

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 164/JP/2017
निर्धारण वर्ष / Assessment Year :2013-14

Shri Ashish Kumar Kanodia, 24-25, Subham Enclave, Jamna Lal Bajaj Marg, C-Scheme, Jaipur-302001.	बनाम Vs.	A.C.I.T., Central Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AHHPK 7462 L		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

आयकर अपील सं./ITA No. 165/JP/2017
निर्धारण वर्ष / Assessment Year :2013-14

Shri Kailash Kumar Kanodia, 24-25, Subham Enclave, Jamna Lal Bajaj Marg, C-Scheme, Jaipur-302001.	बनाम Vs.	A.C.I.T., Central Circle-1, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: ADRPK 6756 F		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri Rajiv Sogani (CA)
राजस्व की ओर से / Revenue by : Shri Rajendra Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 20/05/2019
उदघोषणा की तारीख / Date of Pronouncement : 22/05/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

These are the appeals filed by the assesseees against the separate orders of Id.CIT(A)-4, Jaipur dated 20/12/2016 for the A.Y. 2013-14 in

the matter of imposition of penalty U/s 271AAB of the Income Tax Act, 1961 (in short, the Act).

2. Commons grounds have been taken by both the assesses in their appeals, therefore, both the appeals have been heard together and now decided by passing a consolidated order for the sake of brevity.

3. Following grounds have been taken by the assessee in ITA No. 164/JP/2017.

- “1. In the facts and circumstances of the case and in law, the Id. CIT(A) has erred in confirming the action of the Id. A.O. in imposing penalty of Rs. 60,00,000/- U/s 271AAB of the Income Tax Act, 1961. The action of the Id. CIT(A) is illegal, unjustified, arbitrary and against the facts of the case. Relief may please be granted by deleting the said penalty of Rs. 60,00,000/-.*
- 2. The assessee craves his right to add, amend or alter any of the grounds on or before the hearing.”*

4. Rival contentions have been heard and record perused. The facts in brief are that the assessee is a salaried person and also having income from other sources. He is Director of Balaji Industrial Engineering Ltd.. A search and seizure operation U/s 132 of the Act were carried out on 06/11/2012 at the various premises of Kanodia Group to which the assessee belongs. During the course of search, a red diary containing seven (7) pages was found from assessee's office wherein certain notings relate to cash advances was found recorded. There was total advance of

Rs. 4.00 crores. Out of this Rs. 4.00 crores, the assessee surrendered Rs. 2.00 crores in his name and Rs. 2.00 crores in the name of his father Shri Kailash Kumar Kanodia (present assessee before us). In the statement given by Shri Kailash Kumar Kanodia U/s 132(4) of the Act, the A.O. impose the penalty @ 30% under clause (c) of sub section (1) of section 271AAB holding that the assessee admitted 'Undisclosed Income' in its statement u/s 132(4) but could not furnish his return of income on or before the specified date, since return of income was filed on 22.11.2013 for the A.Y 2013-14 which was after the due date.

5. By the impugned order, the Id. CIT(A) upheld the penalty by observing that the assessee had filed return offering income of Rs. 2.00 crores after specified dates. Now the assessee is in appeal before us against the order of the Id. CIT(A) confirming the penalty so imposed U/s 271AAB of the Act.

6. It was argued by the Id. AR of the assessee that the penalty notice so issued is vague in so far as the specific limb was not mentioned. Our attention was also invited to the penalty notice issued U/s 274 read with Section 271AAB of the Act as placed at page No. 6 of the paper book. Accordingly, it was contended that while initiating the penalty proceedings u/s 271AAB, A.O. was not clear as to under which clause the

case of assessee Company would fall. Therefore, it can be inferred that notice was issued by A.O. without prima facie satisfying himself about as to whether assessee has committed default at all or if yes, under which clause. Therefore, assessee could not get fair opportunity to explain or represent his case, in absence of non-mention of specific clause of alleged default as per A.O. for this purpose, reliance was placed on the decision of the Hon'ble ITAT Chennai 'A' Bench in the case of DCIT, Coimbatore Vs. R. Elanyovan ITA No. 1199/CHNI/2017 dated 5.4.2018 (CLC 244-250) (Internal page 6) while deciding the penalty u/s 271AAB the Tribunal has held that notice issued u/s 274 r.w.s. 271AAB of the Act was not valid. In this case, the AO had not scored out anyone of the two limbs in such notice nor did he mention on which clause of section 271AAB, the assessee was answerable. The Hon'ble ITAT Jaipur Bench, following the decision of Hon'ble ITAT Chennai 'A' Bench in the case of DCIT, Coimbatore Vs. R. Elanyovan (Supra), held in the case of Shri Ravi Mathur Vs DCIT (Supra) that where it is not specified in the show cause notice as to under which clause i.e. either (a), (b) or (c) of section 271AAB(1), the alleged default of assessee is covered, such show cause notice is not sustainable.(relevant portion being para 7 of the judgment) (CLC 32-35) (Internal Page 20-23). The Hon'ble ITAT Jaipur Bench, followed the decision of Shri Ravi Mathur Vs DCIT (Supra) in following

subsequent judgments where if limb is not specified the penalty proceedings have been held to be void.

- Shri Suresh Chand Mittal vs DCIT dated 2-7-2018(Supra) (CLC 81-116) (Internal Page 35)
- Dinesh Kumar Agarwal vs ACIT (Supra) dated 24-7-2018 (CLC 117-167) (Internal page 45)
- Padam Chand Pungliya vs ACIT (Supra) dated 5-4-2019 (CLC 251-289) (Internal page 31)
- Shri Suraj Mal Bansal & Others vs DCIT (Supra) dated 8-4-2019 (CLC 290-313) (Internal Page 21)
- Shri Gopal Das Sonkia vs DCIT ITA No. 306/JP/2018 dated 11-4-2019 (CLC 314-351) (Internal Page 24)

He further argued that the penalty U/s 271AAB of the Act is not mandatory. For this purpose, reliance was placed on the following judicial pronouncements:

- DCIT Vs Manish Agarwal (Supra) (CLC 1-12)
- DCIT Vs. Madan Lal Beswal (Supra) (CLC 214-225)
- Sanwar Mal Agarwal & DCIT Vs. Agam Saran Khemka (Supra) (CLC 226-233)
- DCIT Vs Subhash Chandra Agarwal (Supra) (CLC 234-243)

7. As per the Id AR, the assessee was not carrying on any business, therefore, he was not required to maintain any regular books of account under the Income Tax Act. Accordingly, there is no question of recording the transaction of cash advances in his books of account. He further contended that since the assessee is not carrying on any business, his case falls in second limb i.e. "or other documents" as stipulated in explanation-(c) of Section 271AAB of the Act, which describes undisclosed

income for the purposes of this section. At the time of search, the transactions were found to be recorded in the 'Red Diary', which is '*other document*', mentioned in above definition of undisclosed income. Accordingly, it was argued that it is not coming in the definition of undisclosed income as provided in Explanation (c) of Section 271AAB of the Act. For this purpose reliance was placed on the decision of Kolkata Bench in the case of DCIT Vs Manish Agarwal (supra), Jaipur Bench of the ITAT in the cases of Ravi Mathur Vs. DCIT, Anuj Mathur Vs DCIT, Shri Suresh Chand Mittal Vs DCIT, Shri Dinesh Agarwal Vs ACIT and Shri Ritesh Agarwal Vs DCIT (supra). He also invited our attention to the decision of the Coordinate bench of Visakhapatnam in the case of Pillala Ramakrishna Rao Vs ACIT (supra), ITAT Kolkata Bench in the case of DCIT Vs. Madan Lal Beswal, DCIT Vs. Sanwar Mal Agarwal and DCIT Vs. Agam Saran Khemka (supra).

8. The Id AR has further argued that alternatively and without prejudice to our above submissions, it is humbly submitted that penalty if at all is upheld u/s 271AAB, it should be @ 10% and not @ 30%.

9. As per the Id AR, Section 271AAB (1)(a) provides penalty in the case of undisclosed Income @ 10%, if assessee in the course of the 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, substantiates the manner in which the undisclosed income was derived; and pays the tax, together with interest and furnishes the return of income declaring such undisclosed income therein.

As per the Id AR, when we analyse the various conditions stipulated u/s 271AAB (1)(a) for 10% penalty, it becomes abundantly clear that filing of return within due date is not the substantive condition, but is only a procedural requirement and, therefore, this has rightly been put as the last condition in the order of importance of stipulations.

