

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
&
SHRI O.P. KANT, ACCOUNTANT MEMBER**

**ITA No. 737/Del/2016
Assessment Year: 2012-13**

Anuraag Jaipuria, 8, Prithviraj Road, New Delhi. PAN No. ABVPJ8557B	vs	ACIT Central Circle-07, Jhandewalan Extension, New Delhi.
APPELLANT		RESPONDENT

Assessee by	Shri Manoj Kumar, CA
Revenue by	Smt. Paramita M. Biswas, CIT DR

Date of Hearing	20.03.2019
Date of Pronouncement	27.03.2019

ORDER

PER SHRI BHAVNESH SAINI, J.M.

This appeal by assessee has been directed against the order of Ld. CIT(Appeals)-24, Delhi dated 07.12.2015 for AY 2012-13, challenging the levy of penalty u/s 271AAA of the I.T. Act.

2. Briefly the facts of the case are that the assessee belongs to Jaipuria Group of cases which was subjected to search and seizure action u/s 132 of the Act on 27.03.2012. Assessment order u/s 153A read with section 143(3) was passed on 26.03.2014. The AO issued notices u/s 271AAA of the Act and

levied penalty of Rs. 36,460/- being 10% of the undisclosed income of Rs. 3,64,602/- for assessment year under appeal. The amount of Rs. 3,64,602/- is the amount of additional income offered to tax by the assessee as his undisclosed income for assessment year under appeal.

3. The assessee challenged the levy of penalty before Ld.CIT(A). The submissions of the assessee are reproduced in the appellate order. The assessee briefly explained that the AO has accepted the returned income and did not make any addition in the assessment proceedings. The assessee was eligible to get immunity from penalty u/s 271AAA of the Act. The Ld. CIT(A) noted that the submission of the assessee has been that during the course of search and seizure operation u/s 132 of the Act assessee, the Director of the Company and main person looking after the affairs of the company, in his statement recorded u/s 132(4) on 27/28.03.2012 offered a total amount of Rs. 5 crores as additional income in the hands of himself, his family members and his group concerns, over and above the regular income of the group, with the understanding that no penalty and prosecution will be initiated against the entity of his group. The assessee later on filed letter dated 04.03.2014 with the AO during the course of assessment proceedings giving the disclosure of Rs. 4.96 crores for the group including Rs. 17,24,960/- in his own hands. This break up includes Rs. 3,64,602/- in the hands of the assessee vide letter dated 04.03.2014 in which assessee stated that Rs. 1,07,602/- is on account of school fees, travelling and other party expenses

arising from the entries from the seized document and Rs. 2,57,000/- on account of cash seized from his residence. The assessee made a disclosure to buy peace and avoid litigation. The AO has accepted the additional income of Rs. 3,64,602/- without verifying the same, whether, it was undisclosed income earned by the assessee. Nothing has been detected during the course of search and no incriminating material was found during the search. Therefore, penalty is, not leviable.

4. The Ld. CIT(A) referred to the statement of the assessee recorded during the course of search in which as regards cash of Rs. 2,57,000/- assessee explained that the same belongs to him and his wife and source of cash is withdrawn as salary from the company and past cash pertaining to his wife. As regards the other loose paper, assessee explains that the same pertained to our business concerns. The Ld. CIT(A), however, noted that there is no admission of undisclosed income arising from the seized paper, therefore, penalty is leviable against the assessee. He has confirmed the penalty and dismissed the appeal of assessee.

5. Ld. Counsel for assessee submitted that on the identical facts, in the case of other group person Shri Mahavir Prasad Jaipuria, ITAT on similar facts cancelled the penalty u/s 271AAA of the Act in ITA No. 6643/Del/2015 AY 2012-13 vide order dated 04.10.2017 in which in para 5 & 6 held as under:

“5. We have heard the rival submissions and have also per used the material on record. Before proceeding to examine the rival contentions, it

would be worthwhile to reproduce section 271AAA. [Section 271AAA](#) reads as under:

"The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under [section 132](#) on or after the 1st day of June, 2007, the assessee shall pay way of penalty, in addition to tax, if any payable by him a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year.

(2) Nothing contained in sub-section (1) shall apply if the assessee:

(i) In the course of search, in a statement under sub section (4) of [section 132](#), admits the undisclosed income and specifies the manner in which such income has been derived.

(ii) Substantiates the manner in which the undisclosed income was derived; and

(iii) Pays the tax, together with interest, if any, in respect of the undisclosed income"

5.1 The facts of the case reveal that the amount was found during the course of search which the assessee claimed to be his wife's savings/pin money. This amount was not surrendered at the time of search but was surrendered subsequently during the course of assessment proceedings by assessee surrendering the same in his own hands in the computation of income. Therefore, as per the specific provisions of section 271AAA, this amount does not specifically fall under the definition of undisclosed income found during the course of search. It is also noteworthy that the assessing officer accepted this surrender without any questions asked. Even if for the sake of argument, the same is accepted as to be cash found during the course of search, it is undisputed that the assessee has paid tax due thereon. The only question thereafter remaining is whether the same was substantiated by the assessee or not. The

assessee has already explained the source that is savings/pin money of his wife and as far as the substantiation is concerned, it would be relevant to mention here that given the fact that it is a search case, the question of specifying and substantiating the manner in which the undisclosed income has been derived can be somewhat general and omnibus and no precise calculations or computations can be done with reference thereto. The Cuttack Bench of the Income-Tax Appellate Tribunal in the case of Sri Pramod Kumar Jain vs Deputy Commissioner of Bargarh Income Tax, Circle 2(1) and M/s JRC Resources (P) Ltd vs. CIT Sambalpur in ITA Nos. 131, 132 and 133/CTK/2012 held that having accepted the surrendered income on the basis of returns filed by an assessee, satisfaction as to the specifying and substantiating the manner in which the same has been earned gets answered automatically. In this regard the following comments of the Income-Tax. Appellate Tribunal are topical and relevant:

"We have heard the rival contentions and perused the material available on record. On consideration of the facts and circumstances of the case, we are inclined to hold that no definition could be given to the "specified manner" insofar as the very statement on oath u/s 132(4) specifies the manner on which the assessee is prepared to pay tax thereon. The inscribing in the books of account was taken care of by the assessee when he filed the returns in pursuance to notice u/s 153A accounting the assets. Therefore, the case laws cited at the Bar clearly indicate that the penalty is not automatic if one of the purported conditions is not fulfilled although all the conditions have been agreed to of having fulfilled by the Assessing Officer insofar as the tax and interest has been recovered. Penalty has been levied after the tax has been recovered therefore answers the queries raised by the Learned DR for that the said provisions become redundant was not the

intention of the legislation. The manner, during the search operation, is noted by the search party which the Assessing Officer has acceded to. Therefore, following the decisions as relied upon by the Learned counsel for assessee, wherein the Tribunal was pleased to consider cancelling the penalty so levied are also applicable to the assessee's case before us insofar as there is no prescribed method to indicate the manner in which income was generated when the definition of "undisclosed income" has been defined in the Act itself 'when no income of the specified previous year represented "either wholly or partly" which onus lay upon the assessee stood discharged."

5.2 In view of the above, we are of the considered view that the levy of penalty u/s 271 AAA in the instant case was not justified and as such, we cancel the penalty so levied u/s 271AAA for the year under consideration.

6. In the final result, the appeal of the assessee stands allowed."

6. On the other hand, Ld. DR relied upon the orders of the authorities below.

7. After considering the rival submission, we are of the view that the issue is covered in favour of the assessee by order of ITAT Delhi 'F' Bench in the case of Mahavir Prasad Jaipuria (supra) who is also connected with the same search and connected with the group. On identical facts, the similar penalty has been cancelled by the Tribunal. In the case of the assessee also, assessee declared additional income at the assessment proceedings vide letter dated 04.03.2014 in a sum of Rs. 3,64,602/-. Further, the assessee has explained the items which have been surrendered at

the assessment proceedings. Therefore, no penalty is leviable. Following the order of the Tribunal in the case of Mahavir Prasad Jaipuria (supra), we set aside the orders of the authorities below and cancel the penalty.

8. In the result, appeal of assessee is allowed.

Order pronounced in the open court.

Sd/-

(O.P. KANT)

ACCOUNTANT MEMBER

Dated: 27.03.2019

*Kavita Arora

Sd/-

(BHAVNESH SAINI)

JUDICIAL MEMBER

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	22/03/2019
Date on which the typed draft is placed before the dictating Member	23/03/2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	27/03
Date on which the fair order is placed before the Dictating Member for pronouncement	27 /03
Date on which the fair order comes back to the Sr. PS/PS	27 /03
Date on which the final order is uploaded on the website of ITAT	27/03
Date on which the file goes to the Bench Clerk	27 /03
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	