



IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI
BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND
SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER

ITA no. 1849/Mum/2017
(Assessment Year : 2008-09)

Dy. Commissioner of Income Tax
Central Circle-4(4)
Central Range-4, Mumbai

..... Appellant

v/s

Velji Rupshi Faria
Mahavir General Store
154, Bora Bazar Street
Fort, Mumbai 400 001
PAN – AAIPS5194D

..... Respondent

Revenue by : Shri Rajeev Gubgotra
Assessee by : Shri Kirit Sheth

Date of Hearing – 31.07.2018

Date of Order – 31.08.2018

ORDER

PER SAKTIJIT DEY, J.M.

Aforesaid appeal filed by the Revenue is directed against order dated 28th December 2016, passed by the learned Commissioner (Appeals)-52, Mumbai, deleting penalty of ₹ 74,00,477 imposed under section 271AAA of the Income Tax Act, 1961 (for short "*the Act*") for the assessment year 2008-09.

2. The only effective ground raised by the assessee reads as under:-

"i) Whether on the facts and circumstances of the case and in law, the learned CIT(A) erred in deleting the penalty of ₹ 74,00,477 levied u/s 271AAA."

3. Brief facts are, the assessee is an individual. Pursuant to a search and seizure operation under section 132(1) of the Act in certain business concerns, wherein, the assessee is stated to be the key person, the Assessing Officer initiated proceedings under section 153C of the Act against the assessee. Pursuant to the notice issued under section 153C of the Act, the assessee filed its return of income. During the assessment proceedings, the Assessing Officer referring to the incriminating material found in course of search and seizure operation made a number of additions as a result of which the total income was determined at ₹ 7,40,04,778. While completing the assessment, the Assessing Officer also initiated proceedings for imposition of penalty under section 271AAA of the Act. In response to the show cause notice issued for imposition of penalty under section 271AAA of the Act, though, the assessee filed its explanation on 22nd March 2013, however, the Assessing Officer rejecting the explanation of the assessee proceeded to pass an order on 13th March 2014, imposing penalty of ₹ 74,00,477 under section 271AAA of the Act. Being

aggrieved of the penalty order so passed, assessee preferred appeal before the first appellate authority.

4. The learned Commissioner (Appeals) after considering the submissions of the assessee and having found that search and seizure operation under section 132(1) of the Act was not carried out in case of the assessee, followed the decision of the Tribunal, Ahmedabad Bench, in case of DCIT v/s M/s. K.G. Developers, ITA no.1139/Ahd./2012, dated 13th September 2013, and deleted the penalty imposed. Being aggrieved, the Revenue is in appeal before the Tribunal.

5. The learned Departmental Representative relied upon the ground raised.

6. The learned Departmental Representative strongly supporting the decision of the learned Commissioner (Appeals) also relied upon the following decisions:–

- i) *DCIT v/s M/s. K.G. Developers, ITA no.1139/Ahd./ 2012, dated 13.09.2013;*
- ii) *DCIT v/s Jain Co. Developers Pvt. Ltd., ITA no.6379/Del./2016 dated 12.02.2018; and*
- iii) *DCIT v/s Sam India Abhimanyu Housing, ITA no.1257/Del./ 2015, dated 05.02.2016.*

7. We have considered rival submissions and perused materials on record. From the ground raised by the Department, it is evident, the

Department accepts the fact that the Assessing Officer has imposed penalty under section 271AAA of the Act. That being the case, we proceed to examine the validity of the proceeding initiated under section 271AAA of the Act. A reading of the aforesaid provision makes it clear that only in case of a person in whose case search and seizure operation under section 132(1) of the Act is carried out on or after 1st Day of 2007 but before the 1st Day of July 2010, penalty proceedings under section 271AAA of the Act can be initiated. Thus, as per the aforesaid statutory provision, the primary condition for initiating penalty proceeding is, a person concerned must have been subjected to a search and seizure operation under section 132(1) of the Act. Undisputedly, in the facts of the present case, no search and seizure operation under section 132(1) of the Act was carried out in case of the assessee. This fact is clearly evident from the initiation and completion of proceedings under section 153C of the Act. Thus, the primary condition of section 271AAA of the Act remains unsatisfied. Even otherwise also, if penalty proceedings under section 271AAA of the Act is initiated against a person who is not subjected to search action under section 132(1) of the Act, the provision itself becomes unworkable as no declaration under section 132(4) of the Act is possible from any person other than the person against whom the search and seizure under section 132(1) is carried out. Thus, in such

circumstances, sub-section (2) to section 271AAA of the Act cannot be given effect to. In view of the aforesaid, we agree with the learned Commissioner (Appeals) that initiation of penalty proceedings under section 271AAA of the Act in the instant case is invalid. Our aforesaid decision gets support from the decisions relied upon by the learned Authorised Representative. In view of the above, we uphold the order of the learned Commissioner (Appeals) by dismissing the ground raised by the Revenue.

8. In the result, Revenue's appeal stands dismissed.

Order pronounced in the open Court on 31.08.2018

Sd/-
MANOJ KUMAR AGGARWAL
ACCOUNTANT MEMBER

Sd/-
SAKTIJIT DEY
JUDICIAL MEMBER

MUMBAI, DATED: 31.08.2018

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The CIT(A);
- (4) The CIT, Mumbai City concerned;
- (5) The DR, ITAT, Mumbai;
- (6) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

(Sr. Private Secretary)
ITAT, Mumbai