

आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई
IN THE INCOME TAX APPELLATE TRIBUNAL, 'A' BENCH, CHENNAI
श्री जॉर्ज माथन, न्यायिक सदस्य एवं श्री एस जयरामन, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A.No.474/CHNY/2019
(निर्धारण वर्ष / Assessment Year: 2014-15)

M/s. Hotel Saravana Bhavan, Vs **The ACIT,**
C/o. Shri.T.N. Seetharaman, Central Circle 1(3),
Advocate, Chennai – 34.
#384, (Old No.196), Lloyds Road,
Chennai – 600 086.
PAN: AABFH 3049M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri T.N. Seetharaman, Advocate

प्रत्यर्थी की ओर से/Respondent by : Shri S. Bharath,CIT

सुनवाई की तारीख/Date of hearing : 26.08.2019

घोषणा की तारीख /Date of Pronouncement : 22.11.2019

आदेश / ORDER

Per S.JAYARAMAN, ACCOUNTANT MEMBER:

The assessee filed this appeal against the order of the Commissioner of Income Tax (Appeals)-18, Chennai in ITA No.405/16-17 dated 14.01.2019, wherein the Id.CIT(A) confirmed the levy of penalty made U/s.271AAB dated 30.06.2017 by the ACIT, Central Circle 1(3), Chennai.

2. M/s. Hotel Saravana Bhavan, the assessee, is a firm, carrying on the business of hoteliers. Search & seizure action was carried out in the premises of the group including the assessee's business premise on 23.07.2013. During the search process, various incriminating materials were unearthed, including unaccounted; cash, gold jewellery, silver articles at the residential premises of the partners. When confronted, one of the partners, Shri R. Saravanan admitted U/s.132(4) dated 16.09.2013 additional unaccounted income in the hands of the firm & 3 partners of Rs.12.5 crores for each of the assessment year viz., AY 2013-14 & 2014-15. The assessee firm filed its return of income for assessment year 2014-15 on 01.05.2015 admitting a total income of Rs.18,55,05,110/- which included the admitted undisclosed income U/s.132(4) at Rs.12.5 crores and paid the entire tax payable at Rs.6,07,24,454/- as an advance tax. This return was not processed U/s.143(1). However, the Assessing Officer issued the notice U/s.143(2) on 10.07.2015 and completed the assessment u/s.143(3) r.w.s. 153B(1)(b) on 30.03.2016, assessing the total income at Rs.19,05,92,896/-. In the assessment order, he initiated penalty proceedings U/s.271AAB on the admission of the additional income of Rs.12.5 crores as a deemed concealment.

2.1 During the penalty proceedings, after considering the assessee's reply etc., the Assessing Officer held, inter-alia, that since the provision of Section 271AAB is excluded from the operation of Section 273B, the levy of penalty U/s.271AAB is mandatory, contrary to the assessee's assertion that the additional income disclosed does not refer to any incriminating material, such disclosure was on account of evidences found during the search operations and when it was confronted with them only the assessee admitted such income, the benefit of levy of penalty at a lower rate is available on the compliance of cumulative conditions viz., (1) the return is filed within the specified date i.e, the due date allowed U/s.139(1) i.e., on or before 30.09.2014 (sic. 30.11.2014) and (2) the assessee has paid the tax together with interest, if any, in respect of the undisclosed income. Since in the assessee's case, when the return is not filed within the due date (specified date), the payment of tax on the undisclosed income whenever made and whether made or not does not become material and therefore the Assessing Officer levied the penalty U/s.271AAB. Aggrieved, the assessee filed an appeal before the CIT(A) and the

Id.CIT(A) dismissed the appeal. Aggrieved against the order of the Id.CIT(A), the assessee is on appeal before this Tribunal.

3. The Id.AR submitted that the admission made by the assessee towards unaccounted income does not fall within the scope of “undisclosed income” under clause (c) of Explanation to Section 271AAB. When the Bench pointed out that when the assessee on confrontation with incriminating material, valuables etc., admitted undisclosed income U/s.132(4) at the time of search, subsequently admitted such income in the return and paid the taxes, which was also assessed by the Assessing Officer and such an assessment having attained finality, whether such line of argument is warranted, the Id.AR submitted that in the assessee’s case on same set of facts for the assessment year 2013-14, penalty U/s.271AAB was levied @ 10%. However, for the assessment year 2014-15, penalty was levied @ 30% for the only reason that the return of income was filed on 05.01.2015 when the specified date i.e., the due date was 30.11.2014, giving a go by to all other compliances made in accordance with clause (a) of sub-section (1) of Section 271AAB. The relevant assessment year is AY 2014-15, the date of search & seizure was

23.07.2013, being the year of search, no notice U/s.153A could be issued to the assessee. The assessee started paying the advance tax on the admitted undisclosed income from 29.08.2013 onwards and paid the entire tax at Rs.6,07,24,451/- on the total income including the undisclosed income admitted at Rs.12.5 crores on 13.03.2014 i.e., within specified date. When the assessee filed the return on 05.01.2015, the tax payable by the assessee is Nil. Therefore, it was pleaded that the levy of penalty U/s.271AAB be made @ 10% as made for the assessment year 2013-14, towards which the assessee also made an endorsement in the record. The Id.AR also pleaded that in the absence of issue of notice U/s.153A, the assessee had the benefit of using the entire provision of Sec.139 which includes not only sub-section (1) of Section 139 but also sub-clause (4) of Sec.139, by which the assessee is entitled to file the return upto 31.03.2016. Therefore, it is pleaded that the return filed by the assessee may be treated that it was filed within the specified date. In this regard, the Id.AR relied the decision of the Hon'ble Punjab & Haryana High Court in the case of CIT vs. Ms.Jagrati Aggarwal 339 ITR 610 (P&H), wherein the assessee sold a house property on 13.01.2006 and purchased a new residential property on 02.01.2007 and claimed

deduction U/s.54. The Assessing Officer declined the claim as the assessee failed to deposit the amount in capital gains account scheme and also failed to purchase house property before the due date of filing the return. The Hon'ble High Court held that

“Sub-Section (4) of section 139 provides the extended period of limitation as an exception to sub-section (1) of section 139 of the Act. Sub-section (4) was in relation to the time allowed to an assessee under sub-section (1) to file the return. Therefore, such provision was not an independent provision, but relates to the time contemplated under sub-section (1) of section 139. Therefore, sub-section (4) had to be read along with sub-section (1). Therefore, the due date for furnishing the return of income according to section 139(1) of the Act was subject to the extended period provided under sub-section (4) of section 139 of the Act.”

Per contra, the Id.DR supported the orders of lower authorities.

4. We heard the rival submissions and gone through the relevant material. The relevant portion of the provision is extracted as under:

“271AAB. 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 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—

(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) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

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

(i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and

(ii) on or before the specified date—

(A) declares such income in the return of income furnished for the specified previous year; and

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

(c) a sum which shall not be less than thirty per cent but which shall not exceed ninety per cent of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).

(2) 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).

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

From the above, it is clear that the AO may, in respect of specified years, in relation to undisclosed income, levy penalty of

(a) 10% if the taxpayer admits the undisclosed income u/s 132(4); substantiates the manner of earning such undisclosed income and pays the tax, together with interest on or before the specified date and furnishes the return of income declaring such undisclosed income.

(b) 20% if the taxpayer does not admit undisclosed income u/s 132(4); declares such undisclosed income in the return of income within the specified date and pays the tax together with interest in respect of the undisclosed income.

(c) 30%, if the taxpayer does not fall under either of the condition prescribed in (a) or (b), supra.

In this case, the assessee has admitted the undisclosed income U/s.132(4); substantiated the manner of earning such undisclosed income and paid the taxes in respect of undisclosed income. It is seen from the return that the assessee started paying the advance tax on the admitted undisclosed income from 29.08.2013 onwards, date of

search being 23.07.2013 and paid the entire tax at Rs.6,07,24,451/- on the total income including the undisclosed income admitted at Rs.12.5 crores on 13.03.2014 within the specified date. Therefore, when the assessee filed the return on 05.01.2015, the tax payable shown by the assessee is at 'Nil'. Therefore, the only deviation is in respect of filing the return. Instead of filing it on 30.11.2014, the assessee filed the return on 05.01.2015. Probably for the reason that the assessee has made substantial compliance, it appears that the Revenue has also not issued any notice, as seen from the assessment order dated 30.03.2016, under any section requiring the assessee to file the return for the assessment year 2014-15, till the assessee filed the return of income. Therefore, it is clear that the assessee has made substantial compliance as required under clause (a) to sub-section 1 of Section 271AAB of the Income Tax Act. Therefore, we find merit in the submissions of the assessee, supra, that the penalty should be levied under Clause (a) of Sub-Section 1 of Section 271AAB only. i.e., the sum computed at the rate of 10% of the undisclosed income only. Therefore, we direct the Assessing Officer to levy the penalty @ 10% of the undisclosed income. To this extent the assessee's appeal is allowed.

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

Order pronounced in the court on 22nd November, 2019 at
Chennai.

Sd/-

(जॉर्ज माथन)

(George Mathan)

न्यायिक सदस्य/Judicial Member

Sd/-

(एस जयरामन)

(S. Jayaraman)

लेखा सदस्य /Accountant Member

चेन्नई/Chennai,

दिनांक/Dated 22nd November, 2019

RSR

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT | 5. विभागीय प्रतिनिधि/DR | 6. गार्ड फाईल/GF |