



IN THE INCOME TAX APPELLATE TRIBUNAL, RAJKOT BENCH, RAJKOT

BEFORE DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

AND

SHRI DINESH MOHAN SINHA, JUDICIAL MEMBER

आयकर अपील सं./ITA No. 183/RJT/2023

(Assessment Year: 2018-19)

(Hybrid Hearing)

Rajkot District Co. op. Milk Producers Union Ltd., C/o. Rajkot Dairy, Dudh Sagar Marg, Rajkot-360003	Vs.	National Faceless Appeal Centre, Delhi
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAAAR3262Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No. 166/RJT/2023

(Assessment Year: 2018-19)

(Hybrid Hearing)

Assistant Commissioner of Income Tax, Circle-2(1), Rajkot	Vs.	Rajkot District Co.op. Milk Producers Union Ltd., C/o. Rajkot Dairy, Dudh Sagar Marg, Rajkot-360003
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AAAAR3262Q		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

निर्धारितकीओरसे/Appellant by : Shri D. M. Rindani, AR

राजस्वकीओरसे/Respondent by : Shri Shramdeep Sinha, CIT DR

सुनवाई की तारीख/ Date of Hearing : 21/10/2024

घोषणाकीतारीख/Date of Pronouncement : 20/01/2025

आदेश/ORDER

PER DINESH MOHAN SINHA, JM:



Captioned cross appeals filed by the Assessee and the Revenue, are directed against the order passed by National Faceless Appeal Centre (in short 'NFAC'), Delhi, dated 30.03.2023, under section 250 of the Income Tax Act, 1961 (in short, 'the Act').

2. The Grounds of appeal raised by the assessee are as follows:

ITA No. 183/Rjt/2023(A.Y. 2018-19)(Assessee's Appeal):-

"1. The learned Commissioner of Income-tax (Appeals), Income Tax Department NFAC, Delhi erred in sustaining penalty of Rs. 3,00,000/- out of Rs. 1,73,96,22,709/- levied by the A.O. u/s 271DA of the Act by holding that there was violation of Sec. 269ST of the Act in respect of impugned amount.

2. The learned Commissioner of Income-tax (Appeals), Income Tax Department NFAC, Delhi failed to appreciate that the impugned amount of Rs. 3,00,000/- was a security deposit received in cash to which Sec. 269ST did not apply.

3. The learned Commissioner of Income-tax (Appeals), Income Tax Department NFAC, Delhi further failed to appreciate that no penalty proceedings were initiated during any of the proceedings in case of Appellant – society and that order passed u/s. 271DA is bad in law.

4. The appellant craves leave to add, amend, alter and withdraw any ground of appeal anytime upto the hearing of this appeal."

ITA No. 183/Rjt/2023 for A.Y. 2018-19 is taking as a lead case

3. The brief facts of the case are that the assessee is a registered cooperative society, engaged in manufacturing unit in milk and milk products named as "Amul Pattern". A registered Co-operative Society and part of government sponsored milk system. It collects milk from its member's societies who, in turn collect from individual cattle owners process the milk to supply it to consumers. The assessee has filed its revised return of total income of Rs. 1,61,48,050/- on 13.02.2019 for A.Y. 2018-19. The case was selected for scrutiny under CASS. Thereafter, a statutory



notice u/s. 143(2) was issued to the assessee on 22.09.2019. Further, the AO issued a notice u/s. 142(1) along with detailed questionnaire. The assessee filed its submission which was examined by the AO and an order of assessment u/s. 143(3) of the Act was passed on 22-03-2021 accepting Return Income of the assessee. The show cause notice u/s. 274 r.w.s. 271DA of the Act dated 28.09.2021 was issued to the Assessee requiring it to show cause as to why penalty u/s. 271DA of the Act should not be levied for alleged failure to comply with provisions of sec. 269ST of the Act. The Appellant submitted its replies dated 26.10.2021 and 19.11.2021 to the show-cause notice explaining that each sale transaction and cash receipts did not exceed the threshold limit of Rs. 2,00,000/- u/s. 269ST per buyer. It also explained why cash collection was being made.

4. The assessee is a duly formed co-operative society which is registered under the Gujarat Co-operative Societies Act, 1961. The assessee's existence can be traced back to pre-1961 years when its predecessor entities were promoted and formed by the Government of India under the policies of the Animal Husbandry Dept. of the Ministry of Agriculture. The Govt. had the dairy business in India developed and run on the co-operative model, wherein the village-level milk producers are made stakeholders in their respective 'tehsil' level cooperative societies which collect milk from farmers in villages on daily basis, the 'tehsil' level societies form a district level societies, and in turn the district societies set up a milk collection/storage mechanism, they set up a processing plant, pasteurize the milk and sell the milk and milk products through its network of distributors



and retailers in cities and towns. Diagrammatically, the chain of a typical milk business in co-operative sector may be depicted as under:

MILK PRODUCERS/FARMERS VILLAGE CO-OPERATIVE SOCIETIES MILK COLLECTION/CHILLING-COOLING CENTERS RAJKOT DAIRY MAIN PLANT PROCESSING-PACKAGING-STORAGE DISTRIBUTORS RETAILERS END CONSUMERS

5. The assessee has submitted that Milk has been declared as an 'essential commodity' under the Essential Commodities Act, 1955, under which the Govt., of India has also notified the Milk and Milk Product Order, 1992 "in the interests of the general public", under which the Appellant is duly registered. Being a perishable by nature as also an item of an essential item of daily consumption on wholesale as well as retail sale, the very nature of business require so highly time-bound, daily, and uninterrupted scheduling of collection, transportation, processing, supply, sale and sale realization. Industry practices and Situational exigencies are also to be respected and provided for while arranging the chain of business transactions. Books of account are audited appeals raised sale invoice at point buyers and time of supply of milk and milk products on daily basis, and each is based on different buyers on same day. Cash amount received which does not exist of Rs. 2,00,000 on each transaction and the same is disposal in bank. Ld. AO did not accept the reply of the appellant and proceed in Penalty u/s. 271DA of the Act. However, Ld. AO/NFAC, however, has held that the cash collection in the year per buyer exceeded Rs. 2,00,000/- per event or occasion because each work contract should be considered as one event and hence clause (c) of section 269ST was attracted. The assessee also filed a statement showing corrected collection figures



from each buyer, which comes to Rs.1,02,59,12,374/- and not to Rs.1,73,96,22,709/-. As per provisions of Section 271DA of the Act.

6. The JCIT, Range-2(1), Rajkot issued a show cause notice u/s. 274 r.w.s. 271DA of the Act on 28.09.2021 to the appellant, to show cause as to why penalty u/s. 271DA of the Act should not be levied for alleging failure to comply with provisions of Section 269ST of the Act. The relevant portion of the notice is reproduced below:

“...Whereas in the course of proceedings before me for the Assessment Year 2018-19, it appears to me that that you have failed to comply with the provisions of section 269ST of the Income Tax Act, 1961. You are hereby requested to appear before me either personally or through a duly authorized representative at 11.00 AM on 13/10/2021.”

7. The assessee submitted that the NFAC in considering the distributor contract as one “event” or “occasion” is not correct and all transactions of that distributor cannot be clubbed together. The transaction means a transaction is understood to be a dealing between two persons, in commercial sense, for purchase or sale or supply of goods or services. Thus, a sale becomes a ‘transaction’ if and only when a buyer places an order, the seller accepts the order, and then it delivers the goods or services, the titles to goods passes in law and an invoice is raised for the consideration amount. Further, Section 269ST speaks of a ‘a single transaction’ (and not plural), thus, a single/one invoice would become single/one transaction, each invoice becomes a separate transaction, the section does not permit to combine all transactions with a person in one year, the limit of amount thus, is to be reckoned for a single transaction (in case of sale, it’s the single invoice). In



assessee's case, cash beyond Rs. 2 lakh is not received against a single invoice (i.e. a transaction), hence clause (b) of section 269ST is inapplicable. The section speaks about an 'event' or an 'occasion' is something that is a 'happening' or an 'occurrence' or a 'phenomenon', understood to be an actual/physical event (like a meeting, function, conference, party, inauguration, ceremony etc.). The assessee submitted that a written contract or an agreement for appointment of a distributor is a mutual understanding or an agreement setting out the terms of appointment in writing, it is neither an event nor an occasion or a transaction in the sense in which used in section 269ST or even generally. It is a legal document and not an event as ordinarily understood. The intention of introducing section 269ST is to reduce generation and circulation of black money. It is submitted by assessee here that this intent, as expressed in the Finance Bill, by the Government in the Parliament is not defeated in this case, cash payment, even within permissible limit is received on bank holidays and it is deposited by assessee on a working day. The nature of commodity is such that even the distributors receive cash on retail sales through milk booths and household sale and hence they insist and the assessee has accepted the cash on bank holidays.

8. According to, Circular No. 25/2022 dated 30th December, 2022 it has been clarified that in respect of Co-operative Societies, a dealership / distributorship contract by itself may not constitute an event or occasion for the purpose of clause (c) of Section 269ST. Receipt related to such a dealership / distributorship contract by the Co-operative Society on any day in a previous year, which is within 'the prescribed limit' and complies with



clause (a) as well as clause (b) of Section 269ST, may not be aggregated across multiple days for purpose of clause (c) of Section 269ST of the Act for that previous year. The assessee submitted an Affidavit dated 24.03.2023 in this regard, wherein it has been pointed out that there is only one violation in respect of one party named Somnath Marketing from whom cash of Rs. 3,00,000 was received on 28.06.2017 by way of Earnest Money Deposit (EMD) and not by way of cash receipt against sales, which as per the assessee does not fall into the purview of section 269ST of the Act. Apart from this, it is stated that there is no violation of clause (a) or clause (b) or clause (c) of Section 269ST of the Act.

9. The assessee replied on 16.10.2021, 26.10.2021 and 05.11.2021. The case was transferred to Faceless Penalty on 09.11.2021, thereafter, a show-cause notice issued on 18.11.2021 with a request to comply on or before 29.11.2021 to the show-cause notice explaining that each sale transaction and cash receipts did not exceed the threshold limit of Rs. 2,00,000/- u/s. 269ST of the Act. The copy of reply is reproduced:

"....The assessee is basically a co-operative MILK union / "Rajkot Dairy for short), having membership by village level primary milk co operative societies, which societies collect milk from their individual cattle owner members twice in a day in morning session and evening session and supply to assessee's plant at Rajkot. The assessee Rajkot Dairy processes the milk. The milk being essential commodity for human consumption, is perishable food item and is categorized as agriculture produce. The plant has therefore to operate all the 365 days in a year for three shifts. The raw milk is pasteurized and processed to meet with standard Fat-SNF content milk to be pushed to city sale market. Of course, if during processing, if excess FAT/SNF are found, they are to be recovered and converted to products other than processed milk.

The Rajkot Dairy has to set up milk marketing net work of dealer/distributors making milk available to each and every individual consumer. Annual contracts are entered into and Work Order is issued by the assessee Rajkot Dairy to 131 agencies City route transport contractors are also engaged, who collect processed milk pouches in bulk from the plant and supply to the vendors. The retail Vendors received payment from individual Morning Evening milk buyers in petty sums in Cash in small denomination of Cash. The banks do not accept cash in small denominations from each vendor because of handling and counting time and accuracy problems involved, Rajkot Dairy has made arrangements with banks to accept small notes for some nominal handling charge. It has been ensured while framing dealer A distributor net work, that in a day, a particular person is not required deposit by CASH in Rajkot Dairy, the Milk collection proceeds



in Cash of maximum Rs 2,00,000/- In the event, the collection is in excess of Rs 2,00,000, the same has to be deposited by modes otherwise than in cash as restricted by the section 269 ST of the Income Tax Act.

We state that no violation of provisions contained in section 269ST as regards daily Cash deposit receipt by the assessee Rajkot Dairy even in a single case has taken place and therefore we request not impose penalty us 274 r.w.s. 271DA on the basis of annual aggregate figures.”

10. Aggrieved by the order of Ld. AO dated 27.01.2022 the assessee filed before the Ld. CIT(A)/NFAC. The Ld. CIT(A) has decided the appeal partly allowed the assessee with the following observation:

“After considering the submission by the Appellant and remand reports received from the Assessing Officer and the Affidavit filed on behalf of the Appellant. I am of the opinion that the penalty under Section 271DA is not leviable in the case except for the amount of Rs. 3,00,000 and hence the penalty imposed is restricted to Rs. 3,00,000 and the hence the Assessing Officer is directed to restrict the amount of penalty imposed to Rs. 3,00,000.

Accordingly, the Grounds No. 1, 3 and 4 are partly allowed.”

11. That the Assessee/Department both has filed an appeal against the impugned order before us.

12. During the course of hearing, the A.R. submitted that the assessee is aggrieved by the levy of penalty of Rs. 3,00,000/- is imposed u/s. 271DA of the Act for violation of Section 269ST of the Act. The NFAC has held that the appellant’s case is hit by Clause (c) of Section 269ST i.e. transaction related to one even or occasion from one person. The appellant entered into the only contract with distributors and total cash receipts from distributor was Rs. 3,00,000/- and thus, this clause attract. The relevant portion of the Clause (c) of the Act is reproduced as under:

“(c) Clause was violated and therefore penalty equal to the total cash collected in excess of the limit was attracted as per sec. 271DA.”



that it is a farmer society duly registered with the Government of Gujarat following all laws of Income Tax. Appellant existence can be trace since the 1961, it is formed by the Government of India, whereby Village level milk produced are made stakeholders and collected milk form the farmers only on daily basis and collected district level society is formed. Ld. AR submitted that an affidavit of Shri N.G.S. Managing Director of Rajkot district corporate milk producer Union Ltd. It was Stated that the cash receipt from one party in a single day against invoice raised for the sale milk produce did not made than of Rs. 2,00,000 or more. It was further submitted that buyers of milk and milk products are genuine having PAN No. with the assessee. The confirmation distributors in support of such contention have already been submitted. The CBDT has issued a circular, which clarifies that the cash receipt from one person are not to be aggregated for the entire year because a contract does not constitute an event or occasion for the purpose of clause 'C' of sec. 269ST. Receipt related to such a dealership / distributorship contract by the Co-operative Society on any day in a previous year, which is within 'the prescribed limit' and complies with clause (a) as well as clause (b) of Section 269ST, may not be aggregated across multiple days for purposes of clause (c) of Section 269ST for that previous year.

13. On the contrary, the Ld. D.R. submitted that the assessee has accepted more than Rs. 2,00,000/- from distributor in aggregate in a year and violated the Section 269ST of the Act. That Ld. D R has relied on the order of the Ld. CIT(A). The Board Circular not applicable to the assessee because since there is no valid contract is there for the sale. The penalty is rightly been levied on the assessee.



14. We have heard the rival contentions the perused the matter available on record

15. We note that the assessee is a registered cooperative society. The assessee is engaged in manufacturing unit in milk products like any other dairy functioning on “Amul pattern”. The members of the society are village level primary mild cooperative society from whom mostly the Milk is to be procured. It is affiliated to Gujarat Coop Milk Marketing Federation and National Dairy Development Board, Hon’ble District Registrar Coop. Society. The CBDT has made some clarification vide Circular No. 25/2022 dated 30th December, 2022 which are held as under:

“Circular No. 25/2022

F. No. 2251129/2022/ITA-II.

*Government of India Ministry of Finance Department of Revenue
(Central Board of Direct Taxes)*

New Delhi, Dated 30th December, 2022

Subject: Clarification for the purposes of clause (c) of Section 269ST of the Income-tax Act, 1961 in respect of dealership/distributorship contract in case of Co-operative Societies - reg.

Section 269ST inter-alia prohibits receipt of an amount of two lakh rupees or more (hereinafter referred to as 'the prescribed limit) by a person, in the circumstances specified therein, through modes other than by way of an account payee cheque or an account payee bank draft or use of electronic clearing system through a bank account or through such other electronic mode as may be prescribed.

References have been received in respect of Milk Producers' Cooperative as to whether under the provisions of Section 269ST of the Act, receipt(s) in cash in a day of bank holiday/closure of bank day within 'the prescribed limit' from a distributor against sale of milk when payments were through bank on all other days is to be considered as a single transaction or whether all such receipts in cash in a previous year would be aggregated in respect of transactions with a distributor to treat it as one event or occasion.



With respect to the reference at Para 2 above, it is clarified that in respect of Co-operative Societies, a dealership/ distributorship contract by itself may not constitute an event or occasion for the purposes of clause (c) of Section 269ST. Receipt related to such a dealership/distributorship contract by the Co-operative Society on any day in a previous year, which is within 'the prescribed limit' and complies with clause (a) as well as clause (b) of Section 269ST, may not be aggregated across multiple days for purposes of clause (c) of Section 269ST for that previous year.

*(Ravinder Maini)
Director to the Government India”*

16. The CIT(A) has acknowledged and considered that the affidavit filed by the assessee during the course of remand proceedings the relevant fact is reproduced:

“In respect of one party named Somnath Marketing cash of Rs. 3,00,000/- was received on 28-06-2017 by way of Earnest Money Deposit (EMO) and not by way of cash receipt against sales, which transaction to the best of my knowledge and belief, is to be excluded from the purview of Sec. 269ST of the Income-tax Act, 1961.

The Appellant has submitted an Affidavit dated 24/03/2023 in this regard, wherein it has been pointed out that there is only one violation in respect of one party named Somnath Marketing from whom cash of Rs. 3,00,000 was received on 28/06/2017 by way of Earnest Money Deposit (EMD) and not by way of cash receipt against sales.”

An affidavit submitted by the managing Deputy of Rajkot District Co-operative Milk producers union Ltd., wherein it is stated,

- 1) That on the basis of entries in cash book and ledger accounts of customer-parties maintained by the said union for F.Y. 2017-18, it is noticed that the amount of cash receipts from any one such party in a single day against invoices raised for sale of milk/milk produce did not amount to Rs. 2,00,000/- or more.*
- 2) To the best of my knowledge and belief and considering the records of the union for FY 2017-18. There was no violation of any of the clauses of sec. 269ST of the Income Tax Act, 1961.*



- 3) *With regard to the parties and amounts mentioned in para 3.4 and 3.5 of the DIN & Letter No. ITBA/NFAC/24/2022-23/104894656 (1) dated 20.01.2023 received from NFAC, Delhi, it is stated that the amount of cash receipts against sales from any of the parties, mentioned in para 3.4 & 3.5 did not amount to Rs. 2,00,000/- or more per day from a single party.*
- 4) *In respect of one party named Somnath Marketing cash of Rs. 3,00,000/- was received on 28.06.2017 by way of Earnest Money Deposit (EMD) and not by way of cash receipt against sale, which transaction to the best of my knowledge and belief, is to be excluded from the purview of sec. 269ST of the Income Tax Act, 1961.*

In the affidavit it was acknowledged that in single day transaction on is less than 2,00,000/ hence there was no violation of section of 269 ST of the Income Tax Act and in respect of EMD of Rs. 3,00,000/- the amount received cash from one party in order to grant distributor and not cash receipt against sale hence does not attract section 269ST of the Act.

We further have perused the materials available on record. We observe that the legal contract from appointment of a distributor cannot be considered as one 'event' or one 'occasion' u/s. 269ST; hence sale transactions made to them for supply of milk and milk produces on a different dates, or different quantities, under different tax invoices and orders cannot be clubbed or be treated as transactions relating one event or one occasion; hence the cash received from one person during the year cannot be and should not have been aggregated by the tax dept. for this purpose and thus, clause(c) of s 269ST is not violated, cash received per invoice does not exceed the threshold. In the distributorship contract was a legal document only for receiving the appointment terms in writing; it is not a physical, or even a



virtual event or an occasion as normally understood in common or commercial parlance.

Since the EMD accepted by the assessee is excluded from the purview of section 269ST of the Income Tax Act.

17. We note that in the order of Ld. CIT(A) to the extent of penalty issue of accepting EMD and in terms of contract with Somnath Marketing on 28.06.2017 for appointing as distributor, and in respect of EMD the Ld. CIT(A) has confirmed the order of AO. We observed that EMD is Deposit taken for granting of distributorship and not received against the sale hence does not come in purview of Sect. 269 ST of the Act. section 268ST deal with transaction. Hence, the order of the Ld. CIT(A) is set aside and remit back to the file of the Ld. CIT(A) for fresh adjudication. We observed that the Ld. CIT(A) has considered the affidavit without given an opportunity to the Ld. AO to accept the additional evidence and the same is not tenable. Therefore, the appeal is remitted back to the file of Ld. CIT(A)/NFAC. Hence, the ground no. 1 of the department appeal is also disposed with the above terms.

Now we adjudicate the Appeal No. 166/Rjt/2023 A.Y. 2018-19 (Revenue's Appeal)

18. The Revenue has raised the following grounds of appeal:

ITA No. 166/Rjt/2023(A.Y. 2018-19)(Revenue's Appeal):-

"1. The Ld. CIT(A) has erred in law and/or on facts in deleting the penalty u/s. 271DA of the Income-tax Act, 1961 of Rs. 173,93,22,709/- despite the



detailed findings given by the AO in penalty order and remand report submitted on 28.12.22, 20.01.23, 16.02.23 & 02.03.23.

2. *The Ld. CIT(A) has erred in law and /or on facts in coming to conclusion that the AO has not sent specific instance of violation under clause (a) and clause (b) of Section 269ST despite same is being brought out specifically in remand report dated 20.01.23, 16.02.23 & 02.03.23. Therefore, observation of Ld. CIT(A) that “The Assessing Officer has not sent specific instances of violation under clause (a) and clause (b) of Section 269ST is factually incorrect. On contrary Ld. CIT(A) has relied upon the affidavit submitted by the assessee which itself gives reference to remand report dated 20.01.23 where specific violations were brought out.*

3. *The Ld. CIT(A) has erred in law and /or on facts in completely ignoring the amount of Rs.173,96,22,709/- as mentioned in the Form 61A, which was base of initiating penalty for violation of Section 269ST, instead it has relied upon the submission of assessee that it has carried out transaction of only Rs.102,59,12,374/-.*

4. *The Ld. CIT(A) has erred in law and /or on facts in not giving opportunity to the AO by remanded the matter back to him for examining the matter afresh in view of the CBDT’s circular dated 30.12.22, which clarified the purpose of clause (c) of Section 269ST of the Income Tax Act, 1961 in respect of dealership/distributorship contract in case of Co-operative societies.*

5. *The Ld. CIT(A) has erred in law and /or on facts in relying upon Affidavit filed by the assessee as sought by the Ld. CIT(A) for specific violation to clause (a) & (b) of Section 269ST which is additional evidence admitted by Ld. CIT(A) for which Ld. CIT(A) is bound to provide opportunity to AO to examine the additional evidence as per Rule 46A of Income Tax rules. Therefore, order relied upon the additional evidence for which AO has not been provided opportunity deserved to be quashed and order of AO required to be restored.*

6. *On the facts and in the circumstances of the case and in law, the Ld. CIT(A) should have upheld the order of the AO.”*

19. The Revenue has raised the revised grounds of appeal which are as under:

“1. *The Ld. CIT(A) has erred in law and/or on facts in restricting the penalty u/s. 271DA of the Income-tax Act, 1961 to Rs. 3,00,000. Despite the detailed findings given by the AO in penalty order and remand report submitted on 28.12.22, 20.01.23, 16.02.23 & 02.03.23.*



2. *The Ld. CIT(A) has erred in law and/or on facts in coming to conclusion that the AO has not sent specific instance of violation under clause (a) and (b) of section 269ST despite same being brought out in remand report(s) dated 20.01.2023, 16.02.2023 & 02.03.2023. Therefore, observations of Ld. CIT(A) that “The assessing officers has not sent specific instance of violation under clause (a) and (b) of section 269ST is factually incorrect. On the contrary Ld. CIT(A) has relied upon the affidavit submitted by the assessee which itself gives reference to remand report dated 20.10.2023 where specific violations of Rs. 3,90,59,225/- were pointed out by the AO in para 3.5 of the remand report.*
 3. *On the facts and circumstances in law, the Ld. CIT(A) ought to have examined the entries appearing at Para 3.5 of the remand report dated 20.01.2023 before restricting the penalty to Rs. 3,00,000/- only as later verification revealed that the violation of the provision of Section 269ST amounted to Rs. 1,48,19,225/- only.*
 4. *The Ld. CIT(A) has erred in law and/or facts in relying upon Affidavit filed by the assessee as sought by the Ld. CIT(A) for specific violation to clause (a) & (b) of Section 269ST which is additional evidence admitted by Ld. CIT(A) for which Ld. CIT(A) is bound to provide opportunity to AO to examine the additional evidence as per Rule 46A of Income Tax rules. Therefore, order relying upon the additional evidence for which the AO has not been provided opportunity deserves to be quashed.*
 5. *The appellant craves leave to add, amend, alter or withdraw all or any ground of appeal at anytime upto the date of hearing of the appeal.”*
20. That Ld. AO observed in making an assessment that the assessee has violated the provisions of section 269ST without there being any compelling circumstances. In this case, Rs. 1,73,96,22,709/- has been received by the assessee in cash in respect of transaction aggregating gross amount received from various distributor/person more than Rs. 2,00,000/- in a year in contravention to the provisions of section 269ST of the Act.
- 21 That the Ld. CIT(A)/NFAC by order dated 30.03.2023 has deleted the penalty(partly) by considering that no penalty is leviable u/s. 271DA of the Act.



22. We note that the action of Ld. CIT(A) that there was no violation Clause (c) of section 269ST of the Act has levy penalty is due to that transaction related to one event or occasion from one person, since the appellant entitled in the annual contract with the distributor and the cash received from the distributor in a year was more than 2,00,000/-. Ld. CIT(A) has decided that the penalty under section 271DA is not leviable in this case. on the basis of Remand Reports received from the Ld. AO, and the affidavit furnished by the assessee, stating that cash receipt from one party in a single day, and the sale did not amount of Rs. 2,00,000/- or more than in a single day.

We further note and perused the Circular No. F No. 225/129/2022/ITA-II dated 30.12.2022 issued by CBDT and 3rd para of circular is reproduced:

“With respect to the reference at Para 2 above, it is clarified that in respect of Co-operative Societies, a dealership/distributorship contract by itself may not constitute an event or occasion for the purpose of clause (c) of section 269ST. Receipt related to such a dealership/distributorship contract by the Co-operative Society on any day in a previous year, which is within the prescribed limit and complies with clause (a) as well as clause (b) of section 269ST, may not be aggregated across multiple days for purposes of clause (c) of section 269ST for the previous year.”

23. We have heard rival contention of both the parties and perused the materials available on record. We have set aside the matter in ITA No. 183/Rjt/2023 and the ground No. 1 is covered in the above order. Ld. CIT(A) while disposing ground No. 2, 3, 4 collectively and considered the remand report and affidavit filed by the Managing Director (MD) of the Cooperative Society and decided the appeal of the assessee on that basis. While the argument taken by the Department before us. That the additional



evidence of the assessee was submitted without giving due opportunity to Ld. AO, for examination of additional evidence.

24. We further note that there is violation rule of 46A for accepting the additional evidence, without following the rule 46A of the Income Tax Act, 1962.

25. In view of the above, the order passed by the Ld. CIT(A) based on the additional evidence, which is not tenable. We do not agree with the order of Ld. CIT(A), since the order of Ld. CIT(A) is based on additional evidence. for the purpose of deciding the appeal without an opportunity to Ld. AO to examine the appeal. We therefore, set aside of the order of Ld. CIT(A). We restore back to the filed of the Ld. CIT(A) with direction to disposal of the issue after giving due opportunity to the Ld. AO.

26. In the result, appeal filed by the Assessee in ITA No. 183/RJT/2023 and the appeal filed by the Revenue in ITA No. 166/RJT/2023, the both are set aside.

In the result, appeals of the Assessee/Revenue are allowed for statistical purpose.

Order pronounced in the open court on 20 -01-2025.

Sd/-
(Dr. A. L. SAINI)
ACCOUNTANT MEMBER
Rajkot
Dated: 20/01/2025

Sd/-
(DINESH MOHAN SINHA)
JUDICIAL MEMBER



Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Rajkot
6. Guard file.

By order,

Assistant Registrar/Sr. PS/PS
ITAT, Rajkot