

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : E : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SHRI KULDIP SINGH, JUDICIAL MEMBER

ITA Nos.4814 to 4816/Del/2014
Assessment Years : 2006-07 to 2008-09

ACIT,
Central Circle-25,
New Delhi.

Vs. Nirmal Gupta,
A-13, Lajpat Nagar,
Sector-4, Sahibabad,
Ghaziabad.

PAN: ACRPG3766G

(Appellant)

(Respondent)

Assessee By : Shri Shashwant Bajpai, Advocate &
Shri Shard Aggarwal, Advocate
Department By : Shri Arun Kumar Yadav, Sr. DR

Date of Hearing : 24.10.2017
Date of Pronouncement : 25.10.2017

ORDER

PER R.S. SYAL, VP:

These three appeals by the Revenue relate to the AYs 2006-07 to 2008-09. Since common issue is raised in these three appeals, we are,

therefore, proceeding to dispose them off by this consolidated order for the sake of convenience.

2. Briefly stated, the facts of the case for the assessment year 2006-07 are that a search and seizure operation was carried out in the case of the assessee. Return for the assessment year 2006-07 was filed declaring total income of Rs.1,03,10,131/- as against the income declared in original return at Rs.3,10,130/-. Thus, the assessee offered an additional surrendered income of Rs.1 crore for the year under consideration. The Assessing Officer levied penalty u/s 271(1)(c) in respect of such additional income of Rs.1 crore. This penalty came at Rs.33.70 lac. The Id. CIT(A) observed that the penalty ought to have been imposed u/s 271AAA as the search was conducted on 31.01.2011, which date falls within the period 01.06.2007 to 30.06.2012, being the period prescribed u/s 271AAA. He, therefore, restricted the penalty to Rs.10 lac, being 10% as stipulated u/s 271AAA . That is how the assessee got relief of Rs.23.70 lac. The Revenue is aggrieved against the reduction in penalty.

3. We have heard both the sides and perused the relevant material on record. Relevant part of section 271AAA(1) provides that : `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 but before the 1st 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 per cent of the undisclosed income of the *specified previous year.*' Definition of the term 'specified previous year' has been given in Explanation (b) as under:-

“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.”

4. On going through the definition 'specified previous year' in juxtaposition to section 271AAA(1), it becomes clear that penalty at the rate of 10% of the undisclosed income is to be imposed only in respect of 'specified previous year.' The Id. DR has placed on record a copy of the order passed by the Chennai Bench of the Tribunal in *ACIT vs. Smt. J. Mythili (2013) 35 taxmann.com 83 (Chennai-Trib.)* in which penalty u/s 271(1)(c) has been held to be applicable as against section 271AAA for the period covered within sub-section (1) of section 271AAA. We find that the Id. CIT(A) simply went by the dates given in sub-section (1) of section 271AAA without examining 'specified previous year' which is crucial for determination of the applicability or otherwise of section 271AAA. Under these circumstances, we set aside the impugned order and remit the matter to the file of the Id. CIT(A) for examining the case afresh in the light of the Explanation (b) to section 271AAA. Needless to say, the assessee will be allowed a reasonable opportunity of hearing in such fresh proceedings.

5. Both the sides are in agreement that the facts and circumstances of the other two years are *mutatis mutandis* similar to those for the A.Y. 2006-07. Following the view taken hereinabove, we set aside the impugned orders for such two years also and remit the matter to the file of CIT(A) for taking a fresh decision in conformity with the view expressed by us hereinabove.

6. In the result, all the appeals are allowed for statistical purposes.

The order pronounced in the open court on 25.10.2017.

Sd/-

[KULDIP SINGH]
JUDICIAL MEMBER

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Dated, 25th October, 2017.

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Copy forwarded to:

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

AR, ITAT, NEW DELHI.