

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

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 6643/Del/2015
Assessment Year: 2012-13**

Mahavir Prasad Jaipuria, 8, Prithviraj Road, New Delhi-110001 (PAN: AAEPJ4353R)	vs	ACIT, Central Circle-07 (erstwhile Central circle-12), Jhandewalan Extension, New Delhi.
(Appellant)		(Respondent)

**Appellant by: Shri Manoj Kumar, CA
Respondent by: Shri Atiq Ahmad, Sr. DR**

**Date of Hearing: 05.09.2017
Date of Pronouncement: 04.10.2017**

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.

This appeal has been preferred by the assessee against the order of the Ld. CIT (A) – 24, New Delhi wherein vide order dated 12.10.2015, the Ld. CIT (A) has confirmed the imposition of penalty of Rs. 30,000/- u/s 271AAA of the Income Tax Act, 1961 for AY 2012-13.

2. The brief facts of the case are that the assessee belongs to Jaipuria group of cases which was subjected to search and seizure action under section 132 of the Income Tax Act, 1961 on 27th of March 2012. The statement of the assessee was recorded under section 132 (4) of the Income Tax Act, 1961 and the assessee's son Shri Anurag Jaipuria also offered a total amount of Rs. 5 crores as undisclosed income in the hands of various individuals and entities associated with the Jaipuria group. In the original return of income filed on 31/07/2012, the assessee had offered a total income of Rs. 10,26,175/- to tax. Subsequently, he filed a revised return of income on 07/06/2013 disclosing total income of Rs. 13,26,175/-. During the course of search and post search investigation, the assessee did not surrender any income but during the course of assessment proceedings under section 143 (3) of the Income Tax Act 1961, the assessee surrendered an amount of Rs. 3 Lacs for the assessment year under consideration which was shown in the computation of income under the head "other sources". Assessment was completed under section 143 (3)

of the Income Tax Act, 1961 after making an addition of Rs. 11,92,800/- on account of unexplained cash. Subsequently, penalty proceedings under section 271AAA of the Income Tax Act, 1961 were initiated by issuance of notice under section 274. It was the response of the assessee that penalty proceedings under section 271AAA of the Income Tax Act, 1961 had not been initiated in the assessment order passed under section 143 (3) of the Income Tax Act, 1961 and further there was no undisclosed income of the assessee as per the provisions of section 271AAA of the Act and, therefore, the proposal to impose penalty under section 271AAA of the Income Tax Act, 1961 on that basis was erroneous. However, the assessing officer proceeded to impose penalty of Rs. 30,000/- under section 271AAA on the alleged undisclosed income of Rs. 3 Lacs which was surrendered by the assessee during the course of assessment proceedings. Aggrieved, the assessee preferred an appeal before the Ld. CIT (Appeals) who upheld the confirmation of the penalty and now the

assessee has approached the ITAT and has challenged the imposition of penalty.

3. The Ld. authorised representative submitted that Rs. 4,82,800/- out of Rs. 17,49,800/- found during the course of search was found from the almirah of the assessee's wife Smt. Pushpa Jaipuria which was her pin money, savings, cash presents and gifts received by her on various functions and other occasions. However, in order to buy peace of mind and avoid litigation, the assessee had voluntarily added the amount of Rs. 3 Lacs out of this Rs. 4,82,800/- with the hope and prayer that no penalty shall be levied. It was submitted that the assessing officer had failed to appreciate that there was no undisclosed income of the assessee as per the provisions of section 271AAA of the Income Tax Act, 1961 and, therefore, the imposition of penalty under the said section was legally not tenable. It was also submitted that the assessee's son Sh. Anurag Jaipuria had offered Rs. 5 crores as income in his hand, his family members, HUF, firms and its partners,

companies and its directors and associates in his statement recorded under section 132 (4) of the Income Tax Act, 1961 during the course of search and seizure operation with the understanding that no penalty proceedings of any kind will be taken against him and his group. It was also submitted that the additional income of Rs. 3 Lacs was surrendered by the assessee in his computation of income only to honour the commitment made to disclose the additional income by the son of the assessee even though the source of the said cash found was duly explained by the assessee in his statement during the course of search and seizure operations. It was submitted that the additional income declared by the assessee in his return of income was not an undisclosed income as contemplated in section 271AAA of the Income Tax Act, 1961 as the said cash itself was not found from the possession of the assessee but belonged to his wife who had passed away after the date of search and seizure operation. It was submitted that the same had been elaborately explained by the assessee in his computation of

income as well as in his reply dated 01/03/2014 filed in response to the questionnaire dated 01/11/2013. It was also submitted that the AO had also drawn a wrong inference that the cash had not been substantiated and that the Ld. at CIT appeals had also misapplied the provisions of the Act while confirming the penalty.

4. The Ld. departmental representative, on the other hand, placed reliance on the order of the Ld. CIT (Appeals) and vehemently argued that the penalty in this case was rightly upheld and, therefore, the same should not be deleted.

5. We have heard the rival submissions and have also perused the material on record. Before proceeding to examine the rival contentions, it would be worthwhile to reproduce section 271AAA. Section 271AAA reads as under:

“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 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 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"

5.1 The facts of the case reveal that the amount was found during the course of search which the assessee claimed to be his wife's savings/pin money. This amount was not surrendered at the time of search but was surrendered subsequently during the course of assessment proceedings by assessee surrendering the same in his own hands in the computation of income. Therefore, as per the specific provisions of section 271AAA, this amount does not specifically fall under the definition of undisclosed income found during the course of search. It is also noteworthy that the assessing officer accepted this surrender without any questions asked. Even if for the sake of argument, the same is accepted as to be cash found during the course of

search, it is undisputed that the assessee has paid tax due thereon. The only question thereafter remaining is whether the same was substantiated by the assessee or not. The assessee has already explained the source that is savings/pin money of his wife and as far as the substantiation is concerned, it would be relevant to mention here that given the fact that it is a search case, the question of specifying and substantiating the manner in which the undisclosed income has been derived can be somewhat general and omnibus and no precise calculations or computations can be done with reference thereto. The Cuttack Bench of the Income-Tax Appellate Tribunal in the case of Sri Pramod Kumar Jain vs Deputy Commissioner of Bargarh Income Tax, Circle 2(1) and M/s JRC Resources (P) Ltd vs. CIT Sambalpur in ITA Nos. 131, 132 and 133/CTK/2012 held that having accepted the surrendered income on the basis of returns filed by an assessee, satisfaction as to the specifying and substantiating the manner in which the same has been earned gets answered automatically. In this regard the following comments of the Income-Tax. Appellate Tribunal are topical and relevant:

"We have heard the rival contentions and perused the material available on record. On consideration of the facts and circumstances of the case, we are inclined to hold that no definition could be given to the "specified manner" insofar as the very statement on oath u/s 132(4) specifies the manner on which the assessee is prepared to pay tax thereon. The inscribing in the books of account was taken care of by the assessee when he filed the returns in pursuance to notice u/s 153A accounting the assets. Therefore, the case laws cited at the Bar clearly indicate that the penalty is not automatic if one of the purported conditions is not fulfilled although all the conditions have been agreed to of having fulfilled by the Assessing Officer insofar as the tax and interest has been recovered. Penalty has been levied after the tax has been recovered therefore answers the queries raised by the Learned DR for that the said provisions become redundant was not the intention of the legislation. The manner, during the search operation, is noted by the search party which the Assessing Officer has acceded to. Therefore, following the decisions as relied upon by the Learned counsel for assessee, wherein the Tribunal was pleased to consider cancelling the penalty so levied are also applicable to the assessee's case before us insofar as there is no prescribed method to indicate the manner in which income was generated when the definition of "undisclosed income" has been defined in the Act itself 'when no income of the specified previous year represented "either wholly or partly" which onus lay upon the assessee stood discharged."

5.2 In view of the above, we are of the considered view that the levy of penalty u/s 271 AAA in the instant case was not justified and as such, we cancel the penalty so levied u/s 271AAA for the year under consideration.

6. In the final result, the appeal of the assessee stands allowed.

The order is pronounced in the open court on 4th October, 2017.

Sd/-

**(G.D. AGRAWAL)
PRESIDENT**

Sd/-

**(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER**

Dated: 4th October, 2017

‘GS’

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

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By Order

ASSISTANT REGISTRAR