

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'F', NEW DELHI**

**BEFORE SH. H.S.SIDHU, JUDICIAL MEMBER  
AND**

**SH. R. K. PANDA, ACCOUNTANT MEMBER**

ITA No.4444/Del/2016

Assessment Year: 2010-11

Smt. Preeti Lamba C/o. M/s. RRA TAXINDIA D-28, South Extension, Part-I, New Delhi-110049	Vs	Dy. Commissioner of Income Tax Central Circle –I Faridabad
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Appellant by	Dr. Rakesh Gupta, Advocate
Respondent by	Sh. Surender Pal, Sr DR

Date of hearing:	28/05/2019
Date of Pronouncement:	29/05/2019

**ORDER**

**PER R.K. PANDA, AM:**

This appeal filed by the assessee is directed against the order dated 24.06.2016 of the CIT(A), Gurgaon relating to A. Y. 2010-11.

2. Levy of penalty of Rs.2,50,000/- by the Assessing Office u/s. 271 AAA which has been upheld by the CIT(A) is the only issue raised by the assessee in the various grounds of appeal.

3. Facts of the case, in brief, are that the assessee is an individual and derives income from salary from M/s. Imperial Auto

Industries Limited, Faridabad. The assessee also derives income from house property, business income, capital gain and income from other sources. A search and seizure operation u/s. 132 (1) of the IT Act was conducted in the group cases of M/s. Imperial Auto Industries Limited during which the residential premises as well as office premises of the assessee was also covered. The assessee filed return of income on 27.10.2010 declaring income of Rs.26,33,760/-. The Assessing Officer completed the assessment u/s. 143 (3) r/w section 143 (3) / 153 A(1) (b) of the Act on 28.12.2011 at an income of Rs.26,33,760/-. While completing the assessment, penalty proceedings u/s 271 AAA of the Act were initiated in respect of surrendered income made by the assessee on account of the following :-

1. Voluntary disclosure on account of jewelery of Rs.5,00,000/-

2. Voluntary disclosure on after of income relating to property transaction /advance from property given of Rs.20,00,000/-

4. The Assessing Officer after rejecting the various explanation given by the assessee levied penalty of Rs.2,50,000/- being 10% of the surrendered income to Rs.25 lacs on the ground that the assessee failed to specify and substantiate the manner in which undisclosed income has been earned.

5. In appeal the Ld. CIT(A) confirmed the penalty so levied by the Assessing Officer on the ground that the assessee has not paid the taxes due in respect of the undisclosed income in this

case in due time and therefore, the condition for non levy of penalty u/s. 271 AAA of the Act has not been fulfilled with regard to the payment of taxes by the assessee. He, however, held that the assessee has substantiated the manner of earning of the income so surrendered.

6. Aggrieved with such order of the CIT(A), the assessee is in appeal before the Tribunal.

7. The Ld. Counsel for the assessee heavily challenged the order of the CT(A) in upholding the penalty levied by the Assessing Officer on all together a different ground. He submitted that the assessee has surrendered the income of Rs. 25 lakhs during the year under consideration and filed return of income disclosing the same. Assessee has substantiated the manner of earning of such income and paid the taxes due on such surrendered income. He submitted that while the Assessing Officer levied penalty on the ground that assessee could not substantiate the manner of earning of such income, the Ld. CIT(A) accepted the contention of the assessee that the assessee has substantiated the manner in which undisclosed income was derived. However, he had wrongly mentioned that assessee has not paid the taxes due on such surrendered income in due time. Referring to the copy of form No.26AS he submitted that the assessee has deposited the amount of Rs.7,72,500/- on 04.01.2010 which is evident from the said form No.26AS. He submitted that the Ld. CIT(A) without considering this entry has considered the other entries which were paid /deposited on

various other dates. He accordingly submitted that since the manner of satisfaction of income has been accepted by the CIT(A) and since the assessee has deposited the tax due on the surrendered income prior to the date of filing of return, therefore, penalty u/s. 271 AAA cannot be levied.

8. The Ld. DR on the other hand submitted that it is apparent from the Form No.26AS that the assessee has deposited the taxes of Rs.7,72,500/- on 04.01.2010.

9. We have considered the rival arguments made by both the sides and perused the orders of the authorities below. We find the Assessing Officer levied penalty of Rs.2,50,000/- being 10% of the surrendered income of Rs.25 lacs on the ground that assessee could not substantiate the manner in which the undisclosed income has been earned. We find the CIT(A) at page 12 of the order has accepted the contention of the assessee regarding the substantiation of income by observing as under :-

*“In view of the facts of the case, submissions made by the appellant and following the judicial pronouncement on this issue including the above decision of Hon’ble ITAT Chandiarh Bench, the contentions of the appellant with regard to the second condition of substantiating the manner in which the undisclosed income was derived is accepted.”*

10. The revenue is not in appeal against the above findings of the CIT(A) and therefore, the reason for which the Assessing Officer has levied penalty does not survive.

11. So far as the observation of the CIT(A) that assessee has not paid the taxes in respect of undisclosed income in due time is concerned, we find from the copy of Form No. 26 AS that the assessee has deposited the tax due there on amounting to Rs.7,72,500/- on 04.01.2010. The Ld. DR also fairly conceded that the amount has been paid on 04.01.2010 which is much prior to the filing of the return of income as per the entry in Form No.26AS. We, therefore, find merit in the submission of the Ld. Counsel for the assessee that penalty u/s. 271 AAA cannot be levied in the instant case since the assessee has paid the taxes due on the surrendered income much prior to the filing of the return of the income. We, therefore, set aside the order of the CIT(A) and direct the Assessing Officer to cancel the penalty so levied u/s 271 AAA of the IT Act, 1961.

12. However, if the revenue at any point of time finds that the assessee has not deposited the taxes due before the due date then the revenue is at liberty to move appropriate application for recalling of this order as per law. We hold and direct accordingly. The grounds raised by the assessee are accordingly allowed.

13. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 29.05.2019.

Sd/-  
**(H. S. SIDHU)**  
**JUDICIAL MEMBER**

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

*\*Neha\**  
Date:- 29.05.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	28.05.2019
Date on which the typed draft is placed before the dictating Member	28.05.2019
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	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	29.05.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	