

IN THE INCOME TAX APPELLATE TRIBUNAL "A", BENCH KOLKATA
BEFORE SHRI S.S.VISWANETHRA RAVI, JM & DR. A.L.SAINI, AM

आयकर अपील सं./ITA No.1237/Kol/2011

(निर्धारण वर्ष /Assessment Year:2008-2009)

Jain Infra Projects Ltd., 39, Shakespeare Sarai, Kolkata-700017	Vs.	ACIT, CC-IV, Poddar Court, 18, Rabindra Sarani, Kolkata-700001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCB 9831 F		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

AND

आयकर अपील सं./ITA No.1244/Kol/2011

(निर्धारण वर्ष /Assessment Year:2008-2009)

Manoj Kumar Jain & Sons (HUF) 39, Shakespeare Sarai, Kolkata-700017	Vs.	ACIT, CC-IV, Kolkata Poddar Court, 18, Rabindra Sarani, Kolkata-700001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. :AAIHM9669P		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by : Shri Amit Kumar, Advocate
Revenue by : Shri Pinaki Mukherjee, JCIT

सुनवाई की तारीख / Date of Hearing : 10/11/2016

घोषणा की तारीख/Date of Pronouncement 30/11/2016

आदेश / O R D E R

Per Dr. Arjun Lal Saini, AM:

The captioned two appeals filed by the assessee, pertaining to the assessment year 2008-09, is directed against an order passed by Id. Commissioner of Income Tax (Appeals), Central-1, Kolkata in Appeal No.73/CC-IV/CIT(A), C-1/10-11 & No.75/CC-IV/CIT(A), C-1/10-11, dated 02.08.2011 and 01.07.2011, which in turn arise out of assessment orders passed by the Assessing Officer (AO) Under Section.143(3) of the Income

Tax Act 1961, (in short the 'Act'), dated 31.03.2008 and 31.12.2009, respectively.

2. The above mentioned two appeals pertain to the same assessee group, same assessment year, common issues involved, therefore, these have been clubbed and heard together and a consolidated order is being passed for the sake of convenience and brevity. We take ITA No.1244/Kol/2011 as a lead case.

3. Brief facts of the case qua the assessee are that a search and seizure operation U/s.132 of the I.T.Act, 1961, was carried out on 18.3.2008 at the residence of Mr. Manoj Kumar Jain, Karta of the assessee. The search and seizure operation was also conducted on 18.3.2008 at the office of the group companies, Jain Infra Projects Ltd. The assessee group is mainly engaged in the business activity of infrastructure development and trading etc. The group has also invested huge money in land and properties and raised share capital through accommodation transactions. The assessee filed a letter dated 19.2.2009 before the Income Tax officer stating that some of the assets and documents found and seized in the course of search and seizure operation at the various premises of the group which are outside the regular books of accounts of the group concerns belongs to it. In the said letter, the Karta of the assessee has also stated that the disclosure of the income made u/s.132(4) of of the Act, of Rs. 8.75 crores was on behalf of

the assessee. The AO while making assessment u/s.143(3) observed the followings :-

Cash Loan:-

In the seized documents having identification mark GB/8, GB/23, GB/13, GB/14 and GB/15, there are noting of cash loan received during the-F.Y-2006-07 and F.Y.2007-08. There is repetition of the noting in the various seized documents. During assessment proceeding assessee filed a chart showing unsecured loan received and paid as per seized documents. Assessee's submission is reproduced below:

As submitted above, for the loan entries, M/s Manoj Kumar Jain & Sons (HUF) has applied peak theory and offered the peak balance of Rs.4,91,500,000/- as income in the A.Y 2007-08 & 2008-09. Please find enclosed herewith the working of peak balance. In the F Y2006-07 the peak balance was Rs.40, 00,000/- and in the F. Y. 2007-08 the peak balance was Rs.4,91,50,000/-. Since the peak balance of Rs.40,00,000/- was offered to tax in the A.Y.2007-08, the increase in peak balance of Rs. 4,51,50,000/- has been offered in the A.Y 2008-09. The said income has been shown as receipt and utilized for certain application of fund.

In its submission, the assessee further disclosed additional income in addition to the income of Rs.8.75 Cr disclosed on 19-03-2008 U/S 132(4). The details of the additional incomes including income disclosed during assessment proceedings are as under: -

Asst. Year	Amount
2002-03	21,00,000/-
2003-04	10,50,000/-
2004-05	21,00,000/-
2005-06	24,50,000/-
2006-07	5,00,000/-
2007-08	3,93,00,000/-
2008-09	<u>4,40,10,000/-</u>
	<u>9,15,10,000/-</u>

And the additional income by the following:-

<i>M/s. Bengal Construction Co.</i>	
<i>Asst. Year 2005-06</i>	19,57,900/-
<i>M/s. Jain Infraprojects Ltd.</i>	
<i>Asst. Year 2007-08</i>	5,96,176/-
<i>Asst. Year 2008-09</i>	<u>12,89,608/-</u>
	<u>18,85,784/-</u>

The additional disclosure made in case of M/s Bengal Construction Co. and M/s Jain Infraprojects Ltd. are being considered in their respective assessment.

In the course of assessment proceedings the assessee also filed details & particulars along with supporting evidences which are examined vis-a-vis seized documents. As discussed above, assessee has disclosed additional income of Rs.51,50,000/- for the Asst. Year 2008-09 during the course of assessment proceeding.

Subject to the above discussion, the total income of the assessee has been computed as below :-

<u>Undisclosed Income as per seized documents, as discussed</u>	
<i>Income disclosed U/s.132(4)</i>	<i>4,00,00,000/-</i>
<i>Additional Income disclosed during the assessment proceedings</i>	<u><i>51,50,000/-</i></u>
<i>Total Income</i>	<i>4,51,50,000/-</i>

Penalty proceedings U/s 271AAA initiated separately. Assessed u/s.143(3). Charge interest u/s.234A u/s.234B & u/s.234C. The above order is passed with prior approval of Addl. CIT-R-I-Central, Kolkata, U/s.153D”

Therefore, based on the quantum addition of Rs.51,50,000/-, the AO initiated the penalty proceedings u/s.271AAA of the Act. The AO passed the penalty order u/s.271AAA of the Act on 29.06.2010 observing the followings :-

“During the course of search, certain incriminating documents were found which revealed that the assessee was having concealed income. When the assessee was confronted with the same, it had no other alternative but to admit that it had indeed concealed its particulars of income and in the due course of time came out with a correct calculation of its undisclosed income. The assessee has not disclosed the additional income of Rs.51,50,000/- in return of income u/s.139(1) but offered the same when confronted with the seized documents. Moreover the disclosure of additional income was based on seized documents GB/8, GB-13, GB-14 and GB-15. The mere fact that the assessee has correctly quantified its concealed income, which has been accepted by the department, has no correlation with the fact that the assessee has not concealed its income. In view of the above, the explanations of the assessee are held as not reasonable. So, I am satisfied that this is a fit case for imposition of penalty U/s 271AAA of the I.T. Act 1961. Hence, I direct that the assessee shall pay by way of penalty U/s 271AAA of the I.T.Act 1961 a sum of Rs. 5,15,000/-.

4. Aggrieved from the order of Id. Assessing Officer, the assessee filed an appeal before the Id. CIT(A), who has also confirmed the additions made by the AO, by observing the followings :-

"4. I have carefully considered the submission of the Ld A.R. Section 271 AAA reads as under -

271AAA. (1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of June, 2007, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year.

(2) Nothing contained in sub-section (1) shall apply if the assessee.-

- (i) in the course of the search, in a statement under sub-section (4) of section 132 admits the undisclosed income and specifies the manner in which such income has been derived;*
- (ii) substantiates the manner in which the undisclosed income was derived; and*
- (iii) pays the tax, together with interest, if any, in respect of the undisclosed Income.*

From the plain reading of the above section it is apparent that penalty will not be livable only if all the condition laid down in subsection (2) of section 271 AAA is satisfied. In the case under consideration the assessee declared the additional undisclosed income of Rs. 51,50,000/- only during the course of the assessment proceeding. As per Assessing Officer, the above undisclosed income is based on the seized document. It has been further opined that admission was made only after being confronted with the incriminating seized document. It is further noted that even after admitting the additional undisclosed income the tax and interest thereon was not paid by the assessee. As per assessment order there is a demand of Rs.44,76,679/-. Moreover, the demand created on the additional undisclosed income vide order dated 31.12.2009, was also not paid by the assessee within the statutory time limit.

4.1 Considering above and the provision of section 271 AAA, that notwithstanding anything contained in any other provisions of this Act, where search has been initiated under section 132 on or after the 1st day of June, 2007, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified

previous year. The only exception will be those assessee who satisfy and qualify the conditions laid down in section 271AAA(2) of the Act. Hence taking all the facts into consideration, I am of the opinion, that in the case under consideration the exception conditions are not fully satisfied. Accordingly, it is held that the A.O has rightly imposed penalty of Rs. 5,15,000/- under section 271AAA of the Act. Accordingly the penalty order passed by the A.O is confirmed."

5. Not being satisfied with the order of Id.CIT(A), the assessee is in further appeal before us and has taken the following grounds of appeal:-

"Grounds raised in ITA No.1237/Kol/2011 :-

1. That the Ld.CIT(A) erred in confirming penalty u/s.271AAA of the I.Tax Act amounting to Rs.1,28,961/- @10% on the amount of disallowance made of Rs.12,89,608/-. The penalty so levied is wrong and need to be deleted.

Grounds raised in ITA No.1244/Kol/2011 :-

1. That the Ld.CIT(A) erred in confirming penalty u/s.271AAA of the I.Tax Act amounting to Rs.5,15,000/- @10% on the amount of disallowance made of Rs.51,50,000/-. The penalty so levied is wrong and need to be deleted."

5.1. Ld. AR for the assessee has submitted that penalty u/s.271AAA cannot be levied if the assessee admits the undisclosed income and satisfied the manner in which such income has been verified/admitted. The assessee himself has offered before the AO, the peak amount in the bank statement at Rs.51,50,000/-. The assessee has paid tax also on the peak amount so offered. The AO while levying penalty u/s.271AAA did not record the satisfaction in the assessment order. The assessee has offered the peak credit in the bank account himself during the assessment proceedings and paid the income tax thereon. From the plain reading of Section 271AAA, it is apparent that penalty will not be levied if all the conditions laid down under sub-Section 2 of Section 271AAA is satisfied. The assessee in this case satisfied all the conditions of sub-section 2 of

Section 271AAA of the Act. Ld. AR further submitted that a search & seizure operation was conducted in the case of Manoj Kumar Jain and his associates on 18.03.2008. In the course of said search & seizure proceedings Mr. Manoj Kumar Jain, Karta of the assessee made a disclosure of Rs.8.75 crores u/s.132(4) of the Act. The assessee filed a letter dtd.19.02.2009 claiming that some of the assets and documents found and seized in the course of search & seizure operation at the various premises of the group belongs to it. In the said letter, Mr. Manoj Kumar Jain Karta of the assessee has also stated that the disclosure of income made u/s.132(4) of the I.Tax Act on 19.03.08 by him of Rs.8.75 Crores was on behalf of the assessee. The Karta of the assessee made a disclosure of RS.8.75 crore u/s 132(4) of the Income Tax Act on 19/03/2008 on behalf of the assessee. The breakup of the said additional income disclosed under section 132(4) of the I. T.Act is as under:-

<i>Asst. Year</i>	<i>Amount</i>
<i>2002-03</i>	<i>21,00,000/-</i>
<i>2003-04</i>	<i>10,50,000/-</i>
<i>2004-05</i>	<i>21,00,000/-</i>
<i>2005-06</i>	<i>24,50,000/-</i>
<i>2006-07</i>	<i>5,00,000/-</i>
<i>2007-08</i>	<i>3,93,00,000/-</i>
<i>2008-09</i>	<i><u>4,00,00,000/-</u></i>
	<i><u>8,75,00,000/-</u></i>

For the relevant assessment year 2008-09, the assessee offered the said income of 4,00,00000/- voluntarily by filing the return u/s 139 on 31/03/2009. Disclosure of additional income made u/s 132(4) of the I. Tax Act was purely voluntary to co-operate with the Department and to buy peace. In the course of assessment proceeding, the assessee submitted

that in the seized document marked GB/8,GB/23, GB/13, GB/14 & GB/15 there is noting of cash loans received in the F.Y 06-07 & 07-08. The assessee applied peak theory and offered Rs.40,00,000/- in the assessment year 2007-08 and Rs.4,51,50,000/- in the assessment year 2008-09. The assessee has also requested to treat the income of Rs.4 crore offered in the return filed u/s 139 as Rs.4,51,50,000/-. The said amount is increase in peak balance of loan received and treated as own money by the assessee to buy peace and end the litigation. The assessment has been completed u/s 143(3) at the said revised income of Rs.4,51,50,000/-. The assessee paid the tax including interest there on. In the course of search, statement U/s 132(4) of the Income Tax Act was recorded and the issue based on which the additional income was disclosed was not confronted by the authorized officer to Mr. Manoj Kumar Jain, Karta of the assessee. Disclosure of additional income made by the assessee was purely voluntary to co-operate with the department & to buy peace. So in any circumstances it can't be said that department detected the said income by virtue of search.

<i>Asst. Year</i>	<i>Amount</i>
<i>2002-03</i>	<i>21,00,000/-</i>
<i>2003-04</i>	<i>10,50,000/-</i>
<i>2004-05</i>	<i>21,00,000/-</i>
<i>2005-06</i>	<i>24,50,000/-</i>
<i>2006-07</i>	<i>5,00,000/-</i>
<i>2007-08</i>	<i>3,93,00,000/-</i>
<i>2008-09</i>	<i><u>4,40,10,000/-</u></i>
	<i><u>8,75,00,000/-</u></i>

For the relevant assessment year 2008-09, the assessee offered the said

income of 4,00,00000/- voluntarily by filing the return u/s 139 on 31/03/2009. Disclosure of additional income made u/s 132(4) of the I. Tax Act was purely voluntary to co-operate with the Department and to buy peace. In the course of assessment proceeding, the assessee submitted that in the seized document marked GB/8,GB/23, GB/13, GB/14 & GB/15 there is noting of cash loans received in the F.Y 06-07 & 07-08. The assessee applied peak theory and offered Rs.40,00,000/- in the assessment year 2007-08 and Rs.4,51,50,000/- in the assessment year 2008-09. The assessee has also requested to treat the income of Rs.4 crore offered in the return filed u/s 139 as Rs.4,51,50,000/-. The said amount is increase in peak balance of loan received and treated as own money by the assessee to buy peace and end the litigation. The assessment has been completed u/s 143(3) at the said revised income of Rs.4,51,50,000/-. The assessee paid the tax including interest there on.

In the course of search, statement Is 132(4) of the income Tax Act as recorded and the issue based on which the additional income was disclosed was not confronted by the authorized officer to Mr. Manoj Kumar Jain, Karta of the assessee. Disclosure of additional income made by the assessee was purely voluntary to co-operate with the department & to buy peace. So in any circumstances it can't be said that department detected the said income by virtue of search.

Regarding the outstanding demand of Rs.44,76,679/- raised as per order u/s.143(3) for the AY 2008-09, it is submitted that on perusal of the order and demand notice it was found that the AO has not adjusted the seized cash of 15,00,000/- and it was also noticed that there was mistake in calculation of interest u/s.234B. A rectification petition u/s 154 dated 08.03.2010 was filed in respect and the assessee also paid the balance tax of Rs.24,93,675/- on 26.02.2010. Copy of the rectification petition dated 08.03.2010 along with the copy of the challan is produced. Therefore, as per the assessee there is no demand before passing of the penalty order, hence penalty U/s 271AAA may not be levied.

The Ld. AR also relied on the following judgments:-

- i) ITA No.1430/PN/2013, ITAT Pune Bench, (DCIT Vs. M/s Tapadia & Kasliwal Associates) order dated 12.08.2015 :-

“15. Since in the instant case, although the assessee has not paid an amount of Rs.40,99,998/- before filing of the return of income, however, the fact remains that the demand of Rs.49,64,700/- raised by the AO for A.Y. 2010-11 vide order dated 29-12-2011 passed u/s.143(3) has been paid on 22-03-2012 which is much before 28-06-2012, i.e., the date of penalty order passed u/s.271AAA for the year under appeal. Therefore, respectfully following the decision of the Kolkata Bench of the Tribunal in the case of Pioneer Marbles and Interiors Pvt. Ltd. (Supra), we hold that no penalty u/s.271AAA is leviable in the instant case. Accordingly, the order of the CIT(A) is upheld and the grounds raised by the Revenue are dismissed.”

- ii) ITA No.1773 & 1774/Kol/2012, ITAT Kolkata, (Sri Naresh Chandra Agrawalla Vs. ACIT) order dated 20.08.2015 :-

“It is seen from the assessment order that the ld. AO had stated that the assessee had no option but to accept the truth and come forward with the disclosure and hence concluded that but for the search the assessee would not have come forward with the offer of

undisclosed income and on that ground levy of penalty is justified. We find that if this argument of the Id. AO is to be appreciated, then the very purpose of providing immunity u/s 271AAA(2) of the Act gets defeated. The legislature in its wisdom had provided for granting immunity from levy of penalty in certain circumstances as contemplated in 271AAA(2) of the Act. The levy of penalty u/s 271AAA cannot be made automatic pursuant to the search. We also find that the decision of the Hon'ble Apex court rendered in the case of MAK Data P.Ltd vs CIT reported in 358 ITR 593(SC) is also distinguishable in the facts and circumstances of the case as in the case before the Hon'ble Supreme Court the immunity clause provided in 271AAA(2) of the Act had not been discussed.

We also hold that the reasoning of the assessee had to disclose the undisclosed income because of the search is also not in accordance with law. Reliance in this regard is placed on the decision of CIT vs Sas Pharmaceuticals 335 ITR 259 (Delhi). The Hon'ble Delhi High Court has held as under :-

“ 14. We may, first of all, reject the contention of the learned counsel for the revenue relying upon the expression in the course of any proceedings under this Act occurring in sub-section (1) of section 271 of the Act and contending that even during survey when it was found that the assessee had concealed the particular of his income, it would amount concealment in the course of any proceedings. The words in the course of any proceedings under this Act are prefaced by the satisfaction of the AO or the Commissioner of Income Tax (Appeals). When the survey is conducted by a survey team, the question of satisfaction of AO or the Commissioner (Appeals) or the Commissioner does not arise. We have to keep in mind that it is the AO who initiated the penalty proceedings and directed the payment of penalty. He had not recorded any satisfaction during the course of survey. Decision to initiate penalty proceedings was taken while making assessment order. It is, thus, obvious that the expression in the course of any proceedings under this Act cannot have the reference to survey proceedings, in this case.

15. It necessarily follows that concealment of particulars of income or furnishing of inaccurate particular of income by the assessee has to be in the income tax return filed by it. There is sufficient indication of this in the judgment of this court in the case of CIT v. Mohan Das Hassa Nand (1983) 141 ITR 203 (Del) and in Reliance Petroproducts Pvt. Ltd. (supra), the Supreme Court has clinched this aspect, viz., the assessee can furnish the particulars of income in his return and everything would depend upon the income tax return filed by the assessee. This view gets supported by

Explanation 4 as well as 5 and 5A of section 271 of the Act as contended by the learned counsel for the respondent.

16. No doubt, the discrepancies were found during the survey. This has yielded income from the assessee in the form of amount surrendered by the assessee. Presently, we are not concerned with the assessment of income, but the moot question is to whether this would attract penalty upon the assessee under the provisions of section 271(1)(c) of the Act. Obviously, no penalty can be imposed unless the conditions stipulated in the said provisions are duly and unambiguously satisfied. Since the assessee was exposed during survey, may be, it would have not disclosed the income but for the said survey. However, there cannot be any penalty only on surmises, conjectures and possibilities. Section 271(1)(c) of the Act has to be construed strictly. Unless it is found that there is actually a concealment of non-disclosure of the particulars of income, penalty cannot be imposed. There is no such concealment or non-disclosure as the assessee had made a complete disclosure in the income tax return and offered the surrendered amount for the purpose of tax.

17. We, thus, answer the questions as formulated above, in favour of the assessee and against the revenue finding no fault with the decisions of the Commissioner (Appeals) as well as the Tribunal. As a result, this appeal is dismissed.”

It is seen that even though the income of Rs.27,88,222/- was not offered by him in the regular return filed by the assessee on 31.03.2009 for A.Y.2008-09, it is of no consequence as in terms of 153A of the Act, it becomes a pending proceeding, which gets abated pursuant to the search. In other words, the Id. AR argued that ultimately what is relevant is only the return filed in response to 153A of the Act wherein the assessee had duly considered the income disclosed u/s 132(4) and ultimately the returned income has been accepted by the Id. AO and hence there is no concealment on the part of the assessee in the return u/s 153A of the Act . Similarly the Id. AR argued that in the return filed for A.Y.2009-10, being the year of search, there was no discrepancy in the undisclosed income offered vis-à-vis 132(4) statement and ultimately the returned income was accepted by the Id.AO for A.Y.2009-10 also. Hence there was no concealment for this year.

In view of the aforesaid facts and circumstances and in view of the judicial precedents relied upon, we hold that the assessee had cumulatively satisfied the three conditions contemplated in section 271AAA(2) of the Act and accordingly is eligible for immunity from levy of penalty. This ground of appeal is allowed”.

- iii) ITA No.1326/Kol/2011, (DCIT Vs. Pioneer Marbles & Interiors Pvt. Ltd.) order dated 17.02.2012 :-

7. We find that under the scheme of Section 271 AAA, there is a complete paradigm shift so far as penalty in respect of unaccounted income unearthed as a result of search operation carried out on or after 1st June 2007 is concerned. Unlike in the case of penalty under section 271(1)(c), Section 271 AAA, without any reference to findings or presumptions of concealment of income or the findings or presumptions of furnishing of inaccurate particulars, provides that in respect of unaccounted income in the cases where search initiated after 1st June 2007, the assessee is to pay a penalty @ 10% of unaccounted income. Sub section 2 of Section 271 AAA, however, relaxes the rigour of this penalty provision in a situation in which (i) in the course of the search, in a statement under section 132(4), admits the undisclosed income and specifies the manner in which such income has been derived; (ii) substantiates the manner in which the undisclosed income was derived; and (iii) pays the tax, together with interest, if any, in respect of the undisclosed income . While payment of taxes, along with interest, by the assessee is one of the conditions precedent for availing the immunity under section 271AAA(2), there is no time limit set out for such payments by the assessee. Once a time limit for payment of tax and interest has not been set out by the statute, it cannot indeed be open to the Assessing Officer to read such a time limit into the scheme of the Section or to infer one. There is thus no legally sustainable basis for the stand of the Assessing Officer that in a situation in which due tax and interest has not been paid in full before filing of the relevant income tax return, the assessee will not be eligible for immunity under section 271 AAA(2).

8. While dealing with Explanation 5 to Section 271(1)(c), which is broadly on the same lines, Hon'ble Gujarat High Court, in the case of CIT Vs Mahendra C Shah (299 ITR 305) has observed that, ".....there is no prescription about the point of time when the tax had to be paid qua the amount of income declared in the statement under section 132(4) of the Act". We must, however, point out that even after making these specific observations Their Lordships had to treat the conclusion of assessment proceedings as outer limit for making payment of tax and interest but that was because of the peculiar nature of penalty provisions under section 271(1)(c) wherein Assessing Officer has to record the satisfaction in the course of assessment proceedings it self – something which is not a condition precedent for imposition of penalty under section 271 AAA. Their Lordships had held that "...However, the outer limit has to be the point of time when the assessment proceedings are undertaken by the Assessing Officer because the opening portion of section 271(1) of the Act requires the Assessing Officer to record

satisfaction in the course of such proceedings, and the satisfaction has to be as regards the concealment of particulars of income or furnishing inaccurate particulars of income.” Section 271 AAA, as the statute unambiguously provides, does not require any subjective satisfaction of the Assessing Officer to be arrived at during the assessment proceedings, and, therefore, the outer limit of payment before the conclusion of assessment proceedings will not come into play.

9. In our considered view, therefore, on the facts of the present case wherein entire tax and interest has been duly paid well within the time limit for payment of notice of demand under section 156 and well before the penalty proceedings were concluded, the assessee could not be denied the immunity under section 271AAA(2) only because entire tax, along with interest, was not paid before filing of income tax return or, for that purpose, before concluding the assessment proceedings.

10. For the reasons set out above, we approve the conclusions arrived at by the CIT(A) and decline to interfere in the matter.

11. In the result, the appeal is dismissed. Pronounced in the open court today on 17th day of February 2012.”

5.2. On the other hand Id. DR for the revenue has primarily reiterated the stand taken by the Id. CIT(A) and AO, which we have already noted in our earlier paras and is not being repeated for the sake of brevity.

5.3. Having heard the rival submissions, perused the material available on record, we are of the view that there is merit in the submissions of the assessee, as the proposition canvassed by the Id. AR for the assessee are supported by the judgments of Hon'ble ITAT (supra) and the facts narrated by him above. The Id. AR pointed out that the assessee has voluntarily offered the addition on account of peak credit in the bank during the assessment proceedings. The assessee has paid the interest and tax thereon. Id. AR also pointed out that the AO did not record the satisfaction in the course of assessment proceedings u/s.271AAA as the statute unambiguously provides, does not require any subjective

satisfaction of the Assessing Officer to be arrived at during the assessment proceedings. In the present case, the entire tax and interest thereon has duly been paid well within the time limit for payment of notice of demand under section 156. Based on the above cited factual position and the case laws cited by Id. AR of the assessee, we are of the view that the assessee has complied the provisions of Section 271AAA of the Act, and, hence, the penalty may not be levied. Accordingly, we delete the penalty.

11. In the result, appeals filed by the assessee in ITA No.1244/Kol/2011 and ITA No.1237/Kol/2011 are allowed.

Order pronounced in the open court on this 30/11/2016.

Sd/-
(S.S.VISWANETHRA RAVI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(DR. A.L.SAINI)
लेखा सदस्य / ACCOUNTANT MEMBER

कोलकाता /Kolkata; दिनांक Dated 30/11/2016

प्रकाश मिश्रा/Prakash Mishra,नि.स/ PS

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

1. अपीलार्थी / The Appellant-Jain Infra Projects Ltd(ITA No.1244/Kol/2011)
Manoj Kumar Jain(ITA No.1237/Kol/2011)
2. प्रत्यर्थी / The Respondent.- ACIT-CC-IV, Kolkata
3. आयकर आयुक्त(अपील) / The CIT(A), Kolkata.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, कोलकाता / DR, ITAT, Kolkata
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार
(Asstt. Registrar)
आयकर अपीलीय अधिकरण, कोलकाता / ITAT, कोलकाता