

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

श्री आकाश दीप जैन, उपाध्यक्ष एवं श्री विक्रम सिंह यादव, लेखा सदस्य  
BEFORE: SHRI. AAKASH DEEP JAIN, VP & SHRI. VIKRAM SINGH YADAV, AM

आयकर अपील सं. / ITA NO. 171/Chd/2023  
निर्धारण वर्ष / Assessment Year : 2017-18

M/s Siddharth Diagold Pvt. Ltd. SCO 164, Sector 37-C Chandigarh	बनाम	The DCIT Circle 4(1), Chandigarh
स्थायी लेखा सं. / PAN NO: AATCS1819H		
अपीलार्थी/ Appellant		प्रत्यर्थी/ Respondent

निर्धारिती की ओर से/ Assessee by : Shri Jaspal Sharma, Advocate  
राजस्व की ओर से/ Revenue by : Shri Dharam Vir, JCIT, Sr. DR

सुनवाई की तारीख/ Date of Hearing : 30/01/2024  
उद्घोषणा की तारीख/ Date of Pronouncement : 31/01/2024

**आदेश/Order**

**PER VIKRAM SINGH YADAV, A.M. :**

This is an appeal filed by the Assessee against the order of the Ld. CIT(A), NFAC, Delhi, sustaining the levy of penalty under section 272A(1)(d) amounting to Rs. 50,000/-.

2. Brief facts of the case are that the assessee filed its return of income on 31/10/2017 declaring net loss of Rs. 92,54,370/-. The case of the assessee was selected for scrutiny through CASS and notice under section 143(2) was issued by ITO, W-1(1), Nangal and thereafter the case of the assessee was transferred to ITO, W-4(1), Chandigarh. Thereafter statutory notices under section 143(2) and 142(1) were issued. In view of non compliance to certain statutory notices issued under section 143(2) and 142(1), the AO passed the penalty order under section 272A(1)(d) on 11/11/2019 imposing penalty of Rs. 50,000/-. Subsequently, the assessment proceedings were completed under section 144 by the AO vide its order dt. 20/12/2019 determining total income at Rs. 4,60,30,585/-.

3. Against the levy of penalty, the assessee moved in appeal before the Ld. CIT(A), NFAC, Delhi who has upheld the action of the AO in levying the penalty under section 272A(1)(d) of the Act though the appeal against the quantum order is currently pending adjudication before the Id CIT(A).

4. Against the said findings and direction of the Ld. CIT(A), NFAC, Delhi, the assessee is in appeal before us.

5. During the course of hearing, the Ld. AR submitted that it is not in dispute that there are five statutory notices which have been issued by the AO and which is subject matter of the present penalty proceedings.

5.1 It was submitted that regarding the first notice issued under section 143(2) dt. 09/08/2018 by ITO-W-1(1), Nangal, the assessee filed a reply to the said notice stating that the case of the assessee has to be transferred to the jurisdictional AO i.e; Circle 4(1), Chandigarh from ITO-W-1(1), Nangal. It was further submitted that as such no specific information was called for in the said notice and therefore given the fact that the assessee has responded to the said notice, no penalty for non compliance can be imposed on the assessee company.

5.2 It was further submitted that pursuant to the transfer of the case from ITO-W-1(1), Nangal to Circle 4(1), Chandigarh, another set of notices under section 143(2) dt. 27/09/2018 and dt. 28/09/2018 were issued by ITO-W-4(1), Chandigarh.

5.3 It was submitted that these two notices were statutory notices which were issued by the AO after the case was transferred to him and as such did not require any specific response or any information was called for from the assessee. It was further submitted that the said notice could not be complied with as these did not come to the notice of the assessee as the same were delivered on mail which was inoperative. It was further submitted that no

window to file a response to the notice issued was open in the Department portal against which the reply could have been filed by the assessee. It was accordingly submitted that it is not a case of any deliberate non-compliance to the said notice and in any case, no specific information / documentation was called for and which was not supplied by the assessee and therefore, there is no basis for levy of penalty in respect of these two notices.

5.4 Regarding the 4<sup>th</sup> notice dt. 03/09/2019 issued under section 142(1) of the Act, it was submitted that in the said notice, the assessee was called upon to furnish certain information / documentation and as the record of the assessee was taken over by one of the Directors of the assessee company who became hostile and shifted to Amritsar, an adjournment was sought seeking time to provide the relevant information. It was further submitted that even the information so called for was quite voluminous in nature and same would have required time, therefore an adjournment was sought for the first week of October. It was accordingly submitted that there was no fault on the part of the assessee for not to comply with the notice under section 142(1) and the same was complied with in as much as the adjournment was sought for the reasons which were beyond the control of the assessee. In this regard it was further submitted that this was the first time, the information was sought for by the AO and given that the relevant record were not available with the assessee company, an adjournment was sought and therefore there was a reasonable ground and in such circumstances penalty under section 272A(1)(d) deserves to be deleted.

5.5 Regarding next notice issued under section 142(1) dt. 20/09/2019 fixing the case on 25/09/2019, It was submitted that inspite of assessee's request for time till first week of October, the AO went ahead and issued this notice and sought information from the assessee and given the situation where the relevant records were not with the assessee company, the assessee company again

sought time. It was accordingly submitted that there was no deliberate intention on the part of the assessee company not to file the desired information and therefore penalty cannot be levied in this regard.

5.6 It was further submitted that it is not a case where the assessee has not complied with the aforesaid notice dated 20/09/2019 calling for information and documentation during the course of assessment proceedings. It was submitted that subsequently, the assessee complied with the said notice and filed its response on 26/11/2019 and copy of which is placed at assessee's paper page 25 to 27.

5.7 It was further submitted that the AO subsequently issued notices under section 142(1) dt. 04/11/2019, 09/11/2019, 22/11/2019, 09/12/2019, 15/12/2019 and the assessee filed necessary information / documentation in response to the said notices. It was accordingly submitted that it is not a case where the assessee has not complied with the notices issued earlier wherein the information and the documentation has been called for rather it is a case of delayed response to the notices which have been complied with during the assessment proceedings and therefore the penalty so levied deserves to be deleted.

6. Per contra, the Ld. DR has relied on the orders of the lower authorities. It was submitted that admittedly there was non compliance on the part of the assessee company to various statutory notices issued under section 143(2) as well as 142(1) of the Act as noted by the AO and therefore there is no infirmity in the findings of the Ld. CIT(A) wherein he has confirmed the levy of penalty under section 272A(1)(d) of the Act in absence of any reasonable cause for non-compliance shown by the assessee company.

6.1 It was further submitted that it is a case where the assessment order has been passed u/s 144 and not u/s 143(3) of the Act and therefore, the assessee

company cannot take benefit of subsequent compliance to the notices as even the subsequent compliance by the assessee company has not been found fully acceptable to the AO, leading him to passing of the best judgment assessment order in absence of requisite information/documentation submitted by the assessee company.

7. We have heard the rival contention and perused the material available on the record. The AO has levied the penalty for non-compliance on part of the assessee to five specific notices issued during the course of assessment proceedings, it would therefore be relevant to refer to each of these notices, the information called for and the compliance thereof, if any and the explanation so furnished by the assessee in case of non-compliance.

7.1 As far as the first three notices issued under section 143(2) dt. 09/08/2018, 27/09/2018 and 28/09/2018 are concerned, we find that these were statutory notices issued by the AO to comply with the statutory mandate of informing the assessee that its case has been selected for scrutiny. Besides that no information / documentation has been called for from the assessee company in terms of the said notices.

7.2 Further, it is noted that the assessee company did respond to the said notices. In response to initial notice dt. 09/08/2018, it was specifically brought to the notice of the then AO, ITO W-1(1), Nangal by the assessee company that its case falls under the jurisdiction of ITO W-4(1), Chandigarh and therefore, it was requested that the case of the assessee be transferred to the jurisdictional AO. In fact, acceding to the said request made by the assessee company, the case of the assessee was thereafter transferred from ITO W-1(1), Nangal to ITO W-4(1), Chandigarh and therefore the assertion so made by the assessee that the case of the assessee falls under the jurisdiction of ITO W-4(1), Chandigarh has been factually found correct and in fact acted upon by the competent authority

whereby the case of the assessee was ultimately transferred to ITO W-4(1), Chandigarh.

7.3 Regarding other two notices, as we have noted earlier, once the case of the assessee was transferred to ITO, Ward 4(1) Chandigarh, the said AO again issued the said notices u/s 143(2) one after another within a gap of a day and that to, only informing the assessee that its case has been selected for scrutiny and as such, no specific information was called for, hence, there cannot be any question of non-compliance to the said notices.

7.4 Therefore, as far as the levy of penalty for non compliance of these three notices issued under section 143(2) is concerned, we find that there is no legal and justifiable basis for levy of penalty. In fact, the assessee did respond to the said notices, the Competent authority acted on the assertion so made by the assessee, the case of the assessee was thereafter transferred from non-judicial to judicial AO and in any case, no information/documentation has been called for and therefore, there is no question of non-compliance to the said notices in terms of non-submission of requisite information/documentation. Thus, there is no legal and justifiable basis for levy of penalty as far as these three notices is concerned and the penalty so levied is hereby directed to be deleted.

7.5 Now coming to notice under section 142(1) dt. 03/09/2019 and thereafter another notice u/s 142(1) dt. 20/09/2019 we find that unlike the previous notices, the AO did sought specific information / documentation from the assessee. In response to the notice dt. 03/09/2019, the assessee submitted its reply stating that one of its Director, Shri Ashish Arora has become hostile and shifted to Amritsar and is not cooperating to provide the desired information and therefore, the time was sought to collate the desired information/documentation which was voluminous in nature. In the said submission, the

assessee sought time till first week of October to furnish the necessary information / documentation however without acceding to the said request, the AO again issued a notice dt. 20/09/2019 seeking necessary compliance by 25/09/2019 and in response to the said notice, the assessee again sought an adjournment for the reason stated earlier that one of its Directors has become hostile and therefore, time is required to collate the voluminous information.

7.6 It is further noted that subsequently, the assessee collated the information/documentation and did supply the necessary information and documentation in response to the said two notices as evident from the response filed on 26/11/2019 which has been placed as part of the assessee's paper book pages 25 to 27, however, the AO went ahead and passed the penalty order under section 272A(1)(d) on 11/11/2019 itself.

7.7 We therefore find that the AO has passed the penalty order without even taking into consideration the compliance made by the assessee in response to the notices issued by him and it is therefore a case of delayed compliance rather than non-compliance on part of the assessee and for the delay, we find that the assessee has put forth its explanation in terms of non-availability of information/documentation due to one of the its Directors becoming hostile and who has in his possession the relevant information/documents as sought for.

7.8 Regarding the contention of the Id DR that it is a case where the assessment order has been passed u/s 144 and not u/s 143(3) of the Act and the assessee company cannot take benefit of subsequent compliance to the notices, we find that firstly, the Id AR has not raised any such contention and secondly, besides the aforesaid notices, there are subsequent notices and the responses to the said notices by the assessee company and to what extent the compliances have been made or not and what has lead to passing of the best judgment order u/s 144 is not the subject matter of present penalty proceedings

and is not emerging from the impugned penalty order. The contention of the Id AR has been limited to the extent that the notices which are subject matter of present penalty proceedings have been substantially complied with though after the passing of the penalty order and the same therefore be considered.

8. In the result, we set aside the order of the Ld. CIT(A) and penalty levied under section 271A(1)(d) amounting to Rs. 50,000/- is hereby directed to be deleted.

9. In the result, appeal filed by the assessee is allowed.

Order pronounced in the open Court on 31/01/2024

Sd/-

आकाश दीप जैन  
(AAKASH DEEP JAIN)  
उपाध्यक्ष / VICE PRESIDENT

Sd/-

विक्रम सिंह यादव  
(VIKRAM SINGH YADAV)  
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

Date: 31/01/2024

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar