

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F': NEW DELHI**

**BEFORE,  
SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.2346/Del/2022  
(ASSESSMENT YEAR 2018-19)**

M/s Pearl Beverages Limited, 702, Ansal Bhawan, 16 KG Marg, New Delhi-110 001 PAN-AAACP 4560D	Vs.	Addl.CIT, Central Range-2 New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Ms Timsi Sharma, CA
Respondent by	Ms. Beena, Sr. DR

Date of Hearing	20/06/2023
Date of Pronouncement	06/07/2023

**ORDER**

**PER YOGESH KUMAR U.S., JM:**

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-24, New Delhi [Ld. CIT(A)", for short], dated 16/08/2022 for Assessment Year 2018-19.

Grounds taken in this appeal are as under:

*“1. That on the facts and in the circumstances of the appellant’s case, the learned Commissioner of Income Tax (Appeals)-24, Delhi erred both in facts and in law in upholding penalty levied by the learned AO under section 271DA amounting to Rs.9,90,907/- for alleged violation of provisions of section 269ST as per Statement of Financial Transaction filed by appellant in Form 61A wherein inadvertent, unintentional and bona-fide mistake was committed by the appellant at the time of filling of newly introduced non-revisable online Form only on the basis that the appellant failed to correct the inadvertent mistake.*

*2. That on the facts and in the circumstances of the appellant’s case, the learned Commissioner of Income Tax (Appeals)-24, Delhi erred both in facts and in law in upholding penalty levied by the learned AO under section 271DA amounting Rs.9,90,907/- for alleged violation of provisions of section 269ST by arbitrarily and prejudicially rejecting comprehensive submission of the appellant including duly audited tax Audit Report and filed by tax auditors and approved by appellant only on the basis of doubts, suspicion, conjectures and surmises that the books of accounts were manipulated at the time of tax audit without bringing any evidence on record.*

*3. That on the facts and in the circumstances of the appellant’s case, the learned Commissioner of Income Tax (Appeals)-24, Delhi erred both in fact and in law in upholding penalty u/s 271DA of Rs.9,90,907/- for alleged violation of provisions of section 269ST by arbitrarily and prejudicially rejecting comprehensive submission of the appellant only on the basis that independent verification under section 133(6) of the Act, 1961 could not be carried out.*

*4. That the appellant craves leave to add, amend or alter any of the grounds of appeal.”*

2. Brief facts of the case are that, the Department found that the assessee had received cash of Rs.9,90,907/- in contravention of Section 269ST of the Income Tax Act (‘Act’ for short), accordingly notice u/s 274 read with 271DA of the Act was issued to the assessee requiring it to show cause as to why penalty may not be

imposed under the provision of Section 271DA for violation of the provisions of Section 269ST of the Act. In response, the assessee submitted that 'due to inadvertent mistake by filing of statement of financial transaction (SFT) for the F.Y. 2017-18, the company into consideration, the entire amount received in cash during the year instead of showing those amounts which were in excess of Rs. 2 Lakhs or more in cash (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 in contraventions of provisions of section 269ST of the I.T. Act. It was further added that due this inadvertent mistake the aggregate amount of Rs. 9,90,907/- was shown amount received though no cash exceeding Rs. 2 Lakhs was received by the assessee'.

3. On perusal of the above reply filed by the assessee, the Ld. A.O. issued a notice u/s 136(6) to M/s Swammi Ayyappa Agencies, Prathipadu, Gantur, Andhra Pradesh calling upon further relevant details. The notice issued u/s 136(6) has not been served on the party. The Ld. A.O. proceeded to impose penalty u/s 271DA of the Act of Rs.9,90,907/- on the assessee vide order dated 30/04/2019.

Aggrieved by the penalty order dated 30/04/2019, the assessee preferred an appeal before the CIT(A) and the ld. CIT(A) vide order dated 16/08/2022 dismissed the Appeal filed by the assessee. As against the order of the CIT(A), the assessee preferred the present appeal on the grounds mentioned above.

4. The Ld. Counsel for the assessee pressing on the ground No. 3 submitted that the authorities have not considered the submission made by the assessee further the Ld. A.O. thereafter ld. CIT(A) imposed/sustained penalty mainly on the ground of non compliance of the notice issued u/s 133(6) of the Act to M/s Swammi Ayyappa Agencies, Parthipadu, the notice u/s 133(6) has not been issued to the complete/proper address of the parties, therefore, the notice issued u/s 133(6) of the Act has not been served on the addressee, thus, prayed for setting aside the matter to the file of the A.O. for *de-novo* adjudication. The Ld. A.R. has also made submission in writing.

5. Per contra, the Ld. Departmental Representative justified the order of the A.O. and the CIT(A) prayed for dismissal of the present appeal.

6. We have heard both the parties and perused the material available on record. It is found from the record that the notice issued u/s 133(6) of the Act to Swammy Ayappa Agencies has not been complied. It is the specific case of the assessee that the address of the party was incomplete wherein name of the village and the city has been mentioned and not mentioned the proper postal address of the party. The Ld. A.O. made observation that the notice has been sent to the address provided by the assessee but no address claim to have provided by the assessee. Therefore, in our opinion, if the matter is remanded to the file of the A.O. with a direction to issue notice u/s 133(6) of the Act to the party i.e. M/s Swammi Ayappa Agencies, Prathipadu to its proper address and the issue is adjudicated afresh a substantial justice would be rendered. Thus, we partly allow Ground No. 3 of the assessee for statistical purpose by remanding the matter to the file of A.O. with a direction to issue notice u/s 133(6) of the Act to the correct address of the party and adjudicate the matter afresh in accordance with law after hearing the assessee.

7. In the result, the Appeal of the assessee is partly allowed for statistical purpose. Since, we have remanded the matter to the file of the A.O., the issue on merit is kept open.

Order pronounced in open Court on 06<sup>th</sup> July, 2023.

Sd/-

**(SHAMIM YAHYA)**  
**ACCOUNTANT MEMBER**

Dated: 06/07/2023

*Pk/R.N, Sr. ps*

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

**(YOGESH KUMAR U.S.)**  
**JUDICIAL MEMBER**

ASSISTANT REGISTRAR  
ITAT, NEW DELHI