

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

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

**ITA No.-2845/Del/2017  
(Assessment Year: 2012-13)**

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.
--	----	---

&

**Stay No. 347/Del/2017  
(In ITA No.- 2845/Del/2017)  
(Assessment Year: 2012-13)**

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.
--	----	---

<b>Assessee by</b>	<b>Sh. Ashwani Taneja, Adv. Sh. Shantanu Jain, Adv.</b>
<b>Revenue by</b>	<b>Sh. S.S. Rana, CIT DR</b>

<b>Date of Hearing</b>	<b>12.10.2017</b>
<b>Date of Pronouncement</b>	<b>23.10.2017</b>

**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. 529/14-15(Original)/84/15-16 (New) passed by

the Ld. Commissioner of Income Tax (Appeals)-25, 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. 3,60,000/- 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 Income Tax Act, 1961 (hereinafter referred as 'the Act') assessee filed the return of income declaring an income of Rs. 1,38,62,056/-. During scrutiny assessment AO found the undisclosed income of Rs. 36 lakhs and while making addition on that score, also initiated proceedings u/s 271AAA and concluded them by order dated 26.09.2014 by levying a penalty of Rs. 3,60,000/-. Appeal preferred by the assessee was dismissed by way of impugned order. Hence this appeal. 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 all the three conditions laid down in sub section (2) of Section 271AAA are fulfilled, and no query was raised by the AO as to the manner in which the undisclosed income was derived and the assessee paid the tax to be with their interest, as such, no penalty could be visited. He placed reliance on the decision reported in DCIT vs. Ashok Nagrath in 124 DTR 0132 (Delhi), Tavir Kumar Diamonds Ltd. vs. ACIT in 32 SOT 272 (Mum.), Pramod Kumar Jain vs. Dy. CIT 77 DTR 244 (Ctk.). The second limb of the contention of the assessee is that neither the assessment order nor the notice issued pursuant thereto u/s 271AAA spell out for violation of which provision the penalty proceedings are initiated, as such, the assessee is deprived of an opportunity to defend themselves effectively. He brought to our notice the contents of paragraph no. 4 of Assessment Order and also the notice issued u/s 271AAA. For this principle he placed reliance on the decision reported in CIT & Anr. Vs. M/s SSA's Emerald Meadows in SLP No. 11485/2016, date or order 05.08.2016, Supreme Court of India, (b) CIT vs. M/s SSA's Emerald Meadows in ITA No. 380/2015, High Court of Karnataka, dated 23.11.2015 and (c) CIT vs. Manjunatha Cotton & Ginning Factory in 359 ITR 565 (Kar.). Basing on these two grounds he submits that the penalty

cannot be sustained. Ld. DR heavily relied upon the orders of the authorities below.

4. We have gone through the record in this matter paragraph no. 4 of the assessment order reads as follows:

*“4. The undisclosed income of Rs. 1,64,00,000/- has been declared in the return of AY 2011-12, and taxes paid. The balance undisclosed income of Rs. 36,00,000/- has been declared in the AY 2012-13. The assessee has made disclosure of Rs. 36,00,000/- only on account of search proceedings, therefore, I am satisfied that penalty proceedings u/s 271AAA is warranted in this case and as such the penal proceedings u/s 271AAA is initiated by issue of penalty u/s 271AAA. Penalty u/s 271(1)(c) is also being initiated for concealing the particulars of income separately.”*

5. So also vide page nos. 10 & 13 copies of notices dated 20.03.2014 and 28.08.2014 are produced. In these notices also it is stated that the assessee had concealed the particulars of income or furnished inaccurate particulars thereof in terms of Explanations 1, 2, 3, 4 and 5. Section 271AAA(1) deals only with undisclosed income of the specified year but the notice is not specific on that aspect. Ld. Counsel submitted that the penalty is levied on altogether a different charge that the assessee was not able to substantiate the manner in which such undisclosed income was earned. Basing on the decisions reported in CIT vs. Mahendra C. Shah in 299 ITR 305, Neerat Singal vs. Asstt. CIT 101 DTR 238 (Del. 'E'), CIT vs. Radha Kishan Goel in 278 ITR 454 and DCIT vs. Sulochanadevi

A. Agarwal in ITA No. 1052/Adh./2012, he argued that in the absence of any query about the manner in which the undisclosed income has been derived and about its substantiation, raised by the AO during the course of recording of statement u/s 132(4) of the Act, the AO is not justified in levying the penalty.

6. It is not the case of the Revenue that after the assessee declared income including the undisclosed income any query was made by the AO as to the manner in which the undisclosed income was derived. AO simply accepted the undisclosed income without raising any query and the assessee paid the taxes with interest. In the circumstances, respectfully following the decisions relied upon by the assessee, we hold that the penalty u/s 271AAA cannot be sustained, and the same has to be deleted. Since, we disposed off the main appeal itself, stay petition becomes infructuous, as such, the same is liable to be dismissed.

7. In the result, stay petition is dismissed as infructuous and the appeal of the assessee is allowed.

Order pronounced in the open court on 23.10.2017

Sd/-  
**(G.D. AGRAWAL)**  
**PRESIDENT**

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

Dated: 23.10.2017

\*Kavita Arora

Copy forwarded to:

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

TRUE COPY

ASSISTANT REGISTRAR  
ITAT NEW DELHI