

**आयकर अपील अा अधकरण, अहमदाबाद ँयायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**" SMC" BENCH, AHMEDABAD**  
(CONDUCTED THROUGH VIRTUAL COURT AT AHMEDABAD)

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER**  
**And**

**Ms MADHUMITA ROY, JUDICIAL MEMBER**

आयकर अपील सं./ITA No. 1629/AHD/2018

अाधरण वष/Asstt. Year: 2011-2012

Ketan Ratilal Patel, 66, Tirth Nagar Society Part-1, Sola Road, Memnagar, Ahmedabad.  <b>PAN: ABRPP7959F</b>	Vs.	A.C.I.T., Central Circle-1(2), Ahmedabad.
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<b>(Applicant)</b>		<b>(Respondent)</b>
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Assessee by :	Written Submission
Revenue by :	Shri S.S. Shukla, Sr. DR

सुनवाई का तारख/Date of Hearing : 19/01/2021

घोषणा का तारख /Date of Pronouncement: 16/03/2021

**आदेश / O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax(Appeals)-11, Ahmedabad, dated 08/05/2018 arising in the matter of penalty order passed under s.271AAA of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dated 31/03/2017 relevant to the Assessment Year 2011-2012.

2. The assessee has raised the following grounds of appeal:

1. *The learned CIT(A) has erred in law and on facts in confirming the penalty of Rs. 5,62,500/- levied by the AO u/s. 271AAA of the Act without proper consideration and appreciation of the facts of the case. In view of the facts of the case and elaborate submissions filed coupled with the legal decisions relied upon, the appellant's case does not fall within the scope of provisions of Section 271AAA of the Act. Accordingly, the impugned penalty of Rs. 5,62,500/- requires to be quashed/cancelled.*
2. *The learned CIT(A) has erred in law and on facts while confirming the penalty while observing that the defect on the part of the AO for wrong mention of the section while levying the penalty is clearly covered under the provisions of section 292B of the Act. In view of the legal position that lapse in initiating penalty u/s. 271(l)(c) of the Act is not rectifiable u/s. 292B of the Act, the learned CIT(A) ought to have deleted the impugned penalty of Rs. 5,62,500/- levied by the AO u/s. 271AAA of the Act. Accordingly, the impugned penalty of Rs. 5,62,500/- requires to be quashed/cancelled.*
3. *The learned CIT(A) has erred in law and on facts while not considering the fact that the case of the appellant is duly covered u/s. 271AAA(2) of the Act and therefore, no penalty u/s. 271AAA of the Act is leviable. Accordingly, the impugned penalty of Rs. 5,62,500/- requires to be quashed/cancelled.*

*The appellant craves leave to add, amend, alter, modify or delete any of the above grounds as well as to submit additional grounds at the time of hearing of the appeal.*

3. The only issue raised by the assessee is that the learned CIT (A) erred in confirming the order of the AO by levying the penalty under section 271 AAA of the Act.

4. The facts in brief are that the assessee in the present case is an individual and was subjected to search under the provisions of section 132 of the Act dated 27<sup>th</sup> April 2011. The assessee in the search operation disclosed an income of ₹56,25,000/- as unaccounted income on account of sale of land which was offered in the income tax return. The income declared by the assessee in the return of income was accepted by the AO in the assessment framed under section 143(3) r.w.s 153A of the Act vide order dated 28<sup>th</sup> of March 2014. However the AO initiated the penalty proceedings under section 271AA of the Act which was subsequently confirmed at ₹5,62,500/- being 10% of the undisclosed income in the order framed by the AO dated 31/03/2017.

5. On the appeal before the learned CIT(A), the penalty order came to be confirmed by him vide order dated 08/05/2018.

6. Being aggrieved by the order of the learned CIT (A) the assessee is in appeal before us.

7. The learned AR for the assessee before us has filed the written submission running from pages 1 to 18 challenging the penalty levied by the AO/confirmed by the learned CIT (A) on various counts. The copy of the written submission is available on record.

8. On the other hand, the learned DR vehemently supported the order of the authorities below.

9. We have heard the Id. DR and perused the materials available on record. The penalty order passed under section 271AAA of the Act was challenged by the assessee on various counts including the immunity provided to the assessee under section 271AAA of the Act. The sub section 2 of section 271AAA of the Act provides the immunity from the penalty subject to certain conditions.

#### **Conditions for immunity from penalty u/s. 271AAA**

9.1 Once it is identified by the AO that there is an "undisclosed income" for which assessee is liable for penalty, then for getting immunity, the assessee has to satisfy that he has-

- (i) Specified the manner in which such undisclosed income has been derived.
- (ii) Substantiated the manner in which such undisclosed income has been derived.
- (iii) Pays the tax, together with interest, if any, in respect of undisclosed income.

9.2 Now coming to the facts of the case, we find that the AO in the assessment order has given a finding that the assessee has received an undisclosed payment of ₹ 56,25,000 on account of sale of land. The relevant finding of the AO in the assessment order reads as under:

*During the year under consideration the assessee has disclosed an amount of Rs.56,25,000/- on A/C undisclosed payment received on sale of land at TP-50 survey no.76/1/2/29. This disclosure is on the basic fact & findings of the search. However, the assessee has shown this as business income and claimed loss.*

9.3 From the preceding discussion, we find that the assessee has disclosed the unaccounted income from the sale of land which has not been doubted by the authorities below. Thus, it is transpired that that the assessee complied with the conditions provided under subsection 2 of section 271 AAA of the Act.

9.4 The onus is on the Revenue Authorities to show as to how and in what manner conditions of section 271AAA(2) had not been complied with. In this regard we find support and guidance from the judgment of Hon'ble Allahabad High Court in the case of *Crossings Infrastructure (P.) Ltd. v. CIT* [2014] 41 taxmann.com 474 wherein it was held as under:

*18. Except of recording his own satisfaction, i.e. conclusion that the conditions under Section 271AAA of Act, 1961 have not been complied with, ACIT himself has not discussed as to how and in what manner, conditions have not been complied.*

9.5 The AO in the penalty order without elaborating the facts with the reasons has just mentioned that the assessee has not complied with the conditions as specified under section 271AAA of the Act for claiming the immunity. For the reference, the finding of the AO in the penalty order reads as under:

*As per the conditions laid down under sub-section (2), in order to avail the immunity from the rigors of penalty u/s.271AAA, the assessee, in the course of search itself, in his statement under section 132(4), has to specify and substantiate the manner in which such undisclosed income was derived. In this case a disclosure was of Rs.56,25,000/-*

*The conclusion is that vital conditions laid down under sub-section 2 of the section 271AAA are not satisfied and hence he has lost the immunity provided in the provisions of section 271AAA of the Income Tax Act 1961.*

9.6 From the above, there remains no ambiguity to the fact that the AO has not brought anything on record including the statement recorded under section 132(4) of the Act suggesting that the conditions as specified under section 271AAA of the Act has not been satisfied. Accordingly we are not impressed with the finding of the authorities below. Thus the order of the learned CIT (A) is set aside by us with the direction to the AO to delete the penalty levied by him. Thus the ground of appeal of the assessee is allowed.

10. In the result, the appeal of the assessee is **allowed**.

**Order pronounced in the Court on 16/03/2021 at Ahmedabad.**

**Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER**

**Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

Ahmedabad; Dated 16/03/2021  
*Manish*

**(True Copy)**