

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

**BEFORE SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIALMEMBER**

**ITA No.97/DEL/2024
(Assessment Year : 2018-19)**

DCIT,
Jhandewalan Extension,
New Delhi.

vs.

Reliance Ritu Kumar Pvt. Ltd.,
(Earlier known as Ritika Pvt.Ltd.),
B – 28, Sagar Apartment,
6, Tilak Marg,
New Delhi – 110 001.
(PAN: AABCR5510N)

**ITA No.84/DEL/2024
(Assessment Year : 2019-20)**

DCIT,
Jhandewalan Extension,
New Delhi.

vs.

Reliance Ritu Kumar Pvt. Ltd.,
(Earlier known as Ritika Pvt.Ltd.),
B – 28, Sagar Apartment,
6, Tilak Marg,
New Delhi – 110 001.
(PAN: AABCR5510N)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, CA
Ms. Uma Upadhyay, CA
REVENUE BY : Ms. Harpreet Kaur Hansra, Sr. DR

Date of Hearing : 04.12.2024
Date of Order : 20.12.2024

ORDER

PER S. RIFAUR RAHMAN, AM :

ITA NO.97/DEL/2024

1. This appeal is filed by the Revenue against the order of Id. Commissioner of Income-tax (Appeals)-23, New Delhi (hereinafter referred to 'Ld. CIT (A)') dated 29.11.2023 for Assessment Year 2018-19.
2. The Revenue has taken the only issue involved in this appeal regarding deletion of penalty of Rs.1,43,56,339/- on account of violation of provisions of section 269ST of the Act.
3. Brief facts of the case are, search and seizure operations were conducted u/s 132 of the Income-tax Act, 1961 on 29.05.2018 at the premises of M/s. Ritika Private Ltd. at 260, Udyog Vihar, Phase 1, Gurgaon and 280, Udyog Vihar, Phase-II, Gurgaon. During the course of search and seizure operation, it was found from seized documents that the assessee company has grossly violated provisions of section 269ST of the Income-tax Act, 1961 (for short 'the Act') by way of cash receipts of Rs.2,00,000/- or more from a single person by splitting the invoices against sale of goods to its stores. Accordingly, a reference for initiating penalty proceedings u/s 271DA of the Act was received from the Assessing Officer on the grounds of the violation of the provision of section 269ST of the Act and thus attracted the provisions of section 271DA of the Act.
4. Assessing Officer vide para 7.3 of the penalty order observed that the

assessee has made cash sales in excess of Rs.2,00,000/-, however, the details of the person have not been specified in the order and also proceeded to invoke the provisions of section 269ST of the Act, accordingly made the addition of Rs.1,64,61,501/-

5. Ld. CIT(A) deleted the penalty of Rs.21,05,162/- on account of duplicate entries at Pg 4/Para 13 of his order and also deleted the balance penalty of Rs.1,43,56,339/- based on the submission and evidences brought on records by the assessee during the course of the appellate proceedings.
6. Ld. DR for the Revenue pleaded that the ld. CIT (A) was not right in deleting the penalty and relied on the order of the Assessing Officer.
7. At this outset, ld. AR for the assessee submitted that during the course of penalty proceedings, AO vide notice dated 30.09.2019, shared the copy of table and on the basis of analysis of the said table, it came to the knowledge of the assessee that cash sales of the entire day are clubbed to invoke the provision of section 269ST of the Act, alleging that the assessee has made the sales in excess of Rs.2,00,000/-. He further submitted that in order to substantiate above facts, assessee submitted detailed chart at Pg 201-212 of the paper book which was duly considered and reproduced by the CIT(A) at pages 5 to 16 of his order. He further submitted that with respect to the balance penalty of Rs. 1,45,56,339/-, on going through the details at PB Pg

201-212, it can be noticed that value of all the invoices/bill no. is below Rs.2 lacs which have been issued across various stores and different point of time and by different sales person. Thus, the said invoices have been illogically/incorrectly summed up by the Id. AO to create an illusion that invoices were issued at a value of Rs. 2,00,000/- or more and the name of the customer was deliberately not mentioned to circumvent the provisions of section 269ST of the Act. He submitted that it is also pertinent to mention here that on perusal of the data, it may be noted that the invoices bearing no names have been issued throughout the day at different points of time ranging from 11 AM to 9 PM and it cannot be inferred that the same person was present in the retail outlet throughout the entire day. Further, there is no statutory requirement in retail line of business to undertake Know Your Customer ('KYC') formalities before invoicing the said customer. He submitted that in view of the above facts and findings of Id. CIT(A), the allegation of AO is arbitrary and based on the assumption. Accordingly, the Id. CIT (A) was justified in deleting the penalty levied by the Id. AO on the invoice value aggregating to Rs.1,43,56,339/-.

8. Considered the rival submissions and material placed on record. We observed that the Id. CIT (A) discussed this issue at length in para 14 to 18 of his order. Relevant findings of Id. CIT (A)'s order are reproduced as

under :-

“15. Vide the said above data submitted before the AO it has been explained that the AO has simply aggregated various cash sales made during the given dates at different point of time, and executed by different sales persons, vaguely presuming the same to be sales pertaining to a particular person which was split into various bills so as to be less than Rs.2 lacs in a particular bill. The appellant submitted that it is regular affair at its retail outlets to have such cash sales during any day. There is no reason before the AO to treat these bills as raised for one particular person in a given day. The appellant submits that the law does not permit to aggregate different cash sales bills in a day and If the aggregate is Rs. 2 lakhs or more, treat the same violation of the provisions of section 269ST of the Act.

16. On the perusal of the submission of the appellant and data submitted before the Assessing Officer, it is seen that the presumption of the AO at para 7.3.2 that these bills were split so as to accommodate cash sales of Rs.2 lacs or more to a particular person in a particular day is factually incorrect. It is noticed here that the cash sales invoices of Rs. 2 lakhs or above included in the figures quoted a para 7.3.2, have already been considered by the AO for the purpose of levy of penalty in table at para no.7.1.1 of the penalty order as has been noted above. In this regard, it is noticed from the data submitted before the AO that the date wise bills aggregated by the AO were raised at different point of time. It is further noticed that different sales bills were executed by different sales executives. The Assessing Officer has not stated as to how the bills were in respect of sales to one person only and also that it was against the provisions of section 269ST of the Act.

17. Apparently, the standalone amount of these bills is less than Rs.2 lacs. It is also noticed that AO has not brought on record any name/identity of the persons whom he is alleging to be accommodated by the appellant by raising split bills. Accordingly, it was not justified on his part to presume that there was splitting of cash bills against the appellant with

respect to cash sales mentioned at para 7.3.2. Further, I agree with the contention of the appellant that it is regular phenomena for a brand like appellant company to have such small value cash sales during any particular day.

18. Further, the provision of section 269ST nowhere permits to aggregate/club different cash sales Invoices in a day and treat the same as violation of the provisions of the Act if the aggregate is Rs. 2 lakhs or more. The violation of the section 269ST by receiving cash from a person of Rs. 2 lakhs or more in a day with respect of single or multiple transactions is essentially connected with the payer, it has to be conclusively proved that the amount is received from a single person in a single day. In the present case, it is mere the presumption of the AO in para 7.3.2 that the aggregate amount of cash sales in a day might have been received from one person. However, there is no basis or supporting evidence to justify the presumption. In view of these facts, the penalty levied at para no.7.3.2 to the extent of Rs.1,43,56,339/- is hereby deleted.”

9. We find that the Id CIT(A) has considered the relevant facts on record and deleted the penalty. Therefore, we do not see any reason to disturb the findings of Id CIT(A) and accordingly, the order of the Id. CIT (A) is upheld and the ground raised by the Revenue is dismissed.
10. In the result, the appeal filed by the Revenue is dismissed.

ITA NO.84/DEL/2024

11. This appeal is filed by the Revenue against the order of the Id. Commissioner of Income-tax (Appeals)-23, Delhi (hereinafter referred to ‘Ld. CIT (A)’) dated 29.11.2023 pertaining to Assessment Year 2019-20.

12. At the time of hearing, Ld. Counsel for the assessee has submitted that the tax effect in the appeal filed by the Revenue is below Rs. 60 lakhs. The CBDT in its Circular No.09/2024 dated 17.09.2024 has recently revised the monetary limit for filing of the departmental appeal to the ITAT at Rs. 60 lakhs. He has, therefore, requested that the Revenue's appeal may be dismissed accordingly.
13. However, Ld. CIT(DR) did not oppose the aforesaid proposition.
14. In view of the above position, we noticed that the tax effect in appeal preferred by the Revenue is below Rs.60 lakhs, we deem it proper to dismiss the appeal of the Revenue in the light of the latest Circular No.09/2024 of the CBDT dated 17.09.2024, as not maintainable.
15. In the result, the appeal of the Revenue is dismissed.
16. To sum up : both the appeals filed by the Revenue are dismissed.

Order pronounced in the open court on this 20th day of December, 2024.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

**Dated : 20.12.2024
TS**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-23, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI