

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH

HEARING THROUGH: HYBRID MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 43/Chd/2024
निर्धारण वर्ष / Assessment Year : 2018-19

Inder Pal Singh Legal Heir of deceased Satnam Singh 171789, Street No. 8, Guru Teg Bahadur, Jagraon, Punjab	बनाम	The ITO Ward-1, Jagraon, Punjab
स्थायी लेखा सं. / PAN NO: ADTPS1546D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri Kushal Chopra, C.A
राजस्व की ओर से / Revenue by : Shri Rohit Sharma, CIT DR
सुनवाई की तारीख / Date of Hearing : 31/07/2024
उदघोषणा की तारीख / Date of Pronouncement : 12/08/2024

आदेश / Order

PER PARESH M. JOSHI, J.M. :

This is an appeal filed by the Assessee under section 253 of the Income Tax Act, 1961. The assessee is aggrieved by the Order No. ITBA/NFAC/S/250/2023-24/1056979491(1) dated 11/10/2023 of Ld. CIT(A) passed under section 250 of the Income Tax Act, 1961 which is hereinafter referred to as "**impugned order**".

Brief Factual Matrix

2. In the instant case, penalty proceedings were initiated against the assessee for A.Y. 2018-19 and penalty of Rs. 1,04,00,000/- was imposed u/s **271DA**. The contravention is under Section **269ST** of the Act. The order of Ld. AO is dated 16/03/2022.

3. An information was received from DCIT, Central) Cir-2, Ludhiana vide letter No. ITBA/COM/F/17/2021-22/1033127382(1) Dt. 27.05.2021 that during the course of assessment proceedings in the case of M/s Laxmi Traders [PAN;

AAGFL2688B] for the A.Y. 2018-19, it is noticed that the assessee is one of the partner in the firm m/s. Jai Shree Ganesh & Co. and has withdrawn and received cash on various dates from M/s. Jai Shree Ganesh & Co. amounting to Rs. 1,04,00,000/- (**multiple entries of Rs. 2,00,000/- per day**). The details of said withdrawals are as under:

Sr. No.	Date	Particulars	Vch. No.	Debit
01.	1/4/2017	To Cash	2	2,00,000
02	2/4/2017	To Cash	11	2,00,000
03	3/4/2017	To Cash	21	2,00,000
04	4/4/2017	To Cash	28	2,00,000
05	5/4/2017	To Cash	38	2,00,000
06	6/4/2017	To Cash	49	2,00,000
07	7/4/2017	To Cash	59	2,00,000
08	8/4/2017	To Cash	67	2,00,000
09	9/4/2017	To Cash	75	2,00,000
10	10/4/2017	To Cash	85	2,00,000
11	11/4/2017	To Cash	93	2,00,000
12	12/4/2017	To Cash	98	2,00,000
13	13/4/2017	To Cash	104	2,00,000
14	14/4/2017	To Cash	109	2,00,000
15	15/4/2017	To Cash	115	2,00,000
16	16/4/2017	To Cash	121	2,00,000
17	17/4/2017	To Cash	126	2,00,000
18	18/4/2017	To Cash	131	2,00,000
19	19/4/2017	To Cash	136	2,00,000
20	20/4/2017	To Cash	139	2,00,000
21	21/4/2017	To Cash	145	2,00,000
22	22/4/2017	To Cash	149	2,00,000
23	23/4/2017	To Cash	154	2,00,000
24	24/4/2017	To Cash	160	2,00,000
25	25/4/2017	To Cash	163	2,00,000
26	26/4/2017	To Cash	172	2,00,000
27	27/4/2017	To Cash	175	2,00,000
28	28/4/2017	To Cash	178	2,00,000
29	29/4/2017	To Cash	183	2,00,000
30	30/4/2017	To Cash	186	2,00,000
31	10/5/2017	To Cash	219	2,00,000
32	11/5/2017	To Cash	224	2,00,000
33	12/5/2017	To Cash	229	2,00,000
34	13/5/2017	To Cash	233	2,00,000
35	14/5/2017	To Cash	237	2,00,000
36	15/5/2017	To Cash	241	2,00,000
37	16/5/2017	To Cash	246	2,00,000

38	17/5/2017	To Cash	250	2,00,000
39	18/5/2017	To Cash	254	2,00,000
40	19/5/2017	To Cash	258	2,00,000
41	15/2/2018	To Cash	1039	2,00,000
42	16/2/2018	To Cash	1042	2,00,000
43	17/2/2018	To Cash	1045	2,00,000
44	18/2/2018	To Cash	1048	2,00,000
45	19/2/2018	To Cash	1050	2,00,000
46	20/2/2018	To Cash	1054	2,00,000
47	21/2/2018	To Cash	1057	2,00,000
48	22/2/2018	To Cash	1059	2,00,000
49	23/2/2018	To Cash	1061	2,00,000
50	24/2/2018	To Cash	1063	2,00,000
51	25/2/2018	To Cash	1065	2,00,000
52	26/2/2018	To Cash	1067	2,00,000
			TOTAL	1,04,00,000

4. From the above chart, it is evident that the assessee has received cash of 2,00,000/- each per day, on multiple occasions from a firm M/s. Jai Shree Ganesh & Co. and thus he has violated the provisions of Sect 269ST of the Act, A perusal of section 269ST reveals that it bars any 'person' from receiving an amount of Two lakh rupees or more (a) in aggregate from a person in a day; or (b) in respect of single transaction; or (c) in respect of transactions relating to one event or occasion from a person, otherwise than by account payee cheque or account payee bank draft or use of electronic clearing system through a [bank account or through such other electronic mode as may be prescribed].

In the instant case, the assessee has received Rs. 2,00,000/- per day, on multiple occasions from M/s. Jai Shree Ganesh & Co, in cash i.e. otherwise than account payee cheque/bank draft or use of electronic clearing system. This act of the assessee is nothing but contravention of provisions of Sect 269ST of the I.T. Act, and therefore he is liable for the penalty u/s. 271 DA of the I.T. Act

Consequent to above, a show cause notice **u/s. 274 r.w.s 271 DA** of the Act was issued on 19.08.2021 requiring the assessee to explain as to why penalty

u/s. 271 DA should not be imposed for his failure to comply with the provisions of Sect. 269ST of the Act. Assessee did not furnish any explanation in response to said notice. Hence, another notice u/s 274 r.w.s 271DA was issued to the assessee on 04.02.2022 requiring his compliance on 10.02.2022.

However assessee failed to comply with this notice too. Further, a non responsive reference was raised through Insight Portal on 19.02.2022 and letter was issued to the assessee requiring him to respond within 7 days. However, there is no response from the assessee even after 7 days. In the circumstances it is construed that the assessee has no plausible explanation to offer in response to show cause notices issued u/s. 271 DA of the I.T. Act. In the circumstances, the assessee has made himself liable for imposition of penalty u/s, 271 DA of the I.T. Act.

5. The relevant provision of Section 271DA and Section 269ST are reproduced below:

" Section 271 DA- Penalty for failure to comply with the provisions of section 269ST. 271 DA. (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"

*"Section 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 single transaction; or
(c) in respect of transactions relating to one event or occasion from a person,*

otherwise than by account payee cheque or account payee bank draft or use of electronic clearing system through a [bank account or through such other electronic mode as may be prescribed]."

6. That in the order of Ld. AO dated 16/03/2022 following finding is recorded:

7. *As discussed in the preceding paragraphs, the assessee despite of offering opportunities by issuing show cause notices, has not submitted any explanation with relevant documentary evidence in respect of cash receipts of Rs. 2 lakhs per*

day, on multiple occasions, as detailed in para 2 above. In the circumstances it is construed that the assessee has no explanation of offer in response to show cause notices issued u/s. 271 DA of the IT. Act.

8. Thus on the basis of the above discussion, it is concluded that this is fit case for imposition of penalty u/s.271DA of the I.T.Act, Therefore, as per provisions of section 271 DA the Act, the assessee would be liable to pay penalty a sum equal to the amount of cash of Rs. 2 lakhs per day [received on multiple occasions] totaling to Rs. 1,04,00,000/-, in contravention of provisions of Sect. 269ST of the Act.

9. From the above discussion, I am satisfied that it is justified to levy the penalty u/s, 271 DA of the Act of Rs. 1,04,00,000/- Which is equal to amount received, by the assessee in cash of Rs, 1,04,00,000/- in contravention of provisions of Sect. 269ST of the Act. Accordingly the Penalty of Rs. 1,04,00,000/- is levied u/s. 271 DA of the I.T. Act.

7. The assessee being aggrieved by the order of Ld. AO dated 16/03/2022 preferred first appeal before the Ld. CIT(A) who by impugned order has sustained the order of Ld. AO dt. 16.03.2022.

8. The assessee being aggrieved by the impugned order of Ld. CIT(A) has preferred an appeal in Form No. 36 before us and interalia has raised following grounds of appeal:

1. That the Ld. CIT(A), National Faceless Appeal Centre, New Delhi has erred in passing the ex-parte order and confirming the levy of penalty u/s 271 DA to the tune of Rs. 1,04,00,000/- on account of alleged violation of section 269ST.

2. That no proper or reasonable opportunity has been afforded to the appellant to represent the case since no notice was received on the email of assessee or on the email of his counsel or through physical mode.

3. That the levy of penalty even otherwise is against the facts and circumstances of the case.

4. That the appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off.

Record of Hearing

9. The hearing in the appeal took place on 31/07/2024 when both the parties appeared before us. At the outset and threshold the Ld. AR contended that impugned order is in violation of the principles of natural justice in as much

as no opportunity of hearing was given to the assessee. The Ld. AR inter alia further contended that in Form No. 35 which is a form for filling an appeal before Ld. CIT(A) against column no:- e-mail address they had given e-mail address as “advocate mpsinghoffice@gmail.com. It was further contended that no notice came at said e-mail address consequently “impugned order” came to be passed which is ex parte order and therefore same should be set aside being in violation of the principles of natural justice. The Ld. DR fairly agreed to the contentions of the Ld. AR.

Findings and Conclusions

10. Delay of 38 days is condoned on basis of affidavit filed and for delay reasonable cause is shown. Delay condoned. After carefully perusing the impugned order we notice that “notice of hearing” was issued on 12/12/2022, 05/09/2023, 15/09/2023 and 21/09/2023 and it is claimed to have been served on registered email id of assessee. The email id which was on record i.e; **advocate mpsinghoffice@gmail.com**, no notice came to be served. Consequently assessee could not appear and matter was decided ex parte. We notice that for purpose of notice / communication email address in Form No. 35 is of “advocatempsinghoffice@gmail.com on which no notice came to be served. The Ld. DR too has accepted this factual position. We notice from paper book filed that notice was served on email address “**spsingh212@gmail.com**” which was not as per form 35.

Order

11. Accordingly, we hold that impugned order is in violation of the principles of natural justice as no opportunity was provided to the assessee before passing the impugned order. We therefore set aside the impugned order and remand the case to Ld. CIT(A) on denovo basis. We direct Ld. CIT(A) to give proper opportunity to the assessee and pass a speaking and a well reasoned

order on merit simultaneously we direct assessee to cooperate with the Department in disposal of the appeal. The CIT(A) to decide the Appeal as expeditiously as possible preferably within a period of six months from date of receipt of this order. Accordingly, the appeal of the assessee is allowed as and by way of remand on denovo basis with direction as aforesaid.

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

Order pronounced in the open Court on 12/08/2024

Sd/-

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

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

AG

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

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

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar