

आयकर अपीलीय अधीकरण, न्यायपीठ – “A” कोलकाता,
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
 (समक्ष) श्री ए. टी. वर्की, न्यायीक सदस्य एवं डॉ. अर्जुन लाल सैनी, लेखा सदस्य)
 [Before Shri A. T. Varkey, JM & Dr. A. L. Saini, AM]

I.T.A. No. 1054/Kol/2015
Assessment Year: 2012-13

Deputy Commissioner of Income-tax, Central Circle-4(4), Kolkata	Vs.	Shri Ravi Kumar Khaitan (PAN: AGBPK2281N) Flat-1C, 4, Ho-Chi-Minh Sarani, Kolkata-700 071.
Appellant		Respondent

&

I.T.A. No. 1055/Kol/2015
Assessment Year: 2012-13

Deputy Commissioner of Income-tax, Central Circle-4(4), Kolkata	Vs.	Shri Pradeep Kumar Khaitan (PAN: AGBPK7703R) Flat-1C, 4, Ho-Chi-Minh Sarani, Kolkata-700 071.
Appellant		Respondent

&

I.T.A. No. 1056/Kol/2015
Assessment Year: 2012-13

Deputy Commissioner of Income-tax, Central Circle-4(4), Kolkata	Vs.	Shri Pawan Kumar Khaitan (PAN: AGBPK7702Q) Flat-1C, 4, Ho-Chi-Minh Sarani, Kolkata-700 071.
Appellant		Respondent

Date of Hearing	20.09.2017
Date of Pronouncement	18.10.2017
For the Appellant	Shri Anand R. Baiwar, CIT
For the Respondent	Shri Manish Tiwari, FCA

ORDER

Per Shri A.T.Varkey, JM

All these appeals filed by the revenue are against the separate orders of Ld. CIT(A)-21, Kolkata dated 29.05.2015 for AY 2012-13 wherein the Ld. CIT(A) deleted the penalty levied u/s. 271AAA of the Income-tax Act, 1961 (hereinafter referred to as the "Act"). Since the facts are identical, we propose to adjudicate the case of Shri Pawan Kumar Khaitan in ITA No. 1056/Kol/2015 as the lead case.

2. The brief facts of the case are that a search operation u/s. 132 of the Act was conducted in Rahee Group of cases on 22.09.2011. The search operation was also conducted at the residential and office premises of the assessee. In course of search operation the assessee admitted additional income of Rs.1.50 cr. for taxation in the statement recorded u/s. 132(4) of the Act for AY 2012-13. The AO initiated 153A proceedings against the assessee from AY 2006-07 to 2011-12. Since the search happened in the year under consideration i.e. AY 2012-13, the assessee had filed his return of income u/s. 139 of the Act on 28.09.2012 declaring total income of Rs.1,53,13,440/- including the additional income of Rs.1.50 cr. The assessment was completed u/s. 143(3) of the Act on 31.03.2014 at the assessed income at Rs.1,53,13,440/- i.e. the returned income of the assessee was accepted. While completing the assessment, the AO initiated penalty proceedings u/s. 271AAA of the Act on the additional income admitted by the assessee in the course of the statement given u/s. 132(4) of the Act which was duly declared in the return of income. During the penalty proceedings assessee pleaded that he should be given immunity from levy of penalty as all the conditions stipulated in section 271AAA(2) of the Act has been satisfied. However, the AO did not agree with the contention of the assessee and levied penalty u/s. 271AAA of the Act to the sum of Rs.1.5 cr. on the plea that assessee has not paid tax together with interest in respect of undisclosed income at the time of filing of return in compliance to notice u/s. 142(1) of the Act. Further, it was observed by the AO that the assessee had not substantiated the manner in which the undisclosed income was derived by the assessee and accordingly, held that assessee is not entitled to immunity from penalty. Aggrieved, assessee preferred an appeal before the Ld. CIT(A), who was pleased to delete the penalty. Aggrieved, the revenue is before us.

3. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the assessee did not remit the tax together with interest while filing his return of income. However, nothing turns around on this score because sec. 271AAA of the

Act does not prescribe any time limit for payment of taxes. We find that this issue has already been decided by the Coordinate Bench of this Tribunal in DCIT Vs. Pioneer Marble & Interior reported in 19 Taxman 391 wherein it was held “*in our considered view, therefore, on the facts of the present case wherein the entire tax and interest has been duly paid well within the time limit for payment of notice of demand u/s. 156 of the Act and well before the penalty proceedings were concluded. The assessee could not be denied the immunity u/s. 271AAA of the Act only because entire tax along with interest was not paid before filing of income tax return or for that purpose concluding the assessment proceeding.*” We note in the present case that the assessee has paid the entire tax as demanded by the AO before the penalty proceedings were concluded. Therefore, just because the assessee did not remit the entire tax with interest along with the return of income cannot be the ground to deny immunity to the assessee. We note that the assessee had filed a disclosure petition which has been reproduced by the AO at para VI which is reproduced as under:

“DISCLOSURE

The disclosure petition filed in course search is reproduced below:

Disclosure Petition

1. A search and seizure operation was conducted on Sri Pradeep Kumar Khaitan and also on M.s Rahee Track Technologies Pvt. Ltd. (of which he is a Director).
2. In course of said search, Sri Pradeep Kumar Khaitan under letter 26.09.2011 to the Ld. DDIT offered a sum of Rs. 12 Crores (Twelve crores only) as the undisclosed income of himself and other associates.
3. It is submitted that the said income of Rs. 12 Crore was derived in the financial year 2011-12 and was not disclosed till the date of search on 22.09.2011 of which no regular accounts are maintained. The break-up of total unaccounted income offered for tax, assessee-wise, is summarized as under:-

Break up of Undisclosed Income

Sl. No.	Name of the Entity	Financial Year	Amount (Rs. In Lacs)
1	Pradeep Khaitan	2011-12	200
2	Pawan Kumar Khaitan	2011-12	150
3	Ravi Khaitan	2011-12	150
4	Rahee Infratech Ltd.	2011-12	<u>700</u>
		total	<u>1200</u>

4. The disclosure made in Para 4 above belongs to Financial year 2011-12 and/or is represented, either wholly/partly, by the entries in the material seized from various locations and may also be represented by nay money; bullion, jewellery or other valuable articles or thing, which may have been found in the course of operation.

5. It is submitted that the cash seized amounting to Rs. 4,00,000/- from the residential premises may please be adjusted with the taxes payable by Rahee Infratech Ltd. against the undisclosed income offered for taxation hereinabove. Balance tax payable on the unaccounted income shall be paid in due course.

6. This petition is being made only to buy peace of mind and to avoid protracted litigation; the Group hereby confirms disclosure of an amount of Rs. 12 (Twelve) Crore as its additional income in view of provisions of section 271 AAA of the Act, if any.

7. The disclosure is made by the Group as a token of its bonafide intentions and to extend a hand of co-operation to the Department for concluding the search proceedings.”

4. From the above disclosure statement we note that the assessee had in general terms intimated the undisclosed income. The requirement as per section 271AAA of the Act reads as under:

“77. In the Income-tax Act, after section 271AA, the following section shall be inserted, namely:—
'271AAA. Penalty where search has been initiated.—(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.

(3) No penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).

(4) The provisions of sections 274 and 275 shall, so far as may be, apply in relation to the penalty referred to in this section.

Explanation.—For the purposes of this section,—

(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 the 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;

(b) "specified previous year" means the previous year—

(i) which has ended before the date of search, but the date of filing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and

the assessee has not furnished the return of income for the previous year before the said date; or

(ii) in which search was conducted.'

From the reading of the aforesaid section, 10% of the undisclosed income will be levied if there is no immunity for the assessee. As per the explanation wherein the definition of the term undisclosed income means for the purpose of section 271AAA of the Act the undisclosed income is the income of the specified previous year which is represented by any money, bullion, jewellery or other valuable article or things or any entry in the books of account or other documents or transactions found in the course of search which has not been recorded in the books of account on or before the date of search. However, as apparent from the assessment order, there is no finding of the AO that in the case of assessee there was anything found in the course of search which was not recorded in the books of account. We are of the opinion that merely for the reason that the assessee had admitted additional income in the course of search for taxation, it cannot be said that such admitted income was undisclosed income within the meaning of 'undisclosed income' provided in Explanation to section 271AAA of the Act to impose the penalty. We concur with the Ld. CIT(A) that when the income disclosed u/s 132(4) in the course of search, itself cannot be treated as undisclosed income within the meaning or undisclosed income as provided in Explanation to 271AAA of the Act, the same cannot be treated as undisclosed income to impose the penalty under that section. As rightly noted by the Ld. CIT(A) that as apparent from the assessment order there is no finding of the AO that in the case of the assessee there was anything found in the course of search which was not recorded in the books of account. Just because the assessee has admitted additional income in the course of search it cannot be said that such additional income was undisclosed income within the meaning of undisclosed income provided under explanation to section 271AAA of the Act to impose the penalty. We agree with the Ld. CIT(A) that when the income disclosed u/s. 132(4) of the Act in the course of search itself cannot be treated as undisclosed income within the meaning of undisclosed income as provided in explanation to 271AAA of the Act, the same cannot be treated as undisclosed income to impose the penalty under that section. We note that Rs. 4 lacs seized has been offered by the assessee in the disclosure petition to be taxed in the hands of M/s. Rahee Infratech Ltd. so, without the AO pointing out that the assessee had

undisclosed income in the nature as given in explanation to section 271AAA of the Act, the penalty ought not to have been imposed and that has been rightly deleted by the Ld. CIT(A). We find no infirmity in the impugned order and the same is hereby upheld. Since facts and law are identical in all other appeals, all the appeals of revenue are dismissed.

5. In the result, all the appeals of the revenue are dismissed.

Order is pronounced in the open court on 18th October, 2017

Sd/-

(Dr. A. L. Saini)
Accountant Member

Sd/-

(Aby. T. Varkey)
Judicial Member

Dated : 18th October, 2017

Jd.(Sr.P.S.)

Copy of the order forwarded to:

1. Appellant – DCIT, Central Circle-4(4), Kolkata.
2. Respondent – Assesseees
3. The CIT(A), Kolkata
4. CIT , Kolkata
5. DR, Kolkata Benches, Kolkata

/True Copy,

By order,

Sr. Pvt. Secretary