

**IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH
KOLKATA**

आयकर अपीलिय अधीकरण, न्यायपीठ "A" कोलकाता,

**BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT
AND SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER****ITA No.594/Kol/2022
Assessment Year: 2019-20**

Amrit Breeder Farms Pvt. Ltd. Chitrakoot, 7 th Floor, Room No. 77, 78 & 79, 230A, A.J.C. Bose Road, Kolkata-700020. (PAN: AAGCA6829C)	Vs.	Assistant Commissioner of Income Tax, Circle-11(1), Kolkata.
(Appellant)		(Respondent)

Present for:Appellant by : Shri Anil Kochar, Advocate
Respondent by : Shri P. P. Barman, Addl. CITDate of Hearing : 28.12.2022
Date of Pronouncement : 29.12.2022**ORDER****PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi vide Order No. ITBA/NFAC/S/250/2022-23/1046144381(1) dated 30.09.2022 passed against the penalty order u/s. 271DA of the Income-tax Act, 1961 (hereinafter referred to as the "Act") dated 08.02.2022.

2. Assessee has raised six grounds in the present appeal, all of which relate to challenging the imposition of penalty of Rs.2,04,000/-

u/s. 271DA of the Act on account of deposit of cash in the bank account of the assessee, directly by the party, at a different location.

The grounds raised by the assessee are reproduced as under:

"1. For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the extent to which they are prejudicial to the interests of the appellant.

2. For that the Ld. CIT (A) erred in confirming the order of the Joint Commissioner levying penalty of Rs.2,04,000/- u/s 271 DA of the Income Tax Act, 1961 on alleged grounds.

3. For that the Ld. CIT (A) erred in not properly appreciating the facts of the case and consequently in confirming the order of JCIT on alleged grounds.

4. For that the Ld. CIT (A) ought to have held that the appellant has good and sufficient reasons for the alleged contravention and penalty was not leviable.

5. For that the Ld. CIT (A) erred in not accepting the appellant's submission and explanation with regard to deposit of cash directly by the party in the Bank account of the appellant and ought not to have confirmed the penalty levied.

6. For that the appellant having submitted cogent, relevant & acceptable explanation & reasoning which the Ld. CIT (A) ought to have referred to & ought not to have confirmed the penalty levied u/s 271DA of the Act."

3. Briefly stated facts are that assessee submitted the return of income for the AY 2019-20 on 12.09.2019 declaring therein total income of Rs.1,29,07,990/-. Assessee is carrying on the business of breeding farm, hatchery, captive feed mills etc. As required under the provision of Sec. 44AB, assessee obtained the Tax Audit Report and submitted the same. In the Tax Audit Report, the Auditor has mentioned about the cash of Rs.2,04,000/- deposited on 04.07.2018 in the assessee's Bank A/c bearing No. 40160101059286 at the branch of the Union Bank of India at Katlicherra Branch in the State of Assam. The assessee maintains Bank A/c with Union Bank of India, Camac Street Branch, Kolkata bearing A/c No. 401601010519286. The Auditor during the course of audit process found that M/s Choudhary Poultry Feed Centre had deposited an amount of Rs.2,04,000/- in cash on 04.07.2018 which contravenes the

provisions of Sec.269ST of the Act and reported the same in column No.31 of the Tax Audit Report.

3.1. Based upon the information provided in the Tax Audit Report, the Joint/Additional Commissioner of Income Tax issued a notice u/s. 271DA of the Act requiring the assessee to show cause as to why the penalty should not be imposed for such contravention of provisions of Sec.269ST. The assessee upon receipt of the show cause notice submitted a reply extracts of which are as under: -

“This refers to the notice issued u/s 274 r.w.s. 271DA of the Income Tax Act, 1961 dated 23.03.2021 requiring the assessee to show cause as to why an order should not be made in respect of contravention of Sec. 269ST of the Act for receiving cash in excess of Rs.2,00,000/- from Chaudhury Poultry Feed Centre as per SFT filed in terms of provision of Sec. 285BA of the Act.

In this connection, it is submitted that the said party namely M/s. Chaudhury Poultry Feed Centre deposited an amount of Rs.2,04,000/- in cash on 04.07.2018 in the company's Bank A/c bearing No.40160101059286 maintained with Union Bank of India, Camac Street Branch, Kolkata. The cash was deposited at Katlicherra Branch in the State of Assam of the Bank namely Union Bank of India. In fact, we have not received any amount in cash and it has been a direct deposit by the said party in our Bank A/c. In view of the aforesaid, it is submitted that the cash having not been accepted by us and having been deposited by the said party directly in our Bank A/c in that eventuality it cannot be said that we have contravene the provisions of Sec. 269ST of the Act.

In the aforesaid circumstances, we request your Honour to kindly drop the penalty proceeding initiated u/s 271DA of the Act and for which we shall be highly obliged.”

3.2. The Ld. Joint Commissioner being not satisfied with the explanation submitted by the assessee proceeded to levy penalty of Rs.2,04,000/- u/s. 271DA of the Act. He did not accept the assessee 's contention that the client could have deposited the cash directly into the account of the assessee. He ignored the basic submission that the deposit of cash has been made directly into the account of the assessee.

3.3. Being aggrieved with the action of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A), who confirmed the action of the AO. Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, ld. Counsel reiterated the above facts and contentions to submit that penalty imposed is to be deleted. He also strongly submitted by referring to the audited financial statement for the FY 2018-19 relevant to AY 2019-20 to point out that revenue from operations of the assessee are in the amount of Rs.56,93,58,069/- and other income of Rs.58,98,992/-, with total revenue of Rs.57,52,57,061/- and has reported net profit in its books for the period at Rs.1,11,80,932/-. Ld. Counsel submitted that assessee is an operating company having significant volume of business and its sales are spread over wide range of geographical locations. With such a magnitude of business volumes, it is but natural that some debtor/buyer of its products, more particularly when it deals in breeder, birds, chicks, may deposit the sale proceeds directly into the bank account of the assessee. Against a total volume of sales of Rs.56.93 Cr., one such party has deposited an amount of Rs.2,04,000/- in the assessee's bank account at a location in the state of Assam whereas the assessee maintained its regular bank accounts at Kolkata. Ld. Counsel further stated that assessee has evidently demonstrated that such a deposit in its bank account by a party in the state of Assam is against its sales realisation and is duly accounted in its books of account and offered for taxation. According to him, the provisions of section 271DA of the Act contains a proviso according to which no penalty shall be imposed if such person proves that there were good and sufficient reason for the contravention. The provisions of section 271DA of the Act are reproduced as under;

“271DA. Penalty for failure to comply with provisions of section 269ST – (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.

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

4.1. Ld. Sr. DR placed reliance on the order of Ld. AO.

5. We have heard the rival contentions and from the perusal of material placed on record, we find that there exists a good and sufficient reason in terms of proviso to section 271DA for deleting the penalty of Rs.2,04,000/- imposed by the Ld. AO. The facts demonstrated before us are uncontroverted which makes us incline towards the contentions made by the ld. Counsel narrated above. Considering the nature of business of the assessee and one of such transaction of deposit of cash by a party to a remote location in the bank account of assessee against a sales volume of Rs.56.93 Cr., we direct to delete the penalty imposed u/s. 271DA of the Act. Before parting, we make it clear to the assessee that this relief should not be construed as precedence and a lee way for accepting the money in the manner as in the present case. We direct the AO accordingly. The grounds taken by the assessee in this respect are allowed.

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

Order is pronounced in the open court on 29th December, 2022.

Sd/- (Rajpal Yadav)
Vide President

Sd/- (Girish Agrawal)
Accountant Member

Dated: December, 2022

JD, Sr. P.S.

Copy to:

1. The Appellant:
 2. The Respondent:.
 3. CIT(A), NFAC, Delhi
 4. The Pr. CIT, Kolkata.
 5. DR, ITAT, Kolkata Bench, Kolkata
- //True Copy//

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata