

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI

BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No.4818/Del/2014
Assessment Year : 2010-11

Assistant Commissioner of
Income Tax,
Central Circle-25,
New Delhi.

(Appellant)

Vs. M/s Saviour Builders Pvt.Ltd.,
BB-150, Near Choti Sabji Mandi,
Janakpuri,
New Delhi.
PAN : AALCS4258C.
(Respondent)

Appellant by : Shri S.S. Rana, CIT-DR.
Respondent by : Shri Shashwat Bajpai and
Shri Sharad Agarwal, Advocates.

Date of hearing : 15.04.2019
Date of pronouncement : 16.04.2019

ORDER

PER G.D. AGRAWAL, VICE PRESIDENT :-

This appeal by the Revenue for the assessment year 2010-11 is directed against the order of learned CIT(A)-1, New Delhi dated 13th June, 2014.

2. Following grounds have been raised by the Revenue :-

"On the facts and in the circumstances of the case the Ld.CIT(A) has erred in :-

1. *The order of the CIT(A) is not correct in law and facts.*

2. *On the facts and circumstances of the case, the ld.CIT(A) has erred in deleting the penalty u/s 271(1)(c) of I.T. Act, 1961 imposed by Assessing Officer amounting to Rs.2,02,72,800/-.*

3. The appellant craves leave to add, amend any/all the grounds of appeal before or during the course of hearing of the appeal."

3. At the time of hearing before us, the learned counsel for the assessee has relied upon the decision of ITAT, Delhi Bench in the case of Ashwani Kumar Arora Vs. ACIT – [2017] 81 taxmann.com 440 (Delhi-Trib.). The learned CIT-DR, on the other hand, relied upon the following decisions :-

- (i) CIT Vs. Prasanna Dugar – [2015] 59 taxmann.com 99 (Calcutta).
- (ii) ACIT Vs. Smt. J. Mythili – 35 taxmann.com 86.
- (iii) Smt. Kiran Devi Vs. ACIT – [2009] 125 TTJ 631 (Delhi).
- (iv) CIT Vs. S.J. Prasad – [2008] 220 CTR 169 (Ker).
- (v) CIT Vs. Smt. Meera Devi – [2012] 26 taxmann.com 132 (Delhi).
- (vi) Shourya Towers (P) Ltd. Vs. DCIT – [2013] 30 taxmann.com 10 (Delhi).
- (vii) Sanjay Aggarwal Vs. CIT – [2011] 15 taxmann.com 34 (P&H).

4. We have carefully considered the submissions of both the sides and perused the material placed before us. The facts of the case are that the search has taken place at the assessee's premises on 31st January, 2011. The Assessing Officer completed the assessment at ₹8,41,36,820/- which was the income declared by the assessee in the revised return. The Assessing Officer levied penalty under Section 271(1)(c) at ₹2,44,72,800/-. On appeal, learned CIT(A) held that at the relevant time, no penalty under Section 271(1)(c) could have been levied where Section 271AAA was applicable. He, therefore, modified the penalty order and, instead of penalty under Section 271(1)(c), he imposed penalty under Section 271AAA at ₹42,00,000/- and allowed the relief of ₹2,02,72,800 i.e., ₹2,44,72,800 - ₹42,00,000/-.

5. At the time of hearing before us, it is stated by the learned counsel that no appeal has been filed by the assessee against the penalty sustained under Section 271AAA. Section 271AAA reads as under :-

“271AAA. (1) 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 [but before the 1st day of July, 2012], the assessee shall pay by 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 the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specified 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.

(3) No penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).”

6. From the above, it is evident that Section 271AAA is an overriding provision and which is applicable where the search has been initiated under Section 132 on or after 1st June, 2007 but before the 1st day of July, 2012. In respect of such search for any undisclosed income, the penalty is leviable under this Section at the rate of 10% of

the undisclosed income. Sub-section (3) has clearly provided that no penalty under Section 271(1)(c) shall be imposed upon the assessee whose case is covered by Section 271AAA. Admittedly, in this case, the search has taken place on 31st January, 2011 which falls within the period in which Section 271AAA was applicable i.e., after the 1st day of June, 2007 but the 1st day of July, 2012. In the above circumstances, in our opinion, learned CIT(A) rightly held that in this case, penalty was leviable under Section 271AAA and not under Section 271(1)(c). Similar view has been expressed by the ITAT, Delhi Bench in the case of Ashwani Kumar Arora (supra) relied upon by the learned counsel. The facts in all the cases relied upon by the learned CIT-DR are altogether different. In view of the above, we do not find any infirmity in the order of learned CIT(A). The same is sustained and Revenue's appeal is dismissed.

7. In the result, the appeal of the Revenue is dismissed.
Decision pronounced in the open Court on 16.04.2019.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(G.D. AGRAWAL)
VICE PRESIDENT

VK.

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1. Appellant : Assistant Commissioner of Income Tax,
Central Circle-25, New Delhi.
2. Respondent : M/s Saviour Builders Pvt.Ltd.,
BB-150, Near Choti Sabji Mandi, Janakpuri,
New Delhi.
3. CIT
4. CIT(A)
5. DR, ITAT

Assistant Registrar