IN THE INCOME TAX APPELLATE TRIBUNAL
JABALPUR BENCH, JABALPUR

BEFORE SHRI A. D. JAIN, VICE PRESIDENT
AND SHRI T. S. KAPOOR, ACCOUNTANT MEMBER

ITA No.47/JAB/2017
Assessment Year:2007-08

Income Tax Officer Ward 1 Rewa	v.	Bhanu Pratap Singh Nirmal Chhaya Khutehi Rewa
		TAN/PAN:AVPPS0806G
(Appellant)		(Respondent)

C.O. No.10/JAB/2017
[In ITA No.47/JAB/2017]
Assessment Year:2007-08

Bhanu Pratap Singh Nirmal Chhaya Khutehi Rewa	v.	Income Tax Officer Ward 1 Rewa
TAN/PAN:AVPPS0806G		
(Cross Objector)		(Respondent)

Department by:	Shri P. D. Chougale, D.R.		
Respondent by:	Shri A. P. Srivastava, D.R.		
Date of hearing:	03	04	2019
Date of pronouncement:	04	04	2019

O R D E R

PER A. D. JAIN, V.P.:

This is Revenue's appeal against the order of the ld. CIT(A)-1, Jabalpur, dated 29/8/2017 for Assessment Year 2007-08, taking the following grounds:

1. Whether the Ld CIT (A) is legally justified in deleting the penalty imposed u/s 271(1)(c) by the assessing officer merely on the ground that the correct section was section 271AAA of the I.T Act instead of section 271(1)(c) of the I.T Act. The CIT(A has erred in ignoring the fact that no search has been initiated in the

case of the assessee and therefore, section 271AAA of the I.T Act was not applicable.

2. The assessee has also filed cross objection in support of the order of the ld. CIT(A).

3. The brief facts of the case are that the assessment in the case of the assessee has been completed by the A.O. under section 153 r.w.s. 143(3) of the I.T Act, 1961 on 28/03/2014 determining the total income at Rs.46,07,335/- and initiated penalty proceedings u/s 271(1)(c) of the Act for filing of inaccurate particulars of income and concealment of income. Further, on an application filed on behalf of the assessee, rectification order u/s 154 of the Act was passed by the A.O. on 23/06/2014 determining the total income of the assessee at Rs.34,01,150/- and penalty proceedings were initiated u/s 271(1)(c) for furnishing inaccurate particulars of income and concealment of income.

4. It is borne out from the record that the assessment under section 153C of the Act in the case of the assessee is the outcome of search initiated under section 132 of the Act in Bansal Group of cases in the year 2011, i.e., after the first day of June, 2007, but before the first day of July, 2012. It is also undisputed and admitted fact that the undisclosed income has been assessed in the hands of the assessee. It is also well settled that the provisions of section 271AAA of the Act are applicable where search has been initiated in the aforementioned period. It is also fact that the assessee did not fulfill the conditions laid down in sub-section (2) of section 271AAA of the Act.

5. The crux of the matter, in this case, that which of the penalty provisions, i.e., either section 271AAA of the Act or section 271(1)(c) of the Act, are to be applied to the facts of the assessee's case, has been decided by the ld. CIT(A) relying on the order dated 19/5/2016 of the Delhi Bench of the Tribunal in the case of Shri Ashwani Kumar Arora,

Delhi vs. ACIT, in ITA No.844/DEL/2014, for assessment year 2008-09. The relevant portion of the order of the Tribunal (supra), viz. para 13, is reproduced, as below:

> *"13. When aforesaid undisputed facts are examined in the light of the amended provisions contained under sub-section (2) and (3) of section 271AAA, the penalty in this case, if at all leviable, it should have been levied under section 271AAA (1) and not u/s 271(1)(c) as has categorically been provided in sub-section (3) of section 271AAA. Intention of the legislative in incorporating the provisions contained u/s 271AA .effective during the period 1st June, 2007 to 1st July, 2012 is to provide general amnesty in search and seizure cases, and the case of the assessee undisputedly falls u/s 271AAA and cannot be dealt with u/s 271(1)(c) by any stretch of imagination even."*

6. In view of the above, we find no merit in the Revenue's appeal and confirm the order of the ld. CIT(A), who has rightly deleted the penalty levied u/s. 271(1)(c) of the Act, relying on the order of the Tribunal (supra). Accordingly, the appeal of the Revenue is dismissed.

7. Since we have dismissed the appeal of the Revenue, the cross objection filed by the assessee, which is in support of the order of the ld. CIT(A), has become infructuous and hence the same is dismissed as infructuous.

8. In the result, appeal of the Revenue and cross objection of the assessee are dismissed.

Order pronounced in the open Court on 04/04/2019.

Sd/-	Sd/-
[T. S. KAPOOR]	[A. D. JAIN]
ACCOUNTANT MEMBER	VICE PRESIDENT

DATED:04/04/2019
JJ:0304

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1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR