

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH: 'I' NEW DELHI

**BEFORE SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER
AND
SHRI O.P. MEENA, ACCOUNTANT MEMBER**

**ITA No. 1099 /Del/2015
Assessment Year: 2011-12**

DOT, Central Circle-02 vs Vikas Aggarwal,
Faridabad 26-P, Sector-33,
Gurgaon

PAN AAHIA0815G

**Assessee by Shri Ved Jain, Adv
Shri Ashish Goyal, CA**

Revenue by Smt. Naina Soin Kapil, Sr. DR

**Date of Hearing 06.02.2019
Date of Pronouncement 6.02.2019**

ORDER

PER K.NARASIMHA CHARY:

Challenging the orders dated 29/12/2014 in appeal number 46/CIT(A)(C)/GGN/2013-14 on the file of the learned Commissioner of Income Tax (Appeals)- 3, Gurgaon, ("Ld. CIT(A)") whereunder the Ld. CIT(A) deleted the penalty levied by the learned assessing officer for the assessment years 2011-12, Revenue preferred this appeal.

2. Brief facts of the case are that the assessee has been deriving income from business. There was search and seizure operations under section 132(1) of the Act at the residential as well as the office premises of the assessee on 28/1/2011. Pursuant to the notice issued under section 142 (1) of the Act assessee filed a return of income declaring an income of Rs. 23,22,78,376/- after making total surrender amounting to Rs. 23 crores. Assessment was completed under section 153B (1) (b) of the Act on 28/3/2013 at the returned income. While completing the assessment, learned assessing officer initiated proceedings under section 271 AAA of the Act and concluded them by order dated 27/9/2013 with the levy of penalty of Rs. 2.30 crores.

3. Assessee preferred appeals against the penalty order. Ld. CTT(A) by way of impugned order accepted the contentions of the assessee and directed the learned assessing officer to delete the penalty. Revenue is, therefore, before us in this appeal stating that when the basic requirements of section 271 AAA of the Act by not fulfilling and the assessee failed to elaborate the manner in which the undisclosed income was derived, Ld. CIT(A) should not have deleted the penalty.

4. It is the submission of the Ld. AR that the assessee in this case by name Vikas Agrawal is the brother of one Pradeep Aggarwal and both the brothers are residing in the same house which was subjected to the search and seizure operations and 28/1/201 1. In the case of Pradeep Aggarwal the surrendered amount was 22 crores and the penalty was 2.2 crores. Ld. AR submitted that but for the change in these figures all the facts are identical in the cases of both the brothers. By producing the copies of the assessment order, penalty order, order of the Ld. CIT(A) and that of a coordinate Bench of this Tribunal in ITA No. 1 100/del/2015 in the case of Pradeep Aggarwal,

Ld. AR submitted that in the case of Pradeep Aggarwal also Ld. CIT(A) deleted the penalty and the order of the Ld. CIT(A) is upheld by a coordinate Bench of this Tribunal by order dated 15/10/2018 in ITA No. 1100 /Del/ 2015. He therefore squarely relied on the reasoning and conclusions of the coordinate bench of this Tribunal in the case of Pradeep Aggarwal and submitted that the penalty cannot be sustained in the case of Vikas Agrawal also.

5. Ld. DR heavily relied on the orders of the assessing officer and submitted that in the absence of fulfilment of any of the requirements under section 271 AAA, Ld. CIT(A) is not justified in deleting the penalty. She placed reliance on the decision of the Delhi High Court in the case of PCIT vs. Smt. Ritu Singhal (2018) 92 taxmann.com 224 (del) in support of her contention that where the assessee did not specify in search proceedings as to how he derived undisclosed income and under what head it fell in, it could not be concluded, that the assessee had fulfilled requirements of section 132 (4) and, thus, penalty order passed against her under section 271 AAA was to be confirmed.

6. We have gone through the record. It could be seen from the impugned order it was argued before the Ld. CIT(A) that the surrendered amount was admitted under section 132 (4) of the Act and that the same, as disclosed in the return filed, while also accepted by the learned assessing officer, due taxes were also paid and such surrender was made to buy peace and to avoid litigation, apart from the fact that no specific query about the substantiation was asked of him in the course of search. Assessee contended that he fulfilled all the three conditions as laid down in subsection 2 of section 271 AAA and

placed reliance on the decision of the Hon'ble Allahabad High Court in the case of crossings infrastructure Ltd vs. CIT (Central) 222 taxman 26 and the decision of the

Hon'ble jurisdictional High Court in the case of CIT vs. Sudhir Jain in ITA No. 575 of 2013.

7. Ld. Cff(A) on a consideration of the facts involved in this case, found that these facts are covered by various decisions of the Delhi benches of the Tribunal in the case of Sitaram Gupta vs. ACIT in ITA No. 1835 and 1836 of 2013, Nceraj Singhal vs. ACIT in 146 ITD 152, M/s Spaze tower private limited vs. DC IT in ITA No. 2296/del/2012 and the decisions of Chandigarh Bench in the case of ACIT vs. Munish Kumar Goyal 45 taxmann.com 563, ACIT vs. Gian Chand Gupta in ITA numbers 1005 to 1007/Chd/2013 etc. By following the said decisions Ld. CIT(A) directed the deletion of the penalty.

8. We have gone through the order dated 15/10/2018 in ITA No. 1100/del/2015 in the case of Pradeep Aggarwal where the facts are identical to the facts involved in this matter. A coordinate Bench of this Tribunal while noticing the decision of the Hon'ble Gujarat High Court in the case of PCIT vs. Shalton Silk Mills in ITA No. 823 of 2017 order dated 5/02/2018 and the decision of the Hon'ble Delhi High Court in the case of Smt. Ritu Singal to the contrary, recorded a finding that inasmuch as the assessee falls under the jurisdiction of the Hon'ble Punjab and Haryana High Court, the decision of the Hon'ble Delhi High Court is not binding on the assessee. It, therefore, reached a conclusion that when two views are possible on an issue, the view which is favourable to the assessee has to be accepted in view of the decision of the Hon'ble Apex Court in the case of vegetable products Ltd 88 ITR 192.

9. The Tribunal further noted that since the assessee had surrendered additional income by paying the taxes due thereon and no specific query was raised by the search party at the time of search, following the decision of the Hon'ble Gujarat High Court and various other decisions relied upon by the Ld. CIT(A) the penalty cannot be sustained.

10. In view of the fact that the facts of this case are identical to the facts involved in ITA No. 1100/del/2015 in the case of the brother of the assessee, namely, Pradeep Aggarwal we are of the considered opinion that, in the absence of any compelling reasons, the view taken by a coordinate Bench of this Tribunal in Pradeep Aggarwal's case cannot be deviated. We, therefore, while respectfully following the said decision hold that the penalty in this matter also cannot be sustained. We, accordingly, do not find anything illegal or irregular either in the approach or conclusions reached by the Ld. Cff(A) and, accordingly, hold that the grounds of appeal of the revenue are devoid of any merits. Accordingly, they are dismissed.

11. In the result, appeals of the revenue is dismissed.

Order pronounced in the Open Court on 06.02.2019.

(O.P. MEENA)
ACCOUNTANT MEMBER

(K.NARASIMHACHARY)
JUDICIAL MEMBER

Dated:6TH February,2019/VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR ITAT M W DELHI