

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

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-2062/Del/2016
(Assessment Year: 2010-11)**

DCIT Central Circle 1, Gurgaon.	vs	Gupta Metal Sheets (P) Ltd. 5948-49, Basti Harphool, Sadr Thana Road New Delhi AABCG0343G
	Assessee by	Sh. Satyen Sethi, Adv. Sh. A.T. Panda, Adv.
	Revenue by	Sh. Munish Kumar Gupta, CIT DR

Date of Hearing	20.12.2017
Date of Pronouncement	26.12.2017

ORDER

PER K. NARSIMHA CHARY, J.M.

Aggrieved by the order dated 05.02.2016 in Appeal No. 35/CIT(A)(C)/GGN/2014-15 passed by the Ld. Commissioner of Income Tax (Appeals)-3, Gurgaon, (for short called as the "Ld. CIT (A)") Revenue preferred this appeal.

2. Briefly stated facts are that, pursuant to the search operation u/s 132(1) of the Income Tax Act, 1961 (for short called as the "Act") in the premises of the assessee on 30.07.2009, the assessee surrendered a sum of Rs. 7 crores for the AY 2010-11. While framing the assessment order, Ld. AO considered a sum of Rs. 5,94,89,848/- out of the surrendered amount, as undisclosed income pertaining to the AY 2010-11

and passed the order u/s 153 of the Act. Ld. AO also proceeded u/s 271AAA of the Act and levied a penalty of Rs. 63,34,543/-.

3. In appeal Ld. CIT (A) found that the Revenue never asked any question regarding the manner of earning the income, as such, the assessee cannot be expected to substantiate the manner of earning of income. While following the decision reported in the Hon'ble Gujarat High Court in the case of CIT vs. Mahendra C. Shah 299 ITR 307 and the decisions of the Tribunal in DCIT vs. Harmohinder Singh Chadha in ITA No. 188/Chd./2015 and DCIT vs. Amarjit Goyal in ITA Nos. 1080 to 1082/Chd./2013 Ld. CIT(A) held that if no question is asked during the statement recorded u/s 132(4) of the Act and if the tax are paid on the surrendered income, then the assessee cannot be expected to further substantiate the manner of earning income, and no penalty could be levied. Challenging this, the Revenue is in this appeal before us.

4. It is the argument of the Ld. DR that the assessee had failed to substantiate with evidence the manner in which the undisclosed income was derived so as to qualify for non levy of penalty within the meaning of sub-section (2) of Section 271AAA of the Act, as such, the penalty levied by the Ld. AO should not have been deleted by the Ld.CIT (A). Per contra, it is the argument of the Ld.AR that it is consistently held by different High Courts that if no query is raised by the Assessing Officer regarding the manner of derivation of the undisclosed income, the statutory requirements of Section 271AAA had not been met by the Department, as such, no penalty could be levied. He placed reliance on the decision in PCIT vs. Mukesh Bhai Raman

Lal Prajapati Tax Appeal No. 434 of 2017 decided by the Hon'ble Gujarat High Court on 24.07.2017 and the decision of the Hon'ble Jurisdictional High Court in PCIT vs. Emirates Technology Pvt. Ltd. (2017) 399 ITR 189 (Del) in support of his contentions.

5. We have perused the record. The observation of the Ld. CIT (A) that in this matter the assessee was never asked by the Revenue any question regarding the manner of earning undisclosed income, is not controverted before us by the Revenue. It, therefore, goes undisputed that the penalty is levied because the assessee himself voluntarily did not reveal the manner in which the undisclosed income was earned. However, the law laid down by the Jurisdictional High Court in the case of Emirates Technologies Pvt. Ltd. (supra), the Hon'ble Gujarat High Court in CIT vs. Mahendra C. Shah (supra) and PCIT vs. Mukesh Bhai Ramanlal Prajapati (supra) is otherwise.

6. In CIT vs. Mahendra C. Shah (supra) followed in PCIT vs. Mukesh Bhai Ramanlal Prajapati (supra), the Hon'ble Gujarat High Court observed as follows:

15. In so far as the alleged failure on the part of the assessee to specify in the statement under Section 132(4) of the Act regarding the manner in which such income has been derived, suffice it to state that when the statement is being recorded by the authorized officer it is incumbent upon the authorized officer to explain the provisions of Explanation 5 in entirety to the assessee concerned and the authorized officer cannot stop short at a particular stage so as to permit the Revenue to take advantage of such a lapse in the statement. The reason is not far to seek. In the first instance, the statement is being recorded in the question and answer form and there would be no occasion for an assessee to state and make averments in the exact format stipulated by the provisions considering the setting in which such statement is being recorded, as noted by Allahabad High Court in case of CIT v. Radha Kishan Goel (supra).

Secondly, considering the social environment it is not possible to expect from an assessee, whether literate or illiterate, to be specific and to the point regarding the conditions stipulated by Exception No. 2 while making statement under Section 132(4) of the Act. The view taken by the Tribunal as well as Allahabad High Court to the effect that even if the statement does not specify the manner in which the income is derived, if the income is declared and tax thereon paid, there would be substantial compliance not warranting any further denial of the benefit under Exception No. 2 in Explanation 5 is commendable.

7. In Emirates Technology Pvt. Ltd. the Hon'ble Jurisdictional High Court held as follows:

“3. The Commissioner of Income Tax (Appeals) in para 4.7 of the order dated November 4, 2013 noted that no specific query had been put to the assessee by drawing his attention to section 271AAA of the Act asking him to specify the manner in which the undisclosed income, surrendered during the course of search, had been derived. The Commissioner of Income Tax (Appeals), therefore, relying on the decisions of this Court held that the jurisdictional requirement of section 271AAA was not met.

4. The above view has been concurred with by the Income Tax Appellate Tribunal.

5. In the facts and circumstances of the case, the court is of the view that the concurrent decision of the Commissioner of Income Tax (Appeals) and the Income Tax Appellate Tribunal represent a plausible view which cannot be said to be perverse.”

8. In view of this established legal position, we are of the considered opinion that the Ld. CIT (A) is right in application of the case law to the facts of the case and in deleting the penalty. We, therefore, consequently find that the appeal of the assessee is devoid of merits and dismissed the same.

7. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open court on 26.12.2017

Sd/-

Sd/-

(N.K. SAINI)
ACCOUNTANT MEMBER

(K. NARSIMHA CHARY)
JUDICIAL MEMBER

Dated: 26.12.2017

*Kavita Arora

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI