

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “FRIDAY-A” NEW DELHI
BEFORE SHRI G.S. PANNU, VICE PRESIDENT
&
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No.4448/Del/2016
Assessment Year 2010-11

M/s Imperial Auto Industries Ltd. RRA Taxindia, D-28, South Extension, Part-1, New Delhi-110049	vs.	DCIT, Central Circle-I, Faridabad,
TAN/PAN: AEQPB4221G		
(Appellant)		(Respondent)

Appellant by:	Dr. Rakesh Gupta, Advocate		
Respondent by:	Sh. Bhagwati Charan, Sr.D.R.		
Date of hearing:	03	12	2020
Date of pronouncement:	03	12	2020

ORDER

PER AMIT SHUKLA, J.M.:

The aforesaid appeal has been filed by the assessee against the impugned order dated 24.06.2016, passed by the Ld. CIT (Appeals)-3, Gurgaon, in relation to the penalty proceedings u/s 271AAA of the Income Tax Act, 1961 (in short, ‘the Act’) for Assessment Year 2010-11.

2. In the grounds of appeal, the assessee has challenged the levy of penalty of Rs.50 Lakhs, which has been sustained by the Ld. CIT(A) on the ground that the payment of taxes were not made on the amount surrendered within the due date.

3. The facts in brief are that, a search and seizure action under section 132(1) was carried out at the business premises of the assessee on 02.09.2009. During the course of search, the assessee company had made disclosure/surrender of Rs. 5 Crores in the statement recorded u/s 132(4) of the Act. Based on documents/hand written diaries found and seized from the premises of the assessee which reflected the various hand written transactions with regard to cash receipts, not recorded in regular books of accounts.

4. The assessee in the return of income filed u/s 153A had offered this income in the return of income filed on 15.10.2010. The Ld. Assessing Officer in his assessment order had accepted the said return including disclosure of Rs.5 Crores.

5. Thereafter, the Ld. Assessing Officer initiated penalty proceedings u/s 271AAA and held that at the time of surrender, the assessee could not specify and substantiate the manner in which the undisclosed income was earned. In response, the assessee has filed a detailed reply, however, the Assessing Officer levied penalty purely on the ground that the assessee has failed to specify the manner in which the

undisclosed income was earned and accordingly, the penalty @ 10% of the surrendered amount was levied, which worked out at to Rs.50 Lakhs.

6. Before the Ld. CIT(A), the assessee contended that it has substantiated the manner of earning of undisclosed income which was duly accepted by the Ld. CIT(A) in the following terms:-

“In view of the facts of the case, submissions made by the appellant and following the judicial pronouncements on this issue including the above decision of Hon’ble ITAT Chandigarh Bench, the contentions of the appellant with regard to the second condition of substantiating the manner in which the undisclosed income was derived is accepted.”

7. However, the Ld. CIT(A) confronted the assessee vide the order sheet entry dated 04.05.2016 and asked the assessee to showcause how the assessee satisfies the condition of Section 271AAA(2)(iii) of the Act with regard to payment of taxes together with interest in respect of surrendered income. In response, the assessee submitted that the due date of filing of income tax return for AY 2010-11 was 15.10.2010 and the assessee had filed return of income on 27.09.2010 and advanced tax liability was discharged by the assessee in time. In support, a copy of Form No.26AS together with copy of computation of income was also filed. It was also informed that the amount of cash seized of

Rs.55,18,650/- was further adjusted towards the total tax liability of the assessee, but the credit of such seized cash could not be reflected in the particulars of Form 26AS of the assessee. From 'Form 26AS', the Ld. CIT(A) inferred following facts:-

“In the computation of income, the total tax payable in the case of the appellant was Rs.4,47,13,900/- out of which TDS deducted was Rs.4,47,13,900/- out of which TDS deducted was Rs.10,25,699/- and advance tax paid show at Rs.4,45,18,650/-. The breakup of payment of these taxes is given in the details as per Form 26AS for the year under consideration filed during the appellate proceedings.

Date of Deposit	Total tax
28.08.2015	Rs.5,56,167/-
28.08.2015	Rs.7,69,128/-
20.08.2014	Rs.50,00,000
17.04.2014	Rs.250
29.03.2014	Rs.49,96,663
17.04.2013	Rs.10,000
13.04.2012	Rs.32,84,449
10.01.2012	Rs.1,000
09.01.2012	Rs.1,100
15.10.2010	Rs.3,44,950
Total	Rs.1,49,63,707

In this case, the date of search was 02.09.2009, the due date of return was on 30.09.2010 for the year under

consideration and the return was filed by the appellant on 24.11.2011. It is apparent from the above chart for payments of taxes were paid beyond the due date of filing the return in this case.”

8. Accordingly, he confirmed the penalty on altogether different charge, that is, on the ground that the assessee has not paid the taxes within due date of filing of return. As according to him the taxes were paid beyond the due date of filing of return of income.

9. Before us, the Ld. Counsel for the assessee, drew our attention to computation of income as appearing at page 3 of the paper book, wherein, the assessee had shown details of pre-paid taxes of sums aggregating to Rs.4,45,18,650/- on the return of income declared at Rs.13,15,50,160/- which included the surrendered amount of Rs.5 Crores. The details of prepaid taxes were as under:-

Sr. No.	BSR Code	Date	Challan No.	Amount
1	0202976	10.06.2009	00283	5000000
2	0202976	10.06.2009	00295	1000000
3	0202976	12.06.2009	00128	5000000
4	0202976	14.09.2009	03087	5000000
5	0202976	15.09.2009	00805	5000000
6	0202976	14.12.2009	01455	3000000
7	0202976	13.03.2010	00684	15000000
8	0202976	15.09.2009	00805	5518650
			Total	44518650

10. He also drew our attention to ITNS which is part of assessment order dated 28.12.2011, wherein, the credit of taxes has been given by the Assessing Officer. Insofar as, observations of the Ld. CIT (A) (as incorporated above), he submitted that the same is based on erroneous assumption of facts. All the taxes were duly paid from 12th June, 2009 to 13th March, 2010; and the other increase of taxes as noted by Ld. CIT (A) relates to filling fees, wealth tax and taxes levied on account of penalty. Insofar as, the pre-paid taxes in advance tax are concerned on the return of income, the same was paid much before the due date. In support, he also drew our attention to Form No.26AS appearing at page 93 of the paper book. Lastly, he submitted that this Tribunal in three judgments, similar observations of the Ld. CIT (A) in assessee's group of cases had made observations which have been found to be erroneous and the Tribunal has deleted the penalty. List of the judgments are as under:-

- i) Sh. Jagjit Singh, ITA No. 4443/Del/2016;
- ii) Sh. Manav Sardana, ITA No.4447/Del/2016;
- iii) Smt. Preeti Lamba, ITA No. 4444/Del/2016.

11. He further submitted that, otherwise also, there is no specific date which has been prescribed for payment of taxes in section 271AAA and even if the taxes are paid at the stage of penalty proceedings also, the same has to be reckoned as tax paid on the surrender amount. On this proposition he has filed various judicial pronouncements, which have been placed in the paper book.

12. On the other hand, Ld. DR submitted that the matter can be remanded back to the file of Ld. Assessing Officer/ Ld. CIT (A) so as to verify the dates of payments of taxes. He further submitted that the Assessing Officer has levied penalty on the ground that manner in which the undisclosed income was earned and the assessee could not substantiate the same. Therefore, on this ground also, the penalty is leviable.

13. We have heard the rival submissions and also perused the relevant findings given in the impugned order as well as material placed before us. The Assessing Officer has levied the penalty of Rs.50 Lakhs on the ground that the assessee at the time of surrender had failed to satisfy and substantiate the manner in which the undisclosed income has been earned. However, the Ld. CIT (A) had rejected the Assessing Officer's charge and categorically held that the condition of substantiating the manner in which the undisclosed income was derived was duly demonstrated by the assessee and the same was accepted as incorporated in foregoing para. Thus, the charge on which the Assessing Officer has levied penalty under section 271AAA stands overruled; and against such findings of the Ld. CIT (A), no appeal has been preferred by the Department. Therefore, the said findings of the Ld. CIT (A) have attained finality.

14. The Ld. CIT (A), however, has confirmed the penalty on all together different charge, that is, as specified in *clause (ii)*

to *sub-clause-(2)* of *section 271AAA* of the Act, which is that, the assessee has not paid the taxes and interests in respect of undisclosed income and therefore, exception provided for not levying penalty u/s 271AAA has not been fulfilled. According to him, the assessee had paid the taxes beyond the due date of return of income as Form No.26AS. The said findings are prima facie incorrect from a bare perusal of the Form No.26AS, copy of which has been placed at page 93 of the paper book. It is seen that the assessee has paid all its taxes on the income declared in the return of income on or before 13th March, 2010. Advance tax and the pre-paid taxes of Rs. 4,45,18,650/- were paid between the periods 10th June, 2009 to 13th March, 2010. The relevant dates of the taxes paid has already been incorporated above, however, same is also reflected in Form 26AS. The relevant portion as a scan is reproduced here under:-

11	0020	100	15000000.00	0.00	0.00	0.00	7- 15000000.00	0202976	13-Mar-2010	00684	-
12	0020	100	3000000.00	0.00	0.00	0.00	6- 3000000.00	0202976	14-Dec-2009	01455	-
13	0020	100	5000000.00	0.00	0.00	0.00	5- 5000000.00	0202976	15-Sep-2009	00805	-
14	0020	100	5000000.00	0.00	0.00	0.00	4- 5000000.00	0202976	14-Sep-2009	03087	-
15	0020	100	5000000.00	0.00	0.00	0.00	3- 5000000.00	0202976	12-Jun-2009	00128	-
16	0026	100	1000000.00	0.00	0.00	0.00	2- 1000000.00	0202976	10-Jun-2009	00295	-
17	0020	100	5000000.00	0.00	0.00	0.00	1- 5000000.00	0202976	10-Jun-2009	00283	-

15. The Ld. CIT (A) has only incorporated the figures given at serial number 1 to 10 and has failed to consider the taxes deposited from serial number 11 to 17 which was not on account of income shown in the return of income. Further,

this fact has also been corroborated from the computation of income filed along with return of income, the details of which as incorporated above also matches with Form 26AS. Thus, all the payment of taxes along with interest were duly paid much before due date of filing of return of income. Therefore, the allegation in the charge of the Ld. CIT (A) is completely divorced from the facts and material on record. Accordingly, ground which the Ld. CIT (A) has confirmed the penalty is dismissed.

16. Apart from that, precisely on similar issue and on similar findings of the Ld. CIT(A) in the group cases of the assessee, the Tribunal has come to an independent conclusion that the Ld. CIT(A) has wrongly inferred/ interpreted the Form 26AS and therefore, the finding of the Tribunal will also apply mutatis mutandis in this appeal also. Accordingly, the penalty of Rs.50 Lakhs levied u/s 271AAA of the Act is directed to be deleted.

17. In the result, appeal of the assessee is allowed.
Order pronounced in the open Court on 03rd December, 2020.

Sd/-

[G.S. PANNU]

VICE PRESIDENT

Sd/-

[AMIT SHUKLA]

JUDICIAL MEMBER

DATED: 03rd December, 2020

Shekhar

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar
ITAT, New Delhi