

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri P.M. Jagtap, Accountant Member and  
Shri S.S. Viswanethra Ravi, Judicial Member**

**I.T.A. No. 1119/KOL/ 2014  
Assessment Year: 2010-2011**

**Sanjay Kumar Agarwal,.....Appellant**  
**C/o. Society Hardware Stores,**  
**P.S. Road, Gangtok, Sikkim**  
**[PAN: ATEPA 8461 G]**

**-Vs.-**

**Deputy Commissioner of Income Tax,.....Respondent**  
**Central Circle-XXII, Kolkata,**  
**110, Shanti Pally, E.M. Bye Pass,**  
**Aayakar Bhawan Poorva,**  
**Kolkata-700 107**

**Appearances by:**

**Shri Subash Agarwal, Advocate, for the assessee**  
**Shri Sallong Yaden, Additional CIT, D.R., for the Department**

Date of concluding the hearing : June 07, 2017

Date of pronouncing the order : June 14, 2017

**O R D E R**

**Per Shri P.M. Jagtap, A.M.:**

This appeal filed by the assessee is directed against the order of ld. Commissioner of Income Tax (Appeals), Central-III, Kolkata dated 11.04.2014, whereby he confirmed the penalty of Rs.36,675/- imposed by the Assessing Officer under section 271AAA of the Act.

2. The assessee in the present case is an individual, who belongs to 'Begraj Group". A search and seizure action under section 132 was conducted in the cases belonging to the said Group including the case of the assessee. Consequent to the said action, a notice under section 153A of the Income Tax Act was issued by the Assessing Officer to the assessee.

As noted by the Assessing Officer, the assessee, however, had meanwhile filed his return of income for the year under consideration under section 139 of the Act on 23.12.2011 declaring total income of Rs.22,93,520/-. In the said return, set off of Rs.3,66,754/- was claimed by the assessee on account of brought forward losses. In the absence of any evidence to support and substantiate the said claim, the Assessing Officer disallowed the same in the assessment completed under section 143(3) vide an order dated 30.12.2011. He also imposed penalty of Rs.36,675/- under section 271AAA of the Act being 10% of the sum of Rs.3,66,754/- disallowed by him on account of assessee's claim for set off of brought forward losses.

3. The penalty imposed by the Assessing Officer under section 271AAA was challenged by the assessee in the appeal filed before the Id. CIT(Appeals) and since the submission made by the assessee in support of his case on the issue of imposition of penalty under section 271AAA was not found acceptable by him, the Id. CIT(Appeals) confirmed the penalty imposed by the Assessing Officer under section 271AAA after recording his observations/findings as under:-

*"Coming back to section 271AAA with which we are concerned here, the Id. AR in the submissions has also tried to tweak on legal interpretation of the words and phrases in the section 271AAA, viz.- "undisclosed income", and "specified previous year". I do not find any force in the AR's interpretations, as the case of the appellant is clearly covered as "undisclosed income" under Explanation (a)(ii) being entry in books of account or other documents which is found to be false and would not have been found to be so at the search not been conducted. As regards "specified previous year", the search action being initiated on the 22.03.2010, the FY 2009-10 is clearly the "specified previous year" as per Explanation (b)(ii).*

*Thus, foremost on the fact itself, the appellant has not even offered any explanation to what the brought forward losses are/from where they have been arrived at".*

4. Aggrieved by the order of the Id. CIT(Appeals), the assessee has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. As per the provisions contained in sub-section (1) of section 271AAA, the Assessing Officer may, notwithstanding anything contained in any other provisions of the Act, direct that, in a case where search was initiated under section 132 on or after the 1<sup>st</sup> day of June, 2007 but before 1<sup>st</sup> day of July, 2012, 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 percent of the undisclosed income of the specified previous year. The term "undisclosed income" for the purposes of section 271AAA is defined in Explanation (a) as under:-

*"(a) 'undisclosed income', means-*

*(i) Any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has-*

*(A) Not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or*

*(B) Otherwise not been disclosed to the Chief Commissioner or Commissioner before the date of search; or*

*(ii) Any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted".*

6. The ld. counsel for the assessee has contended that the penalty under section 271AAA is imposed in the case of the assessee on account of addition made by the Assessing Officer by way of disallowance of assessee's claim for set off of brought forward losses, which cannot be considered as income of the assessee represented either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in

the course of a search under section 132. Although the ld. D.R. has relied on the impugned order of the ld. CIT(Appeals) to contend that the addition made by the Assessing Officer is covered by Clause (ii) of Explanation (a) to section 271AAA, we find merit in the contention of the ld. counsel for the assessee that the disallowance of assessee's claim for set off of brought forward losses cannot be considered as income by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course as envisaged in Clause (ii) of Explanation (a). Moreover, it is not a case where the same is found to be false and would not have been found to be so had the search not been conducted. Even the Assessing Officer himself has not made out such a case either in the assessment order or even in the penalty order. We, therefore, find merit in the contention of the ld. counsel for the assessee that the disallowance of assessee's claim for set off of brought forward losses cannot be treated as 'undisclosed income' for the purpose of imposing penalty under section 271AAA. Accordingly, we cancel the penalty imposed by the Assessing Officer and confirmed by the ld. CIT(Appeals) and allow this appeal of the assessee.

**7. In the result, the appeal of the assessee is allowed.**

Order pronounced in the open Court on June 14, 2017.

**Sd/-**  
**(S.S. Viswanethra Ravi)**  
**Judicial Member**

**Sd/-**  
**(P.M. Jagtap)**  
**Accountant Member**

***Kolkata, the 14<sup>th</sup> day of June, 2017***

- Copies to :*
- (1) Shri Sanjay Kumar Agarwal,  
C/o. Society Hardware Stores,  
P.S. Road, Gangtok, Sikkim**
  - (2) Deputy Commissioner of Income Tax,  
Central Circle-XXII, Kolkata,  
110, Shanti Pally, E.M. Bye Pass,  
Aayakar Bhawan Poorva,  
Kolkata-700 107**
  - (3) Commissioner of Income Tax (Appeals), Central-III,  
Kolkata;**

- (4) Commissioner of Income Tax ,Kolkata*
- (5) The Departmental Representative*
- (6) Guard File*

*By order*

*Senior Private Secretary,  
Head of Office/DDO  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

***Laha/Sr. P.S.***