

आयकर अपीलिय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, JAIPUR

श्री विजय पाल रॉव, न्यायिक सदस्य एवं श्री भागचन्द, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI BHAGCHAND, AM

आयकर अपील सं./ITA No. 822/JP/2017
निर्धारण वर्ष/Assessment Year : 2012-13.

Shri Sanjay Somani, A-25, Subhash Nagar, Jaipur.	बनाम Vs.	The DCIT, Central Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AHUPS 9543 D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 823/JP/2017
निर्धारण वर्ष/Assessment Year : 2012-13.

Shri Peeyush Somani, A-25, Subhash Nagar, Jaipur.	बनाम Vs.	The DCIT, Central Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AZIPS 7028 R		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 825/JP/2017
निर्धारण वर्ष/Assessment Year : 2012-13.

Shri Sameer Somani, A-25, Subhash Nagar, Jaipur.	बनाम Vs.	The DCIT, Central Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN No. AHXPS 8637 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Shri P.C. Parwal (CA)
राजस्व की ओर से / Revenue by : Smt. Seema Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 02.07.2018.
घोषणा की तारीख / Date of Pronouncement : 20/07/2018.

आदेश / ORDERPER BENCH :

These three appeals by three individual assesses who are family members are directed against three separate orders of Id. CIT (A)-4, Jaipur dated 23.08.2017 and 05.09.2017 arise from the penalty orders passed under section 271AAA of the I.T. Act for the assessment year 2012-13. The issue raised in these appeals is identical and common and also arising from the same facts as well as the search and seizure action. Therefore, for the purpose of recording facts, the appeal in ITA No. 822/JP/2017 is taken as lead case wherein the assessee has raised the following grounds :-

- “1. Under the facts and circumstances of the case the learned CIT (A)-4, Jaipur has grossly erred in not allowing the assessee to represent its case before him by ignoring the principles of natural justice and therefore making ex party order of confirmation of order passed by learned AO.
2. Under the facts and circumstances of the case the learned CIT (A)-4, Jaipur has grossly erred in law as well as facts in confirming the order passed by the Id. DCIT, Central Circle-1, Jaipur of imposing penalty of Rs. 2,00,000/- u/s 271AAA of the Income Tax Act, 1961 on total additional income of Rs. 20,00,000 admitted during the course of search proceedings, by wrongly alleging that the assessee has neither specified nor substantiated the manner in which income has been derived, and therefore he is liable for penalty u/s 271AAA of the I.T. Act, 1961 on such disclosed income in the return though it is part of returned income.
3. The above penalty levied by the learned assessing officer is quite illegal arbitrary, excessive without any basis and based on guess, conjecture and surmises.

4. That the appellant assessee craves for a leave to add, alter and amend any grounds of appeal at the time of appellate hearing.

2. There was a search and seizure operation under section 132 of the IT Act on 31.01.2012 in case of Somani Group to which the assesses belong to. During the search and seizure action, statement of Shri Sameer Somani was recorded under section 132(4) in which he offered Rs. 5 crores as undisclosed income of the Somani Group, after consulting with all the partners including the assesses before us. Thereafter, vide letter dated 24th February, 2012 the assesses given the details of bifurcation of undisclosed income of Rs. 5 crores and out of which Rs. 2.41 crores was offered in the case of M/s. Aditya Telelink Pvt. Ltd., Rs. 1.5 crores in the case of M/s. Redd communication India Pvt. Ltd. and balance of Rs. 79 lacs was shared amongst the different individuals of the family. The assesses before us have owned up and offered to tax Rs. 20 lacs each as undisclosed income. The assessee filed returns of income and offered the undisclosed income of Rs. 20 lacs each. The AO accepted the income so declared and offered to tax by the assessee. However, the AO observed that the assesses have neither explained the manner of earning of income nor have substantiated the same and, therefore, penalty proceedings under section 271AAA were initiated against these three assesses. The AO accordingly issued a show cause notice dated 19.08.2014 under section 271AAA read with section 274 of the Act to which the assessee filed reply dated 28.08.2014. The assessee contended that when the assessee has complied with all the conditions provided under section 271AAA, then no penalty is leviable on the amount which was offered to tax. The AO did not accept the contention of the assessee and levied the penalty of Rs. 2,00,000/- each being 10% of the undisclosed income of each

assessee. The assessee challenged the levy of penalty before the Id. CIT (A). The appeals filed by the assesses were dismissed ex parte.

3. Before us, the Id. A/R of the assessee has submitted that the provisions of section 271AAA grants immunity to the assessee who satisfies the conditions that he admits undisclosed income in the statement under section 132(4) and specifies the manner in which such income has been derived. Further, the assessee substantiated the manner in which the undisclosed income was derived and paid the tax together with interest in respect of the undisclosed income. Since the assessee complied with the required conditions and, therefore, the penalty under section 271AAA cannot be levied in the cases of assesses. He has further submitted that in the statement recorded under section 132(4) on 1st February, 2012 Shri Sameer Somani admitted undisclosed income of Rs. 5 crores for the entire group and thereafter vide letter dated 24th February, 2012 the undisclosed income was divided amongst the partners including the three assesses in these appeals who have offered Rs. 20 lacs each to tax. The Id. A/R has further contended that the AO has levied the penalty on the ground that the assessee has not specified the manner in which undisclosed income was derived and, therefore, when the assessee failed to substantiate the manner in which the undisclosed income was derived, the AO has levied the penalty @ 10% of undisclosed income in each case. The Id. A/R has contended that during the course of assessment proceedings, the assessee submitted letter dated 14.3.2014 and explained the manner in which undisclosed income was derived. Therefore, the requirement of specifying the manner in which undisclosed income was derived was satisfied when the assessee explained the same vide letter dated 14.03.2014. The Id. A/R has further contended that there is no specific format or procedure

prescribed under the Act for substantiation of manner in which the undisclosed income was derived. Hence the explanation of the assessee in the letter dated 14.03.2014 satisfied the requirement of the provisions. He has pointed out that the assessee has admitted that he has entered into transactions of land/property and earned the commission and brokerage income and income arising from the same is declared in the return. Thus the assessee explained the manner in which the undisclosed income was earned and also substantiated the same and hence the conditions required for grant of immunity of penalty under section 271AAA has been satisfied. In support of his contention, he has relied upon the decision of Hon'ble Gujarat High Court in case of Principal CIT vs. Swapna Enterprise, 401 ITR 488 (Guj.) as well as the decision of the Delhi Benches of the Tribunal in the case of Sita Ram Gupta vs. ACIT, 151 ITD 449 (Trib.)(Del.). Hence, the Id. A/R has submitted that the condition of specifying the manner in which undisclosed income was derived stood duly satisfied by the assessee before the authorities below and, therefore, the penalty levied under section 271AAA may be deleted/cancelled.

4. On the other hand, the Id. D/R has relied upon the orders of the authorities below and submitted that the AO while passing the penalty order under section 271AAA has clearly stated that the assessee failed to substantiate the manner of earning the undisclosed income. The Id. D/R has further submitted that the AO has clearly pointed out that no return was filed by the assessee for the year under consideration within the time prescribed under section 139(1) of the Act and, therefore, a notice under section 142(1) was issued on 30th October, 2012 for filing the return. In compliance to this notice, the assessee filed his return of income on 31.12.2012 declaring total income which included undisclosed income declared

during the search and seizure action. However, the assessee could not explain the manner of earning the additional undisclosed income nor could substantiate the manner of earning. Therefore, the penalty under section 271AAA is leviable when the assessee has failed to comply with the conditions.

5. We have considered the rival submissions as well as relevant material on record. The sole ground for levy of penalty under section 271AAA is non substantiation of manner of earning the income which was surrendered by the assessee. It is pertinent to note that the undisclosed income of Rs. 5 crores was disclosed in the statement under section 132(4) by one Shri Sameer Somani who is also family member of the assessee and representing the entire group. The relevant part of the statement has been produced by the AO in the penalty order at page 3 as under :-

“ प्रश्न 32 आज आपके आवासीय भवन ए-25, सुभाष नगर, जयपुर पर दिनांक 31.01.2012 से 01.02.2012 तक तलाशी की कार्यवाही की गई इस भवन में आप स्वयं, आपके बड़े भाई श्री संजय सोमानी, आपकी माता श्रीमती सरला सोमानी, आपके चाचा श्री जय कुमार सोमानी एवं उनके पुत्र श्री पियुष सोमानी अपने-अपने परिवार के साथ विभिन्न तलों पर रहते हैं। तलाशी कार्यवाही के दौरान आपके निवास स्थान के अलावा आपकी फर्मो/कम्पनी के कार्यालयों पर भी तलाशी व सर्वे की कार्यवाही भी की गई। इस दौरान आपके ऑफिस कार्यालयों व निवास स्थान पर विभिन्न कागजात पाए व जब्त किए गए हैं। आपने जबत कागजातों का सत्यापन अपनी बही खातों व लेखा पुस्तकों से सत्यापन नहीं कराया गया। इन पाये व जब्त किए गये कागजातों के आधार पर आपके व आपके परिवार के अन्य सदस्यों एवं आपकी पारिवारिक फर्मों और कम्पनियों में अघोषित आय व निवेश की सम्भावना बनती है। इस सम्बन्ध में आप क्या कहना चाहते हैं।

उत्तर : सर्च की कार्यवाही के दौरान हमारे निवास एवं हमारी कम्पनियों व फर्मों के कार्यालयों पर से विभिन्न कागजात पाए व जब्त किए गए हैं। मैं व मेरे परिवार के अन्य सदस्य इन कागजातों में इन्द्राज प्रतिष्ठियों का सत्यापन

बही खातों व लेखा पुस्तकों से नहीं करवा सके है। इस सम्बन्ध में मैंने श्री संजय सोमानी, जय कुमार सोमानी, पियुष सोमानी के विचार विमर्श करने के बाद हम सभी इस नतीजे पर पहुंचे हैं कि हमारी फर्मों व कम्पनियों में रूपये पाँच करोड़ की अघोषित आय स्वीकार करते हुए आयकर के लिए समर्पित करते हैं। इस अघोषित आय पर हम देय आयकर नियमानुसार चुका देंगे। हमारी किन फर्मों/कम्पनियों की अघोषित आय है। इसका पूर्ण विवरण हमारी कम्पनियों व फर्मों के कार्यालयों में पाए व जब्त किए गए कागजातों/लेखों पुस्तकों के सतयापन के बाद आपके कार्यालय में प्रस्तुत कर देंगे। ”

Thus as per the statement recorded under section 132(4) the total amount of Rs. 5.00 crores was disclosed as undisclosed income for the entire group which was subsequently distributed amongst various partners which includes two corporate entities and four individuals. However, out of Rs. 5 crores, Rs. 79 lacs was shared by four individuals and the assessee before us have owned up Rs. 20 lacs each from the undisclosed income. Thus the major part of the undisclosed income was owned up by two corporate entities viz. M/s. Aditya Telelink Pvt. Ltd and M/s. Redd Communication India Pvt. Ltd. It is also clear that at the time of statement the manner of earning the undisclosed income was not substantiated nor it was explained though it may be reflected from the seized material itself. However, from the statement recorded under section 132(4) it is not clear as to how the undisclosed income was earned by the group as a whole. Subsequently, vide letter dated 24th February, 2012 the assessee group has bifurcated the undisclosed income amongst various partners and Rs. 79 lacs was owned up by four individuals who are family members including the three assessee before us. The relevant part disclosing Rs. 79 lacs in the hands of individuals in the letter dated 24th February, 2012 is as under :-

"(c) Disclosure of additional income of Rs. 79,00,000/-.

The break up of additional income of Rs. 79.00 lacs amongst different assesses of our family and business concern, the manner of earning the additional income disclosed will be submitted subsequently on detailed scrutiny fothe seized material/records and/or post search inquiry carried out by the department either before/at the time of filing of return of income and/or in the assessment proceedings by claiming the telescoping effect against any proposed addition that may be proposed to be made by the A.O. in the assessment proceedings on the basis of seized material/records as well as in respect of gold ornaments and jewellery found during the course of search proceedings in respect of which the explanation offered by the assessee is not acceptable to the Assessing Officer."

Therefore, it is apparent from the said letter that there was no explanation or substantiation of the manner in which undisclosed income was derived by the individuals. The assessee has contended that during the course of assessment proceedings vide letter dated 14.03.2014 the assessee has substantiated the manner in which the undisclosed income was derived. However, we find that the said letter also does not disclose any specific manner but a stand was taken by the assessee that it was a voluntary disclosure of total amount of Rs. 5 crores pertaining to the assessee as well as different members of the family and concerns/firms/companies. The reference was also made to the letter dated 24.02.2012. Thus it is clear that so far as the individual assesses are concerned, there is no separate or specific substantiation of the manner in which the undisclosed income was earned. However, since the disclosure was made as a consolidated amount of Rs. 5 crores

on behalf of the group, then if the substantiation of manner in which the undisclosed income was earned by the group was satisfied in case of the corporate entities who owned up the major share of the undisclosed income, then the out-come of the proceedings in the case of two companies, namely, M/s. Aditya Telelink Pvt. Ltd. and M/s. Redd Communication India Pvt. Ltd. shall have a direct bearing on the question of levy of penalty under section 271AAA of the Act in the hands of the individual assessee. Since neither the assessee nor the department has brought before us any record or material about the status of the penalty proceedings in case of these two companies, namely, M/s. Aditya Telelink Pvt. Ltd. and M/s. Redd Communication India Pvt. Ltd., therefore, in the facts and circumstances of the case, we are of the considered view that the matter needs a reconsideration at the level of the AO and as per the out-come of the penalty proceedings, if any, in the cases of M/s. Aditya Telelink Pvt. Ltd. and M/s. Redd Communication India Pvt. Ltd. Hence, we set aside the matter to the record of the AO to reconsider the levy of penalty in the light of out-come of the penalty proceedings in the case of two companies. Needless to say, the assessee be given an opportunity of hearing before passing the fresh order.

6. In the result, appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on 20/07/2018.

Sd/-

(भागचन्द)
(BHAGCHAND)

लेखा सदस्य / Accountant Member
जयपुर / Jaipur
दिनांक / Dated:- 20/07/2018.
das/

Sd/-

(विजय पाल राव)
(VIJAY PAL RAO)

न्यायिक सदस्य / Judicial Member

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

1. अपीलार्थी / The Appellant-Shri Sanjay Somani, Shri Peeyush Somani and Shri Sameer Somani, Jaipur.
2. प्रत्यर्थी / The Respondent-The DCIT, Central Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File {ITA No. 822, 823 & 825/JP/2017}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar