

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "B", 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. 424/JP/2019  
निर्धारण वर्ष / Assessment Year :2013-14

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|---|-------------|--|
| D.C.I.T,<br>Central Circle-1,<br>Jaipur             | बनाम<br>Vs. | Shri Prashant Gupta,<br>301, Anukampa Mansion-I, M.I.<br>Road, Jaipur. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No. ACNPG 5157 D |             |  |
| अपीलार्थी / Appellant                               |             | प्रत्यर्थी / Respondent  |

राजस्व की ओर से / Revenue by : Ms. Anuradha (JCIT) &  
Shri B.K. Gupta (CIT-DR)  
निर्धारिती की ओर से / Assessee by: Shri P.C. Parwal (CA)

सुनवाई की तारीख / Date of Hearing : 19/08/2019  
उदघोषणा की तारीख / Date of Pronouncement : 21/08/2019

आदेश / ORDER

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

This is an appeal filed by the revenue against the order of Id.CIT(A)-IV, Jaipur dated 11/02/2019 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. Rival contentions have been heard and record perused. Facts in brief are that a search & seizure operation U/s 132(1) of the Act was carried out on 23/01/2013 at the various premises of Anukampa Group. Residential and business premises (301, Anukampa Mansion-I, M.I. Road, Jaipur & 1-3, Vidyut Nagar-A, DCM, Ajmer Road, Jaipur) of the

assessee were also covered. In search certain one diary and Annexure-A exhibit 5 was found. In this diary certain advance given to various villagers for Rs. 627 lacs was found to be mentioned. The same was surrendered by the assessee as his income. After search, the assessee filed return declaring an income of Rs. 6,50,14,880/- including the surrendered income of Rs. 627 lacs and paid tax thereon.

3. The assessment U/s 143(3) r.w.s. 153(1)(b) of the Act was completed at an income of Rs. 6,56,06,110/- by making the addition of Rs. 5,91,234/- on account of expenses incurred for personal/non-business purposes. Simultaneously the A.O. initiated penalty on undisclosed income of Rs. 6.27 crores U/s 271AAB of the Act. In this regard, observation of the A.O. are at para 3 of the A.O.'s assessment order dated 31/3/2015. Against the order, the assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) vide order dated 20/03/2017 deleted the addition of Rs. 5,91,234/-. In penalty proceedings, the assessee filed explanation. However, the A.O. rejected the same and levied the penalty of Rs. 62,70,000/- U/s 271AAB(1)(a) of the Act.

4. By the impugned order, the Id. CIT(A) deleted the penalty after observing as under:

“5. *I have considered the facts of the case, gone through the assessment order and the submission of the appellant. It is seen that in search*

*one diary and Annexure-A exhibit 5 was found. In this diary certain advance given to various villagers for Rs.627 Lakhs was mentioned. In search, statement of the appellant was recorded u/s 132(4) on 23-01-2013, wherein in reply to q. no. 8 the appellant himself had surrendered this advance as income. After search appellant filed the return declaring an income of Rs. 6,50,14,880/- including the surrendered income of Rs.627 Lakhs and paid tax thereon.*

5.2 *The arguments of the Ld. AR is that*

1. *The penalty is not mandatory as the word used is MAY and the Hon'ble ITAT Jaipur Bench in the similar circumstances deleted the penalty levied.*
2. *The appellant disclosure of income relating to the specified A Yr does not fall into the definition of 'undisclosed income' as provided in the section*

5.3 *It is seen that the Hon'ble ITAT Jaipur Bench in the case of Ravi Mathur V. DCIT ITA 969/JP/2017 dated 13.06.2018 deleted the similar penalty. The brief facts of this case was that in search assessee surrendered Rs.10.02 as income and offered the same in the return. The AO also assessed the same and levied penalty thereon. On further appeal the CIT(A) confirmed the penalty. On further appeal, the ITAT deleted the penalty by discussing the issue at page 10 to 35 and finally concluding that 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 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.

5.4 The finding of the ITAT in case of Ravi Mathur [ITA 969/JP/2017] is reproduced from para 8 onwards as under:-

8. Even otherwise, without restricting ourselves to the validity of show cause notice, we note that section 271AAB of the Act contemplates imposition of penalty pursuant to the disclosure of undisclosed income in the statement recorded under section 132(4) and, therefore, the levy of penalty under this section does not depend on the addition made during the assessment proceedings. Hence the penalty proceedings under section 271AAB are completely independent of the enquiry and finding of the AO in the assessment order except for the limitation provided as per section 275 of the Act. We have already held that the penalty is not automatic but the AO has to take a decision to impose the penalty after giving an opportunity of hearing to the assessee in terms of section 274 of the Act. Thus the AO in the proceedings under section 271AAB of the Act has to first decide that the conditions prescribed under the said section are satisfied for levy of penalty and then to further take a decision after considering the explanation of the assessee for non compliance of any of the conditions under clauses (a) to (c) of sub-section (1) regarding the quantum of penalty. The primary condition for levy of penalty is the existence of undisclosed income as per the disclosure made by the assessee under section 132(4). The term 'undisclosed income' has been defined in Explanations to section 271AAB. Therefore, as per the definition provided in the Explanation, the undisclosed income may have various forms and the same is not recorded in the books of accounts or other documents maintained in normal course relating to the specified previous year. As per sub-clause (i) of clause (c) of the Explanation, the undisclosed income means

*any income of the specified previous year represented by any money, bullion, jewellery or valuable article or things or any entry in books of accounts or other documents or transactions found in the course of search. This definition is further subject to two conditions that the said income has not been recorded on or before the date of search in the books of accounts or other documents maintained in the normal course relating to such previous year or otherwise not being disclosed to the Principal Chief Commissioner, Principal Commissioner or Commissioner before the date of search. The other forms of undisclosed income as defined in sub clause (ii) is any entry in respect of expenses recorded in the books of accounts or other documents maintained in the normal course. Therefore, the clause (ii) contemplates undisclosed income in the form of false entries of expenses recorded in the books of accounts which is not relevant for the case in hand.*

*Since in the case of assessee the transactions of investment were found in the diary, therefore, whether these entries in the diary constitute undisclosed income as per clause (c)(i) of Explanation to Section 271AAB of the Act. The assessee is an individual and for the year under consideration the assessee has not reported any business income nor it was assessed by the AO. Therefore, it is clear that the assessee was not required by any mandate of law to maintain regular books of accounts. In the computation of income, the assessee has shown income from Salary, income from house property and income from other sources. The returned income was accepted by the AO while framing the assessment under section 143(3) and hence assessee's case does not fall in the category where the regular books of accounts are mandatory. The entries of investment in real estate were found recorded in the diary and in the absence of any other document maintained in the normal course relating to the year under consideration, the entries in the diary are to be considered as*

recorded in the documents maintained in the normal course. It is not the case of the revenue that the assessee has recorded the other transactions in the other documents maintained in the regular course relating to the year under consideration and only these entries are recorded in the diary. Since the levy of penalty under section 271AAB is not based on the addition and enquiry conducted by the AO in the assessment proceedings, therefore, it is incumbent on the AO to conduct a proper examination of facts, circumstances and explanation furnished by the assessee before arriving to the conclusion that penalty under section 271AAB is leviable and further whether it is 10% or 20% or 30% of such undisclosed income. Therefore, the AO is under statutory obligation to examine all the issues during the proceedings under section 271AAB after giving the assessee an opportunity to explain the charges/grounds on which the penalty is proposed to be levied. Hence it is a pre-requisite condition that the AO first specify the charges against the assessee and to make known the assessee of his default so as to afford an opportunity to explain the default/charges so brought against the assessee. Without considering the explanation of the assessee on the specific default, the order passed by the AO under section 271AAB suffers from serious illegality and therefore not sustainable in law. When a stringent action is provided in the Statute against the default committed by the assessee, then it also cast an equally stringent and strict duty on the authority responsible to take such action. Therefore, when the provisions for levy of penalty under section 271AAB is a specific provision to deal with the undisclosed income and it provides a strict penal action then the corresponding duty of the tax authority is also equally stringent. The AO cannot escape from following the strict mandatory requirement of law and particularly the principle of natural justice. The AO has neither specified the grounds and clause of section 271AAB nor has dealt with the same in the impugned order passed under section 271AAB. The AO has also not given a finding that the case of the

*assessee falls in the definition of undisclosed income provided under clause (c)(i) of Explanation to section 271AAB. When the transactions of investment in real estate are recorded in the diary being other documents maintained by the assessee for the said purpose, then in the absence of any requirement of maintaining regular books of accounts by the assessee, the case of the assessee would not fall in the definition of undisclosed income as per clause (c) of Explanation to section 271AAB of the Act.*

9. *The Kolkata Bench of the Tribunal in the case of DCIT vs. Madan Lal Beswal (supra) has considered this issue of the alleged income found recorded in the other documents would fall in the definition of undisclosed income in para 3 and' 4 as under :-*

*"3. We have heard rival submissions and gone through the facts and circumstances of the case. We find that the issue involved herein is squarely covered in favour of the assessee in the case of DCIT vs Manish Agarwala (another member in the same Nezone Group) in ITA No. 1479/Kol/2015 for AY 2013-14 dated 9.2.2018 by the order of this tribunal, wherein it was held as under:-*

*3. We have heard rival submissions and gone through the facts and circumstances of the case. We note that the AO has levied the penalty u/s. 27 IAAB on the ground that the income from commodity profit has been found during search u/s.132 of the Act which is not reflected in the regular books of account. The AO has accepted that during search the assessee has admitted u/s. 132(4) of the Act the income from speculative trading. The undisputed facts the AO has given finding pertaining to this case is as follows:*

