

आयकर अपीलीय अधिकरण "ए" न्यायपीठ पुणेमें।
IN THE INCOME TAX APPELLATE TRIBUNAL "A"
BENCH, PUNE

BEFORE SHRI PARTHA SARATHI CHAUDHURY,
JUDICIAL MEMBER AND
DR. DIPAK P. RIPOTE, ACCOUNTANT MEMBER

आयकरअपीलसं. / ITA No.900/PUN/2018
निर्धारणवर्ष / Assessment Year : 2013-14

Vanishree Resorts Ltd., Vani Bhavan, S.No.51, 52, Bhairav Nagar, Dhanori Road, Pune – 411015. PAN: AAACV 5609 H	Vs	The JCIT, Range-13, Pune.
Appellant/ Assessee		Respondent / Revenue

Assessee by	None.
Revenue by	Shri Arvind Desai – DR
Date of hearing	27/07/2022
Date of pronouncement	01/09/2022

आदेश/ ORDER

PER DR. DIPAK P. RIPOTE, AM:

This appeal filed by the assessee Vanishree Resorts Ltd., against the order of Id.Commissioner of Income Tax(Appeals)-8, Pune dated 28.01.2018 emanating from the order under section 271D of the Act passed by the JCIT, Range-13, Pune. The assessee has raised the following grounds of appeal:

- “1. The learned CIT(A) erred on facts and in law in upholding the penalty u/s 271D of the Act. She failed to appreciate the facts and submissions made in this behalf in its proper perspective.
2. The appellant craves leave to add, alter, delete or substitute all or any of the above grounds of appeal.”

2. None appeared for the appellant assessee. It is observed that on last four occasions hearing was adjourned as none appeared on behalf of the appellant assessee. On 30.09.2021, the Id.Authorised Representative(Id.AR) for the assessee appeared and requested for an adjournment and accordingly case was adjourned. However, after that no one has attended on 22.12.2021, 15.02.2022, 23.05.2022 and 27.07.2022. Since there is consistent non-compliance by the appellant assessee, we have decided the case on merit.

3. The Id.Departmental Representative(Id.AR) for the Revenue took us through the order under section 271D and Id.CIT(A)'s order.

4. To appreciate the facts of the case, we are reproducing relevant part of the Id.CIT(A)'s order.

“6. In **Ground NO.1**, the appellant has alleged that the AO has erred in imposing **penalty** of Rs. 7,99,000/- u/s. 271D of the Act. Vide written submissions dated 18/01/2018 **various** cash deposits have been explained as below:-

Sr.No.	Date	Receipt	Payment	Explanation
1	11/06/2012	3,30,000	-	Wrong entry of cash receipt was made in our books on 11/06/2012 hence same was rectified by reverse entry on 12/06/2012. As such this amount is neither acceptance nor repayment of any loan or deposit.
2	12/06/2012	-	3,30,000	
3	12/10/2012	1,40,000	-	This amount was received on account of subscription dues from the chit subscriber of

				<i>Sheeba Kuries ltd. And wrongly deposited in our bank account. Hence, the entry was shown as receipt from Sheeba Kuries Ltd. As such in facts it was not in nature of loans or deposit received.</i>
	03/11/2012	1,10,000	-	<i>Wrong entry of cash receipt was made in our books on 03/11/2012 hence same was rectified by reverse entry on 05/11/2012 on 05/11/2012. As such this amount is neither acceptance nor repayment of any loan or deposit.</i>
5	03/11/2012	1,10,000	-	
6	05/11/2012	-	2,20,000	
7	01/12/2012	50,000		<i>Cash pertaining to Sheeba Kuries Ltd. Was wrongly deposited in our bank account. Therefore, the same was shown as receipt from Sheeba Kuries Ltd. As such in facts it was not in nature of loans or deposit received</i>
8	31/12/2012	25,000		
9	23/02/2012	34,000		
	<i>Total</i>	7,99,000		

7. Regarding entry of Rs.3,30,000/- appearing at Sr. No.1 above, it has been stated that a sum of Rs.3,30,000/- was wrongly entered in the cash book on 11/06/2012 which was reversed on 12/06/2012. However, nothing has been filed on record before the AO or before me to substantiate the claim that the relevant entry was reversed. The appellant has further stated that a sum of Rs. 3,30,000/- has been withdrawn on 12/06/20,2 from his bank account by way of a self cheque. This is of no relevance as the relevant cash deposit has-been made on 11/06/2012 whereas the withdrawal is on 12/06/2012 i.e. a day after the deposit had already been made. Hence the contention of the appellant explaining the above mistake is without any basis.

8. Regarding, the next deposit of Rs. 1,40,000/- received on 12/10/2012, it has been contended that the said amount pertained

to the subscription amount received from the chit subscribers of its sister concern Sheeba Kuries Ltd. which were wrongly credited in the cash book of the appellant. It is stated that the management of the appellant and he sister concern was the same and therefore the mistake apparent. This explanation cannot be accepted. First and foremost the appellant has not provided any details regarding the management of both the concerns. Moreover, the AO has rightly observed that chit fund companies are governed by strict laws and the subscriptions received from subscribers cannot be deposited elsewhere as that is considered a serious flaw under the Companies Act. It is interesting to note that even regarding cash deposits appearing at Sr.No. 5, 6 & 7 of Rs.50,000/- on 01/12/2012. Rs. 25.000/- on 31/12/2012 Rs. 34,000/- on 23/02/2013, the appellant has given the same excuse. This clearly shows that the appellant's explanation is an afterthought because a mistake can happen once but not repeatedly like in the present case. Cash deposits discussed above have been made at sufficient intervals hence they cannot be read to be a mistake. Hence the explanation of the appellant regarding these all these entries cannot be accepted.

9. *Regarding cash deposits of Rs.1,10,000/- each on 03/11/2012 the appellant has stated that these amount were wrongly entered in the cash book on 03/11/2012 which were reversed on 05/11/2012. However, nothing has been filed on record before the AO or before me to substantiate the claim that the relevant entry was reversed. The appellant has further stated that a sum of Rs.1,10,000/- each has been withdrawn on 03/11/2012 and 05/11/2012 from his bank account by way of a self cheque. A copy of bank account has been filed to reflect the same. Regarding the withdrawal made from the bank account on 03/11/2012 of an identical amount, it can be considered that the deposit made, on 03/11/2012 is out of this amount. However, another deposit of the same amount has been made on 03/11/2012 whereas the withdrawal is on 05/11/2012. Hence the benefit of mistaken entry cannot be given to the appellant as the deposit to this extent is before the date of withdrawal.*

10. *On the basis of the above analysis it seen that the appellant has on the pretext of mistakes has made considerable cash deposits in his books of account. It is a recurring practice and therefore cannot be overlooked in the garb of a mistake. The explanation given by the appellant is not acceptable in the light of the facts already discussed above. However, benefit of Rs.1,10,000/- is being given as the appellant has been able to demonstrate that the said sum was withdrawn from bank and deposited on the same day. Accordingly, the penalty levied by the AO is reduced to Rs./6,89,000/- and upheld to this extent Ground No.1 is Partly Allowed.”*

5. We have heard the ld.DR for the Revenue and perused the records. It is observed that both the ld.JCIT and ld.CIT(A) has considered the submission made by the appellant assessee and passed the order after taking into consideration the submission of the assessee. Before us, no evidence has been filed to establish that there was sufficient cause for cash deposits. It is also a fact that assessee had made the cash deposits on various dates. The explanation submitted by the assessee before the ld.CIT(A) has been perused and we are of the view that the ld.CIT(A) has rightly rejected the explanation for the reasons mentioned in the order. Therefore, we uphold the order of ld.CIT(A). Accordingly, appeal of the assessee is dismissed.

6. In the result, appeal of the assessee is dismissed.

Order pronounced in the open Court on 1st September, 2022.

Sd/- (PARTHA SARATHI CHAUDHURY) JUDICIAL MEMBER	Sd/- (DR. DIPAK P. RIPOTE) ACCOUNTANT MEMBER
--	---

पुणे / Pune; दिनांक / Dated : 1st Sep, 2022/ SGR*

आदेशकीप्रतिलिपिअग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A), concerned.
4. The Pr. CIT, concerned.
5. विभागीयप्रतिनिधि, आयकर अपीलीय अधिकरण, "ए" बेंच,
पुणे / DR, ITAT, "A" Bench, Pune.
6. गार्डफ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// TRUE COPY //

Senior Private Secretary
आयकर अपीलिय अधिकरण, पुणे/ITAT, Pune.