

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4443/Del./2016  
(ASSESSMENT YEAR : 2010-11)**

Shri Jagjit Singh,  
House No.9 – 10, Sector 16A,  
Faridabad.

vs. DCIT, Central Circle 1,  
Faridabad.

**(PAN : AEZPS1137F)**

**(APPELLANT)**

**(RESPONDENT)**

ASSESSEE BY : Dr. Rakesh Gupta, Advocate,  
Shri Somil Aggarwal, Advocate  
REVENUE BY : Dr. Vijay Kumar Chadha, Senior DR

Date of Hearing : 16.09.2019

Date of Order : 07.10.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, Shri Jagjit Singh (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, New Delhi qua the assessment year 2010-11 confirming the penalty levied u/s 271AAA of the Income-tax Act, 1961 (for short 'the Act') 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.39,14,442/-.*

*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.39,14,442/-, 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. 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 when the issue of cash seized adjustment towards advance tax liability was allowed by Ld. CIT(A) in quantum appeal, and in any case, there is no prohibition to treat the seized cash as self assessment tax and in any case, amendment to section 132B was prospective.*

*5. 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.”*

3. Briefly stated the facts necessary for adjudication of the issues at hand are : On the basis of assessment framed under section 143 (3) read with section 153 (1)(b) of the Act at an income of Rs.5,06,84,450/-, penalty proceedings were initiated u/s 271AAA of the Act on the ground that the assessee has made voluntary surrender of Rs.3,91,44,424/- on account of jewellery, cash found from the assessee's premises and unaccounted investment in the property. Assessing Officer (AO) proceeded to levy the penalty of Rs.39,14,442/- i.e. 10% of the undisclosed/surrendered income of Rs.3,91,44,424/- on the ground that the assessee has failed to specify and substantiate the manner in which the undisclosed income has been earned.

4. Assessee carried the matter by way of appeal before the ld. CIT (A) who has confirmed the penalty by dismissing the appeals. Feeling aggrieved,

the assessee has come up before the Tribunal by way of filing the present appeal.

5. 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.

6. Undisputedly, the entire case is based upon the search and seizure operation conducted on 02.09.2009 at the business as well as residential premises in cases closely associated with M/s. Imperial Auto Industries Ltd. wherein total addition and surrender made in the return of income was Rs.3,91,44,424/-. It is also not in dispute that after the quantum appeal decided by the Id. CIT (A), penalty proceedings have been initiated qua the amount of Rs.3,91,44,424/- i.e. (addition of Rs.3,32,900/- + Rs.1,01,524/-) + (surrender of Rs.50,00,000/- + Rs.3,06,10,000/- + Rs.31,00,000/-). It is also not in dispute that the penalty has been levied by the AO as the assessee has not been able to substantiate the manner in which surrendered income has been earned. It is also not in dispute that the Id. CIT (A) has accepted the contention of the assessee that the manner in which the undisclosed income was derived has been duly substantiated. It is also not in dispute that on quantum, the Revenue has accepted the order passed by the Id. CIT (A) thus attained finality.

7. In the backdrop of the aforementioned facts and circumstances of the case, now the sole question arises for determination in this case is

***“as to whether the assessee has complied with second condition to get immunity u/s 271AAA(2)(i) that he has paid tax together with interest, if any, within due date in respect of the undisclosed income?”***

8. Ld. CIT (A) has confirmed the penalty on the premise that the assessee has paid taxes beyond the due date of return amounting to Rs.1,00,19,297/- as per Form 26AS for the year under assessment and as such, is not entitled for immunity u/s 271AAA (2)(i).

9. Undisputedly, the date of search in this case is 02.09.2009 and due date of return was 31.07.2010 for the year under assessment. It is also not in dispute that the assessee has filed return on 15.10.2010.

10. Ld. AR for the assessee challenging the impugned order contended inter alia that the amount of cash seized of Rs.31,00,000/- was adjusted towards the total tax liability of the assessee; that the return of income has been filed and all the taxes have been paid within the due date i.e. 15.10.2010 (extended from 30.09.2010 vide F.No.225/72/2010-ITA.II dated 27.09.2010) and as such penalty is not sustainable. F.No.225/72/2010-ITA.II dated 27.09.2010 is extracted for ready perusal as under :-

***“F.No. 225/72/2010-ITA.II  
Government of India  
Ministry of Finance  
Department of Revenue  
Central Board of Direct Taxes***

***Dated: September 27, 2010***

***Order under Section 119 of the Income Tax Act, 1961***

*On consideration of the reports of disturbance of general life caused due to floods and heavy rains, the Central Board of Direct Taxes, in exercise of powers conferred under section 119 of the Income Tax Act, 1961, hereby extends the due date of filing of returns of income for the Assessment Year 2010-11 from 30.09.2010 to 15th October 2010. Accordingly the due date for Tax Audit report u/s. 44AB of the Income Tax Act is also extended to 15th October, 2010.*

*Sd/-  
(Ajay Goyal)  
Director (ITA. II)”*

11. When we examine para 3 of the assessment order AO has categorically recorded the fact that the assessee has filed return of income on 15.10.2010 declaring income of Rs.5,06,84,450/- which was processed on 20.04.2011 and has accepted the contention of the assessee that the assessee has paid taxes and interest thereon in due date before filing of return on 15.10.2010 and has proceeded to levy the penalty on the sole ground that the assessee has failed to specify and substantiate the manner in which the undisclosed income has been earned.

12. When we examine return of income along with computation of income filed by the assessee for the year under assessment, available at page 11 of the paper book, it categorically shows that the assessee has paid the taxes and interest thereon prior to 15.10.2010 and the refund of Rs.4,92,030/- is due to the assessee.

13. When it is proved on record that the assessee has paid the due taxes and interest thereon prior to 15.10.2010, which is due date as per F.No.225/72/2010-ITA.II dated 27.09.2010 (supra), on which return of income

was filed, the assessee is entitled for immunity u/s 271AAA (2)(i) and there is no question of levying the penalty on the assessee.

14. Coordinate Bench of the Tribunal decided the identical issue in favour of the assessee in case of *Shri Manav Sardana vs. DCIT in ITA No.4447/Del/2016 order dated 10.06.2019* by returning following findings :-

*“5. Bare perusal of the impugned order passed by the ld. 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 ld. 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 ld. Senior DR.*

*6. Perusal of the impugned order passed by the ld. CIT (A) shows that somehow ld. 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.”*

15. The contention raised by the ld. DR for the Revenue that the payment of taxes and interest alleged to have been paid by the assessee within due date need to be verified by the AO is not sustainable on the face of the fact that from the return of income along with computation of income, available at pages 1 to 11 of the paper book, it is duly proved that the return has been received and perused under Rules and there is a refund of Rs.4,92,030/- due to the assessee.

16. In view of what has been discussed above, we are of the considered view that penalty levied 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 seek necessary relief. Consequently, appeal filed by the assessee is allowed.

**Order pronounced in open court on this 7<sup>th</sup> day of October, 2019.**

**Sd/-  
(N.K. BILLAIYA)  
ACCOUNTANT MEMBER**

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

**Dated the 7<sup>th</sup> day of October, 2019  
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Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**