

**IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH 'B', CHANDIGARH**

BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND MS.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

ITA No.181/Chd/2018
(Assessment Year : 2013-14)

Sh.Swaran Singh,
H.No.2449-50,
Near Aroma, Sector 22,
Chandigarh.

Vs.

The D.C.I.T.,
Central Circle-1,
Chandigarh.

PAN: ACGPS6676J
(Appellant)

(Respondent)

Appellant by : Shri Nikhil Goyal, CA
Respondent by : Shri Surinder Meena, Sr.DR

Date of hearing : 31.05.2018

Date of Pronouncement : 19.06.2018

ORDER

Per Sanjay Garg, Judicial Member :

The present appeal has been preferred by the assessee against the order of Ld. Commissioner of Income Tax (Appeals)-3, Gurgaon (hereinafter referred to as ('Ld.CIT (Appeals)' dated 4.12.2017, passed u/s 271AAA of the Income Tax Act, 1961 (in short 'the Act') in Appeal No.291/CIT(A)(C)/GGN/2015-16 relating to assessment year 2013-14.

2. The assessee in this appeal has agitated the confirmation of the penalty levied by the Assessing Officer u/s 271AAA of the Act. At the outset, the Ld. counsel for assessee inviting our attention to the quantum assessment order as well as the penalty order passed u/s 271AAA of the Act, has submitted that in this case the assessee has not surrendered any undisclosed income during the search

action carried out at the premises of the assessee u/s 132 (1) of the Act. Therefore, the penalty could not have been levied u/s 271AAA of the Act. The assessee stated that the addition of Rs.10,19,484/- was made in to the income on two counts, firstly, in respect of jewellery found at the residential premises and bank lockers amounting to Rs.9,52,214/- and secondly, relating to cash found at the residential premises amounting to Rs.67,270/-He has further submitted that even the quantum additions in respect of jewellery found amounting to Rs.9,52,214/- have been deleted by the CIT(Appeals) vide his order dated 5.1.2018. The only addition sustained in this case is relating to cash found amounting to Rs.67,270/- only.

3. The Ld. DR, on the other hand, has relied upon the order of the lower authorities.

4. We find force in the contentions of the Ld. counsel for assessee. In this case, the assessee has not surrendered any amount during search action. The provisions of section 271AAA of the Act are attracted only in case of surrender of income during search operation. The addition in this case was made during the assessment proceedings carried out u/s 143(3) r.w.s. 153A of the Act and in view of this, penalty, if any, was attracted that could have been levied u/s 271(1)(c) of the Act and not u/s 271AAA of the Act. Even the major portion of the addition relating to jewellery stood deleted. So far as addition relating to cash of Rs.67,270/- was concerned, though the assessee could not furnish the exact evidence

relating to the source of the said amount, therefore, the disallowance was made in this respect, however, so far as penalty proceedings are concerned, we are of the view that the explanation of the assessee that the assessee was an income tax payee for the last so many years and that during the year under consideration, the assessee had declared an income more than Rs.53 lacs, and under the circumstances, the meagre cash amount of Rs.67,270/- found at the premises of the assessee can be considered to be reasonably possessed by the assessee for day to day expenses out of the declared income of the assessee. This does not seem to be a case of concealment of income or furnishing inaccurate particulars of income. In view of this, we do not find any justification on the part of the lower authorities in levying the impugned penalty. The penalty so levied by the lower authorities is hereby deleted.

5. In the result, the appeal of the assessee stands allowed.

Order pronounced in the open court on 19.06.2018

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Dated : 19th June, 2018

Rati

Copy to:

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

Sd/-
(SANJAY GARG)
JUDICIAL MEMBER

Assistant Registrar,
ITAT, Chandigarh

