

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, AMRITSAR
BEFORE SHRI UDAYAN DAS GUPTA, JUDICIAL MEMBER
AND SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 286/Asr/2023
निर्धारण वर्ष / Assessment Year : 2017-18

Rohtash Monga, Prop. Monga Jewellers, F.City, Punjab 152002	बनाम	The ACIT, Circle, Ferozepur
स्थायीलेखासं./PAN NO: ADQPM0639Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

(HybridHearing)

निर्धारिती की ओर से/Assessee by : Shri P.N. Arora, Advocate
राजस्वकी ओर से/ Revenue by : Mrs. Neelam Sharma, Sr.DR

सुनवाईकीतारीख/Date of Hearing : 27.12.2024
उदघोषणाकीतारीख/Date of Pronouncement : 24/03/2025

आदेश/Order

Per Krinwant Sahay, AM:

Appeal in this case has been filed by the Assessee against the order dated 16.09.2023 passed by Id. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi (NFAC).

2. Grounds of appeal are as under:-

1. *That whether the worthy CIT(A). NFAC is right in confirming the penalty levied u/s 271-D for A.Y. 2017-2018 passed on dt. 16.9.2023 which was not initiated with the Assessment order passed 30.11.2019 by AO, Range-1. Ferozepur keeping in view the letter of offer surrender dt. 8.11.2011 in which it is written that surrender is subject to no penal action against the assessee, which was accepted by the survey party as veil as the A.O. who framed the assessment for A.O. 17-18, if wrong, then the penult orders may kindly be quashed.*

2. That whether the worthy CIT(A), NFAC was right in confirming the penalty orders passed of A.O viz., JT. CIT (A), Bhatinda Range -1, Bhatinda, as JT., CIT, Range-1, Bhatinda which was initiated the penalty proceedings 31.3.2022, and not with the assessment order which was passed 30.11.2019 u/s 143(3) of the I. T. Act, 1961 due the facts that penalty notice was issued :

- a) firstly Smt Sneh Lata,
- b) secondly to Smt. Rita Bajaj
- c) thirdly to Sh. Rohtash Monga

under section 271-D for the Asstt., year 2017-2018 for the offence u/s 269SS of the Income Tax Act 1961 on account of the amendment section 269SS in the definition of Specified person and Specified Advance against the Immoveable Property was amended w.e.f. 1.6.2015, to which neither the Smt. Sneh Lata nor Smt. Rita Bajaj nor Sh. Rohtash Monga was aware about the amendment of change of definition of specified person for receiving advance against the property. If wrong then penalty levied amounting to Rs.1,75,000/- may kindly be quashed.

3. That whether the worthy CIT(A)NFAC is right while confirming the penalty levied u/s 271-D by Jt. CIT, Range-1 Bhatinda whereas no penalty proceedings was initiated for the Assessment Year 2017-2018 in the case of Sh. Rohtash Monga in which no penal Action was initiated except u/s 271AAC read with section 115BBE keeping in view the letter of offer submitted on 8.12.2016 to the Survey Party and accepted by survey party and as well as the then A.O. who framed the Assessment u/s 143(3) for the Assessment year 2017-2018 on 30.11.2019 and similarly AO has framed the Assessment u/s 143(1) for the Assessment Year 2018-2019 in both assessment years in which no penalty proceedings was initiated neither in the A.Y. 2017-2018 and 2018-2019 respectively, if wrong then the it is prayed that the penalty orders passed u/s 250 by the CIT(A), NFAC, u/s 271-D of the Income Tax Act, 1961 may kindly be quashed.

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4. *That whether the worthy Commissioner of Income Tax, (A) NFAC is right in deciding the Jurisdiction to rely the Judgements relied upon by assessee of Supreme Court of India, Punjab and High Court and other High Courts as well as of ITAT of different Bench, which was rejected by Jt. CIT, Range-I, Bhatinda as well as by the CIT (A) NFAC on the plea cited as Under:*

"As far as the judgements cited by the assessee in this submission are concerned, the same do not pertain to the Jurisdictional appellate authorities and are therefore not binding. "

If, wrong, then the appeal of the assessee may kindly be accepted and the penalty orders may kindly be quashed.

5. *The assessee craves to add or amend any grounds of appeal before the appeal is finally disposed of or any other relief may kindly be granted to which the court feel fit in the interest of law of natural justice.*

3. During the proceedings before us, the Id. Counsel for the Assessee has filed written submissions which is reproduced as under: -

Statement of facts in the case of Sh. Rohtash Monga Prop.,
M/S Monga Jewellers.

That worthy CIT(A), NFAC issued notice u/s 250 vide No. ITBA AC/F//APL-1/2023-2024/1054733125(1) DATED 31.7.2023 for submission of reply on or before 4.8.2023. On account of appeal filed against the penalty order passed on 12.9.2022 by the Learned Jt. CIT, Range, Bhatinda u/s 271-D of I.T. Act, 1961, for the A.Y. 2017-2018. On 3.8.2023 before 4.8.2023 the assessee sought adjournment for 18.8.2023 and on 18.8.2023 when the assessee uploaded his written reply on the portal in response to this notice of appeal for penalty under section 271-D of the Income Tax Act, 1961. On the said i.e. 18.8.2023 the

assessee came to know that the Appeal filed against the penalty levied u/s 271-E has been dismissed on dt. 16.8.2023 by the CIT(A) NFAC.

But the worthy CIT(A), NFAC, while dismissing the appeal of the assessee filed u/s 271-D, for the A.Y.2017-2018 on dated 16.9.2023 against the notice issued u/s 250 vide No. ITBA/NFAC/F//APL-1/2023-2024/1054733125(l) DATED 31.7.2023 without appreciating the facts submitted on 18.8.2023 through written submission.

4. The ld. Counsel further argued that since the CIT(A) did not had the opportunity of going through detailed submission filed by the Assessee before passing the order, therefore, the order passed by the ld. CIT(A) should be quashed.


5. The ld. DR relied on the order of the CIT(A).

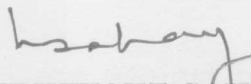
6. We have considered the findings given by the ld. CIT(A) in his appeal order and we find that in compliance to notice issued u/s 250 of the Act by the CIT(A), NFAC dated 31.7.2023, the Assessee filed an application on 3.8.2023 requesting therein to adjourn the case till 18.8.2023 so that detailed submission can be filed. The Assessee did file a detailed submission on 18.8.2023 but because of some communication gap or technical error it seems the ld. CIT(A) had already dismissed the appeal against the penalty levied u/s 271A dated 16.8.2023 i.e. two days prior to the date requested by the Assessee. Accordingly, we find that the Assessee could not get opportunity to bring its detailed submissions before passing an order by the

ld. CIT(A). In our view, it is against the element of natural justice where the Assessee has been denied to bring its case before the adjudicating authority. Whatever reason there is no denying that the very basic requirement of natural justice i.e. opportunity to the Assessee to bring its submissions to the notice of the CIT(A) has not been adhered to in this case. So, we are inclined to remand this case back to the CIT(A) to decide the issue afresh on merit, in accordance with law, on affording due and adequate opportunity of hearing to the Assessee. The Assessee, no doubt, shall cooperate in the fresh proceedings before the CIT(A). All pleas available under the law shall remain so available to the assessee. Ordered accordingly. The appeal of the Assessee is allowed for statistical purposes.

7. In the result, the appeal is allowed for statistical purposes.

Order pronounced on 24/03/2025


(UDAYAN DAS GUPTA)
Judicial Member


(KRINWANT SAHAY)
Accountant Member

“आर.के.”

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

1. The Appellant
2. The Respondent
3. CIT
4. DR, ITAT, AMRITSAR
5. Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar