

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'डी' ,मुंबई।

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES, 'D' MUMBAI**

श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री राजेश कुमार, लेखा सदस्य, के समक्ष

**Before Shri Joginder Singh, Judicial Member, and
Shri Rajesh Kumar, Accountant Member**

**ITA No.241/Mum/2016
Assessment Year: 2012-13**

Rajendrakumar Champalal Jain 1901/1902, Darshan Heights, Zaobawadi, Thakurdwar, Mumbai-400002	बनाम/ Vs.	DCIT, Central Circle-4(2), Room No.411, 4 th Floor, Aayakar Bhavan, M.K. Road, Mumbai-400020
(निर्धारिती /Assessee)		(राजस्व /Revenue)
PAN. No. AAAPJ8332J		

निर्धारिती की ओर से / Assessee by	Shri Rakesh Sakaria
राजस्व की ओर से / Revenue by	Shri Saurabh Deshpande-DR

सुनवाई की तारीख / Date of Hearing :	02/11/2017
आदेश की तारीख /Date of Order:	02/11/2017

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is in appeal, challenging the impugned order dated 28/10/2015 of the Ld. First Appellate Authority, Mumbai, upholding the levy of penalty of Rs.1,08,088/- u/s 271AAA of the Income Tax Act, 1961 (hereinafter the Act) on the income disclosed during search action u/s 132 of the Act.

2. During hearing, Shri Rakesh Sakaria, Ld. counsel for the assessee, stated at bar that the addition on the basis which penalty was imposed has been deleted and the appeal has been decided in favour of the assessee, therefore, the penalty will not survive. This contention of the assessee was not controverted by Shri Saurabh Deshpande, ld. DR.

2.1. We have considered the rival submissions and perused the material available on record. The facts, in brief, are that the assessee, an individual, at the relevant time was partner in various partnership firm, engaged in the business of construction and redevelopment of properties.

The assessee declared income of Rs.97,20,610/- in his return filed on 20/02/2013. There was search action u/s 132 of the Act upon the assessee at his residential premises, wherein, certain ornaments, jewellery and silver utensils were found. As per the assessee, these items were duly explained with supporting evidence. Before us, the ld. counsel for the assessee, filed paper book by inviting our attention to page-5 of the same, wherein, through question no.1 of the statement of Shri Rajendra C. Jain, the inventory of jewellery found including silver items valued at Rs.10,80,040/-. In reply, the old silver items were claimed to be inherited from the parents and no documentary evidence was produced to substantiate the source, therefore, the assessee offered Rs.15 lakh as income to cover up the discrepancy in the investment in the silver items and any other discrepancies, subject to the condition no penalty/prosecution proceeding will be initiated, meaning thereby, the interest of the Revenue has already been safeguarded. The contents of the statement are reproduced hereunder:-

Q.3. The inventory of jewellery found include silver items (20.770 Kgs.) valued at Rs.10,80,040/- you are therefore requested to furnish the source of acquisition of such assets along with documentary evidence thereof.

Ans. The Silver items/utensils are very old items inherited by me from my parents and same were belonging to them. However, I do not have any documentary evidences as on date of substantiate the same. I am tendering a pay order of Rs.10,80,000/- dated 12.11.2011 with a request not to seize the silver items.

Q.4. Dou you want to say anything else?

Ans. Sir, I am offering Rs.15,00,000/- as my current year's income being brokerage earned from real-estate transactions done for others to cover up the discrepancies in the investment in silver items and any other discrepancies. I request your honour since the above admission of income has been made voluntarily explaining the source, no penalty and prosecution proceedings may be initiated against me or any of my family members."

The contents of the statement were not controverted by the Revenue. It was also explained that the aforesaid amount was surrendered which was earned from brokerage and due taxes thereupon were paid. This claim of the assessee was not controverted by the Revenue. Thus, we are of the view, it may be a good case for quantum addition but not for penalty. Thus, the appeal of the assessee is allowed and the ld. Assessing Officer is directed to delete the penalty.

Finally, the appeal of the assessee is allowed.

This order was pronounced in the open court in the presence of the ld. representatives from both sides at the conclusion of the hearing on 02/11/2017.

Sd/-

Sd/-

(Rajesh Kumar)

(Joginder Singh)

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 02/11/2017

Shekhar, P.S./नि.स.

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Assessee.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai