

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE
BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.134/Ind/2023
Assessment Year : 2017-18

Pari Agri Grain Industries Private Limited, 324/5, AB Road, Dewas (Assessee / Appellant)	<u>बनाम/</u> <u>Vs.</u>	Director of Income-tax (I&CI), Bhopal (Revenue / Respondent)
PAN: AACCCJ 7334 B		
Assessee by	Ms.Ayushi Garg and Ms. Anshika Goyal, CAs	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	07.11.2023	
Date of Pronouncement	30.11.2023	

आदेश/O R D E R

Per B.M. Biyani, A.M.:

Feeling aggrieved by appeal-order dated 28.02.2023 passed by learned Commissioner of Income-tax (Appeal), NFAC, Delhi ["CIT(A)"], which in turn arises out of penalty-order dated 30.11.2018 passed by learned Director of Income-tax-(I&CI), Bhopal ["AO"] u/s 271FA of Income-tax Act, 1961 for Financial Year 2016-17 relevant to assessment-year ["AY"] 2017-18, the assessee has filed this appeal.

2. Heard the learned Representatives of both sides at length and case-records perused.

3. Facts, as briefed by Ld. AR for assessee with the support of documents filed in Paper-Book and orders of lower-authorities, are such that the assessee, a private limited company, issued a total number of 18,750 shares to 15 different persons and received a sum of Rs. 5 lakh from each person and a total sum of Rs. 75 lakh from all persons taken together, during financial year 2016-17. The AO relying upon section 285BA of Income-tax Act, 1961 read with Rule 114E of Income-tax Rules, 1962, framed a view that the amount received by assessee towards issue of shares exceeded Rs. 10 lakh, therefore the assessee was required to file a "Statement of Financial Transactions (SFT)" for the impugned transaction but since the same was not filed by due date (i.e. by 31.05.2017 extended to 30.06.2017), the assessee committed a default. Accordingly, the AO imposed penalty u/s 271FA vide order dated 30.11.2018. The AO worked out quantum of penalty at Rs. 80,600/-. Aggrieved, the assessee went in first-appeal but did not get any relief. Now the assessee has come in this appeal before us.

4. Ld. AR for assessee submitted that in an identical case of assessee's group-company named "Jai Shri Balaji Infracon Private Limited" having PAN: AACCCJ5113A, there was an issue of 40,000 equity shares to 20 persons and a sum of Rs. 4,50,000/- was received from each person, totalling to Rs. 90,00,000/- from all persons taken together, during the very same financial year 2016-17. In that case also, the AO imposed penalty u/s 271FA for non-filing of SFT and the assessee carried matter in first appeal before CIT(A), NFAC, Delhi. The said appeal has already been decided in favour of assessee by Order bearing DIN: ITBA/NFAC/S/250/2022-23/1050086072(1) dated 24.02.2023, a copy filed in Paper-Book, holding thus:

"4.6 Looking at above provisions, prima facie, it is clear that no penalty was leviable on appellant-assessee. It has received less than Rs. 10 lakh i.e. Rs. 4.5 lacs from share subscriber during the financial year. In view of above discussion, ground of appeal is

allowed in favour of appellant-assessee subject to verification by LJAO of all documents, which have been submitted during appellate proceedings. Appellant-assessee is directed to submit the same to LJAO for verification. Thus, appeal for AY 2017-18 stands allowed subject to due verification at the end of LJAO."

5. Ld. AR submitted that in the aforesaid order of assessee's group-company, the CIT(A) has taken an interpretation, after analysing the language of Rule 114E, that no penalty is leviable on assessee as the assessee had received less than Rs. 10 lacs i.e. Rs. 4.50 lakh from each subscriber. Ld. AR submitted that the factual status of present appeal of assessee is also same yet the CIT(A) has not adopted the same interpretation in assessee's case. Ld. AR submitted that the present assessee also deserves the same interpretation and therefore needs to be exonerated from penalty.

6. Per contra, Ld. DR supported the penalty-order and argued that the AO has rightly imposed penalty since the assessee collected a total sum of Rs. 75 lakh which exceeded the threshold of Rs. 10 lakh prescribed in Rule 114E.

7. We have considered rival submissions of both sides. After a careful consideration, we find that the CIT(A), NFAC has taken an interpretation in group-company's case that no penalty is imposable when the sum received from each subscriber is less than Rs. 10 lakh even though the total receipt exceeded Rs. 10 lakh. After deriving such interpretation, the matter has been remanded back to AO for verification of documents filed by assessee. The facts of assessee are also identical. Faced with situation, we agree to Ld. AR's contention that the present assessee also deserves benefit of same interpretation. We also find that the section 273B prescribes that no penalty shall be imposed u/s 271FA if the assessee proves that there was a reasonable cause for failure. In the present case, even if it is assumed that the interpretation of Rule 114E can be in either way i.e. whether the threshold limit of Rs. 10 lakh requiring submission of SFT is to checked *qua* receipt from each person or *qua* aggregate receipt from persons, then also

the assessee shall be entitled to the benefit of section 273B because of the simple reason that the first-appellate authority, which is having an expertise in dealing with interpretation of tax law on day to day basis, himself holds former view. Therefore, without putting any interpretation from our side on language of Rule 114E, we suffice it to hold that assessee deserves exoneration from penalty imposed by AO having regard to the order of CIT(A) in assessee's group-company's case and also as per section 273B. However, the documents filed by assessee in Paper-Book to explain that the quantum of individual receipt from each shareholder is less than Rs. 10 lakh, needs verification by AO. Therefore, we are inclined to remand this matter to AO for the limited purpose of verification of those documents and pass a needful order. Needless to mention that the AO's exercise shall be restricted to verification of documents only and once the assessee's claim of individual receipt being less than Rs. 10 lakh is found correct, the AO shall delete/drop the penalty.

8. Resultantly, this appeal is allowed for statistical purposes.

Order pronounced in the open court on 30.11.2023.

sd/-

VIJAY PAL RAO

JUDICIAL MEMBER

sd/-

B. M. BIYANI

ACCOUNTANT MEMBER

Indore

दिनांक/Dated : 30.11.2023

CPU/Sr. PS

Copies to: (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

*By order
Assistant Registrar
Income Tax Appellate Tribunal
Indore Bench, Indore*