

IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD BENCH

**Before: Shri Rajpal Yadav, Judicial Member  
And Shri Amarjit Singh, Accountant Member**

**ITA No. 480/Ahd/2016  
Assessment Year 2012-13**

The DCIT, Central Circle-1, Aayakar Bhavan, Race Course Circle, Baroda (Appellant)	Vs	Shri Akshay A. Kothari Madma Pujan, Near Devdeep Nagar, Old Padra Road, Baroda- 390015 PAN: ADBPK9611R (Respondent)
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**Revenue by: Shri Mudit Nagpal, Sr. D.R.  
Assessee by: Ms. Urvashi Shodhan, A.R.**

Date of hearing : 01-11-2018  
Date of pronouncement : 29-11-2018

**आदेश/ORDER**

**PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-**

This revenue appeal for A.Y. 2012-13, arises from order of the CIT(A)-12, Ahmedabad dated 02-11-2015, in proceedings under section 143(3) of the Income Tax Act, 1961; in short the Act.

2. The solitary ground of appeal of the revenue is against the decision of Id. CIT(A) in deleting the penalty levied u/s. 271AAA amounting to Rs. 32,25,000/-.
3. The fact in brief is that a search u/s. 132 of the act was carried out in the case of the assessee on 9<sup>th</sup> August, 2011. The assessee has filed return of income for assessment year 2012-13 on 31<sup>st</sup> March, 2013 declaring total income

of Rs. 3,68,00,080/-. Thereafter, the assessing officer has assessed the income u/s. 143(3) of the act accepting the total amount income offered in the return of income. The assessing officer has also initiated penalty proceedings u/s. 271AAA of the act in respect of disclosing an amount of Rs. 32,25,000/- from land trading and commission income. A show cause notice dated 24<sup>th</sup> March, 2014 was issued to the assessee to explain why penalty u/s. 271AAA should not be imposed. In response to the notice, the assessee explained that in the statement recorded u/s 132(4), he has admitted the said undisclosed income and also specified the manner in which such income has been derived. He further stated that due taxes along with interest on the said undisclosed income had been paid and such income had been accepted in totality and no further inquiry/investigation etc. had been made and there was not any further addition to the income disclosed by the assessee. The assessing officer has not accepted the explanation of the assessee stating that has not fulfilled the conditions stipulated in section 237AAA of the act as the assessee has neither given any particulars/details/specifications of such unaccounted income nor maintained any separate account in respect of this undisclosed income. He has stated that during the course of search in the case of Shri Anil Bolabhai Patel and his group members statement of Anil Bolabhai Patel was recorded u/s. 132(4) of the act and an amount of Rs. 35 crores was declared by him on behalf of the firm and other group members and the share of the assessee out of the above disclosure was to the amount of Rs. 32,25,000/-. The assessing officer observed that sub-section 2 of section 271AAA provides that the assessee should substantiate the manner in which the undisclosed income was derived, however, the assessee has not substantiated the manner in which undisclosed income was derived as assessee has not given full details of persons from whom the cash has been received neither he has provided any confirmation from them. Consequently, the assessing officer has levied penalty @ 10% of the total undisclosed income of the specified previous year to the amount of Rs. 32,25,000/-.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has deleted the penalty levied by the assessing officer. Relevant part of the decision of Id. CIT(A) is reproduced as under:-

*"4. Similarly, full content of the Return of income filed in response to notice u/s 153A/139, the assessment order as also the order of penalty have also been perused by me. I have also very patiently heard the Ld. AR and also gone through various decisions relied upon." Upon such perusal, I have noticed as under:*

*1) The appellant has categorically disclosed the total group unaccounted income of Rs. 70 crores, which is clearly based on seized documents and stated by the appellant /Rajendra Shah to be from "land related transactions". This fact is clearly noted by the AO himself in penalty order*

*2) The Q-20 to 22 of statement of Rajendra Shah clearly suggests that the admission is based on transaction depicted in seized documents.*

*3) There is no further probe or query about the manner or substantiation of earning unaccounted income by the Authorized Officer. As such, the Authorized Officer not only acquiesces on the "elaboration" made by Rajendra Shah vide answer to Q- 21, the authorized officer has not warned the appellant with regard to insufficiency if any even in response to the prayer of the appellant not to levy penalty "in view of the fact that the admission is u/s 132(4)".*

*4) The statement dated 9-10/8/2011 is further followed up by a further letter to DDIT dated 16/8/2011 confirming the disclosures as made above.*

*5) There is no further specific query during assessment proceedings so as to elicit any further information about the manner of earning unaccounted income or substantiation thereof. No addition to income returned has been made by the AO. As such, the very satisfaction of the AO for initiation of the penalty confirms that the satisfaction is based entirely on the return of income and particulars contained therein without any reference to any seized or other documents and also without any express or implied satisfaction about non-fulfilment of any of the immunity condition ofs.271AAA(2).*

*The assessee in his return of income has offered additional income of Rs. 1,00,00,000/- which is as per the disclosure of additional income made during the course of search proceedings. This additional income has been offered due to search action and the findings thereof, thus the amount of Rs. 1,00,00,000/- is undisclosed income of the assessee for the specified previous year as per section 271AAA of the Act. Therefore, penalty proceedings u/s 271AAA are separately initiated for this default." (The amount is Rs. 3,22,50,000/- for AY 2012-13).*

*6) The income returned by the appellant u/s 153A/139(1) has been accepted by the AO without any alteration or any reference to seized or other documents and also without contesting the quantification or the manner of earning.*

*7) The AO has accepted the bifurcation/ allocation of unaccounted income in various hands and years thus fully endorsing the appellant's direct or indirect averments u/s 132(4) with regard to manner of earning and the quantum of unaccounted income for respective years and respective hands.*

*5. In view of the clear cut facts as evident and noted by me above, and the ratios of the decisions relied upon by the Ld. AR and otherwise perused and followed by me in other appeals, I have to observe that there is no denying that the disclosure is made u/s 132(4) and manner of earning is clearly not only specified in the statement u/s 132(4) but, as rightly pointed out by the AR, is substantiated by seized documents on the basis of which the disclosure is made. I also agree with the Ld. AR, that there is no definition of "stating the manner and substantiating the same" laid down in s. 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 appellant and therefore the AO has erred in not at all dealing with the factual and legal submissions made by the appellant before him before coming to conclusion about non-fulfillment of immunity conditions. Moreover, in my considered opinion as fortified by various authorities relied upon by the appellant or otherwise perused by me, the very fact that after disclosure u/s 132(4) stating the "manner" as reflected in the seized documents, when the appellant has shown the disclosure in the return of income in conformity with the statement/disclosure u/s 132(4) (made "a clean breast" of unaccounted income), and that thereafter no addition has been made in the assessment and no further query has been raised not only by "the "Authorized Officer but even by the AO during assessment stage, would clearly establish, ipso facto, that the onus under S. 271AAA(2) with regard to manner and substantiation has been flawlessly discharged by the appellant. Thus, it is indeed incomprehensible, as rightly pleaded by the AR, as to how the Ld. AO has come to the conclusion that the Appellant has not stated the manner of earning unaccounted income. The Assessing Officer has not even found or referred to any loose papers which contradict the statement given or income returned by the appellant. Rather, the assessment is exclusively based on the acceptance of return filed by the appellant, without raising any doubt, conditionality or contradiction with regard to such acceptance, which in turn is based on statement u/s 132(4). The Investigating Officer/Authorized Officer had not asked any specific question regarding the manner of deriving additional income or substantiating the same. Even the Ld. Assessing Officer had put no further queries before initiating the proceedings u/s 271AAA. The Ld. AR is therefore right in contending that the observation of the Ld. AO that the appellant has not discharged the onus of stating the manner of earning the unaccounted income or of substantiating the same for claiming benefit of s. 271AAA(2) is not based on facts and evidences available on record.

6. Moreover, as is clear from the various judicial ruling relied upon by the AR and further as perused by me and considered in other appeal proceedings involving the issue of penalty u/s 271AAA, (below), the onus to put a specific question with regards to the manner in which the income had been derived is on the person who recorded statement in this regards i.e. authorized officer. Thus, simply because the authorized officer fails to put the question to ask the manner of deriving additional income, the appellant cannot be denied the benefit provided under section 271AAA(2) of the Act. In the facts before me, as can clearly be seen, even in the face of a reply by the appellant vide answer 20-22 reproduced above pleading for immunity from penalty in conjunction with and in consideration of disclosure being made, as the "statement is u/s 132(4)", the Authorized officer has neither solicited further information, nor pointed out any incompleteness in the statement nor indicated possibility of likely penalty u/s 271(1)(c) or u/s 271AAA. The AO during the assessment or during the penalty proceedings has not brought out any positive material either in the form of seized documents or otherwise to conclude or even to observe that the unaccounted income is earned in a manner different from what has been stated during 132(4). When seen in the light of Mahendra C Shah (supra), I find force in the contention of the ARs that subsequent to admission u/s 132(4), clearly indicating the broad manner of earning, followed by offering in the return, and unconditional and unaltered bringing of the same to tax by the AO, substantially tantamount to stating the manner and substantiating the same, and that the AO cannot hold otherwise during penalty proceedings without bringing in positive evidence to establish the absence of substantiation or the falsity in claim of the appellant or without referring to seized documents. As such, I am also of the considered opinion that the fact that the Authorized Officer during search and Investigating Officer thereafter has acquiesced in the reply given by the appellant, without any further probe at that time, clearly establishes that compliance satisfactory to the Investigating Officer has been made by the appellant. Thereafter, once the appellant has filed the return honoring his

commitment fully, and which has also been accepted during assessment without any modification to returned income, the Ld. AO's insistence during penalty proceedings for "stating the manner and substantiating the same" is simply superfluous and uncalled for in the circumstances, in the face of clear-cut disclosure of manner of earning and/or purpose of "disclosure" by the appellant, and also in light of Mahendra C. Shah (supra). Such insistence of the AO and "non-compliance thereto" by the appellant pleading "sufficient compliance", cannot culminate into levy of penalty u/s 271AAA. The word 'substantiate' used in clause (ii) of sub-section (2) of Section 271AAA has to be understood only in the sense in which it has been explained by the Hon'ble Gujarat High Court in case of Mahendra C. Shah, [2008] 172 TAXMAJM 58 (GUJ.), which has further been followed in subsequent ITAT decisions in the context of immunity condition 271AAA(2), to the effect that once the income admitted is offered with due payment of taxes thereon, and the manner of earning as stated during 132(4) or subsequently has been accepted by the Authorized Officer without warning about non-fulfillment of immunity condition of 271AAA(2)(ii), and further acted upon or acquiesced by the Assessing Officer during assessment, there is sufficient compliance to the condition of 271AAA(2)(ii) made by the assessee. Thus, on cumulative appreciation of facts listed in para 4 above, and in light of judicial authorities, immunity conditions prescribed u/s 271AAA(2)(i) and (ii) are held to be satisfied by the appellant. There being no dispute with regard to condition (iii), it is further held that the appellant clearly deserved immunity u/s 271AAA(2) and thus, penalty levied by the AO is not sustainable.

7. Moreover, on identical facts, in the case of Umesh C Patel appeal no. CIT(A)-12/370B,371B/CC-2Baroda/2014-15 dated 28/10/2015 and other cases of the group, I have already cancelled the penalty u/s 271AAA observing and holding thus:

5.2. When seen in the light of Mahendra C Shah (supra), I find force in the contention of the ARs that subsequent to admission u/s 132(4), clearly indicating the broad manner of earning to be "being from land transactions, capital gains and miscellaneous" followed by offering in the return, and unconditional and unaltered bringing of the same to tax by the AO, substantially tantamount to stating the manner and substantiating the same, and that the AO cannot hold otherwise during penalty proceedings without bringing in positive evidence to establish the absence of substantiation or the falsity in claim of the appellant or without referring to seized documents. As such, in light of various authorities cited by the AR and also otherwise perused by me, I am of the considered opinion that the fact that the Authorized Officer during search, and Investigating Officer thereafter, has acquiesced in the reply given by the appellant, without any further probe at that time, clearly brings out that compliance satisfactory to the Investigating Officer has been made by the appellant. Thereafter, once the appellant has filed the return honoring his commitment fully, which has also been accepted during assessment without any modification to returned income, the Ld. AO's insistence for "stating the manner and substantiating the same" is simply superfluous and uncalled for in the face of clear-cut disclosure of manner of earning of "unaccounted income" by the appellant, and also in light of Mahendra C. Shah (supra). Such insistence of the AO and "non-compliance thereto" by the appellant pleading "sufficient compliance", has obviously not impacted the quantification of income and assessment thereof.

5.3 The fact that the Ld. AO himself has taxed the amount offered u/s 132(4) and further in the return u/s 153A, without contradicting or contesting the basis and quantification of such "undisclosed income" to disprove the same would also, it was vehemently contended, go to establish that the manner as stated by the appellant u/s 132(4) stands not only substantiated as required u/s 271AAA(2)(ii) but the AO is also satisfied about such substantiation right at the assessment stage, and the AO is not expected to suddenly hold otherwise during penalty proceedings unless he brings positive material to disprove the already accepted

substantiation by the appellant. I find considerable force in the contentions raised as above and have no hesitation in fully agreeing with the same. While on one hand FIC has, in Mahendra C Shah clearly opined that considering the social environment, the appellant cannot be expected to give graphic details of manner of earning unaccounted income, on the other hand, the insistence of the Ld. AO for such details or substantiation has no bearing or relevance during the assessment when due taxes have been paid by the appellant. The appellant already made "a clean breast of his unaccounted income", as in Sidh Nath Goel, (supra), and there is no further material brought by the Ld. AO to hold otherwise. Thus, I find that the appellant's case is squarely covered by the ratios of Mahendra C Shah and Sidh Nath Goel (supra), and thus it is to be held that the appellant has made effective and sufficient compliance to immunity condition of s. 271AAA(2)(ii) also. I may also add that the law laid down in Mahendra C Shah and Sidh Nath Goel has been further explained and applied by the Ahmedabad Tribunal in Geeta Prints Pvt Ltd and Sulochana Devi Aggarwal in the context of immunity conditions contained in s. 271AAA(2)(i) and (ii) in ITA Nos. 2093/2011 and 1052/2012 (supra) holding as above, and, further, Geeta Prints has also been further approved by the HC in Tax Appeal No 565/2015 dated 14/09/2015.

6. There is no controversy with regard to fulfillment of immunity condition contained in 271AAA(2)(iii). Thus, as discussed above in para 3 and para 4, all the three immunity conditions as prescribed u/s 271AAA(2) are held to be complied with in law by the appellant and thus it is to be held that appellant clearly qualified for immunity. This conclusion, apart from the discussion as above, is also clearly supported by the decision of the Tribunal in Sulochanadevi Agarwal and Geeta Prints (supra), wherein Mahendra C Shah is followed. The penalty u/s 271AAA levied by the AO is thus held not sustainable in view of immunity available to the appellant u/s 271AAA(2)

7. Moreover, I also find that the proposition of law laid down in Kirit Dahgabhai (supra) to the effect that penalty, post-search, can be levied or sustained only on the income which has been assessed "over and above" that returned by the assessee u/s 153A after the search, in view of the specific provisions of s. 153A, and cannot be levied on "undisclosed income" already returned u/s 153A, has been followed by ITAT Ahmedabad in Sandip Naunitlal (supra) in the direct context of penalties both u/s 271(l)(c) read with explanation 5A and also u/s 271AAA. Respectfully following the same also it is to be further held that the Ld. AO erred in levying the penalty u/s 271AAA on the "undisclosed income" already returned

in the income filed after search, and on this count also the levy penalty is held not sustainable.

8. Facts of the appellant's case being identical, I need to follow the decision in Umesh C Patel (supra), which in turn has followed ratios of binding Jurisdictional HC decisions as explained and applied by Ahmedabad Tribunal. Thus, and therefore also, penalty levied by the AO u/s 271AAA amounting to Rs. Rs. 10,00,000/- and Rs. 32,25,000/- for AY 11-12 and 12-13 respectively is cancelled. The related grounds succeed and the appellant gets a relief as under:

A.Y.	Relief
2011-12	Rs. 10,00,000/-
2012-13	Rs. 32,25,000/-

9. *The appeals for both the years thus stands allowed."*

5. During the course of appellate proceedings before us, the Id. departmental representative has supported the order of assessing officer. On the other hand, Id. counsel has submitted paper book containing judicial pronouncements of Co-ordinate Bench of ITAT in the case of other group members vide ITA No. 481/Ahd/2016 order dated 09/08/2018, IT(SS)A No. 83/Ahd/2016, ITA No. 947/Ahd/2016 order dated 25-09-2018, Further she has contended that the Co-ordinate Bench of ITAT in ITA Nos. 1089 to 1093, 1098 & 1099/Ahd/2016 order dated 21/02/2016 on identical issue and identical facts in the case of other group members has decided the issue of levying of penalty u/s. 271AAA in favour of the assessee.

6. We have heard both the sides and perused the material on record carefully. It is noticed that a search 132 of the act was conducted in the case of the assessee on 9 August 2011. It was also contended that income disclosed had been accepted and no further inquiry investigation and addition has been made to the income disclosed by the assessee and he was never asked to substantiate further in the matter. The assessee has also submitted that he has complied with all the conditions prescribed in subsection 2 to the provision of section 271AAA of the act therefore no penalty u/s 271AAA to be levied. It is also contended that assessee has disclosed the unaccounted income on the basis of seized document and the assessing officer/authorized officer has not made any further proof or inquiry about the manner of earning unaccounted income by the assessee. In the light of the above facts and circumstances we have perused the decision of the Co-ordinate Bench of ITAT in the case of other group members vide ITA No. 481/Ahd/2016 order dated 09/08/2018, IT(SS)A No. 83/Ahd/2016, ITA No. 947/Ahd/2016 order dated 25-09-2018, ITA Nos. 1089 to 1093, 1098 & 1099/Ahd/2016 order dated 21/02/2016 on identical issue and identical facts in the case of other group members decided in favour of the

assessee. Relevant part of the decision of Co-ordinate Bench is reproduced as under:-

*“4. Learned Departmental Representative vehemently contends that the lower authority herein has committed both illegality and irregularity in deleting the impugned penalties imposed by the Assessing Officer by invoking Section 271AAA of the Act for the reason that all these assessee failed to specify the manner of having derived the undisclosed income during search followed by substantiation thereof. We rather find that the Revenue’s sole substantive identical ground in all these appeals pleads that it is only the latter condition of substantiation of the manner of deriving of the undisclosed income that remained to be unfulfilled. We notice in this backdrop that hon’ble jurisdictional high court’s recent judgment in Tax Appeal No. 434 of 2017 Pr.CIT vs. Mukeshbhai Ramanlal Prajapati holds after discussing a catena of case laws that it is incumbent for an authorized officer to put the searched assessee to question about the manner of having derived the relevant undisclosed income. Their lordships are of the view that the burden then shifts on the concerned deponents to substantiate the said manner of having derived the undisclosed income in issue. We sought to know from learned Departmental Representative as to whether the authorized officer had raised “manner query” in the course of search statement or not. He fails to pinpoint any such question raised in search statement. Learned counsel refers to CIT(A)’s order(s) under challenge pages 4 onwards extracting the relevant search statement(s) followed by necessary correspondence with the DDIT-1. Mr. Soparkar’s case is that no such specific query on the relevant “manner issue” came to be raised from the authorized officer. We therefore quote hon’ble jurisdictional high court’s above referred judgment to conclude that the CIT(A) has rightly deleted all the impugned penalties after holding that all these assessee had duly complied with the relevant immunity conditions u/s.271AAA of the Act. The Revenue’s identical sole substantive grievance in all these appeals is therefore rejected.”*

Considering in detail the facts as elaborated in the findings of the Ld. CIT(A) and respectfully following the decision of Co-ordinate Bench on identical issue and identical facts, we do not find any merit in the appeal of the revenue, therefore, the decision of Id. CIT(A) of deleting the penalty levied by the assessing officer is justified. Accordingly, the appeal of the revenue is dismissed.

7. In the result, the appeal of the revenue is dismissed.

Order pronounced in the open court on 29-11-2018

**Sd/-**  
**(RAJPAL YADAV)**  
**JUDICIAL MEMBER**  
**Ahmedabad : Dated 29/11/2018**

**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER**

**आदेश क० तालम अ० षत / Copy of Order Forwarded to:-**

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलालय आधिकरण,  
अहमदाबाद