

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND
SHRI AMARJIT SINGH, JUDICIAL MEMBER

I.T.A. No.4005/M/2014
(Assessment Year: **2010-2011**)

ACIT, Central Circle 43, R.No.659, 6 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-20.	बनाम/ Vs.	Mr. Pravin S. Jain, 203, Kalbadevi Road, 104, 1 st Floor, Mumbai- 400002.
स्थायी लेखा सं./PAN : AABPJ2451M		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri Daya Sagar, CIT-DR
प्रत्यर्थी की ओर से/ Respondent by	:	Shri Manish Sanghavi

सुनवाई की तारीख /Date of Hearing : 01.12.2015

घोषणा की तारीख /Date of Pronouncement : 16.12.2015

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the Revenue on 2.6.2014 is against the order of the CIT (A)-38, Mumbai dated 27.2.2014 for the assessment year 2010-2011.

2. The **core issue** raised in this appeal relates to the **levyability of penalty u/s 271AAA** of the Act when there is no warrant in the name of the assessee initiating search and when the assessments were made u/s 153C of the Act. Briefly stated relevant facts of the case are that there was a search action in the case of Shri Hasmukh Jokmal Jain and Shri Indramal Solanki on 8.5.2009. Subsequent to the search action, there was a survey u/s 133A of the Act on the premises of the assessee, who is a proprietor of M/s. Darshan Gold, a proprietary concern. It is an undisputed fact that the assessments in the case of the assessee were completed u/s 153C of the Act and not u/s 153A of the Act.

3. With the background of the above facts, Ld Counsel for the assessee demonstrated that the penalty proceedings initiated u/s 271AAA of the Act in the case of the assessee and levied penalty of Rs. 20 lakhs. In this regard, Ld Counsel

for the assessee submitted that such levy of penalty is unsustainable in law in view of the provisions of section 271AAA of the Act. Further, Ld Counsel for the assessee brought our attention to the language of the said section 271AAA of the Act and read out that "*the Assessing Officer may.....direct that, in a case **where search has been initiated under section 132 on or after the 1st day of June, 2007 [but before the 1st day of July, 2012]**.....*".

4. On the other hand, Ld DR for the Revenue relied on the penalty order of the AO and submitted that this is the case where assessee complied with the declaration made u/s 132(4) of the Act and paid taxes thereon.

5. We have heard both the parties and perused the orders of the Revenue Authorities as well as the provision of section 271AAA of the Act. There is no dispute on the fact that the assessee offered the disclosed income and paid taxes. That issue on quantum reached the finality. When comes to the penalty proceedings, the AO erroneously initiated the penalty proceedings u/s 271AAA of the Act when the present assessee is not covered u/s 132 of the Act. He is covered only u/s 133A of the Act. Section 271AAA is not relevant for initiating such proceedings legally. Further, on perusal of the order of the CIT (A), we find paras 6.1 to 6.3 are relevant in this regard. Considering the importance of the relevant para 6.3 of the impugned order and for the sake of completeness of this order, the same is extracted as follows:-

*"6.3. In view of the above, I am of the view that the provisions of **section 271AAA of the Act can be invoked only** in respect of the assessee, **who has been searched u/s 132 of the Act**. No search u/s 132 of the Act was conducted in the case of the appellant. Survey operation u/s 133A of the Act cannot lead to initiation of penalty proceedings u/s 271AAA of the Act. The penalty in the case should have been initiated u/s 271(1)(c) of the Act. In view of the above, the penalty levied u/s 271AAA of the Act amounting to Rs. 20,00,000/- is hereby deleted."*

6. Considering the above, we are of the opinion that the CIT (A) has rightly adjudicated the issue as per the provisions of the Act and in accordance with law. Therefore, in our view, the decision taken by the CIT (A) is fair and reasonable and it does not call for any interference. Accordingly, grounds raised by the Revenue are dismissed.

7. In the result, **appeal of the Revenue is dismissed.**

Order pronounced in the open court on 16th December, 2015.

Sd/-

(AMARJIT SINGH)

JUDICIAL MEMBER

मुंबई Mumbai; दिनांक 16/12/2015

व.नि.स./ OKK, Sr. PS

Sd/-

(D. KARUNAKARA RAO)

ACCOUNTANT MEMBER

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,
ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / **ITAT, Mumbai**