

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "B": NEW DELHI
BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 3226/Del/2016
(Assessment Year: 2012-13)

ACIT, Central Circle-17, Room No. 103, First Floor, Hall No. 1, ARA Centre, E-2, Jhandewalan, New Delhi	Vs.	Shri Sajjan Singh, F-180, C-Scheme, Subhash Nagar, Jaipur, PAN:APFPS5687B
(Appellant)		(Respondent)

CO No. 195/Del/2017
(In ITA No. 3226/Del/2016)
(Assessment Year: 2012-13)

Shri Sajjan Singh, F-180, C-Scheme, Subhash Nagar, Jaipur, PAN:APFPS5687B	Vs.	ACIT, Central Circle-17, Room No. 103, First Floor, Hall No. 1, ARA Centre, E-2, Jhandewalan, New Delhi
(Appellant)		(Respondent)

ITA No. 3227/Del/2016
(Assessment Year: 2012-13)

ACIT, Central Circle-17, Room No. 103, First Floor, Hall No. 1, ARA Centre, E-2, Jhandewalan, New Delhi	Vs.	Aryan Ispat and Power Pvt Ltd, 1 st Floor, Building No. 8, Community Center, Vasant Lok, New Delhi PAN: AAECA5656E
(Appellant)		(Respondent)

CO No. 197/Del/2017
(In ITA No. 3227/Del/2016)
(Assessment Year: 2012-13)

Aryan Ispat and Power Pvt Ltd, 1 st Floor, Building No. 8, Community Center, Vasant Lok, New Delhi PAN: PAN: AAECA5656E	Vs.	ACIT, Central Circle-17, Room No. 103, First Floor, Hall No. 1, ARA Centre, E-2, Jhandewalan, New Delhi
(Appellant)		(Respondent)

Revenue by :	Ms. Ashima Neb, Sr. DR
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Assessee by:	Shri Sajjan Kr Tulsiyan, Adv Ms. Nisha Rachh, CA Shri Karan Kumra, CA
Date of Hearing	30/11/2017
Date of pronouncement	19/01/2018

ORDER

PER PRASHANT MAHARISHI, A. M.

1. Both the above appeals of the revenue with respect to the above two different assessee's involves similar issues of penalty levied u/s 271AAA of the Income Tax Act deleted by the Id CIT(A). The facts are also similar therefore, both the appeal of the revenue as well as Cross objections of the assessee are heard together and disposed of by a common order.

ACIT Vs. Sajjan Singh
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CO No. 195/Del/2017
AY 2012-13

2. This is an appeal filed by the Revenue and the cross objection filed by the assessee against the order of the Id CIT(A)-27, New Delhi 11.03.2016 for the Assessment Year 2012-13, wherein, the penalty levied by Asst. CIT, Central Circle-17, New Delhi u/s 271AAA of the Income Tax Act of Rs. 1731180/- was cancelled. The revenue has raised the following grounds of appeal in ITA No. 3226/Del/2016 for the AY 2012-13:-

- "1. That the Ld. Commissioner of Income tax (Appeals) has erred in law and on the facts in deleting the penalty of Rs. 17,31,180/- u/s 271AAA levied by the AO.
2. That the Commissioner of Income Tax (Appeals) has erred in law and on the facts in holding that the assessee fulfilled all the conditions of section 271AAA(2) without appreciating the fact that the assessee did not fulfill any of the condition laid down in clause 2 of section 271AAA of the Income Tax Act, 1961.
3. That the Commissioner of Income Tax (Appeals) has erred in law and on the facts in wrongly stating that the assessee described

the manner in which undisclosed income was earned and also substantiated the same ignoring the fact that the assessee never specified the manner in which undisclosed income has been claimed nor substantiated the manner in which such income was derived both during the assessment/penalty proceedings and also at the appellate proceedings.

4. *(a) The order of the Ld.CIT(A) is erroneous and not tenable in law and on facts."*
3. The assessee has raised the following grounds in Cross Objection No. 195/Del/2017:-
 - "1. *That the departmental appeal challenging deletion of penalty of Rs. 17,31,180/- u/s. 271 AAA of the Act by the Ld. C.I.T.(A) is completely vague with ignoring the evidences placed and available on record, based on which the Ld. CIT(A) had rightly deleted the penalty u/s 271 AAA.*
 - 2) *That the Ld. C.I.T.(A) has rightly deleted the penalty after verifying and satisfying herself about the undisclosed income, surrendered by the respondent during the course of his statement u/s 132(4), and holding that the respondent fulfilled the conditions of section 271 AAA(2) of the Act.*
 - 3) *That the Ld. CIT(A) has rightly verified the statement u/s 132(4) in detail wherein the respondent had duly explained the manner in which undisclosed income was earned, and also taking into account the fact that the returned income was also duly accepted by the assessing officer."*
4. The brief facts of the case is that assessee is an individual who was subjected to search and seizure operation u/s 132 on 12.04.2012. The Id AO issued notice u/s 153A. The assessee filed return which was assessed u/s 143(3) read with section 153A on 30.03.2015. The income assessed was Rs. 11870830/-. During the search assessee disclosed undisclosed income on account of cash, jewellery, marriage expenses and capital gain which was included in the return of income for the impugned assessment year and assessed at the same amount.
5. The Id Assessing Officer initiated penalty proceedings u/s 271AAA because in the statement recorded u/s 132(4) of the Act the assessee

did not disclose the above sum and also failed to substantiate the manner in which such undisclosed income was derived.

6. The assessee explained before the Id Assessing Officer that cash found during the course of search on 12.04.2012 the assessee disclosed of Rs. 10400000/-. Regarding the jewellery same was also disclosed in the statement. Similarly, marriage expenses and capital gain was also disclosed in the statement. It was further stated that it was admitted during the course of search and assessee has also shown that cash was received on account of property sold and jewellery was also out of undisclosed income. With respect to the marriage the assessee informed month as well as the occasion of incurring the above expenditure. With respect to the capital gain assessee also disclosed the year in which it is sold the amount of capital gain earned. Therefore, the assessee submitted that it fulfills all the conditions of section 271AAA(2) of the Act as the taxes have also been paid by the assessee.
7. The Id Assessing Officer rejected the contention of the assessee because the assessee has failed to substantiate the manner in which the above income was earned. Therefore, according to the Id Assessing Officer the condition (ii) of sub-section 271AAA is not fulfilled. Therefore, penalty of Rs. 1731180/- was levied.
8. Assessee challenged the same before the Id CIT(A) who deleted the above penalty holding that assessee has surrendered the above sum in his statement u/s 132(4) and described the manner of earning such income and substantiated the same. The assessee has also included the above sum in his return of income and paid the taxes. In view of this it was held that all the conditions of sub-section (ii) are fulfilled. Therefore, the revenue is in appeal before us.
9. The Id DR vehemently stated that assessee has failed to fulfill the requirement mentioned in above section and therefore, penalty has

rightly been levied. She supported the order of the Id AO and opposed the finding of the Id CIT(A).

10. The Id Authorised Representative vehemently submitted that the assessee fulfills all the conditions and therefore, penalty has been rightly been deleted. He placed his written submission contesting the above facts. In his written submission he referred to the several decisions of ITAT and High Courts. In the end he submitted that now the issue is squarely covered by the decision of the Hon'ble Delhi High Court in case of Pr. CIT Vs. Emirates Technologies Pvt. Ltd and Gujarat High Court in case of Pr. CIT Vs. Mukesh Bhai Raman Lal Prajapati and Pr. CIT Vs. M/s. Geeta Printers. In view of this he submitted that now the issue is squarely covered in favour of the assessee.
11. We have carefully considered the rival contentions and also perused the orders of the lower authorities. The statement of the assessee was recorded on 12.04.2012 consisting the 30 questions. The assessee has disclosed the above sum in his statement vide Q No. 27 to 30 of his statement. Further, the assessee has also disclosed the above amount in his return of income and paid due tax thereon. Furthermore, while disclosing the above amount the assessee has also substantiated the source from which the such sum was earned. However, on reading of the statement of the assessee recorded u/s 132(4) of the Act we do not find any question raised by the search party to the assessee to show the manner in which the income is earned and how the above income is earned. The assessee himself has stated the undisclosed income and the manner in which it is earned. The Hon'ble Delhi High Court in case of Pr. CIT Vs. Emirates Technologies Pvt. Ltd in ITA No. 400/2017 dated 18.07.2017 has held upheld the order of lower authorities in deleting the penalty levied u/s 271AAA. In that particular case where no specific query has been put to the assessee by drawing his attention to the provisions of 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, penalty was deleted. Further, similar view has been taken by Hon'ble Gujarat High Court in ITA No. 434/2017 dated 24.04.2017 in Pr. CIT-2, Vs. Mukesh Bhai Raman Lal Prajapati relying on the decision of the Hon'ble Gujarat High Court in case of CIT Vs. Mahendershri Shah 299 ITR 305 and Hon'ble Allahabad High Court in CIT Vs. Shri Radhakrishan Goel 278 ITR 454. The Id CIT(A) has also deleted the penalty for the same reasons. NO contrary decision was put to our attention. Therefore, the decision of the CIT(A) is confirmed. The Id Assessing Officer is directed to delete penalty u/s 271AAA of Rs. 1731180/-.

12. In the result appeal of the revenue is dismissed.
13. The cross objection filed by the assessee in CO No. 195/Del/2017 are supportive in nature and therefore, same are allowed as we have already dismissed the appeal of the revenue.
14. In the result appeal of the revenue is dismissed and CO of the assessee is allowed.

ACIT Vs. Aryan Ispat and Power Pvt Ltd
ITA No. 3227/Del/2016
CO No. 196/Del/2017
Assessment Year 2012-13

15. This appeal is filed by the revenue and cross objection filed by the assessee against the order of the Id CIT(A)-27, New Delhi dated 22.03.2016, wherein, the penalty u/s 271AAA of Rs. 2,00,00,000/- levied by the Id Assessing Officer vide order dated 30.09.2015 is deleted.
16. The revenue has raised the following grounds in ITA No. 3227/Del/2016 for the AY 2012-13:-

- "1. That the Ld. Commissioner of Income tax (Appeals) has erred in law and on the facts in deleting the penalty u/s 271 AAA of Rs. 2 Crore levied by the AO.*
- 2. That the Commissioner of Income Tax (Appeals) has erred in law and on the facts in holding that the assessee fulfilled all the conditions of section 271AAA(2) without appreciating the fact that*

the assessee did not fulfill any of the condition laid down in clause 2 of section 271AAA of the Income Tax Act, 1961.

3. *That the Commissioner of Income Tax (Appeals) has erred in law and on the facts in wrongly stating that the assessee described the manner in which undisclosed income was earned and also substantiated the same ignoring the facts that the assessee never specified the manner in which undisclosed income has been claimed nor substantiated the manner in which such income was derived both during the assessment/penalty proceedings and also at the appellate proceedings.*
 4. *That the Commissioner of Income Tax (Appeals) has erred in law and on the facts in ignoring the fact that the assessee did not pay any taxes on so called undisclosed income which is in complete violation of section 271AAA(2)(IV) of the I.T. Act. 1961.*
 5. *(a) The order of the Ld.CIT(A) is erroneous and not tenable in law and on facts."*
17. The assessee has raised the following grounds of appeal in cross objection No. 197/Del/2017 :-
- "1) *That the departmental appeal challenging deletion of penalty of Rs. 2,00,00,000/- u/s. 271 AAA of the Act by the Ld. C.I.T.(A) is completely vague with ignoring the evidences placed and available on record, based on which the Ld. CIT(A) had rightly deleted the penalty u/s 271 AAA.*
 - 2) *That the Ld. C.I.T.(A) has rightly deleted the penalty after verifying and satisfying herself about the undisclosed income surrendered by the respondent vide letter dated 11.06.2012 prior to conclusion of search, and holding that the respondent fulfilled the conditions of section 271 AAA(2) of the Act.*
 - 3) *That the Ld. CIT(A) has rightly verified the letter dated 11.06.2012 in detail wherein the respondent had explained the manner in which undisclosed income was earned, and also taking into account the fact that the returned income was also duly accepted by the assessing officer.*
 - 4) *That the penalty u/s 271 AAA has rightly been deleted by the Ld. CIT(A) as there was no tax due on the undisclosed income in the case of the respondent owing to loss of Rs. 32,15,47,337 suffered in AY 2012-13."*
18. The brief facts of the case is that assessee is a private limited company. The search u/s 132 was carried out on 12.04.2012. In response to notice u/s 153A, assessee filed return declaring loss of Rs. 321545337/- on 17.09.2014 and in the return of income assessee has

shown Rs. 20 crores disclosed vide letter dated 11.06.2012 of the Chairman and Managing Director of the company. The assessment was framed u/s 143(3) read with section 153A on 30.03.2015 at the returned income. The penalty u/s 271AAA was initiated and assessee submitted its reply stating that during the course of search assessee's Managing Director submitted a letter dated 11.06.2012 when the last authorisation was executed. The sum specified in the case of the assessee was offered in the return of income and tax due thereon, was paid. The assessee has given the details of the disclosure made. However, the Id Assessing Officer levied penalty u/s 271AAA of the Act as according to him assessee did not comply with the conditions of sub-section (ii) of section 271AAA of the Act. The appeal was preferred before the Id CIT(A), who deleted the penalty holding that disclosure was made prior to the conclusion of the search describing the manner of earning income and substantiating the same which was included by the assessee in its return of income by paying due tax thereon. Therefore, revenue is in appeal.

19. The arguments of both the parties remained the same and both of them confirmed the similar facts in this appeal also.
20. We have carefully considered the rival contentions and also perused the orders of the lower authorities. Fact and circumstances of the case in the present appeal are similar to that of appeal of the revenue in case of Shri Sajjan Singh. In that particular appeal by this order we have confirmed finding of the Id CIT(A) in deleting the penalty u/s 271AAA relying on the decision of Hon'ble Delhi High Court and Gujarat High Court. Therefore, in this appeal too, for similar reasons we confirm the finding of the Id CIT(A) in deleting the penalty.
21. In the result appeal of revenue is dismissed.
22. The cross objection filed by the assessee is supporting the findings of the Id CIT(A). as we have already upheld the order of the Id CIT(A) the cross objection filed by the assessee is allowed.

23. In the result ITA No. 3227/Del/2016 filed by the revenue is dismissed and CO No. 197/Del/2017 filed by the assessee is allowed.
24. In the result both the appeals filed by the revenue mentioned order in the present order are dismissed and cross objections filed by the assessee are allowed.

Order pronounced in the open court on 19/01/2018.

-Sd/-

(BHAVNESH SAINI)
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated: 19/01/2018
A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

		Date	
1.	Draft dictated on		PS
2.	Draft placed before author		PS
3.	Draft proposed & placed before the second member		JM/AM
4.	Draft discussed/approved by Second Member.		JM/AM
5.	Approved Draft comes to the Sr.PS/PS		PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk		PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		