

**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI**

**BEFORE SHRI PRAMOD KUMAR, VP AND SHRI ABY T. VARKEY, JM**

आयकर अपील सं/ I.T.A. No.1790/Mum/2022

(निर्धारण वर्ष / Assessment Years: 2018-19)

M/s. National Decorators 2, Kuber Bhuvan, Bajaj Road, Vile Parle (E), Mumbai-400056.	<b>बनाम/</b> Vs.	JCIT of IT, Cir-25(3) Kautilya Bhawan, G Block, Bandra Kurla Complex Mumbai- 400051.
<b>स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAFFN0305E</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by:	Shri Vimal Punmiya
Revenue by:	Shri Chetan M. Kacha (Sr. AR)

सुनवाई की तारीख / Date of Hearing: 29/08/2022

घोषणा की तारीख /Date of Pronouncement: 23/09/2022

**आदेश / ORDER**

**PER ABY T. VARKEY, JM:**

This is an appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals)/ NFAC, Delhi dated 17.06.2022 for the assessment year 2018-19 against the penalty confirmed by Joint Commissioner of Income Tax (AO) u/s 271DA of the Income Tax Act, 1961 (hereinafter "the Act").

2. Brief fact of the case is that the assessee is a partnership firm had filed the return of income declaring total income of Rs.2,75,39,050/-. The AO received an information that the assessee had received cash of Rs.2,11,220/- from Shri Ashish Behera in the relevant assessment year, in violation of Section 269ST of the Act, wherein there was prohibition to receive cash more than Rs. 2,00,000/-. And therefore the AO issued show cause notice as to why penalty u/s 271DA of the Act should not be levied on the cash receipt



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of Rs.2,11,220/-. The assessee replied that it had carried out work of decoration during an event (marriage) and had received an amount of Rs.2,11,220/- from two (2) parties viz. the Groom side as well as Bride-Groom side to the tune of Rs.1,11,000/- and Rs.1,00,220/- respectively for that event. And contended that since the same was received from the said two (2) persons, there was no violation of Section 269ST of the Act. Moreover, it was brought to the notice by the AO that this was the first year in which the restriction of cash receipt was brought in i.e. by the relevant Finance Bill and as well as the Act which was introduced w.e.f. 1<sup>st</sup> April, 2017; and it was also brought to the notice of AO that when the bill was introduced initially in the Parliament, the proposed limit was initially Rs. 3 lakhs but when the Act was passed, it was brought down to two (2) lakhs; and the assessee therefore was on the impression that the limit prescribed was Rs. 3 Lakhs. And therefore in any case, there was reasonable cause for receipt and so penalty should not be levied [Section 271DA of the Act gives discretion to the Joint Commissioner not to levy penalty provided there is reasonable cause]. However, the AO/Joint Commissioner did not accept the plea of the assessee on the ground that the assessee failed to produce any evidence to corroborate the fact that it has received money from Groom Side Rs.1,11,000/- and bride groom side of Rs.1,00,220/-. According to the AO, it was an afterthought to wriggle out of the penalty provisions. Therefore, he levied penalty of Rs.2,11,220/- u/s 271DA of the Act. Aggrieved, the assessee preferred an appeal before the Ld. CIT(A)/NFAC who was pleased to confirm the same. Aggrieved, the assessee is before us.



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3. We have heard both the parties and perused the records. The assessee has received Rs.2,11,220/- from Shri Ashish Behera in the year under consideration. The AO noticing the same was of the opinion that the assessee had violated Section 269ST of the Act by receiving amount of Rs.2,11,220/- from a single person. And therefore, the Joint Commissioner levied penalty of Rs.2,11,220/- u/s 271DA of the Act. We note that as per the Finance Act, 2017 Section 269ST of the Act was brought into the statute book which took w.e.f. 01.04.2017 ie. (from this assessment year onwards) Section 269ST of the Act reads as under: -

**“Mode of undertaking transactions.**

269ST. No person shall receive an amount of two lakh rupees or more-

- (a) in aggregate from a person in a day; or
- (b) in respect of a single transaction; or
- (c) in respect of transactions relating to one event or occasion from a person,

Otherwise than by an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account (or through such other electronic mode as may be prescribed):

4. Section 271DA of the Act reads 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, as 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.



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

5. In this case, the assessee before the Joint Commissioner has pleaded that it has received Rs.2,11,220/- from two (2) persons [Shri Ashish Behera (Groom) Rs.1,11,000/-] and [Shri Manjusha S. Shetty (Bride Groom) of Rs.1,00,220/-] and so the assessee received the amount in question from two (2) persons and therefore, penalty should not be levied. However, JCIT did not accept the contention of the assessee because according to him, the assessee failed to produce any evidence to substantiate that it has received the same from two (2) persons; and according to him it was it was an afterthought. Whereas before us the assessee had filed confirmation from Shri Ashish Ishwor Behera PAN No. AUQPB3512J that he has paid Rs.1,11,000/- to the assessee for carrying decoration work on 31.10.2017 (page no. 1 of the P.B) and also the confirmation from Shri Shridhar Subba Shetty with his address and PAN details given therein that he has paid an amount of Rs.1,00,220/- to the assessee (Paper Book, page no. 2). The Ld. AR also brought to our notice invoices placed at paper book at page no. 3 from where it is discerned that the total amount even though is Rs.2,11,220/, the amount charged for the decoration work by the assessee was to the tune of Rs.1,79,000/- and CGST was to the tune of Rs.16,110/- and SGST was to the tune of Rs.16,110/-. Thus, the total amount CGST/SGST was to the tune of Rs.32,220/- which has been remitted to the Government Treasury. And thus we note the assessee for the event/marriage has taken total amount from two Person



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Rs.1,79,000/- and the balance has been remitted as tax to the treasury to the tune of Rs.32,220/-. And we also take note of the fact that this was the first year of introducing section 269ST & 271DA of the Act wherein Rs. 2 Lakhs was fixed as the other limit for cash receipt. Taking into consideration, the overall facts and circumstances of the case as discussed (supra) according to us, there was reasonable cause for non-levy of penalty u/s 271DA of the Act [as provided for in that section]. Therefore, we direct deletion of penalty imposed by JCIT.

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

Order pronounced in the open court on this 23/09/2022.

Sd/-

(PRAMOD KUMAR)  
VICE PRESIDENT

Sd/-

(ABY T. VARKEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 23/09/2022.  
Vijay Pal Singh, (Sr. PS)

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार / (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai