

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

Before Ms. Sushma Chowla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 6631/Del./2016 : Asstt. Year : 2010-11

Smt. Divya Vedi, RRA Taxindia, D-28, South Extension, Part-I, New Delhi-110049	Vs	Deputy Commissioner of Income Tax, Central Circle-1, Faridabad
(APPELLANT)		(RESPONDENT)
PAN No. AAEPV8188Q		

Assessee by : Sh. Somil Aggarwal, Adv.

Revenue by : Ms. Nidhi Srivastava, CIT DR

Date of Hearing: 03.10.2019

Date of Pronouncement: 30.10.2019

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A)-3, Gurgaon dated 30.11.2016.

2. Following grounds have been raised by the assessee:

"1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in not deleting the penalty of Rs. 56,986/- fully, which was levied by Ld. A.O. and that too without assuming jurisdiction as per law and without appreciating the facts and circumstances of the case.

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, more so when penalty was initiated & levied by Ld. A.O. only on the ground that manner of income for investment in jewellery was not substantiated and thus, Ld. CIT(A) has exceeded the jurisdiction.

3. *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. The provisions of Section 271AAA are as under:

"271AAA. Penalty where search has been initiated.—(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 June, 2007, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year.

(2) Nothing contained in sub-section (1) shall apply if the assessee,—

(i) 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;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) pays the tax, together with interest, if any, in respect of the undisclosed income.

(3) No penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).

(4) The provisions of sections 274 and 275 shall, so far as may be, apply in relation to the penalty referred to in this section.

Explanation.—For the purposes of this section,—

(a) "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 Chief Commissioner or Commissioner before the date of the search."

4. In the instant case, the Assessing Officer levied and the Id. CIT (A) confirmed the penalty levied by the Assessing Officer on the grounds that the assessee failed to substantiate the manner in which the income was earned [5(v) of the penalty order]. From the records, we find that the assessee while answering to question No. 5 posed during the search has explained that the jewellery belongs to her minor daughter and mother-in-law. The revenue has released the jewellery worth Rs.11.21 lacs out of the total jewellery of Rs.15.10 lacs. This is a classification of releasing the jewellery as per the Board instruction and levying penalty on the value of the precious stones studded in the said jewellery on the grounds that the assessee could not fulfill the conditions laid down in the provisions of Section 271AAA(2)(ii). In our opinion, when the gold jewellery in which the diamonds were studded has been accepted by the department as the jewellery received at the time of marriage or other occasion, then, it cannot be said that the diamond studded in the said jewellery were out of the undisclosed income of the assessee. It is well settled that the assessment proceedings and the penalty are two different and distinct proceedings and that the addition made in the assessment may be relevant but not a conclusive proof of concealment of income or furnishing of inaccurate particulars of income. Therefore, considering the totality of the peculiar facts of the present case, we hereby direct that the penalty of Rs.56,986/- made by the Assessing Officer be obliterated.

5. In the result, the appeal of the assessee is allowed.

Order Pronounced in the Open Court on 30/10/2019.

Sd/-

(Sushma Chowla)
Judicial Member

Dated: 30/10/2019

Subodh

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

ASSISTANT REGISTRAR

