

IN THE INCOME TAX APPELLATE TRIBUNAL, MUMBAI BENCH 'D', MUMBAI

**BEFORE SHRI SAKTIJIT DEY, HON'BLE VICE PRESIDENT
AND SHRI AMARJIT SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No.5051/Mum/2024
Assessment Year: 2019-20**

Madhav Sheth B-81, Golf Course Road, The Pinnacle DLF City, Phase-V, Sector- 43, Gurgaon, Haryana-122009. PAN: AJAPS 4139 D (Appellant)	vs	Central Circle-6(1), Mumbai (Respondent)
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Present for:

Assessee by : Ms. Kavita Nabera
Revenue by : Smt. Sanyogita Nagpal, CIT, DR

Date of Hearing : 18.11.2024
Date of Pronouncement : 27.11.2024

ORDER

PER AMARJIT SINGH, AM:

This appeal of the assessee for the assessment year 2019-20 is directed against the order dated 01.08.2024 passed by the Id. Commissioner of Income-tax (Appeal)-54 Mumbai. The assessee has raised the following grounds of appeal:

"1. On the facts and circumstances of the Appellant's case and in law the Ld. CIT(A) erred in passing an ex-parte order without giving reasonable opportunity of being heard, for the reasons mentioned in the impugned order or otherwise.

2. On the facts and circumstances of Appellant's case and in law, Ld. CIT(A) erred in confirming the action of Ld. A.O. in holding that the appellant has contravened the provisions of section 269SS of the Act on account of alleged cash loan received by the appellant, for reasons stated in the impugned order or otherwise.

3. On the facts and circumstances of Appellant's case and in law, Ld. CIT(A) erred in relying upon the retracted statements, without having any concrete evidence on record, for the reasons mentioned in impugned order or otherwise.

4. On the facts and circumstances of Appellant's case and in law, Ld. CIT(A) erred in confirming the action of Ld. A.O. in levying a penalty u/s 271D amounting to Rs. 1,50,00,000/-, for reasons stated in the impugned order or otherwise.

5. The appellant craves leaves to alter, amend, withdraw or substitute any ground or grounds or to add any new ground or grounds of appeal on or before the hearing.”

2. In this case a search action was conducted in the case of Perfect Mobiles and Communication Pvt. Ltd. along with the residential premises of the assessee Shri Madhav Sheth who was one of the Director of the said company. The AO completed the assessment u/s 153C r.w.s. 143(3) of the Act for the year under consideration assessing total income at Rs. 77,21,590/-. Subsequently, information was received from the Investigation Wing of the Department that one shri Vijay Kulkarni who was found in possession of cash of Rs. 2,00,50,000/- at his office, in his statement, stated that out of the said cash amount of Rs. 1,50,00,000/- was received from the assessee shri Madhav Sheth. It was also stated that the said amount in cash for the assessee was arranged by one Shri Kailash Karamchandani. Therefore, the AO has levied penalty of Rs. 1,50,00,000/- u/s 271D of the Act upon the assessee in contravention of provision of section 269SS of the Act vide order passed u/s 271D of the Act on 30.01.2023.

3. The assessee has filed appeal before the ld. CIT(A) against the order u/s 271D of the Act passed by the assessing officer. The ld. CIT(A) has dismissed the appeal filed by the assessee for not making any compliance during the course of appellate proceedings.

4. Before us, the ld. Counsel submitted that assessee could not make compliance before the First Appellate Authority as the relating supporting material could not be collected timely, therefore, requested that one more opportunity be provided before the First Appellate Authority for deciding the appeal filed by the assessee on merit.

5. After perusal of material placed on record, we find that neither the assessee has made any compliance before the ld. CIT(A) nor the ld. CIT(A) has passed the order u/s 250 of the I.T. Act on merit as prescribed u/s 250(6) of the Act. Section 250(6) of the Act contemplate that the ld. CIT(A) would determine point in dispute and therefore, reason on such point in support of his conclusion after referring material available in the assessment record. After taking into consideration, the above facts and circumstances, we restore the case of the assessee to the First Appellate Authority for deciding on merit as contemplate u/s 250(6) of the Act after providing three more opportunities to the assessee. The assessee is also directed to make due compliance before the First Appellate Authority without any failure. Accordingly, the appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in the open court on 27.11.2024

Sd/-

Sd/-

**(SAKTIJIT DEY)
VICE PRESIDENT**

**(AMARJIT SINGH)
ACCOUNTANT MEMBER**

Mumbai: 27.11.2024
Biswajit, Sr. P.S.

Copy to:

1. The Appellant:
2. The Respondent:
3. The CIT,
4. The DR .

//True Copy//

By Order

Assistant Registrar
ITAT, Mumbai Benches, Mumbai