relative who could lend money to him to satisfy his immediate requirement. In such circumstances, it could not be said that the assessee had entered into a transaction to avoid the payment of tax or to defraud the revenue. The element of mens rea was not borne out from the nature and the manner in which the transaction was carried out"

14. In the given set of facts it could not be said that the assessee had entered into a transaction to avoid the payment of tax or to defraud the Revenue. As the transactions were bonafide and the default was of technical nature and party involved did not acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest.

15. In the result, we are not inclined to disturb or change the order of Ld. Pr.CIT(A), hence, the order of Ld. Pr.CIT(A) is sustained.

16. **In the result, appeal of Revenuer is dismissed.**

ITA No. 1569/Mum/2021 (A.Y. 2015-16)

17. The present appeal is instituted against the order dated 20.07.2021 passed u/s.250 of the I.T. Act, 1961 (hereinafter referred to as "the Act") for AY.2015-16 by the Ld. CIT(A)-48 Mumbai in the case of Lilavati Kirtilal Mehta Medical Trust (here in after called as the assessee).

18. Facts of the case are that the assessee trust is registered as a charitable trust u/s. 12A of the Income Tax Act, 1961, since 22 January, 1979. The assessee is engaged in according medical relief and encouraging medical science, and more particularly running a hospital in name of Lilawati Hospital at Bandra Mumbai, which constitutes a "charitable purpose" as per section 2(15) of the Income Tax Act, 1961. For AY 2015-16, the assessee had filed its original return of income on 26.09.2015 declaring total income at Rs. NIL. The case was selected under CASS for scrutiny and notice u/s.143(2) dated 26.09.2016 was issued and served on the assessee. Thereafter, a notice u/s.142(1) was issued on 02.08.2017 with detailed questionnaire and duly served on the appellant. Prior to that the then CIT(Central)-1, Mumbai had issued a show cause u/s 12AA(3) to the assessee trust, with a view to cancel the registration, as certain anomalies had been found during the course of search held on 11.04.2011, indicating that the assessee had diverted certain funds to entities connected to the trustees as also had increased compensation to M/s Empire Chemist, which was suspected to be a connected

entity. In due consideration to the facts of the case, the Ld. CIT(Central)-1, cancelled the registration granted to the assessee u/s 12A, vide his order u/s 12AA(3) of the Act, dated 28.03.2014. Consequent upon the CIT(Central)'s order, the Ld. AO issued a show cause to the assessee, calling upon it to explain as to why its income may not be computed as 'business income' as per provisions of sec. 28 to 43 of the Act, and why the benefit of sec 11 and 12 of the Act, may not be denied to it. Relying on the said cancellation order, the Learned AO had, inter-alia, denied exemption under section 11 to the assessee and had treated and taxed the surplus as 'business income of the Appellant. The Ld. AO also disallowed the claim of the assessee towards legal expenses by treating the same as personal expenses of the trustees. Consequently the Ld. AO assessed total income of the assessee trust at Rs. 39,30,63,136/-in status of AOP vide order u/s 143(3) dated 30.12.2017 by denying the exemption u/s.11 of the Act on surplus of Rs.38,51,83,495/- and an addition/disallowance of legal fees of Rs.78,79,641/-. The assessee preferred an appeal against the above order of the AO.

19. In the appeal of the assessee, Ld. CIT(A)-48 allowed the appeal of the assessee. Hence, Revenue is in appeal before us.

20. We have gone through the order of the AO, order of the ld. CIT(A), orders of ITAT in ITA No. 2827/Mum/2014, ITA No. 1811/Mum/2020 for A.Y. 2006-07, ITA No. 1810/Mum/2020 for A.Y. 2007-08, ITA No. 1809/Mum/2020 for A.Y. 2008-09, ITA No. 1808/Mum/2020 for A.Y. 2009-10, ITA No. 1724/Mum/2020 for A.Y. 2010-11, ITA No. 1725/Mum/2020 for A.Y. 2011-12, ITA No. 1726/Mum/2020 for A.Y. 2012-13, ITA No. 627/Mum/2020 for A.Y. 2013-14, ITA No. 628/Mum/2020 for A.Y. 2014-15 & ITA No. 633/Mum/2020 for A.Y. 2016-17.

21. It is an admitted fact that assessments have been framed allowing assessee’s claim under section 12 as applicable to a registered trust. Benefit of section 11 was withdrawn because of cancellation of registration by Ld. CIT, Central-1. Accordingly, the assessee was assessed as an AOP. The income earned by the assessee was taxed as Business Income.

22. AO denied exemption under section 11 only on the ground of withdrawal of registration under section 12AA. However, since the order of withdrawal stands set-aside and registration originally granted stands restored vide ITAT order dated 12.06.2019 the reason for denial of exemption under section 11 by the AO ceases to exist.

23. Considering these facts and decision of ITAT in assessee’s own case as mentioned in para 20 (supra), we are of the opinion that we have to follow the decisions of ITAT as mentioned (supra) and appeal of Revenue is liable to be rejected. Since, it is not the case where Hon’ble Bombay High Court has set-aside the order of ITAT, respectfully following the precedents, we uphold the order of Ld. CIT(A).

24. In the result, Revenue’s appeal stands dismissed.

Order pronounced in the open court on 30th day of August, 2022.

Sd/-	Sd/-
(AMIT SHUKLA)	(GAGAN GOYAL)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, दिनांक / Dated: 30/08/2022
SK, Sr.PS
<u>Copy of the Order forwarded to</u>:

1. अपीलार्थी/The Appellant,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त (अ) / The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुबंई/DR, ITAT, Mumbai
6. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy. /Asstt. Registrar)
ITAT, Mumbai