

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES "A" : DELHI

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER

ITA.No.3541/Del./2015
Assessment Year 2012-2013

Shri Amardeep Dalal, A-3/502, Block-4, Kailash Dham Apartment, Sector-50, Noida, U.P. PIN - 201301. PAN AGWPD5758J	vs.	The ACIT, Central Circle-17, New Delhi.
(Appellant)		(Respondent)

For Assessee :	Shri Ved Jain, Advocate.
For Revenue :	Shri Amit Katoch, Sr. D.R.

Date of Hearing :	12.02.2019
Date of Pronouncement :	14.02.2019

ORDER

PER BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the Order of the Ld. CIT(A)-XXVI, New Delhi, Dated 31st March, 2015, for the A.Y. 2012-2013, challenging the levy of penalty under section 271AAA of the Income Tax Act, 1961.

2. Briefly the facts of the case are that assessee filed return of income declaring income of Rs.2.57 crores. Search

was carried out by the department on 17th January 2012 in Logix Group of cases and their business and residential premises of the Directors. During the course of search various books of account and documents were found and seized. The case of assessee was selected for scrutiny. The main source of income of assessee is remuneration received from M/s. Prithvee Propmart Pvt. Ltd., and income from house property etc. During the course of the search and survey operation, various incriminating material in the form of documents and soft data were found and impounded/seized from the premises. The assessee was not in a position to immediately offer explanation upon documents impounded. Hence, disclosed an amount of Rs. 1 crore in his Individual case for assessment year under appeal at the time of search. Further details are mentioned in the penalty order. The A.O. noted that total credits in favour of the assessee are of Rs.3,40,90,500/- comprising of cash of Rs.2,42,90,500/- and cheque of Rs.98 lakhs. During the post-search proceedings in respect of cheque credit of Rs.98 lakhs, the assessee has explained that there are

cheque withdrawal of Rs.35,10,231/- and the net cheque credit are Rs.62,89,769/- The assessee has explained that these cheque credits into the bank account of M/s. Prithvee Propmart Pvt. Ltd., are from the bank account of the assessee which are of the regular account of the assessee. Further during the search proceedings an amount of Rs.11,50,000/- was found at the premises of the assessee which was not satisfactorily explained by the assessee. Therefore, assessee has declared this amount as additional income in assessment year under appeal. Thus, the assessee disclosed Rs.2,54,40,500/- (Rs.2,42,90,500/- + Rs.11,50,000/-). The A.O, therefore, initiated the penalty proceedings under section 271AAA of the Income Tax Act, 1961 by issuing notice dated 26th March, 2014 (PB-3) for compliance on 24th April, 2014. On the date fixed, nobody appeared. The assessee later on 3rd September, 2014 filed a reply that penalty is not leviable in the matter. Further letter was issued to assessee on 16th September, 2014 for hearing on 22nd September, 2014 but, nobody appeared during the proceedings before the A.O. The A.O, therefore,

levied the penalty under section 271AAA of the Income Tax Act, 1961. The Ld. CIT(A) dismissed the appeal of assessee.

3. The Learned Counsel for the Assessee, at the outset submitted that the copy of the show cause notice Dated 26th March 2014 under section 274 read with section 271 of the Income Tax Act is filed at Page-3 of the paper book in which the A.O. has mentioned as under :

“Have concealed the particulars of your income or furnished inaccurate particulars of such income in terms of Explanation 1,2,3, 4 and 5. (Penalty u/s.271AAA).”

3.1. He has submitted that A.O. has issued notice for penalty under section 271(1)(c) of the Income Tax Act, 1961. No notice under section 271AAA of the Income Tax Act, 1961 have been issued in the matter.

3.1. The Ld. D.R. verified this fact from the Department and submitted that except this notice, no notice have been issued in the matter. Learned Counsel for the Assessee, therefore, submitted that since no notice have been issued under section 271AAA of the Income Tax Act,

1961, before levy of the penalty, therefore, entire penalty proceedings are vitiated and as such penalty orders may be quashed.

4. Considering rival submissions, it is clear that A.O. has issued show cause notice dated 26th March, 2014 copy of which is filed at Page No.3 of the paper book in which A.O. has called for explanation of assessee on the contents of penalty under section 271(1)(c) of the Income Tax Act, 1961, (though in the penalty under section 271AAA of the Income Tax Act, 1961 have been mentioned). It is, therefore, clear that no notice have been issued to assessee seeking explanation of assessee for levy of the penalty under section 271AAA of the Income Tax Act, 1961. Section 271AAA(4) of the Income Tax Act, 1961 provides that *“the provisions Sections 274 and 275 shall, in so far as may be, apply in relation to penalty referred to in this Section”*. Section 274(1) of the Income Tax Act provides that *“no order imposing a penalty under this Chapter, shall be made, unless the assessee has been heard or has been given a reasonable opportunity of being heard.”*

4.1. In the present case, though the A.O. issued show cause notice on 26th March, 2014, but, the A.O. mentioned therein the contents which are relevant to penalty proceedings under section 271(1)(c) of the Income Tax Act, 1961. The A.O. did not issue any notice to the assessee for levy of the penalty under section 271AAA of the Income Tax Act, 1961. Thus, no reasonable opportunity of being heard have been given to the assessee before levy of the penalty under section 271AAA of the Income Tax Act, 1961 and the assessee has also not been heard with reference to penalty proceedings under section 271AAA of the Income Tax Act, 1961. Since, assessee was not made aware as to under which provisions the penalty shall have to be levied against the assessee, there is no question of giving reasonable opportunity of being heard to the assessee or to hear the assessee before levy of the penalty. Due to the above, the entire penalty proceedings are vitiated and as such liable to be quashed. We, accordingly, set aside the orders of the authorities below and quash the penalty proceedings.

5. In the result appeal of Assessee is allowed

Order pronounced in the open Court.

Sd/-
(L.P. SAHU)
ACCOUNTANT MEMBER

Sd/-
(BHAVNESH SAINI)
JUDICIAL MEMBER

Delhi, Dated 14th February, 2019.

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'A' Bench, Delhi
6.	Guard File.

// BY Order //

Assistant Registrar : ITAT Delhi Benches :
Delhi