- i) The assessee has substantiated the manner in which the income was derived.*
- ii) Furnished the return of income therein and*
- iii) Paid the tax along with interest.*

*Based on the said finding, according to AO, the assessee satisfies the conditions enumerated in sec. 271AAB(i)(a) of the Act and thereafter levied ten percent of Rs.3 cr., which have been deleted by the impugned order of Ld. CIT(A).*

4. *The Ld. DR brought to our notice that in the very same group case of Manoj Beswal & Ors. the Tribunal had confirmed the levy of penalty and contended before us that penalty u/s. 271AAB of the Act is mandatory and therefore, according to Ld. DR, the Ld. CIT(A) erred in deleting the penalty by stating that the assessee did not had any 'mens rea' not to disclose the amount in question. According to him, penalty has to be mandatorily levied u/s. 271AAB of the Act on the undisclosed income found during search. On the other hand, Ld. AR Shri Miraz D. Shah, supporting the decision of Ld. CIT(A) made contentions though taken up before the Ld. CIT(A) but has not been adjudicated on those averments, which the Ld. AR urges before us to consider while adjudicating the appeal of the Revenue. The Ld. AR also pointed out that the contentions which he is going to raise has been taken up before the AO also, however, according to Ld. Counsel, those legal arguments were not considered by the AO in the right perspective. The first contention of the Ld. AR is that since Sec. 271AAB of the Act is a penalty section it should be construed strictly, which we agree being it is a trite law that penalty provisions have to be strictly interpreted. Next contention of Ld. AR is that sec. 271AAB of the Act is not mandatory because Parliament in its wisdom has used the word 'may' and not 'shall'. So, according to him, it is the discretion bestowed upon the AO whether to initiate and impose penalty u/s. 271AAB of the Act. We agree with the said contention of Ld. AR because when a similar issue was adjudicated by 'TAT Lucknow (the author of this order was a member of the Bench) in Sandeep Chandak & Ors. Vs. CIT (2017) 55 ITR (Trip) 209 and 2017 (5) TMI 675- ITAT-Lucknow in ITA No. 416, 417 and 418/LKW/2016 dated 30.01.2017 while adjudicating a case where penalty was*

levied under section 271AAB of the Act it was held that the provisions of Sec. 271AAB of the Act are not mandatory, which means that penalty need not be levied in each and every case wherever the assessee has made default as stated in clauses (a), (b) and (c) of the Act. Sub-section (1) of Sec. 271AAB of the Act uses the word "may" not "shall". "May" cannot be equated with "shall" especially in penalty proceeding. Using the word "may" in our opinion, gives a discretion to the AO to levy the penalty or not to levy, even if the assessee has made the default under the said provision." Therefore, the 2nd ground of Revenue fails and we hold that penalty u/s. 271AAB of the Act is not mandatory and is discretionary. Before proceeding further, we note that the ex parte order passed by the Coordinate Bench relied upon by Ld. DR., Manoj Beswal, supra, have been recalled in MA Nos. 218 to 220/Ko1/2017 dated 12.01.2018 by observing as under:

"By virtue of these miscellaneous applications, the assessee seeks to recall the order passed by this Tribunal in I.T.A. Nos. 1471, 1475&1476/Ko1/2015 in the hands of Amit Agarwal, Madan Lal Beswal and Manoj Beswal respectively for the assessment year 2013-14 on the ground that notice was not served on the assessee for the hearing and on certain factual error that had crept in the order of the Tribunal. The first preliminary objection raised by the Ld. AR was that the notice of hearing was not served on the assessee for the hearing scheduled on 06.11.2017 and hence, the assessee could not be present on the said date by way of personal appearance. The second objection raised by the Ld. AR was that the Tribunal had stated in para 9 of its order that the assessee himself had accepted that he is engaged in commodities trading business and therefore mandated to maintain books of accounts in terms of section 44AA of the Act and thereby inferring that the assessee had reported the profit from commodities trading business under the head "income from business or profession". Based on this crucial finding, the Tribunal had concluded that since the transaction of commodities trading had not been entered by the

*assessee in his books of accounts as on the date of search on 01.08.2012 and thereby it takes the character of undisclosed income for which penalty u/s 271AAB of the Act is exigible. In this regard, we find that the Ld. AR drew our attention to the computation of the total income wherein the assessee had offered income from commodity trading only under the head income from other sources. We also find that the [ld. AO](#) had also specifically stated in the body of the assessment order vide column no. 10 that the assessee is having only salary income and income from other sources. We find that due to the absence of the assessee at the time of hearing this particular fact had escaped the attention of the Tribunal. On perusal of the fact available on record, we find that the finding recorded by this Tribunal in para 9 of its order dated 10.11.2017 that the assessee is mandated to maintain books of accounts u/s 44AA of the Act is factually incorrect and deserves to be rectified. This mistake of primary fact had led to a conclusion of upholding the levy of penalty u/s 271AAB of the Act. Hence, in these facts and circumstances and in view of the aforesaid mistake of primary fact rightly pointed out by the Ld. AR, we deem it fit to recall the orders of this Tribunal dated 10.11.2017 in the case of aforesaid assessee."*

*In the aforesaid scenario, the legal position is that an order which has been recalled for de novo adjudication, is no order in the eyes of law and so it cannot be treated as a precedent. Hence, the reliance placed by the Ld. DR in respect of assessee's in the same group concern cases as decided by the Tribunal no longer survives and cannot be treated as covered against the assessee.*

5. *The third contention of the Ld. AR is that the assessee is an individual, who was drawing salary income. So, according to him, he need not maintain any books of account as per the Act. According to Ld. AR, undisputedly the assessee was engaged for the first time this AY only in trading of commodities, that too which was conducted in a nonsystematic manner and the income*

*from it was duly offered to tax by the assessee in his return of income under the head "Income from Other Sources", which, according to Ld. AR was accepted as such by the AO and drew our attention to page one of assessment order, (not the penalty order) wherein we note that the AO has acknowledged that the assessee owned up Rs. 3 cr. as his income from commodity profit and it has been disclosed in his income and expenditure for AY 2013-14 under the head "income out of speculative business from sale of commodities", and thereafter the AO confirmed the assessee's claim and thereafter total income was assessed by the AO as per the return submitted by the assessee. In the light of the aforesaid facts discerned from assessment order, the assessee's case is that for the first time in this A.Y he was doing unsystematic speculative activity which earned income and, it was brought under the head "Income from Other Sources", and so, accordingly, he is not required to maintain books of account as stipulated in Sec. 44AA or Sec. 44AA(2)(ii) of the Act because, these provisions are only for assesses who are earning income under the head "Business or profession". We note that Sec. 44AA or Sec. 44AA(2)(ii) of the Act casts a duty upon the assessee who are into "Business or Profession" and such assessee's are bound to maintain books of account as stipulated therein. For appreciating this submission let us go through the provisions of law.*

*"44AA. (1) Every person carrying on legal, medical, engineering or architectural profession or the profession of accountancy or technical consultancy or interior decoration or any other profession as is notified by the Board in the Official Gazette shall keep and maintain such books of account and other documents as may enable the [Assessing] Officer to compute his total income in accordance with the provisions of this Act. (2) Every person carrying on business or profession [not being a profession referred to in subsection (1)] shall,--*

- (i) *if his income from business or profession exceeds [one lakh twenty] thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession exceed or exceeds [ten lakh] rupees in any one of the three years immediately preceding the previous year; or*
- (ii) *where the business or profession is newly set up in any previous year, if his income from business or profession is likely to exceed [one lakh twenty] thousand rupees or his total sales, turnover or gross receipts, as the case may be, in business or profession are or is likely to exceed [ten lakh] rupees, [during such previous year; or*
- (iii) *where the profits and gains from the business are deemed to be the profits and gains of the assessee under [section 44AE] [or section 44B13 or section 44BBB], as the case may be, and the assessee has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, during such [previous year; or]]*
- (iv) *where the profits and gains from the business are deemed to be the profits and gains of the assessee under section 44AD and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his business and his income exceeds the maximum amount which is not chargeable to income-tax during such previous year,] keep and maintain such books of account and other documents as may enable the [Assessing] Officer to compute his total income in accordance with the provisions of this Act.*
- (3) *The Board may, having regard to the nature of the business or profession carried on by any class of persons, prescribe, by rules, the books of account and other documents (including inventories, wherever necessary) to be kept and maintained under sub-section (1) or sub-section (2), the particulars to be contained therein and the form and*

*the manner in which and the place at which they shall be kept and maintained.*

- (4) Without prejudice to the provisions of sub-section (3), the Board may prescribe, by rules, the period for which the books of account and other documents to be kept and maintained under sub-section (1) or sub-section (2) shall be retained.]"*

*So from a reading of the above provisions which clearly stipulates that assessee who are carrying on business or profession shall keep and maintain such books of account and other documents which may enable the AO to compute the total income. We note that. assessee in the statement of total income filed before the AO has shown income only under two heads (i) salary income (ii) income from other sources. We would like to reproduce the summary of total income of the assessee filed along with the return:*

|                                  |                              |
|----------------------------------|------------------------------|
| <i>Income from Salary</i>        | <i>Rs. 45,57,600</i>         |
| <i>Income from Other sources</i> | <i>Rs.3,00,24,047</i>        |
|                                  | <b><i>Rs.3,45,81,647</i></b> |

- 6. We note that the AO has accepted the aforesaid statement of total income filed before him without contesting the claim of the assessee as to whether the assessee's claim of income other than from salary should be from "Income from Business". The confusion that has arisen in this case, we note is on the misdirection of AO in the assessment proceedings wherein the assessment order of the assessee, the AO has observed "during search and seizure operation, Shri Manoj Beswal had made a consolidated disclosure of Rs.32 crore vide his disclosure petition. Out of this consolidated disclosure, the assessee owned up Rs. 3 cr. In the disclosure petition Shri Manoj Beswal it was stated that the source of such undisclosed income was out of commodity profit. It has been submitted that the amount has already been disclosed in his Income & Expenditure account for the AY 2013-14 under the head 'Income out of Speculative Business from sale of commodities'. Verification of accounts confirms his claim." This*

*observation is flawed because, we note that AO got carried away by perusal of the "Income & Expenditure Account for AY 2013-14" submitted by the assessee before him, wherein it was shown in the income side that is right hand column as "Income from Speculative Business from sale of commodities" and left hand side column reflects the expenditure; and AO came to the conclusion that assessee has disclosed under the heading income out of Speculative Business from sale of commodities. The character of a receipt and the head under which it has to be taxed is not based on the nomenclature of receipt of income shown in Income & Expenditure Account. All the incomes of revenue nature will be posted in the right hand side column of 'income' in the Income & Expenditure Account and the description given therein cannot determine the head of income prescribed under chapter IV of the Act. Therefore, the observation of the AO in assessment order in the light of his action of accepting the statement of total income filed by the assessee along with return which without being contested, is erroneous, unless the AO was able to negate the claim of the assessee by bringing the income from commodity transactions as part of business income. It should be remembered that under the Income Tax Act 1961, the total income of an assessee individual company is chargeable to tax u/s. 4 of the Act. The total income has to be computed in accordance with the provisions of the Act. Section 14 of the Act lays down that for the purpose of computation, income of an assessee has to be classified under five heads. It is possible for an assessee/individual/company to have five different sources of income, each one of it will be chargeable to Income Tax Act. Profits and gains of business or profession is only one of the heads under which an assessee's income is liable to be assessed to tax. If an assessee has not commenced business there cannot be any question of assessment of its profits and gains of business. That does not mean that until and unless the assessee commences its business, its income from any other source will not be taxed as held by the Hon'ble Supreme Court in the case of Tuticorin Alkali & Chemicals Ltd. Vs. CIT (1997) 227 ITR. 172 (SC). It has been*

*further held that when the question is whether a receipt of money is taxable or not or whether certain deduction from that receipt is principles of law and not in accordance with accountancy practice. Further, the Hon'ble Apex Court held that the question as to whether a principal receipt is of the nature of income and falls within the charge of sec. 4 of the Act is a question of law which has to be decided by the Court on the basis of the provisions of the Act and interpretation of the term 'income' given in a large number of decisions of the Hon'ble Supreme Court, High Court and Privy Council. After taking note of the Apex Court order as above, we note that the AO in the assessment order after having accepted the statement of total income (supra) and the return wherein the assessee has shown the income from commodities under the head "Income from Other Sources" cannot now after perusal of "Income & Expenditure Account" determine the character of transaction in the penalty proceedings as "Income from Business or Profession" which approach/action is erroneous. We note that the assessee in his statement of total income along with return has classified his income under two heads (i) Salary and (ii) from other sources and the income of Rs. 3 cr. as income from other sources, which we find the AO has not contested in the assessment order, has thus crystallized and the necessary inference drawn is that assessee an individual who was admittedly a salaried person engaged in the previous year relevant to the assessment year under consideration (that too for the first time) in an activity from which he derived "Income from Other Sources" are not required to maintain books of account which are applicable only if the assessee was engaged in Business or Profession. However, we further note that the transactions which yielded income, the assessee had in fact maintained records from which the AO was able to deduce the true income and expenditure of the assessee. We note the AO in the assessment order has accepted the returned income comprising of income from salary and income from other sources by observing as under:*

*"Total income assessed as per return Rs.3,44,65,120/-". And further we note that the AO had specifically stated in the body of the assessment order vide column no. 10 that the assessee is having only salary income and income from other sources. Thus from a perusal of the assessment order, it is not in dispute that assessee is not engaged in any business. And the AO cannot change the character of income in a derivative proceeding which is an off-shoot of assessment proceedings i.e. the penalty proceedings without contesting and making a finding against the claim of the assessee in the assessment order as discussed above.*

*7. Finally, the Ld. AR submitted that during the search, the search party found the records of the assessee's transactions in speculative commodity from the drawer of assessee's accountant from which the AO could compute the income of the assessee from the said transaction which amount assessee declared during search and which was duly returned and which figure was accepted by the AO. According to Ld. AR, the fact that search happened on 01.08.2012 need to be taken note of since undisputedly there was enough and more time for the assessee to submit the accounts during assessment proceedings which fact has been taken note of and concurred by the Ld. CIT(A). Thereafter, the Ld. AR drew our attention to the definition of undisclosed income given under section 271AAB which reads as under:*

*"Penalty where search has been initiated.*

*'271AAB. (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 July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,--*

*(a) a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such assessee—*

\*\*\*\*\* Explanation - For the purposes of this section, -

(a).....

(b) .....

(c) "undisclosed income" means—

(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—

(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or (B) otherwise not been disclosed to the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner before the date of search;

(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted."

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 Id. CIT(A) on the aforesaid reasoning rendered by us.

8. In the result, the appeal of the revenue is dismissed.

4. We find that the facts in the aforesaid case and the decision rendered thereon are squarely applicable to the facts of the instant cases before us and respectfully following the same, we dismiss the appeals of the revenue."

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 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 271 AAB is not sustainable and the same is deleted.*

- 5.5 In the present case also, the appellant is having only income from house property and interest income. Same is evident from the computation of income filed with the return of income. The disclosure made by the appellant is filed under the head business and profession income. Further, the diary so found, on the basis of which disclosure is made, also contained list of advance made which form the basis of disclosure by the appellant. Also, the appellant is not required to maintain any such books of accounts under the law. It may be noted that the amount surrendered is duly recorded in the other documents maintained in normal course and therefore the same can't be said to be undisclosed income.
- 5.6 In my view the case of appellant is squarely covered by the decision of Hon'ble ITAT Jaipur given in the case of Niraj Mathur ITA 969/JP/2017. This decision is followed in the following cases also:
- a. *R.K. Gupta Vs. DCIT (ITA No. 359/JP/2017*
  - b. *S C Mittal ITA 931/JP/2017*
  - c. *Anuj Mathur ITA 971/JP/2017*
  - d. *Ratan lal Agarwal ITA 418/JP/2018*
6. *During the course of appellate proceedings the Ld. A/R was specifically in applicability of the decision in the case of Sandeep Chandak Vs. CIT 93 [Taxmann.com](http://Taxmann.com) 405, in which case the SLP filed by the appellant in that case was dismissed by Hon'ble Supreme court.*
- 6.2 *The learned A/R submitted as under:*

*"In appeal proceeding, your goodself referred to the decision of the Allahabad High Court in case of PCIT V. Sandeep Chandak 304 CTR 657 and required to file the submission on the same.*

*In this connection we may point out that this decision is made against the order of the ITAT wherein the Hon'ble ITAT deleted the penalty on the ground that the notice issued does not relates to the provisions of section 271AAB and it can't be accepted that notice issued u/s 271(1)(c) was valid for initiation of the proceeding u/s 271AAB. Further no penalty proceeding was initiated u/s 271(1)(c) or 271AAB during the course of assessment proceeding. Besides this ITAT held that the AO has not specified in the notice in respect of which clause the penalty is going to be levied on the assessee. Further the penalty u/s 271AAB is not mandatory.*

*The Hon'ble court restored the order of the CIT(A) by holding that the satisfaction of the AO is not required to be recorded by the AO during assessment proceeding or at the time of completion of the proceeding. Therefore the initiation of the proceeding after completion of the assessment proceeding is not vitiated by law. Further last line of the notice clearly mention section 271AAB and the assessee has given the reply to the notice which shows that the assessee fully comprehended the implication of the notice that it is for section 271AAB, Thus the decision of the high court is on the legality of the notices issued.*

*We may further point out that in our earlier submission we have referred to the decision of the ITAT Jaipur Bench wherein the Hon'ble ITAT held that the income recorded in the other records do not form part of the undisclosed income itself and therefore deleted the penalty. The facts of the assessee's case is exactly same.*

*In these facts, the decision of the Allahabad High Court is not applicable to the facts of the present case whereas the ITAT decision*

*is directly applicable to the facts of the present case. Accordingly the penalty levied by the AO is uncalled for and be deleted. "*

6.3 *I have carefully perused the submissions made and the judgment too. I am in agreement with the Ld. A/R that in Sandeep Chandak case the adjudication was made in reference to the notice issued u/s 277 r.w.s. u/s 271 by the depatt. The grounds in the case of Sandeep Chandak are as under:*

*2. Following questions of law have been framed by the assessee :*

*"(A) Whether on the facts and circumstances of the case and in law, the Ld. ITAT has erred in not appreciating the facts that the notice was issued for imposition of penalty u/s 271AAB and not for imposition of penalty u/s 271(a)(c) of the Act ?*

*Whether on the facts and circumstances of the case and in law, the Ld. ITAT has erred in not appreciating the facts that the specific charge 'have in a statement under sub section 4 of section 132 during the course of search and seizure operation admitted undisclosed income' was mentioned in the notice ?*

*Whether the benefit of Section 292BB was correctly denied to the AO/appellant by the I TAT?"*

6.4 *Clearly the issue of what constitute the `undisclosed income within the definition provided in the section u/s 271AAB was never a subject matter before the Hon'ble High Court of Allahabad. Even otherwise this aspect is discussed elaborately in the order of Niraj Mathur delivered by Hon'ble ITAT Jaipur.*

6.5 *Thus, following the decision of the Hon'ble ITAT Jaipur Bench in case of Ravi Mathur discussed supra, the penalty levied by the AO is unjustified. The various other cases of ITAT Jaipur bench referred by the Ld. AR also support his case: Accordingly the penalty of Rs.62.7 Lakhs levied by the AO is deleted. On the facts and in the circumstances of the case, appellant gets a relief in Ground No. 1.*

7. *In the result, the appeal is allowed."*

5. Against the above order of the Id. CIT(A), the Revenue is in further appeal before the ITAT.

6. It was vehemently argued by the Id DR that the income surrendered by the assessee comes within the meaning of undisclosed income as provided under clause (c) of explanation to Section 271AAB of the Act which reads as under:

*"(c) "undisclosed income" means-*

*(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has-*

*(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or*

*(B) otherwise not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner before the date of search; or*

*(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted."*

7. As per the Id DR as the assessee himself has surrendered undisclosed income, the A.O. was justified in levying penalty U/s 271AAB of the Act.

8. On the other hand, it was contended by the Id AR that during the course of search certain loose papers were found wherein there are notings relating to advance given to various persons towards purchase of land. The notings describe the name of persons, the amount advanced and the date of such advance. Therefore, what have been found during the course of search are certain entries relating to investment made in purchase of land. However, the said entry in the loose paper giving advances for purchase of land itself is not an undisclosed income. Besides the said entries, there are no other documents/material in terms of any agreement to sell, description of the property etc. which was found during the course of search. As per the definition of undisclosed income u/s 271AAB, 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. It can also be not said to be income by way of any entry in the books of account or other documents or transactions found in the course of search u/s 132 as it envisages an inflow of funds in the hands of assessee whereas an investment represents an outflow of funds from the assessee's hand. Thus, an undisclosed investment in the purchase of land does not fall in the definition of undisclosed income as provided in explanation (c) to section 271AAB. Though the same can be subject matter of addition in the quantum proceedings but the same

cannot be treated as undisclosed income for the purpose of levy of penalty u/s 271AAB. The Id AR placed reliance on the decision of the Coordinate Bench in the case of M/s Rambhajo's Vs ACIT 175 DTR 161 order dated 11/01/2019. The precise observation was made by the Coordinate Bench at para 39 of its order, which reads as under:

*“Now, coming to surrender made on account of cash advances for land purchases in the statement recorded under s. 132(4) of the Act. During the course of search, a diary has been found wherein there are notings relating to advances given to various persons towards purchase of land. The notings describe the names of the persons, the amount advanced which ranges from Rs 2 lacs to Rs 50 lacs to 4 persons totalling to Rs 1.12 crores and the date of such advance during the period 28th July, 2013 to 3rd Sept., 2013, just before the date of search on 4th Sept., 2013. 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 under 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 s. 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 connote different meanings and connotation and thus cannot be used interchangeably. 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 s. 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. We are also conscious of the fact that there are deeming provisions in terms of ss. 69 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 s. 69 and s. 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 s. 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 s. 69 and s. 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 s. 271AAB provide for a specific definition of undisclosed income. Where a specific definition of undisclosed income has been provided in s. 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. 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 under 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 s. 271AAB read with the Explanation thereto and penalty so levied thereon deserved to be set aside.”*

9. Reliance was also placed on the decision in the case of M/s Silver & Art Palace Vs. DCIT ITA No.236/JP/18 order dated 11.02.2019. The relevant finding at Para 42 to 44 is as under:-

*“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 connote 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."*

10. Further reliance was placed on the decision in the case of Shri Rajendra Kumar Gupta Vs DCIT in ITA No. 359/JP/2017 order dated 18/01/2019. The precise observation at para 21 was as under:

*“During the course of search, a note book (diary) has been found referred to as Ann. AS wherein there are certain notings relating to cash advances given to various persons totaling to Rs 82,80,000. Referring to the statement of the assessee in respect of these notings recorded u/s 132(4), Id CIT(A) has given a finding that the assessee has given a generalized statement without specifying the complete particulars of persons to whom loans were given and also failed to substantiate the same. The said findings have not been disputed by the Revenue and therefore, merely based on surrender and generalized statement of the assessee, in absence of anything specific to corroborate such entries, can it be said that such entries/notings represent undisclosed income of the assessee. As per the definition of undisclosed income u/s 271AAB, the said cash advances 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 cash advances 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. A cash advance 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 can be subsequent outflow by way of an advance to any third party. Giving an advance 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 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 and not vice-versa. We are also conscious of the fact that there are deeming provisions*

*in terms of section 69 and 69B wherein such amounts may be deemed as income in absence of satisfactory explanation. In our view, the deeming fiction so envisaged under Section 69 and Section 69B 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 contained in section 69 and section 69B 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. 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. In light of the same, the undisclosed investment by way of advances 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.”*

11. Further reliance is placed on the following recent decisions of Hon'ble ITAT, Jaipur Bench:-

Sh. Vimal Chand Surana Vs. DCIT 72 ITR(Trib.) 583 order dated 30.05.2019

Sh. Ashish Kumar Kanodia Vs. ACIT ITA No.164/JP/17 order dated 22.05.2019

Sh. Suran Mal Bansal HUF Vs. DCIT ITA No.124/JP/18 order dated 08.04.2019

Sh. Padam Chand Pungliya Vs. ACIT 71 ITR(Trib.) 562 order dated 05.04.2019

12. It was also argued by the Id AR that Section 271AAB of the Act has three different limbs for levy of penalty at three different rates which is provided in clause (a), (b) & (c) of sub-section (1) of section 271AAB. Notice of penalty issued u/s 274 r.w.s. 271AAB at the time of initiation of proceedings dt. 31.03.2015 had not specified as to under which clause the alleged default of assessee is covered. In the subsequent show cause notice dated 30.01.2018, penalty proceedings was initiated under clause (c) and finally in the penalty order, penalty was imposed under clause (a). Thus, non-specification of clause in the show cause notice in which penalty is initiated/ initiating penalty in different clause and finally imposing penalty in different clause shows that even AO was not certain as to under which clause assessee has committed the default. Thus, the penalty notice issued by the AO is

vague and consequent penalty imposed by AO is illegal and bad in law.

For this purpose, reliance is placed on the following cases: -

Sh. Vimal Chand Surana Vs. DCIT 72 ITR(Trib.) 583 order dated 30.05.2019

Sh. Padam Chand Pungliya Vs. ACIT 71 ITR(Trib.) 562 order dated 05.04.2019

Sh. Gopal Das Sonkia Vs. DCIT ITA No.306/JP/2018 order dated 11.04.2019

Sh. Dinesh Kumar Agarwal Vs. ACIT ITA No.855 & 856/JP/2017 order dated 24.07.2018

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 during the course of search, one diary and Annexure-A exhibit 5 was found. In this diary certain advances given to various villagers amounting to Rs. 627 lacs was stated. Statement of assessee was also recorded U/s 132(4) of the Act on 23/1/2013 wherein in reply to question No. 8, the assessee himself has surrendered these advances as income. On this surrendered income, the A.O. has levied penalty U/s 271AAB of the Act. We observed that

what have been found during the course of search are certain entries relating to investment made in purchase of land. However, the said entry in the loose paper giving advances for purchase of land itself is not an undisclosed income. Besides the said entries, there are no other documents/material in terms of any agreement to sell, description of the property etc. which was found during the course of search. As per the definition of undisclosed income u/s 271AAB, 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. We further observe that the assessee was having only income from house property and interest income. The diary was found on the basis of which disclosure was made also contained list of advances made which formed basis of disclosure by the assessee. Since the assessee was not carrying on any business, he was not required to maintain any such books of account under the law. The amount so surrendered was duly recorded in other documents maintained in the normal course and therefore, the same cannot be said to be undisclosed income. The Id. CIT(A) has dealt with the issue threadbare and after applying the various judicial pronouncements including pronouncements of the Coordinate Bench in the cases of Ravi Mathur Vs DCIT in ITA No. 969/JP/2017 order dated 13/06/2017 deleted the addition. The facts and circumstances of the instant case was pari

materia with the facts of Ravi Mathur's case ITA No. 969/JP/2017 which decision was subsequently followed by the Tribunal in the case of R.K. Gupta Vs. DCIT (ITA No. 359/JP/2017, S C Mittal ITA 931/JP/2017, Anuj Mathur ITA 971/JP/2017 and Ratan lal Agarwal ITA 418/JP/2018 which have been elaborately mentioned by the Id. CIT(A) in his order at para 5.6 and after following the same, deleted the penalty so imposed. We do not find any infirmity in the order of the Id. CIT(A), therefore, we uphold the same.

14. In the result, appeal of the revenue is dismissed.

Order pronounced in the open court on 21<sup>st</sup> August, 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:- 21<sup>st</sup> August, 2019

\*Ranjan

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

1. अपीलार्थी / The Appellant-The D.C.I.T, Central Circle-1, Jaipur.
2. प्रत्यर्थी / The Respondent- Shri Prashant Gupta, 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. 424/JP/2019)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar