

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“ A ” BENCH, AHMEDABAD**

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER And  
SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

1. आयकर(ss)अपील सं./I.T(ss).A.No.83/Ahd/2016
  2. आयकर अपील सं. / I.T.A. No.447/Ahd/2016
- (निर्धारण वर्ष / Assessment Years : 2011-12 & 2012-13)

1-2.Dy.CIT Central Circle-2 Baroda	<b>बनाम/ Vs.</b>	1-2.Shri Umesh C.Patel 14/A, Purshottam Nagar Society BPC Road, Baroda-390 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACUPP 1733 D		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी ओर से/ <b>Appellant by</b> :	Shri Sanjeev Dev, Sr.DR
प्रत्यर्थी की ओर से/ <b>Respondent by</b> :	Shri S.N. Soparkar, AR

सुनवाई की तारीख / <b>Date of Hearing</b>	11/09/2018
घोषणा की तारीख/ <b>Date of Pronouncement</b>	25/09/2018

**आदेश / O R D E R**

**PER SHRI MAHAVIR PRASAD, JUDICIAL MEMBER :**

These two appeals have been filed by the Revenue are directed against the common order of the Commissioner of Income Tax(Appeals)-12, Ahmedabad [Ld.CIT(A) in short] dated 28/10/2015 arising out of assessment orders passed by the DCIT, Central Circle-2, Baroda dated 25/03/2014 for the Assessment Years (AYs) 2011-12 & 2012-13.

2. Since both the appeals are inter-connected, these are being disposed of by way of a consolidated order for the sake of convenience.

3. To begin with we shall address the Revenue's appeal in IT(ss)A No.83/Ahd/2016 for AY 2011-12 as a lead case.

4. The Revenue raised the common ground of appeal which reads as under:-

*On the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in law as well as facts and circumstances of the case by deleting the penalty u/s.271AAA by amounting to Rs.24,57,306/- (AY 2011-12) and Rs.39,51,145/- (AY 2012-13), in spite of the fact that the assessee has not fulfilled the condition (ii) lay down in penalty u/s.271AAA, I respect of substantiates the manner in which the undisclosed income was derived during the course of assessment & penalty proceedings.*

5. The brief facts of the case are that there was an action u/s.132 on group on 09/08/2011. The assessee's case was also covered therein. The Assessing Officer (AO) in para 2.1 of the penalty order has observed that Shri Rajeshbhai M. Shah, the key person of the group, in his statement u/s.132(4) dated 09/08/2011 and dated 05/10/2011 has made a disclosure of total amount of Rs.25,00,35,460/- for the group as a whole. The detailed bifurcation of income was also submitted by Rajeshbhai M. Shah in which income of Rs.2,47,72,230/- and Rs.3,99,78,970/- respectively pertaining to the assessee was separately shown vide letter addressed to the Investigating officer referred to by to the AO. The disclosed income was offered for taxation under the head "Other Income" by the assessee. The questionnaire dated 16/09/2013 was specifically issued requiring the assessee inter alia to indicate the manner in which undisclosed income was derived, substantiate the manner in which undisclosed income was derived and whether taxes together with interest have

been paid in respect of other income so as to fulfill the eligibility conditions for exemption prescribed u/s.271AAA. The AO further observed that the assessee has not provided any details or explanation in this regard during the course of assessment proceedings hence, it is clear that the income is “undisclosed income” of the assessee. The AO further observed that the assessee in his statement recorded u/s.132(4) of the Act did not himself admit the undisclosed income and specified the manner in which such income has been derived but the undisclosed income was admitted by Shri Rajesh m. Shah. It is further evident as observed by the AO that the final disclosure of Rs.25 crore was made in the course of statement u/s.131(1) and not u/s.132(4), and that too by Shri Rajesh M. Shah and not by the appellant. Thus, the first condition as per clause (i) of sub section (2) of the section 271AAA is not satisfied by the assessee and therefore the assessee cannot be granted immunity from penalty. The second condition of sub section (2) of section 271AAA provides that the assessee should substantiate the manner in which the undisclosed income was derived. As assessee had not established by any cogent evidences the manner of earning undisclosed income derived. The assessee never filed any further details or explanations providing details of source from where the money was received and the manner in which the undisclosed income was derived. Thus, the assessee has failed to satisfy the second the condition laid down in sub section (2) of section 271AAA but has in fact made no genuine effort to provide details so as to satisfy that condition. Thus, the conditions mentioned in the section 271AAA have not been fulfilled by the assessee and thus though income returned u/s.153A in conformity with

“admission” has been accepted by the AO without any further enquiry or additions, immunity within the meaning of section 271AAA(2) was not granted and penalty has been levied.

6. In appeal before the Ld.CIT(A), the CIT(A) mentioned in his order that there is no controversy about the disclosure of the relevant “undisclosed income” in the return of income and due payments of taxes with interest on such “undisclosed income” by the assessee. The AO has however held that conditions as prescribed u/s.271AAA(2)(i) and 271AAA(2)(ii) have not been fulfilled by the assessee and therefore denying the immunity, penalty has been levied by him. The Ld.CIT(A) cited a judgement of Hon’ble Gujarat High Court in the case of CIT vs. Mahendra C.Shah (2008) 172 Taxman 58 (Guj.) wherein it was held that sufficient compliance to immunity condition in section 271AAA(2)(ii) has been made during 132(4) wherein the undisclosed income is income from various projects and from the transaction of sale of land etc. and received from various business projects, and the entity-wise bifurcation was given in the statement u/s.131 recorded in continuation of search Proceedings. The assessee’s mode of allocation/manner was stated to be “being from land transactions, capital gains and miscellaneous”. The Ld.CIT(A) has agreed with the assessee that there is no definition of “stating the manner and substantiating the same” laid down in section 271AAA, as indeed it is to be gathered from not only the statement u/s.132(4) but also the seized documents/assets which are confronted to the assessee and Ld.CIT(A) deleted the penalty levied by the AO.

7. Now, the Revenue is in appeal before us.

8. We have heard the parties and gone through the relevant material on record. In this case, the assessee is a partner in various firms which are engaged in the business of land development and construction. A search u/s.132 of the Act was conducted in the case of the assessee as a member of Vasanwala group on 09/08/2011. The assessee in the statement recorded u/s.132(4) of the Act had made disclosure of certain income for AY 2011-12 & AY 2012-13. For the assessment year under reference, the undisclosed income declared from land transactions as “income from other sources” is Rs.2,45,73,060/- which derived from land trading etc. The assessee had filed his return of income u/s.139 of the Act dated 29/9/2011 on total income of Rs.2,47,72,230/- which includes Rs.2,45,73,060/- declared. The assessment was completed u/s.143(3) r.w.s.153A of the Act accepting returned income. The total income assessed was same as income returned and no addition had been made. Thereafter, a show-cause notice u/s.271AAA of the Act dated 25/03/2014 received asking the assessee to show cause why penalty us/271AAA of the Act should not be levied. In reply thereof, the assessee stated that undisclosed income has been disclosed in statement u/s.132(4) of the Act which is recorded before conclusion of search and as the assessee has specified and substantiated the manner in which such income has been earned and has paid tax together with interest. Hence, the case is covered by exception provided in sub section (2) of section 271AAA of the Act and as such, no penalty can be levied. The assessee also cited decision of Coordinate

Bench in the case of ITO vs. Shri Manibhai A.Shah in ITA No.460/Ahd/2016 for AY 2012-13 in which appeal of the Revenue was dismissed for deleting the penalty by the Ld.CIT(A) u/s.271AAA of the Act. The relevant portion of the ITAT order is reproduced hereunder:-

*“6. With the assistance of the ld.representatives, I have gone through the record. Area of dispute between both the parties is whether the assessee is entitled to benefit of sub-section (2) of section 271AAA of the Income Tax or not. Section 271AAA contemplates levy of penalty upon an assessee. However, sub-section 2 provides that sub-section 1 of Section 271AAA would not be applicable upon an assessee if he fulfills the following conditions viz. (a) that the assessee in the course of search, in a statement under sub-section (4) of section 132 admits the undisclosed income and specifies the manner in which such income has been derived, and (b) substantiate the manner in which the undisclosed income was derived, and (c) pays the tax together with interest, if any, in respect of undisclosed income.*

*7. As far as the fulfillment of clause (c) is concerned, there is not dispute between the parties. Similarly, assessee has disclosed the income during the course of search. The dispute between the parties is whether the assessee has specified manner in which such income has been derived and substantiate the manner in which undisclosed income was derived. The AO has simply observed that the assessee has not admitted the income himself and has not disclosed the manner. The income was disclosed by the son of the assessee. It is pertinent to say that the statement of Shri Rajesh M. Shah was recorded on behalf of group itself. He has specified the income of Rs.25 crores not only assessable in his hand, but pointed out that it will be allocated between different entities and the persons. He has also disclosed the manner in which the income was derived. All these aspects have been specifically considered by the ld.First Appellate authority in the finding extracted supra. After perusal of the finding of the ld.CIT(A), I do not see any reasons to interfere in it. Accordingly, the appeal of the Revenue is devoid of any merit, and dismissed.”*

9. After going through the order of the ITAT, we are of the opinion that the CIT(A) has rightly deleted the penalty u/s.271AAA(2)(ii) and has passed a detailed and reasoned order and similar appeal of the Revenue has been dismissed by the Coordinate Bench in the case of partner of the assessee. Hence, we are not inclined to interfere with the order passed by the Ld.CIT(A). As a result, appeal of the Revenue in IT(ss)A No.83/Ahd/2016 for AY 2011-12 is dismissed.

ITA No.447/Ahd/2016 for AY 2012-13 – Revenue's appeal

10. We find that the captioned appeal of the Revenue is identical to the facts of the IT(ss)A No.83/Ahd/2016 for AY 2011-12(supra). In view of the *pari materia* facts concerning the identical issue, our decision in IT(ss)A No.83/Ahd/2016 shall apply *mutatis mutandis* to the captioned appeal. Thus, the appeal of the Revenue in ITA No.447/Ahd/2016 for AY 2012-13 is dismissed.

11. In the combined result, both the appeals of the Revenue are dismissed.

<b>This Order pronounced in Open Court on</b>	<b>25/09/2018</b>
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**Sd/-**  
( PRADIP KUMAR KEDIA )  
**ACCOUNTANT MEMBER**  
Ahmedabad; Dated 25/ 09 /2018

**Sd/-**  
( MAHAVIR PRASAD )  
**JUDICIAL MEMBER**

*IT(ss)A No.83/Ahd/2016  
&ITA No.447/Ahd/2016  
DCIT vs. Shri Umesh C.Patel  
Asst.Years – 2011-12 & 2012-13*

**- 8 -**

**आदेश की प्रतिलिपि अग्रहित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-12, Ahmedabad
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
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