

**IN THE INCOME TAX APPELLATE TRIBUNAL “C” BENCH, MUMBAI
BEFORE SRI MAHAVIR SINGH, JM AND SRI MANOJ KUMAR AGGARWAL, AM**

ITA No. 1999/Mum/2016

(A.Y. 2011-12)

ITA No. 2000/Mum/2016

(A.Y. 2012-13)

Jitendra M. Mehta Flat No. 7, Shiv Niwas, Plot No.19, Road. No. 6, Sion (West), Mumbai-400 022	Vs.	The Asst. Commissioner of Income Tax, CC-47, Mumbai
Appellant	..	Respondent
PAN No. AADPM0084D		

Assessee by : Jitendra Singh, AR

Revenue by : Rajat Mittal, DR

Date of hearing: 25-01-2018 **Date of pronouncement :** 31-01-2018

ORDER

PER MAHAVIR SINGH, JM:

These two appeals by the assessee is arising out of the different orders of Commissioner of Income Tax (Appeals)-50, Mumbai, [in short CIT(A)] in appeal No. CIT(A)-50/IT-798&799/2014-15 dated 18-01-2016. The Assessments were framed by the Deputy Commissioner of Income Tax, Central Circle-47, Mumbai (in short DCIT) for the assessment year 2011-12, 2012-13 order dated 21-03-2014 under section 153A read with section 143(3) of the Income Tax Act, 1961(hereinafter 'the Act').



2. The only common in these two appeals of assessee is regards to the order of CIT(A) confirming the action of the AO in imposing penalty under section 271AAA of the act. The CIT(A) confirmed the penalty amounting to ₹ 2.25 lakh in AY 2011-12 and amounting to ₹ 2.85 lakh in AY 2012-13. The facts are exactly identical in both the years. The grounds raised are also identical. Hence, we will take the facts and grounds from ITA No. 1999 & 2000/Mum/2016 for AYs 2011-12 & 12-13. The relevant grounds reads as under: -

“2011-12

1. The Commissioner (Appeals) has erred, on the facts and in the circumstances of the case, in holding that the Assessing Officer was justified in imposing penalty u/s. 271AAA.

2. The Commissioner (Appeals) has erred in confirming the penalty to the extent of Rs. 2,25,000/- out of penalty Rs. 2,31,750/- levied by the Assessing Officer.

2012-13

1. The Commissioner (Appeals) has erred, on the facts and in the circumstances of the case, in holding that the Assessing Officer was justified in imposing penalty u/s. 271AAA.

2. The Commissioner (Appeals) has erred in confirming the penalty to the extent of Rs. 2,85,000/- out of penalty Rs. 10,03,433/- levied by the Assessing Officer."

3. Briefly stated facts are that a search and seizure action under section 132 of the Act was carried on the business and residential



premises of Rohan Group of cases on 26-05-2011. The assessee filed its original return of income for AY 2011-12 on 27-09-2011 and for AY 2012-13 on 28-09-2012 under section 139 of the Act. Consequently to search, notices under section 153C of the Act were issued and assessee filed its returns of income for AYs 2011-12 and 2012-13.

4. The issue relating to penalty is that during the course of search golden valued at ₹ 22.50 lakh and cash of ₹ 28.50 lakh was found in locker. The assessee could not explain the source of investment and cash and accordingly, he disclosed the amount of ₹ 20 lakh for AY 2011-12 during the recording of statement under section 132(4) of the Act. The assessee while filing returns of income offered a sum of ₹ 51 lakh in the return of income for AY 2012-13 instead AY 2011-12, which consists of unexplained cash investment of ₹ 22.50 lakh in gold bar and unexplained money of ₹ 28.50 lakhs. The assessee revised the return of income for AY 2012-13 and reduced the offered undisclosed income by this amount of ₹ 22.50 lakh. Subsequently, the assessee revised the return of income for AY 2011-12 and increased the offered undisclosed income by the sum of ₹ 22.50 lakh and filed revised computation of income for AY 2011-12 including this unexplained cash investment of ₹ 22.50 lakh in the gold bar. The AO initiated the penalty proceedings under section 271AAA in both the assessment years on the undisclosed income ₹ 51 lakh. In AYs 2011-12 & 2012-13, the AO levied the penalty on both the items i.e. investment in gold bar at ₹ 22.50 lakh and cash found from locker at ₹ 28.50 lakhs. The CIT(A) deleted the penalty partly and sustain penalty of ₹ 2.25 lakhs in AY 2011-12 & ₹ 2.85 lakhs in AY 2012-13. In both the cases, the AO levied the penalty and CIT(A) confirmed only on one basis that the assessee is unable to provide the manner of earning the income as provided in explanation to section 271AAA of the Act. Now before us, the learned Counsel for the assessee argued that he has earned this unexplained income from the architect profession which are undisclosed



and kept as past savings. The learned Sr. Departmental Representative, stated that the manner was not disclosed during the penalty proceedings.

5. After hearing both the sides and going through the facts of the case, we find that the assessee is able to explain the manner of earning of this income, which is undisclosed as past savings on account of professional receipts undisclosed. The assessee is in the profession of architect and he is earning professional income, which is disclosed during search under section 132 of the Act. Accordingly, we are of the view that the assessee is able to explain the manner of earning of this income and hence, the penalty levied by AO and confirmed by CIT(A) is hereby deleted. We allow both the appeals of the assessee.

6. **In the result, both the appeals of assessee are allowed.**

Order pronounced in the open court on 31-01-2018.

Sd/-
(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER

Sd/-
(MAHAVIR SINGH)
JUDICIAL MEMBER

Mumbai, Dated: 31-01-2018

Sudip Sarkar /Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.
//True Copy//

BY ORDER,

Assistant Registrar
ITAT, MUMBAI