

आयकर अपीलिय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'A', CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SH.SANJAY GARG, JM & SMT.ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No.1556/Chd/2017

निर्धारण वर्ष / Assessment Year : 2009-10

Shri.Ashok Jindal, House No.22, NAC, Manimajra, Chandigarh.	बनाम	The D.C.I.T., Central Circle-1, Chandigarh.
स्थायी लेखा सं./PAN NO: AAMPJ1996Q		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

&

आयकर अपील सं./ ITA No.1557/Chd/2017

निर्धारण वर्ष / Assessment Year : 2009-10

Shri.Amit Jindal, House No.21, NAC, Manimajra, Chandigarh.	बनाम	The D.C.I.T., Central Circle-1, Chandigarh.
स्थायी लेखा सं./PAN NO: ACGPJ8215N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Sudhir Sehgal, Adv.

राजस्व की ओर से/ Revenue by : Smt.Chanderkanta,
Sr.DR

सुनवाई की तारीख/Date of Hearing : 16.07.2018

उदघोषणा की तारीख/Date of Pronouncement : 15.10.2018

आदेश/Order

PER ANNAPURNA GUPTA, A.M. :

Both the above appeals have been filed by different assessees against separate orders of the Commissioner of Income Tax (Appeals)-3, Gurgaon (in short CIT(A) both dated 29.8.2017, upholding the penalty levied u/s 271AAA of the Income Tax Act, 1961 (in short 'Act').

2. The facts and the issue involved in both the appeals, it was common ground, were identical, being the levy of penalty u/s 271AAA of the Act on cash surrendered during search conducted on the assessee u/s 132 of the Act. They were therefore heard together and are being disposed off by this common order for the sake of convenience.

We shall be dealing with the assessee's appeal in ITA No.1556/Chd/2017 and our decision rendered therein will apply mutatis mutandis to the appeal of the other assessee in ITA No.1557/Chd/2017.

3. Briefly stated, a search and seizure operation was carried out at the residential and business premises of Jindal Group of cases of Panchkula on 15.7.2008 and the assessee was one of the persons covered under the search action. The assessee had surrendered an additional income of Rs.54,87,500/- relating to the impugned year on account of the following assets/documents:-

- 1) Cash found from the residential premises of the assessee group amounting to Rs.11 lacs.
2. Pages 54 to 59, of Annexure A-10 of Delta-I, amounting to Rs.60,000/-.
3. Annexure A-8 of Delta-3 amounting to Rs.38,50,000/-.
4. Capital introduced in firms amounting to Rs.4,77,500/-.

4. The above surrender was disclosed in the return of income filed by the assessee and was accepted by the Revenue also. However, penalty u/s 271AAA was initiated

and thereafter levied for the reason that the assessee had failed to substantiate the manner in which the undisclosed income had been earned by him.

5. The matter was carried in appeal before the Ld.CIT(A), who followed the decision of ITAT Chandigarh Bench in the case of DCIT Vs. Shri Sanjeev Goyal in ITA No.109/Chd/2015 for assessment year 2011-12, as per which if the assessee had disclosed income while giving statement u/s 132(4) during the course of search and paid tax thereon and showed the said undisclosed income in the return under the head "Income from Business" no penalty u/s 271AAA was leviable. In view of the aforesaid decision, the Ld.CIT(A) held that the assessee had specified and substantiated the manner of earning the income with regard to surrender made of capital introduced in the firms and the documents relating to Annexure A-10 And A-8, and consequently deleted the penalty levied on the same. However, vis-à-vis surrender of cash of Rs.11 lacs, the Ld.CIT(A) held that as per the decision of the Hon'ble Jurisdictional High Court in the case of Kim Pharma Pvt. Ltd. Vs. CIT (P&H) (2003) 258 CTR 458, the same was assessable as deemed income of the assessee u/s 69A of the Act and not business income and since no explanation with regard to the same has been furnished, penalty u/s 271AAA on the same was upheld. The relevant findings of the Ld.CIT(A) at para 5- 5.4 of his order are as under:

5. Decision:-

I have considered the basis of penalty imposed by the AO and the submissions made by the AR of the appellant. The perusal of the provisions of the section 271AAA make it clear that the penalty can be levied on undisclosed income of the specified year if the conditions specified in the sub-section (2) of section 271AAA are not satisfied. It, therefore, follows that first thing to determine is what is the amount of undisclosed income under the given circumstances. The concept of undisclosed income has been clearly defined by Explanation to section 271AAA. However, the AO has imposed the penalty on the ground that the appellant had not substantiated the manner in which the income was earned.

5.1 The AO has made following observations in this case:

- (i) The assessee made a surrender of Rs. 54,87,5007- for the year under consideration.
- (ii) This disclosure was declared in the return of income.
- (iii) The assessee failed to substantiate the manner in which the income has been earned,
- (iv) In view of the same, penalty u/s 271AAA was imposed.

5.2 The appellant during the appellate proceedings has submitted as follows:-

- (i) The appellant admitted the undisclosed income of Rs. 54,87,500/- during the year under consideration and disclosed the same in return filed.'
- (ii) The income tax alongwith interest was paid on this surrendered amount.
- (iii) The appellant has substantiated the manner of earning undisclosed income.

5.3 I have gone through the order of Hon'ble ITAT, Chandigarh Bench in case of DCIT vs Shri Sanjeev Goyal ITA No. 109/Chd/ 2015 for AY 2011-12 referred to by the appellant and the relevant part of the judgment is as follows:-

"9. The undisputed facts in the present case are that during the course of search and seizure operations u/s 132, the assessee had surrendered an amount of Rs. 1,50,00,000/-. It is also not in dispute that assessee had attributed this income as being derived from speculative dealings in commodities outside the books of accounts. It is I further not in dispute'that the assessee had disclosed the surrendered income in its return of income and paid the taxes thereon.

In the above factual background, it is to seen whether penalty u/s 271AAA is leviable.

It is the contention of the Revenue that though admittedly, the assessee has surrendered an income of Rs. 1,50,00,000/- during the course of search and seizure

operation, disclosed the manner of earning the same being from speculative dealings in commodities and also disclosed the income in its return of income, the assessee had not substantiated the manner of earning the undisclosed income and hence not fulfilled all the conditions specified u/s 271AAA for grant of immunity from penalty.

The issue therefore is whether admission of undisclosed income and a description of the nature of the same could be treated as compliance with the condition of specifying and substantiating the manner in which the undisclosed income is earned as required by the section 271AAA(2)(i) and (ii).

10. We find that a similar requirement of disclosing the manner in which undisclosed income is earned is also there in Explanation-5 to section 271(l)(c). Interpreting which the Allahabad High Court in the case of CIT vs RadhaKrishanGoel (2005) 278 ITR 454 observed that non disclosure of manner of earning the undisclosed income is not relevant for the purpose of availing benefit under Explanation 5 below section 271(l)(c). In CIT vs Mahendra C. Shah [2008] 215 CTR 493 (Guj). It was held the assessee having declared the value of diamonds in his statement under section 132(4) and paid taxes thereon before assessment was entitled to immunity from penalty under section 271(l)(c) under Explanation 5 thereof even though the statement did not specify the manner in which the income representing value of diamonds in his statement under section 132(4) and paid taxes thereon before assessment was entitled to immunity from penalty under section 271(l)(c) under Explanation 5 thereof even though the statement did not specify the manner in which the income representing value of diamonds was derived. With respect to such requirement in relation to section 271AAA, it has been held in the case of Pramod Kumar Jain v. Dy. CIT (2013) 33 Taxmann.com 651 (Ctk) that the disclosure of income under section 132(4) during the course of search having been made and the assessee having surrendered certain income for the relevant assessment years in the statements during the course of search and filed returns declaring the same pursuant to notice under section 153A and which returns have been accepted by the AO, levy of penalty under section 271AAA was not justified on the ground that the assessee has though made disclosure but failed to specify the manner in which such income had been derived. Hon'ble Tribunal further held that no definition could be given to the 'specified manner' and there is no prescribed method given in the statute to indicate the manner in which income was generated.

It has been held in the case of Ashok Kumar Sharma v Dy. CIT [2013] 33 taxmann.com 652 (Ctk) that when assessee disclosed concealed income while giving statement under section 132(4) during the course of search and paid tax thereon and showed the said undisclosed income in the return under the head "Income from business" and which undisclosed income has been accepted by the Department, penalty under section 271AAA is not leviable.

11. In view of the above judicial precedents we find that the assessee has specified and substantiated the manner of earning the income and has not violated any of the conditions specified u/s 271AAA(2), for granting immunity from penalty.
12. We therefore hold that no penalty u/s 271AAA could be levied in the present case.

Accordingly we uphold the order of the Id. CIT(A) deleting the penalty.

5.4 In view of the facts of the case, submissions made by the appellant and judicial pronouncement of the Hon'ble ITAT Chandigarh on this issue discussed above, it is held that the appellant has specified and substantiated the manner of earning the income with regard to following income disclosed:-

- (0) Capital introduced in firms -Rs. 4,77,500/-.
- (if) Documents page54-59 ofannexure A-10 of delta 1 amounting Rs. 60,000/-
- (iii) Documents Annexure A-8 of Delta 3 amounting Rs. 38,50,000/-

However with regard to disclosure on account of cash found from residential premises of the assessee group amounting Rs. 11,00,000/-, it is held that manner of earning this income-has not been specified and substantiated because:-

- (i) cash of Rs. 11 lakh surrendered by the appellant was part of Rs. 44 lakh cash surrendered by the assessee group vide letter dated 22.07.2008 and it was in the surrender letter itself stated as unexplained cash found in residential premises during search operations.

It has been held by the Hon'ble Jurisdictional High Court in the case of Kim Pharma (P) Ltd vs CIT (P&H) [2013] 258 CTR 458 that where amount surrendered during survey was not reflected in books of accounts and no source from where it was derived was declared by the assessee, it was assessable as deemed income of assessee u/s 69A and not business income.

In view of the above referred judgement, cash found is held as unexplained as no from which it is derived. Thus, with regard to the same, it is held that the appellant has not specified and substantiated the manner of earning income during the course of search and hence Penalty u/s 271AAA of the Act is leviable on this amount.

In view of the above discussion, penalty u/s 271AAA amounting Rs. 1,10,000/-related to surrender related to cash amounting Rs. 11,00,000/- is confirmed and the appellant gets relief on the balance amount,

6. As a result, appeal of the appellant is partly allowed.

6. Aggrieved by the same, the assessee has come up in appeal before us, raising the following grounds:

- "1 *That the Worthy Commissioner of Income Tax (Appeals)-3, Gurgaon has erred in upholding penalty amounting to Rs.1,10,000/- relating to surrender of cash of Rs.11 lacs found during the course of search from the residential premises of the assessee group.*
- 2. *That the Worthy CIT (A)-3, has erred in holding that with regard to cash found during search, the appellant has not specified and substantiated the manner of earning the income during the course of search and hence penalty u/s 271 AAA of the Act is leviable on this amount.*

3. *That the Worthy CIT (A) while confirming the penalty u/s 271AAA with regard to cash found during the search, has erred in assessing the income of assessee as deemed income u/s 69A and not business income by following the judgment of Jurisdictional High Court in the case of M/s Kim Pharma (P) Ltd. vs CIT (P&H) (2013) 258 CTR 458.*
4. *That the Appellant craves leave to add or amend the grounds of appeal before the appeal is finally heard or disposed off."*

7. During the course of hearing before us, the Ld. counsel for assessee stated that the CIT(A) had upheld the levy of penalty on cash for the reason that the same was assessable as deemed income u/s 69A of the Act and not business income as per the decision of the Hon'ble Jurisdictional High Court in the case of Kim Pharma Pvt. Ltd.(supra). The Ld. counsel for assessee stated that this finding of the Ld.CIT(A) was contrary to the facts of the case since the surrender made on account of cash had not been assessed as deemed income u/s 69A of the Act but had been accepted alongwith the other income surrendered by the assessee, penalty on which had been deleted by the CIT(A).

8. The Ld. DR fairly conceded to this fact, but at the same time relied on the findings of the CIT(A) that the assessee had not been able to specify and substantiate the manner of earning the cash surrendered and therefore penalty u/s 271AAA had been rightly upheld by the CIT(A).

9. We have considered the rival contentions and have also gone through the order of the CIT(A). Undisputedly the entire surrender made by the assessee on account of capital introduced in firms, documents found and cash , amounting in all to Rs.54,87,500/- was accepted and assessed to tax by

the Revenue. All taxes thereon had been paid. Admittedly, no portion of the surrender had been assessed separately under any other head. Therefore the decision of the ITAT in the case of Sanjeev Goyal (supra) applied to the entire surrender made, and the CIT(A), we hold had wrongly segregated the surrender made on account of cash by stating that the same was assessable u/s 69A of the Act, when the fact was that it had not been so assessed. In fact on going through the order of the ITAT in the case of Sanjeev Goyal (supra) we find that it has been held in the said case that the disclosure of income u/s 132(4) during search having been made and the assessee having surrendered the same and included the same in the returns filed which have been accepted by the Revenue, no penalty u/s 271AAA is leviable for not specifying the manner of earning the income surrendered. All the aforesaid conditions admittedly stood fulfilled in the case of surrender made on account of documents found and capital introduced in the firm, as per the CIT(A). The cash was also part of the same surrender and no distinction has been brought out of the same with the rest of the surrender made. We therefore hold that there was no basis for upholding the levy of penalty on the cash surrendered and the same is therefore directed to be deleted. The appeal filed by the assessee is, therefore, allowed.

ITA No.1557/Chd/2017:

10. In the impugned case, it was common ground that the facts were identical, with the penalty having been levied u/s

271AAA of the Act, on surrender made of identical amount of Rs.54,87,500/- on identical counts of cash Rs.11 lacs,Annexure A 10 of Delta 1 Rs.60,000/-,Annexure A-8 of Delta 3 Rs.38,50,000/- & capital introduced in firm Rs.4,77,500/-, out of which the CIT(A) upheld penalty levied, on the cash surrendered of Rs.11 lacs, for the identical reason that the same was not assessable as business income but as deemed income of the assessee as per the decision of the Hon'ble Jurisdictional High Court in the case of Kim Pharma Pvt. Ltd. (supra).It was pointed out by the Ld. counsel for assessee was that the impugned surrender of cash had been accepted and assessed alongwith the total surrender made and had not been assessed as deemed income.

In view of the same, since the the facts are identical to that in ITA No.1556/Chd/2017,our decision rendered therein will apply squarely to the present case also following which we delete the penalty upheld on the cash surrendered. The appeal of the assessee is allowed.

11. In effect, both the appeals of the assessees are allowed.

Order pronounced in the Open Court.

Sd/-
संजय गर्ग
(SANJAY GARG)
 न्यायकि सदस्य/ **Judicial Member**
 दिनांक /**Dated: 15th October, 2018**
 रती

Sd/-
अन्नपूर्णा गुप्ता
(ANNAPURNA GUPTA)
 लेखा सदस्य/ **Accountant Member**

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar