

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

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-2844/Del/2017
(Assessment Year: 2011-12)**

Shums Inayatali Soomar C/o M/s RRA Taxindia, D-28, South Extension Part-1, New Delhi. AAAPS6321G	vs	ACIT Central Circle 9, New Delhi.
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**&
Stay No. 346/Del/2017
(In ITA No.- 2844/Del/2017)
(Assessment Year: 2011-12)**

Shums Inayatali Soomar C/o M/s RRA Taxindia, D-28, South Extension Part-1, New Delhi. AAAPS6321G	vs	ACIT Central Circle 9, New Delhi.
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Assessee by	Sh. Ashwani Taneja, Adv.
Revenue by	Sh. S.S. Rana, CIT DR

Date of Hearing	12.10.2017
Date of Pronouncement	23.10.2017

ORDER

PER SHRI K.N. CHARY, JUDICIAL MEMBER

This is an appeal by the assessee challenging the order dated 29.03.2017 in appeal no. 528/14-15(Original)/56/15-16 (New) passed by

the Ld. Commissioner of Income Tax (Appeals)-New Delhi (hereinafter for short called as the "Ld. CIT (A)") on the following grounds of appeal:

1. *"That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in imposing penalty of Rs. 16,43,000/- u/s 271AAA and that too without assuming jurisdiction as per law and more so when the impugned penalty order could not have been passed under law.*
2. *That having regard to the facts and circumstances of the case, the Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in imposing penalty u/s 271AAA and that too without assuming jurisdiction and thus passing the impugned penalty order is illegal, void ab-initio, contrary to law and facts and without considering the submission of the assessee and without observing the principles of nature justice.*
3. *That the assessee craves the leave to add, alter or amend the grounds of appeal at any stage and all the grounds are without prejudice to each other."*

2. Briefly stated facts are that consequent to the search conducted in the Aerens Group on 17.08.2011, and 10.02.2012, and notice u/s 153A of the Act, assessee filed the return of income declaring an income of Rs. 2,24,99,268/-. During scrutiny assessment AO found the undisclosed income of Rs. 1,64,00,000/-, while making addition initiated proceedings u/s 271AAA and concluded them by order dated 26.09.2014 by levying a penalty of Rs. 16,43,000/-. Appeal preferred by the assessee was dismissed by way of impugned order. Hence this appeal and along with appeal assessee filed stay petition to stay the demand, pending disposal of the appeal.

3. It is the argument of the Ld. AR that u/s 271AAA of the Act, the AO may direct that the assessee shall pay by way of penalty a sum computed at the rate of 10% of the undisclosed income of the specified previous year, as such, the penalty levied shall be with reference to the specified previous year only. According to him since the search in this case was conducted on 10.02.2012 with reference to clause (b) of Explanation 2 to Section 271AAA the specified previous year is only the F.Y. 2011-12 but not FY 2010-11, as such, the proceedings u/s 271AAA with reference to the previous year relevant for the AY 2011-12 are bad under law. Ld. DR heavily relied upon the orders of the authorities below.

4. Relevant portion of Section 271AAA reads as follows:

“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)

(3)

(4)

Explanation.—For the purposes of this section,—

(a)

(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.”

Therefore, it is clear that u/s 271AAA(1), the penalty has to be computed with reference to this specified previous year and in so far as the previous year in this case is concerned the year in which the search was conducted because for the year ended with 31.03.2011 the due date was 30.09.2011 for filing the return of income and in this matter the assessee had filed the return of income for the AY 2011-12 on 31.07.2011 as is evident from the acknowledgement of return for the AY 2011-12. Therefore, in respect of the case on hand the previous year has to be reckoned not with reference to sub clause (i) but it has to be reckoned with reference to sub clause (ii) in which case the specified previous year is the FY 2011-12 and the AY 2012-13. With this view of the matter, we hold that no penalty u/s 271AAA could be levied with reference to the AY 2011-12 and in this factual matrix we are unable to sustain the orders of the authorities below. We, therefore, quash the same and direct the AO to delete the penalty for the AY 2011-12. Since we disposing of the main appeal itself, stay petition becomes infructuous, as such, the same is liable to be dismissed.

6. In the result, stay petition is dismissed and the appeal of the assessee is allowed.

Order pronounced in the open court on 23.10.2017

Sd/-
(G.D. AGRAWAL)
PRESIDENT

Dated: 23.10.2017

*Kavita Arora

Sd/-
(K.N. CHARY)
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI