

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH: BANGALORE**

**BEFORE SHRI BEENA PILLAI, JUDICIAL MEMBER
AND
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

ITA No.547/Bang/2022
Assessment Year : 2018-19

Balaji Auto Enterprises Mysore Pvt. Ltd., No.19, 1 st Main, Swimming Pool Road, Saraswathipuram, Mysuru-570 009. PAN – AADCB 9614 M	Vs.	The Asst. Commissioner of Income-tax, Circle-1(1) & TPS Mysuru.
APPELLANT		RESPONDENT

Appellant by	:	Shri Ravi Shankar, Advocate
Respondent by	:	Smt. Priyadarshini Baseganni, Addl.CIT (DR)

Date of Hearing	:	18.10.2022
Date of Pronouncement	:	20.10.2022

ORDER

PER LAXMI PRASAD SAHU, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of CIT(A)-2, Panaji dated 04.05.2022 for the assessment year 2018-19 for penalty imposed u/s 271DA of the Act with the following grounds of appeal:-

"1. The order passed by the learned Commissioner Income Tax(Appeals), passed under section 250 of the Act is so far as it is against the Appellant is opposed to law, weight of evidence,

natural justice, probabilities, facts and circumstances of the Appellant's case.

2. The appellant denies itself liable to a penalty of Rs. 9,33,798/- under section 271DA of the act, on the facts and circumstances of the case.

3. The learned CIT(A) was not justified in appreciating that the cash received from sale of products, was due to reasonable cause, on the facts and circumstances of the case.

4. The learned CIT(A) ought to have appreciated the submissions filed online and available on record, to draw an erroneous inference that the appellant has not substantiated the reasonable cause for receiving cash, on the facts and circumstances of the case.

5. The appellant craves to add, alter, amend, substitute, change and delete any of the grounds of appeal.

6. For the above and other grounds that may be urged at the time of hearing of the appeal, the Appellant prays that the appeal may be allowed and justice rendered.

2. The brief facts of the case are that as per Form No.61A, report provided by the ITO(I & CI), the assessee company had received cash in excess of Rs.2.00/- from four different persons in contravention of provision of sec.269ST of the Act, the details of cash received from the following parties are as under:-

Sl.No	Person Name Sri/Smt	Aggregate gross amount received from the person	Aggregate gross amount received from the person in Cash	Report status
1	G K Siddegowda	16,64,489	3,19,789	Accepted
2	C M Madan	8,42,846	2,09,478	Accepted
3	Narasimhe Gowda	19,72,365	2,04,092	Accepted
4	K S Rajamma	23,02,417	2,00,439	Accepted
	Total	67,82,117	9,33,798	Accepted

3. Since as per the opinion of the AO, the assessee has received cash more than Rs.2.00/- from parties accordingly he has violated provision of sec 269ST , therefore, the assessee is laible for penalty and accordingly the AO has imposed the penalty u/s

271DA for violation of sec.269ST of the Act to the tune of Rs.9,33,798/-.

4. Aggrieved from the above order, the assessee filed appeal before the CIT(A) and he also confirmed the penalty imposed by the AO.

5. The Id.AR submitted that the assessee has received more than Rs.2 lakhs from 4 parties but not in single instance. He produced copy of ledger of the 4 parties which is placed at paper book page no15 to 54 and he also submitted that the cash was received towards booking of car, accessories, payment of insurance and other items, which is clear from the copy of the ledger account produced.

6. On the other hand, the Id.DR relied on the order of the lower authorities.

7. After hearing both sides, perusing entire materials on record and after examining the orders of the lower authorities, we observe from the order of the AO that the assessee has received cash more than 2.00/- from the four parties on different dates. As per the opinion of the AO the assessee has violated the provision of section 269ST, therefore, he imposed the penalty u/s 271DA of the Act. On going through the copy of the ledger, it has been observed that the assessee has not received cash more than

Rs.2.00/- in a day from one party. For the sake of brevity, we reproduce sec. 269ST of the Act.

"269ST. Mode of undertaking transactions.—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:

Provided that the provisions of this section shall not apply to—

- (i) any receipt by—*
 - (a) Government;*
 - (b) any banking company, post office savings bank or co-operative bank;*
- (ii) transactions of the nature referred to in section 269SS;*
- (iii) such other persons or class of persons or receipts, which the Central Government may, by notification in the Official Gazette, specify.*

Explanation.—For the purposes of this section,—

- (a) "banking company" shall have the same meaning as assigned to it in clause (i) of the Explanation to section 269SS;*
- (b) "co-operative bank" shall have the same meaning as assigned to it in clause (ii) of the Explanation to section 269SS."*

8. After going through the above section, it is clear that the assessee's case does not fall under this section. Hence, penalty cannot be levied. Accordingly, the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 20th October, 2022.

Sd/-
(Beena Pillai)
Judicial Member

Sd/-
(Laxmi Prasad Sahu)
Accountant Member

Bangalore,
Dated 20th October, 2022.
Vms

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.