

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C”BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND  
SHRI B.R. BASKARAN, ACCOUNTANT MEMBER**

ITA No.2295/Bang/2019
Assessment Year:2013-14

Sri Suresh H Kerudi Near Lion's School Extension Area, Ward No.10 Bagalkot-587 105 Karnataka  <b>PAN NO :ANXPK7519G</b>	<b>Vs.</b>	ITO Ward-1 Bagalkot
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Pranav Krishna, A.R.
<b>Respondent by</b>	:	Smt. R. Premi, D.R.

Date of Hearing	:	26.11.2020
Date of Pronouncement	:	26.11.2020

**ORDER**

**PER B.R. BASKARAN, ACCOUNTANT MEMBER:**

The assessee has filed this appeal challenging the order dated 28.8.2019 passed by Ld. CIT(A) Belgaum for assessment year 2013-14 confirming the penalty of Rs.3,80,000/- levied by the A.O. u/s 271AAB of the Income-tax Act,1961 ['the Act' for short].

2. The Ld. A.R. submitted that an identical issue was considered in the assessee's own case in ITA Nos.2950 to 2955/Bang/2018 relating to assessment years 2007-08 to 2012-13. The coordinate bench has passed the order on 25.10.2019 holding that the provisions of section 271AAB of the Act could not be invoked in the

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hands of the assessee, since the assessee was not a person who was subjected to search. The Ld. A.R. submitted that the ratio of above said decision would squarely apply to the instant year also.

3. We heard Ld. D.R. and perused the record. We notice that the penalty u/s 271AAB of the Act was levied upon the assessee for assessment years 2007-08 to 2012-13 also. The coordinate bench in the assessee's own case referred (supra) has deleted the penalty with following observations:

*"10. We have considered the rival submissions. We find that an identical plea was put forth by the assessee in the case of Shreeji Corporation (supra) and the Ahmedabad Bench of the Tribunal in its order accepted the stand and held as follows:-*

*"5. A perusal of the assessment order undisputedly points out that no search had taken place in the case of the assessee per se under s.132 of the Act. A bare reading of law codified in Section 271AAB(1) clearly provides that the AO may direct the assessee to pay a sum by way of penalty at specified percentage where undisclosed income of the specified previous year has been detected as a result of search under s.132 of the Act. Section 271AAB(1)(a) however simultaneously provides concessional treatment in the matter of penalty under s.271AAB where the assessee admits the undisclosed income in a statement under sub-section 4 of Section 132 of the Act subject to fulfillment of other conditions with which we are presently not concerned with. Therefore, it is manifest that applicability of Section 271AAB is integrally connected to search under s.132 of the Act. In the absence of search under s. 132 of the Act, the assessee has no occasion to avail the concessional treatment by way of admission under s.132(4) of the Act. Thus, we find obvious merits in the observations made by the first appellate authority that provisions of Section 271AAB of the Act are not applicable to the case of the assessee. In the absence of search under s.132 of the Act, the consequential or incidental assessment proceedings under s.153C of the Act will not, in our view, entitle the AO to usurp jurisdiction under s.2.71AAB of the Act for the*

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*purposes of imposition of penalty. Hence, we do not see any infirmity in the conclusion drawn by the CIT(A)."*

*11. The Pune Bench of the Tribunal in the case of Volga Dresses(supra) has also taken a similar view:-*

*6. "We have considered the rival submissions. A perusal of the provisions of section 271AAB shows that the opening words are "penalty where search has been initiated" a perusal of the provisions under Section 271 AAB also talks of the assessee declaring any undisclosed income in the course of the search in the statement under section 132(4). Admittedly in the present case, that is in the case of the assessee firm in appeal there has been no search. Search admittedly is on the residence of one of the partner of the assessee firm. Further a perusal of the order of the learned CIT(A) also clearly shows that the learned CIT(A) has cancelled the penalty on the ground that there was no search in the case of the assessee firm. The revenue has not been able to point out as to how this finding of the learned CIT(A) is erroneous. This being so the finding of the learned CIT(A) on this issue stands confirmed."*

*12. In view of the aforesaid decision of coordinate Benches, we are of the view that the penalty in the case of assessee cannot be sustained as the assessee was not a person who was subjected to search u/s. 132 of the Act and consequently the provisions of section 271AAB could not be invoked in his case."*

4. Since the facts are identical in the instant year, following the above said decision of the coordinate bench, we hold that the penalty in the case of the assessee cannot be sustained as the assessee was not a person who was subjected to search u/s 132 of the Act and consequently the provisions of section 271AAB of the Act could not be invoked in this case. Accordingly, we quash the order passed by tax authorities.

5. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 26<sup>th</sup> Nov, 2020.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(B.R. Baskaran)**  
**Accountant Member**

Bangalore,  
Dated 26<sup>th</sup> Nov, 2020.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.