As per the Id. AR, under situation given in clause "a", if the assessee admits the undisclosed income and pays tax thereon before the specified date, the commitment from his side become final, conclusive and irretrievable. Statements u/s 132(4) is recorded under oath. Any admission during statements recorded under oath, if not acted upon, has penal consequences under the Indian penal code. The verification part of the return is also a declaration, which if found wrong, has penal consequences. Thus, the binding effect of the statement u/s 132(4) is as high as of verification contained in the return of income. In a peculiar situation of search, the verification in a return of income is repetition of what is admitted under oath u/s 132(4).

As per the Id AR, it is worthwhile to note that in situation where nothing is admitted u/s 132(4), the first binding effect comes through the verification contained in the return of income. This concept is evident because in situation given in clause "a", filing of return is the last condition i.e. (iii)(B), whereas in situation given in clause "b" it is second last situation i.e. (ii)(A).

He further submitted that a procedural lapse, when all other conditions are fulfilled, should not lead to penalizing the assessee by imposing the penalty at the rate of 30% in place of 10%. Assessee falls under 271AAB(1)(a) and AO as well as Id CIT(A) have erred in confirming the penalty under section 271AAB(1)(c). The sole reason of non-filing of return within due date should not become the deciding factor for imposing 30% penalty.

The substantive conditions being admission of undisclosed income u/s 132(4), payment of tax thereon and including the same in the return of income. Once the substantive conditions are found complied with, there is no reason to penalize the assessee by imposing penalty at the rate of 30% instead of minimum penalty of 10%.

The use of word "may" give discretion to the AO to impose or not to impose penalty. Similarly, the same word "may" confer further discretion

on the AO to impose penalty at any of the three specified rates i.e. 10%, 20% and 30%. The AO has to use the discretion judicially. In the instant case, for a procedural lapse, when substantive requirements have been complied with, the AO did not act judiciously in imposing penalty at the rate of 30% and not using his discretion correctly to restrict the penalty at the rate of 10%. Such a border line case, where there is no loss to the revenue and in substance, the conditions have been complied with, use of discretion in a judicious manner was obligatory on the part of the AO.

Reliance was placed on the decision of the Hon'ble ITAT Bench of Chandigarh, in similar case of DCIT Vs Hari Singh in ITA No. 598/Chd/2017 (CLC 352-356) (Internal Page 4), where income tax was paid before the due date of filing return, but return was filed after due date, confirmed the order of CIT(A), wherein penalty was reduced from 30% to 10%. In view of the above the penalty imposed may please be quashed or, alternatively, should be imposed at the rate of 10% in place of 30%.

10. During the course of hearing, the assessee has raised additional ground, which reads as under:

"In the facts and circumstances of the case and in law, the Id. AO has erred in treating the declared income during the course of search as 'Undisclosed Income' within the meaning as defined in section 271AAB. Action of the Id. AO is illegal. Relief may please be granted by quashing the penalty order."

11. It was argued by the Id AR that the above ground is legal ground. All relevant facts are available on record. No new facts are required to be evaluated nor any further enquiry is needed. The provisions of law are to be applied on the facts already available on record. The omission of the above ground was inadvertent. This additional ground is taken as a matter of precaution. The issue is otherwise covered in Ground No. 1.

Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. [1998] 229 ITR 383 (SC) held that *"...Under section 254, the Tribunal may, after giving both the parties to the appeal an opportunity of being heard, pass such orders thereon as it thinks fit. The power of the Tribunal in dealing with appeals is thus expressed in the widest possible terms. The purpose of the assessment proceedings before the taxing authorities is to assess correctly the tax liability of an assessee in accordance with law. If, for example, as a result of a judicial decision given while the appeal is pending before the Tribunal, it is found that a non-taxable item is taxed or a permissible deduction is denied, there is no reason why the assessee should be prevented from raising that question before the Tribunal for the first time, so long as the relevant facts are on record in respect of that item. There is no reason to restrict the power of the Tribunal under section 254 only to decide the grounds which arise from the order of the Commissioner (Appeals). Both the assessee as well as the department have a right to file an appeal/cross objection before the Tribunal. There is no reason why the Tribunal should be prevented*

from considering questions of law arising in assessment proceedings although not raised earlier...”

12. On the other hand, the Id DR has relied on the orders of the authorities below and contended that the A.O. was justified in levying penalty in respect of amounts surrendered during the course of search more particularly when return was not filed within the stipulated time as provided under the Act.

13. We have considered the rival contentions and carefully gone through the orders of the authorities below. We had also deliberated on the judicial pronouncements referred by the lower authorities in their respective orders as well as cited by the Id. AR and Id. DR during the course of hearing before us in the context of factual matrix of the case. From the record we found that the assessee is a salaried person and also having income from other sources. The assessee was not carrying any business, therefore, was not maintaining books of account under the provisions of the IT Act. The assessee was belonging to Kanodia Group on which a search operation was carried out on 06/11/2012. During the course of search, a red diary containing 7 pages (Annexure-AS Exhibit 12) was found from assessee's office, wherein there are certain notings relating to cash advances given to various persons totaling Rs. 4 crores as under:

Page No.	Date	Name of Person	Amount (Rs. in Crores)	Remarks
3	27-5-2012	RS	1	Given by assessee
4	17-6-2012	RS	1	Given by assessee's Father Shri Kailash Kumar Kanodia
5	8-7-2012	RS	1	
7	22-7-2012	RS	1	Given by assessee
	Total		4	

The above advances of Rs. 2 crores each were surrendered in the hands of assessee and his father Shri Kailash Kumar Kanodia respectively, in the statements given by Shri Kailash Kumar Kanodia u/s 132(4). The income declared by the assessee is not 'Undisclosed Income' in view of the following facts:

- (a) assessee is a salaried person. He mainly derives income from salary and other sources. He is not carrying out any business. Therefore, he is not required to maintain any regular books of account under the Income Tax Act, 1961. Since, he is not required to maintain any regular books of account, there is no question of recording the above transactions relating to cash advance given by the assessee in his books of account.
- (b) Since the assessee is not engaged in business or profession, the assessee's case falls in the second limb i.e. "or other documents" as stipulated in Explanation (c) of section 271AAB which describes undisclosed income for the purposes of this section. At the time of search, the transactions were found to

be recorded in the 'Red Diary', which is '*other document*', mentioned in above definition of undisclosed income.

- (c) There is no requirement in law to disclose income in respect of the assessment year relevant to previous year in which search is conducted to Chief Commissioner or Commissioner before the date of search.

Even though, the A.O. has accepted the fact that the cash payments were recorded in the seized diary but alleged that it cannot be presumed that he is not maintaining any Statement of Affairs. (AO Penalty Order Page 5) since he is a director in many companies. In this regard, we observe that mere fact that assessee is director in many companies does not cast responsibility on the assessee to maintain books of account or so called Statement of Affairs. For this purpose reliance may be placed on the decision of Hon'ble Kolkata Bench of ITAT in the similar case of DCIT Vs Manish Agarwal (2018) 92 taxmann.com 81 (CLC 1-12) wherein it was held that income recorded in 'other document' cannot be termed as "Undisclosed Income" as per section 271AAB and no penalty can be levied against the assessee. Relevant part of para 7 (CLC 11-12) is reproduced hereunder:

"According to the Ld. AR, from the facts and circumstances described above, since the assessee is not engaged in business or profession, he does not require to maintain the books of account as per sec. 44AA or sec. 44AA(2) of the Act, therefore, the assessee's case falls in the second limb i.e. "or other documents" as stipulated u/s. 271AAB Explanation (c)

(supra) which describes undisclosed income for the purposes of this section which is very important to adjudicate this issue. Therefore, the question is when the search took place, the assessee's transactions (in this case, the speculative transaction) has been found to be recorded in the "other documents" which is (retrieved from the assessee's accountant's drawer) and based on that the assessee declared Rs. 3 cr. during search and later returned income of Rs. 3 cr. as income under the head "Income from Other Sources" which was accepted by the AO in toto. We note that since the income under question (Rs. 3 cr.) was in fact entered in the "other documents" maintained in the normal course relating to the AY 2013-14, which document was retrieved during search, hence, the amount of Rs. 3 cr. offered by the assessee does not fall in the ken of "undisclosed income" defined in Sec. 271AAB of the Act. So, Rs. 3 cr. which was commodity profit recorded in the other document maintained by the assessee which was retrieved during search cannot be termed as "undisclosed Income" in the definition given u/s. 271AAB of the Act. Since Rs. 3 cr. cannot be termed as "Undisclosed Income" as per sec. 271AAB of the Act, no penalty can be levied against the assessee. Therefore, we uphold the order of the Ld. CIT(A) on the aforesaid reasoning rendered by us."

14. Furthermore, the Jaipur Bench of ITAT, following the decision of DCIT Vs Manish Agarwal (Supra), in the case of Shri Ravi Mathur Vs DCIT (ITA No. 969/JP/2017) dated 13-6-2018 (CLC 13-47) held that once the said income is found as recorded in the other documents maintained in the normal course, the income cannot be termed as "Undisclosed Income" as per section Explanation (c) to section 271AAB and no penalty can be levied against the assessee. Relevant para is reproduced hereunder: (Internal Page 34-35)

"Therefore, when the assessee is not required to maintain the books of account as per section 44AA, then the matter is required to be examined whether the alleged undisclosed income is recorded in the other documents maintained in the normal course as per clause (c) to

Explanation to section 271AAB. Undisputedly the alleged income was found recorded in the diary which is nothing but the other record maintained in the normal course, thus the same would not fall in the definition of undisclosed income. Once the said income is found as recorded in the other documents maintained in the normal course, then it cannot be presumed that the assessee would not have disclosed the same in the return of income to be filed after about one year from the date of search. Hence, in view of the above facts and circumstances of the case as well as the various decisions on this point, we hold that the penalty levied under section 271AAB is not sustainable and the same is deleted.

10. In the result, appeal of the assessee is allowed.”

15. We also found that the Jaipur Bench of ITAT has consistently followed the above view in the following cases:

- Shri Anuj Mathur Vs DCIT (ITA No. 971/JP/2017) dated 13-6-2018 (CLC 48-80) (Internal Page 31-32)
- Shri Suresh Chand Mittal Vs DCIT (ITA No. 931/JP/2017) dated 2-7-2018 (CLC 81-116) (Internal Page 35)
- Shri Dinesh Kumar Agarwal vs ACIT (ITA No. 855 & 856/JP/2017 dated 24-7-2018 (CLC 117-167) (Internal Page 45)
- Shri Ritesh Agarwal vs. DCIT (ITA No. 418/JP/2018) dated 9-7-2018 (CLC 168-203). (Internal Page 34-35)

16. Similar view has been upheld in the following judicial pronouncements:

- ITAT Visakhapatnam Bench ITA No. 64/Vizag/2017 Pillala Ramakrishna Rao Vs ACIT dated 7-6-2017 (CLC 204-213) (Internal Page 9-10)

- ITAT Kolkata Bench ITA No. 1475 & 1476/Kol/2015 DCIT Vs. Madan Lal Beswal dt.14.3.2018 (CLC 214-225) (Internal Page 11)
- ITAT Kolkata Bench ITA No. 1472 & 1477/Kol/2015 DCIT Vs. Sanwar Mal Agarwal & DCIT Vs Agam Saran Khemka dated. 26.04.2018 (CLC 226-233) (Internal Page 7)
- DCIT Vs Subhash Chandra Agarwal (2018) 91 taxmann.com 442 (Kolkata – Trib) (CLC 234-243) (Internal Page 8)

17. From the record we also found that the above advances made in cash were declared as income in the return of income filed. Every additional income declared in the return filed is not per se 'Undisclosed Income'. What has been found during the course of search is a red diary, wherein there are certain notings relating to cash advances given to various persons totaling Rs. 4 crores. Besides the said document, there were no other incriminating document/material was found during the course of search. As per the definition of undisclosed income u/s 271AAB, the said cash advance cannot be stated to be income which is represented by any money, bullion, jewellery or other valuable article or thing. In the definition of undisclosed income, it talks about "income by way of any entry in the books of account or other documents or transactions found in the course of a search under section 132". The cash advance cannot be deemed as undisclosed Income in the context of section 271AAB. For this proposition, reliance is placed on the judgment

of Silver & Art Palace vs DCIT ITA No. 236/JP/2018 dated 11-2-2019 (CLC 357-394), where Hon'ble ITAT Jaipur Bench held that such cash advances cannot be deemed as 'Undisclosed Income' for the purpose of section 271AAB. Relevant portion being para 42, 43 & 44 of the judgment is being reproduced hereunder: (Internal Page 35-38)

