

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 820/DEL/2015 (A.Y 2011-12)

DCIT Central Circle-II Faridabad (APPELLANT)	Vs	Hindustan Syringes & Medical Devices Ltd. Sector-25, Ballabgarh , Faridabad AAACH0007M (RESPONDENT)
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Appellant by	Sh. Rampal Meena, CIT DR
Respondent by	Sh. V. K. Aggarwal, Adv & Ms. Sweta Bansal, CA

Date of Hearing	18.12.2018
Date of Pronouncement	19.12.2018

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 10/12/2014 passed by CIT(A)-III, Gurgaon for Assessment Year 2011-12.

2. The grounds of appeal are as under:-

“ (i) Whether on the facts and circumstances of the case, the Ld.CIT(A) has erred in deleting the total penalty levied u/s 271AAA even when the assessee was given appropriate opportunity of being heard.?

(ii) Whether on the facts and circumstances of the case, the Ld.CIT(A) was right in granting relief to the assessee when even the basic requirement of the Section 271AAA is not fulfilled i.e. The assessee failed to elaborate the

manner in which the undisclosed income was derived?

3. The assessee company is engaged in the business of manufacturing of glass syringes, disposable syringes and needles. In this case, search and seizure operation u/s 132(1) of the Act was carried out at the business premises of the assessee on 15.12.2010. Notice u/s 142(1) of the Act was issued on 21.10.2011. In response, the assessee filed its return on 23.12.2011 declaring income of Rs. 38,41,78,010/-, which included the surrender of Rs. 8,00,00,000/-. The Assessing Officer initiated and levied penalty u/s 271AAA.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

4. The Ld. DR submitted that the Assessing Officer has rightly levied penalty and relied upon the order of the Assessing Officer. The Ld. DR relied upon the following decisions:-

- i. Ritu Singal Vs. CIT (2018-TIOL-438-HC-DEL-IT)
- ii. ACIT Vs. SSA International Ltd. (ITA No. 5051/Del/2013)
- iii. ACIT Vs. SSA International Ltd. (ITA No. 5051/Del/2013)
- iv. Sandeep Chandak Vs. PCIT [2018] 93 Taxmann.com 406 (S.C)/[2018]255 Taxman 367 (SC)
- v. Anand Sancheti Vs. DCIT [ITA No. 305/Nag/2015]
- vi. K. Krishnamurth Vs. DCIT [ITA No. 667 (Bang) 2015]
- vii. ACIT Vs. Shailesh Gopal Mhaske [2017] 86 taxmann.com 263 (Pune-Trib.)]

5. The Ld. AR submitted that a search action was conducted on the assessee group on 15/12/2010 wherein Mr. Rajiv Nath, Joint MD of the Group, had voluntarily disclosed an additional business income of Rs. 11 crores for the whole group for F. Y. 2011-12 u/s 132 (4). Penalty was levied by the Assessing Officer at Rs. 80,00,000/- u/s 271AAA in the case of the

assessee on account of surrender of Rs. 8,00,00,000/- being difference in valuation of stock. The CIT(A) deleted the penalty after considering facts and various judgments of jurisdictional ITAT and others. The Ld. AR further submitted that during the course of lifting of restraint from the bed room of Sh. Rajiv Nath, Joint MD, on 22/12/2010, various documents relating to inventory were found and seized. The said pages were duly explained by Sh. Rajiv Nath in his statement recorded on 22/12/2010. It was explained that there is a difference in value of inventory including WIP to the extent of Rs. 8 crores which was surrendered. The manner in which such income was derived was explained that this difference is due to the fact that various items of finished goods were shown below the cost treating it as net sale value whereas the actual carrying cost was higher. The manner was also substantiated by explaining that page no. 44 and 45 of Annexure A-1 represent the stock statement for the same day. Rs. 8 crores were surrendered on account of valuation difference in stock u/s 132(4) read with section 271AAA and requested the authorized officer to make it part and parcel of overall disclosure of Rs. 11 crores made by him in his statement recorded on oath on 16/12/2010. In fact after the surrender, the statement was closed without any further query. Subsequently, bifurcation of Rs. 11 crore was also provided vide letter dated 22/12/2010, i.e. the day of conclusion of search in which Shri Rajiv Nath surrendered Rs. 8 crore on account of valuation of stock in the company. Post dated cheques were handed over in respect of the tax due on the surrendered amount at the time of conclusion of the search on 22/12/2010 as mentioned in the bifurcation letter of even date. The Ld. AR submitted that the assessee surrendered Rs. 8 Cr as business income as is evident from the extract of statement dt. 22/12/2010. The surrendered amount was declared in the return of income u/s 153A as business income. The Assessing Officer accepted the surrendered amount as business income as declared by the assessee in the return of income and levied the income tax on it accordingly. He accepted the manner in which this additional income of Rs. 8 crore was derived as explained during the search and did not raise any

objection. The manner was also substantiated by explaining that page no. 44 and 45 of Annexure A-1 represent the stock statement for the same day. Even the tax paid on this income was accepted. The Ld. AR submitted that the assessee admitted the undisclosed business income of Rs. 8 crores during the statement u/s 132(4) and has also specified the manner in which such income has been derived as explained in para 2 above. A specific reference to section 271AAA was also made while surrendering Rs. 8 crores. The manner in which undisclosed income of Rs. 8 crore was derived is clearly substantiated by the computation in the seized documents themselves which has been accepted by the Assessing Officer. The tax alongwith interest has also been paid on 20/12/2010 and 11/1/2011 as detailed in the computation of income enclosed herewith. The Ld. AR submitted that Income Tax Act does not provide any specific format for disclosing the manner of deriving the undisclosed income. The very fact that the manner of deriving the undisclosed income was explained during the course of statement u/s 132(4) with a specific reference to section 271AAA and the Authorized Officer having not raised any further question on the manner specific, clearly proves that the Authorized Officer was satisfied with the explanation given by the assessee. Similarly, the Assessing Officer also accepted the same without raising any objection. No further questions were asked by the Assessing Officer either regarding the manner or regarding substantiating the manner. Not only this, the Assessing Officer accepted the surrendered income in the return as business income and also accepted the tax and interest paid by the assessee. Therefore, all the conditions as mentioned in section 271AAA were satisfied by the assessee and hence, the Assessing Officer was not justified in levying the penalty. The Ld. AR relied upon the following decisions:

- Mahavir Prasad Jaipuria vs. ACIT, 2017-TIOL-1435-ITAT-DEL
- ACIT Vs. Balwant Singh, 2016-TIOL-1428-ITAT-dEL
- ACIT Vs. Sushil Kuamr Gupta, 2014-TIOL-544-ITAT-DEL, Order

dated 14/8/2014

The Ld. AR submitted that in view of the facts and law as discussed above, penalty u/s 271AAA has rightly been deleted by the CIT (A). The Ld. AR submitted that the Assessing Officer observed that the manner of earning undisclosed income can be ascertained only if the names and addresses of the persons from whom stock was purchased are provided and the mode of payment like cash etc. is indicated. He has also questioned as to who were the buyers. Obviously the buyer of undervalued stock was the assessee itself and that is why it has surrendered the undisclosed income. The Ld. AR submitted that the observation of the Assessing Officer is beyond the scope of IT Act because firstly, no such question was asked by the Authorized Officer and secondly, section 271AAA does not lay down any such conditions. However, the names and addresses of the persons from whom stock was purchased are already recorded in the books of accounts because there is not even a single item of undisclosed purchase. It is a case of under valuation of closing stock and not undisclosed stock. All the payments were made by a/c payee cheques as recorded in the books of accounts. Therefore, question of furnishing any further names of the suppliers does not arise.

6. We have heard both the parties and perused the material available on record. It is pertinent to note here that a search action was conducted on the assessee group on 15/12/2010 wherein Mr. Rajiv Nath, Joint MD of the Group, had voluntarily disclosed an additional business income of Rs. 11 crores for the whole group for F. Y. 2011-12 u/s 132 (4). Penalty was levied by the Assessing Officer at Rs. 80,00,000/- u/s 271AAA in the case of the assessee on account of surrender of Rs. 8,00,00,000/- being difference in valuation of stock. During the course of lifting of restraint from the bed room of Sh. Rajiv Nath, Joint MD, on 22/12/2010, various documents relating to inventory were found and seized. The said pages were duly explained by Sh. Rajiv Nath in his statement recorded on 22/12/2010. The Joint MD of the

assessee explained that there is a difference in value of inventory including WIP to the extent of Rs. 8 crores which was surrendered and also explained the manner in which such income was derived by submitting that this difference is due to the fact that various items of finished goods were shown below the cost treating it as net sale value whereas the actual carrying cost was higher. The manner was also substantiated by explaining that page no. 44 and 45 of Annexure A-1 represent the stock statement for the same day. Rs. 8 crores were surrendered on account of valuation difference in stock u/s 132(4) read with section 271AAA and requested the authorized officer to make it part and parcel of overall disclosure of Rs. 11 crores made by him in his statement recorded on oath on 16/12/2010. Subsequently, bifurcation of Rs. 11 crore was also provided vide letter dated 22/12/2010, i.e. the day of conclusion of search in which Shri Rajiv Nath surrendered Rs. 8 crore on account of valuation of stock in the company. Post dated cheques were handed over in respect of the tax due on the surrendered amount at the time conclusion of the search on 22/12/2010 as mentioned in the bifurcation letter of even date. The assessee surrendered Rs. 8 Cr as business income as is evident from the extract of statement dt. 22/12/2010. The surrendered amount was declared in the return of income u/s 153A as business income. The Assessing Officer accepted the surrendered amount as business income as declared by the assessee in the return of income and levied the income tax on it accordingly. He accepted the manner in which this additional income of Rs. 8 crore was derived as explained during the search and did not raise any objection. These facts clearly mentioned in the Assessment Order as well as in the order of the CIT(A) and are not disputed by the Ld. DR. After the surrender, the statement was closed without any further query. The CIT(A) has given a detailed findings in the order. The Ld. AR distinguished the case laws referred by the Ld. DR as in case of Ritu Singal (supra), the source of income was not disclosed whereas in the present case the source was disclosed by the assessee. As regards the SSA International Ltd. (supra) during the search proceedings, assessee therein expressed his inability to explain the discrepancy in the stock whereas the

assessee has explained the documents found during the search. As regards the other case laws referred by the Ld. DR , the facts are distinguishable as the conditions prescribed in Section 271 AAA was not fulfilled by the assessee's therein whereas the assessee in the present case explained all the relevant documents and the Assessing Officer accepted the explanation given by the assessee. Therefore, in our opinion there is no need to interfere with the findings of the CIT(A). Hence, appeal of the revenue is dismissed.

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

Order pronounced in the Open Court on 19th December, 2018.

**Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER**

**Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 19/12/2018
R. Naheed

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	18.12.2018
Date on which the typed draft is placed before the dictating Member	18.12.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	20.12.2018
Date on which the final order is uploaded on the website of ITAT	20.12.2018
Date on which the file goes to the Bench Clerk	20.12.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	