

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

**BEFORE SHRI R.K.PANDA, ACCOUNTANT MEMBER
&
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.-6104/Del/2014
(Assessment Year: 2011-12)**

Ajay Kumar Gupta 43/1, Raipur Road, Civil Lines New Delhi- 110054	Vs.	DCIT, CC-04 New Delhi
Appellant		Respondent

**Assessee by: Sh. R.S.Singhvi, Adv.
Revenue by: Shri N.K.Bansal, Sr.DR**

Date of Hearing	13.02.2019
Date of Pronouncement	27.02.2019

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.:

This appeal is preferred against the order of the Ld. CIT (Appeals)-33, New Delhi wherein, vide order dated 02.07.2014, the Ld. CIT (Appeals) has upheld imposition of penalty amounting to Rs. 1,75,000/- imposed u/s 271(AAA) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

2. The Brief facts of the case are that the M/s. Dharampal Satyapal Ltd. group is engaged in the manufacturing and trading of Chewing Tobacco and premium *pan masala* besides other

businesses. A search and seizure action u/s 132 of the Act was carried out on 21.01.2011 in the Dharampal Satyapal group of cases. The assessee, who is a Director in the group, had during the year earned income from salary, business and profession and other sources and the return of income was filed at an income of Rs. 56,99,270/-. The assessee's residence was also covered in the search as carried out on 21.01.2011. During the course of search at the assessee's residence, cash of Rs. 21,00,000/- was found and unexplained cash of Rs. 17,50,000/- was seized. In the return filed by the assessee, this amount of Rs. 17,50,000/- was added to his income as income from other sources. The AO observed that the assessee could not explain the manner of earning this income during the course of search and seizure proceedings. The assessment was completed at the returned income of Rs. 56,99,720/-. However, penalty proceedings u/s. 271AAA were also initiated and, subsequently, vide order dated 30.09.2013 penalty of Rs. 1,75,000/- was imposed u/s 271AAA of the Act being 10% of the undisclosed income of Rs. 17,50,000/-. The assessee's appeal against the imposition of penalty was dismissed by the Ld. CIT (Appeals) and now the assessee has approached the ITAT and has challenged the impugned order by raising the following grounds of appeal :-

“1. The order passed by the Ld. CIT (A) is bad in law & nature, hence it is liable to be quashed.

2. That on the facts and circumstances of the case, the Ld. CIT(A) has erred in holding the penalty under section 271AAA despite the fact the assessee fulfilled the condition under section 271AAA sub section (2). Therefore, the same is liable to be deleted.

3. The appellant craves leave for addition, modification, alteration, amendment of any of the grounds of appeal.”

3. The Ld. Authorised Representative submitted that the allegation of the AO that the assessee did not specify the source of unexplained income found during the course of search is incorrect in so far as no query was raised by the AO while recording the statement u/s 132(4) of the Act. In this regard, he drew our attention to the copy of statement recorded during the course of search. It was also submitted that the surrender of this amount was not made by the assessee during the course of search but was surrendered as income in the return of income filed. It was further submitted that the return filed by the assessee was accepted by the AO and no further additions were made. The Ld. Authorised representative placed reliance on the judgment of Hon'ble Delhi High Court in the case Pr. Commissioner of Income Tax

vs. Emirates Technology Pvt. Ltd. reported (2017) 399 ITR 189 (Delhi) and submitted that the Hon'ble Delhi High Court had in this case upheld the order of the Tribunal holding that where no query is raised by the assessing officer regarding the manner of derivation of income from unexplained sources, the deletion of penalty was justified. The Ld. Authorised Representative submitted that penalty was not imposable in this case.

4. In response, the Ld. Sr. Departmental Representative submitted that the Hon'ble Delhi High Court in the subsequent case of Ritu Singhal vs. CIT (2018-TIOL-438-HC-DEL-IT) had held that a mere statement that the sum surrendered during the search was undisclosed income but not disclosing the source of such income cannot be construed as satisfaction of condition u/s 271AAA. It was submitted and vehemently argued by the Ld. Sr. Departmental Representative that the penalty had been rightly imposed and upheld and further that the assessee's appeal deserved to be dismissed.

5. We have heard the rival submissions and have also perused the orders of the lower authorities. We have also perused the statement of the assessee which was recorded

u/s 132(4) of the Act on the date of search i.e. 21/01/2011. A perusal of the said statement shows that no surrender of the amount of cash seized i.e. Rs. 17,50,000/- was made by the assessee during the course of search/in the statement recorded u/s 132(4). The amount of Rs. 17,50,000/- was offered for tax by the assessee as income from other sources for the first time in his return of income which was duly accepted by the AO and the assessment was completed at the returned income without any further query or investigation by the AO. Therefore, on the peculiar facts of this case, it is our considered opinion that the rigours of section 271AAA will not be attracted. The judgment of the Hon'ble Delhi High Court in the case of Ritu Singhal will not be of any help to the department as in this case the assessee had surrendered a certain amount as undisclosed income in the statement recorded during the search proceedings and had, thereafter, not substantiated the manner in which the undisclosed income was earned. However, in the present case, there was no surrender by the assessee and the seized cash was included in the computation of income and offered for tax which was duly accepted by the AO without any further query. We also note that this case is covered in favour of the

assessee by an order of the coordinate Bench of this Tribunal in the case of Mahavir Prasad Jaipuria vs. ACIT reported in 167 ITD 253 (Delhi – Trib) wherein the coordinate Bench had held that where the AO had accepted the assessee's surrender without any questions being asked, no penalty u/s 271AAA was leviable. Therefore, on the same analogy, we do not find this case a fit case for imposition of penalty. The impugned order is set aside and the AO is directed to delete the penalty.

6. In the final result, appeal of the assessee stand allowed.

Order pronounced in the open court on 27.02.2019.

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

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 27.02.2019

BR

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	12/02/2019
Date on which the typed draft is placed before the dictating Member	
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	27.02.2019
Date on which the fair order comes back to the Sr. PS/PS	27.02.2019
Date on which the final order is uploaded on the website of ITAT	27.02.2019
Date on which the file goes to the Bench Clerk	
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	