

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'A' BENCH, KOLKATA
(Virtual Court)**

(Before Sri J. Sudhakar Reddy, Accountant Member & Sri Partha Sarathi Chaudhury, Judicial Member)

**I.T.A. No. 325/Kol/2020
Assessment Year: 2013-14**

**Mahabir Prasad Jalan (HUF).....Appellant
[PAN: AACHM 0965 N]**

vs.

ACIT, Central Circle-1(1), Kolkata.....Respondent

Appearances by:

Sh. S.M. Surana, Adv., appeared on behalf of the Assessee.

Sh. Dhruvajyoti Ray, JCIT, appeared on behalf of the Revenue.

Date of concluding the hearing : November 5th, 2020

Date of pronouncing the order : November 13th, 2020

ORDER

Per Partha Sarathi Chaudhury, JM:

This appeal preferred by the assessee emanates from the order of the Learned Commissioner of Income Tax (Appeals)-20, Kolkata [hereinafter the "CIT(A)"], dated 18.02.2020 u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act') for the Assessment Year (hereinafter 'AY') 2013-14 as per the following grounds of appeal:

"1. For that the penalty imposed u/s 271AAB is bad in law since no search warrant of panchnama was issued in the name of the assessee.

2. For that the Ld. CIT(A) erred in confirming the penalty imposed by the AO u/s 271AAB which is not in accordance with law."

2. Brief facts of the case are that a search & seizure operation u/s 132(1) Act was conducted on 13.12.2012 at Ramakrishna Group and persons associated with the group. Assessee's premises was also covered u/s 132(1) of the Act. During the course of search, incriminating material regarding undisclosed commodity profit of ₹2,85,00,000/- was discovered. During the course of search proceedings, assessee made a disclosure of this undeclared commodity trading profit and followed up by declaring the same in the return filed in response to notice u/s 153A. All the taxes were also paid on the declared

income. As all the conditions regarding levy of penalty u/s 271AAB was satisfied, AO has levied penalty of ₹28,50,000/- u/s 271AAB.

3. At the outset, the Id. Counsel for the assessee submitted that the facts, circumstances and the issues involved in this case are absolutely identical to the facts, issues and circumstances with *ITA No. 241/Kol/2020* for the AY 2013-14 in the case of *Sri Mahabir Prasad Jalan* and therefore the same order of the Tribunal may be followed in this case also.

4. The Id. D/R conceded that the facts involved in the present case are identical with the case referred to (*supra*).

5. We have heard the rival contentions, perused the relevant records and considered the judicial pronouncements placed on record. That after taking the submissions of the parties herein, we find that identical matter came up before us for consideration in *ITA No. 241/Kol/2020 (supra)*, wherein on this issue we have held as under:

“4. We have heard both the parties and perused the relevant records. After hearing the rival submissions and analyzing the facts and circumstances of the case and considering the judicial pronouncements placed on record before us and analyzing the provisions of section 271AAB of the Act, we find that therein three limbs of the section are mentioned as clauses (a); (b); (c), wherein a sum paid @ 10%, 20% and 60% respectively of the undisclosed income of the specified previous year has to be determined for purposes of penalty. Thus, it is evident that notice issued under this provision has to specify under which clause the AO wants to proceed to levy the impugned penalty and there has to be an undisclosed income of the specified previous year. In this case, when we peruse the assessment order, we find that there is not even a whisper of specified clause of the section 271AAB of the Act in which the penalty proceeding has been initiated by the AO, although the AO has accepted the return of income filed by the assessee. The AO has also not mentioned any undisclosed income in the name of the assessee. In this scenario, facts apropos are covered by various judicial pronouncements/decisions filed on record before us specifying the following principles:

a. Penalty initiated u/s. 271AAB of the Act should mention the specific clause/charge in which it is initiated so that in conformity with principle of natural justice the assessee should know the exact charge for imposition of penalty and he can be ready for his defence.

b. There has to be an undisclosed income for the previous year.

5. Taking the totality of facts and circumstances of the case, we are of the considered view that when the notice issued u/s. 271AAB of the Act does not contain any specific charge against the assessee as per the various clauses therein, when the AO has accepted the return filed by the assessee and when the AO has not found any undisclosed income in the hands of the assessee, in such scenario, the penalty u/s. 271AAB of the Act cannot be imposed and accordingly, we set aside the impugned order of the Ld. CIT(A) and direct the AO to cancel the impugned penalty from the hands of the assessee.”

6. Therefore we find no reason to deviate from our view taken in ITA No. 241/Kol/2020 (*supra*) and we allow this appeal of the assessee accordingly.

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

Kolkata, the 13th November, 2020.

Sd/-
[J. Sudhakar Reddy]
Accountant Member

Sd/-
[Partha Sarathi Chaudhury]
Judicial Member

Dated: 13.11.2020
Bidhan

Copy of the order forwarded to:

1. ***Mahabir Prasad Jalan (HUF), 4A, Hastings Park Road, Hastings, Kolkata-700 027.***
2. ***ACIT, Central Circle-1(1), Kolkata.***
3. CIT(A)-20, Kolkata. (sent through mail)
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata. (sent through mail)

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches