

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

**BEFORE SHRI R.K. PANDA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4447/Del./2016
(ASSESSMENT YEAR : 2010-11)**

Shri Manav Sardana,
House No.D – 99,
Panchsheel Enclave,
New Delhi.

vs. DCIT, Central Circle 1,
Faridabad.

(PAN : AATPS6108A)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Somil Aggarwal, Advocate
REVENUE BY : Shri N.K. Bansal, Senior DR

Date of Hearing : 06.06.2019

Date of Order : 10.06.2019

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Shri Manav Sardana (hereinafter referred to as the 'assessee') by filing the present appeal sought to set aside the impugned order dated 24.06.2016 passed by the Commissioner of Income-tax (Appeals)-3, Gurgaon qua the assessment year 2010-11 confirming the penalty levied u/s 271AAA on the grounds inter alia that :-

“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty u/s 271AAA of Rs.19,69,000/-

2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the levy of penalty u/s 271AAA of Rs.19,69,000/-, more so when penalty was initiated & levied by Ld. A.O. only on the ground that manner of earning undisclosed income was not substantiated and thus, Ld. CIT(A) has exceeded the jurisdiction.

3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the levy of penalty u/s 271AAA, more so payment of taxes were made in time available under the law.

4. In any view of the matter and in any case, imposition of penalty u/s 271AAA and confirmed by Ld. CIT(A) is bad in law and against the facts and circumstances of the case.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment framed under section 143 (3)/153A (1)(b) of the Income-tax Act, 1961 (for short ‘the Act’) at the income of Rs.1,96,29,030/-, penalty proceedings were initiated u/s 271AAA of the Act on the ground that the assessee has made voluntary declaration of Rs.30,00,000/- on account of jewellery found in his possession, made a surrender of Rs.18,00,000/- on account of unaccounted cash found and seized and assessee has made voluntary declaration of Rs.99,90,000/- on account of income relating to property transaction. AO levied the penalty of Rs.19,69,000/- @ 10% of the undisclosed income of Rs.1,96,90,000/- on the ground that the assessee has failed to

specify and justify the manner of earning in which the undisclosed income has been earned.

3. Assessee carried the matter by way of an appeal before the Id. CIT (A) who has confirmed the penalty levied by the AO by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Bare perusal of the impugned order passed by the Id. CIT (A) shows that the penalty has been confirmed by holding that the assessee has not paid "taxes and penalty" in respect of undisclosed income in due time, the condition for non-levying of penalty u/s 271AAA has not been fulfilled with regard to payment of taxes by the assessee. However, the Id. AR for the assessee contended that they have duly paid the taxes and interest qua the undisclosed income in this case within due time and referred to the return of income and computation of income available at pages 1 to 3 of the paper book, wherein taxes and interest is shown to have been duly paid. When we examine notice of demand u/s 156, available at page 4 of the paper book, demand is shown at nil. Similarly, in

Form 26AS annexed with the Income-tax return of the assessee, detail of tax paid has been duly shown, which has not been controverted by the Id. Senior DR.

6. Perusal of the impugned order passed by the Id. CIT (A) shows that somehow Id. CIT (A) has omitted to account for the deposit of Rs.27,70,110/- made by the assessee in the bank being tax paid on the declared income and reached the conclusion to confirm the penalty levied by the AO, whereas computation of income and Form 26AS duly shows that the said amount has been paid in the bank on 04.01.2010 which is well within time.

7. In view of what has been discussed above, we are of the considered view that penalty imposed in this case is not sustainable, hence ordered to be deleted. However, in case, Revenue finds that the assessee has not deposited the taxes along with interest due well within time then Revenue has liberty to file the application as per law to recall the order. Consequently, appeal filed by the assessee is allowed.

Order pronounced in open court on this 10th day of June, 2019.

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

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

Dated the 10th day of June, 2019/TS

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Ghaziabad.
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.