"42. Now, coming to surrender made on account of cash advances for land purchases in the statement recorded u/s 132(4) of the Act. During the course of search, a diary has been found wherein there are notings relating to advance given to various persons towards purchase of land. Therefore, what has been found during the course of search is certain entries relating to undisclosed investment in purchase of land. Besides the said entries, there are no other documents/material in terms of any agreement to sell, the description of the property etc, which has been found during the course of search. As per the definition of undisclosed income u/s 271AAB, the undisclosed investment in so called purchase of land cannot be stated to be income which is represented by any money, bullion, jewellery or other valuable article or thing. Whether it can then be said that such undisclosed investment represents income by way of any entry in the books of account or other documents or transactions found in the course of a search under section 132. An investment per se represents an outflow of funds from the assessee's hand and an income per se represents an inflow of funds in the hands of the assessee. Therefore, once there is an inflow of funds by way of income, there could be subsequent outflow by way of investment. Investment and income thus connotes different meaning and connotation and thus cannot be used inter-changeably. In the definition of undisclosed income, where it talks about "income by way of any entry in the books of account or other documents or transactions found in the course of a search under section 132", what perhaps has been envisaged by the legislature is an inflow of funds in the hands of the assessee which has been found recorded by way of any entry in the books of accounts or other documents, and which has not been recorded before the date of search in the books of accounts or other documents maintained by the assessee in the normal course. In light of the same, the undisclosed investment by way of advance for purchase of land can be subject matter of addition in the quantum proceedings, as the same has been surrendered during the course of search in the statement recorded u/s 132(4) and offered in the return of income, however the same cannot be said to qualify as an undisclosed income in the context of section 271AAB read with the

explanation thereto and penalty so levied thereon deserved to be set-aside.

43. We are also conscious of the fact that there are deeming provisions in terms of section 69, 69A and 69B wherein such investments are deemed to be treated as income in absence of satisfactory explanation. In our view, the deeming fiction so envisaged under Section 69, 69A and Section 69B where investments which are found either not recorded or found recorded at a lesser value in the books of accounts, and such investments are deemed to be income of the assessee of the year in which such investments have been made, cannot be extended and applied automatically in context of section 271AAB. It is a well-settled legal proposition that the deeming provisions are limited for the purposes that have been brought on the statute book and have therefore to be applied in the context of provisions wherein they have been brought on the statute book and not otherwise. In the instant case, the deeming provisions are contained in section 69, 69A and section 69B and therefore, the same could have been applied in the context of bringing to tax such investments to tax in the quantum proceedings, though the fact of the matter is that the AO has not even invoked the said deeming provisions in the quantum proceedings in the instant case. Therefore, even on this account, the deeming fiction cannot be extended to the penalty proceedings which are separate and distinct from the assessment proceedings and more so, where the provisions of section 271AAB provide for a specific definition of undisclosed income. Where a specific definition of undisclosed income has been provided in Section 271AAB, being a penal provision, the same must be strictly construed and in light of satisfaction of conditions specified therein and it is not expected to examine other provisions where the same has been defined or deemed for the purposes of bringing the amount to tax.

44. In light of above discussions and in the entirety of facts and circumstances of the case, the penalty U/s 271AAB is directed to be deleted on amount of surrender made during the course of search in absence of the same qualifying as undisclosed income as so defined under section 271AAB of the Act.”

Reliance is also placed on the following judgments of Jaipur ITAT holding the similar view:

- Padam Chand Pungliya vs ACIT ITA No.112/JP/2018 (CLC 339-377) dated 5-4-2019 (Internal Page 31-32)

- Surajmal Bansal HUF & Others vs DCIT ITA No. 124/JP/2018 dated 8-4-2019 (CLC 290-313) (Internal Page 21)

18. In view of the above discussion and respectfully following the judicial pronouncements, we do not find any merit for imposition of penalty in respect of declared income which is not coming in the purview of "undisclosed income" as defined under clause (c) to explanation to Section 271AAB of the Act. It is pertinent to mention here that no contrary decision was brought to our notice by the Id DR so as to persuade us to deviate from the conclusion drawn in the above judicial pronouncements as referred and relied by us.

19. As the facts and circumstances in both the cases are same, respectfully following the reasoning given hereinabove, we do not find any merit in the penalty so imposed U/s 271AAB of the Act.

20. In the result, both the appeals of the assesseees are allowed in terms indicated hereinabove.

Order pronounced in the open court on 22nd May, 2019.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 22nd May, 2019

***Ranjan**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- (i) Shri Ashish Kumar Kanodia, Jaipur.
(ii) Shri Kailash Kumar Kanodia, Jaipur.
2. प्रत्यर्थी / The Respondent- The A.C.I.T., Central Circle-1, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 164 & 165/JP/2017)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar