

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.4445/Del./2016
(Assessment Year : 2010-11)**

Shri Tarun Lamba,
House No.9 – 10, Sector 16A,
Faridabad.

vs. DCIT, Central Circle 1,
New Delhi.

(PAN : AAQPL6970J)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Somil Agarwal, Advocate
REVENUE BY : Shri H.K. Choudhary, CIT DR

Date of Hearing : 22,06.2021
Date of Order : 09.07.2021

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

Appellant, Shri Tarun Lamba (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 24.06.2016 passed by the Commissioner of Income-tax (Appeals)-3, Gurgaon affirming the penalty levied vide order dated 30.03.2014 passed u/s 271AAA of the Income-tax Act, 1961 (for short 'the Act'), qua the assessment year 2010-11 on the grounds inter alia that :-

“1. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the action of Ld. AO in levying penalty u/s 271AAA of Rs.18,49,000/-.

2. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the levy of penalty u/s 271AAA of Rs.18,49,000/- more so when penalty was initiated & levied by Ld. A.O. only on the ground that manner of earning undisclosed income was not substantiated and thus, Ld. CIT (A) has exceeded the jurisdiction.

3. That having regard to the facts and circumstances of the case, Ld. CIT (A) has erred in law and on facts in confirming the levy of penalty u/s 271AAA, more so payment of taxes were made in time available under the law.

4. In any view of the matter and in any case, imposition of penalty u/s 271AAA and confirmed by Ld. CIT(A) is bad in law and against the facts and circumstances of the case.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment framed under section 143(3) read with section 153A (1)(b) of the Act, penalty proceedings were initiated under section 271AAA of the Act on the ground that assessee has surrendered an income of Rs.1,84,90,000/- on account of investment made by him in cash, jewellery and properties. Declining the contentions raised by the assessee, Assessing Officer levied penalty of Rs.18,49,000/- @10% of the undisclosed income of Rs.1,84,90,000/- on the ground that the assessee has failed to specify and substantiate the manner in which the undisclosed income has been earned.

3. Assessee carried the matter before the Id. CIT (A) by way of filing appeal who has confirmed the penalty levied by the AO by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, during search and seizure operation u/s 132(1) of the Act carried out at the business premises of M/s. Imperial Auto Industries Ltd. Group of cases on 02.09.2009 as well as at the residential premises of assessee, the assessee made surrender of income of Rs.1,84,90,000/- on account of investment made by him in cash, jewellery and properties. It is also not in dispute that assessee has surrendered income of Rs.1,84,90,000/- in his return of income filed in response to notice u/s 142 (1) of the Act. It is also not in dispute that the assessee has already paid income-tax along with interest on the surrendered amount.

6. In the backdrop of the aforesaid facts and circumstances of the case, arguments addressed by the Id. Authorized Representatives of the parties to the appeal, case laws relied upon, two questions arise for determination in this case is :-

“(1) as to whether assessee has failed to specify and substantiate the manner in which surrendered income has been earned as has been held by AO in the assessment order; and

(2) as to whether assessee has failed to satisfy the condition specified in section 271AAA(2)(iii) with regard to payment for taxes and interest in respect of undisclosed income of Rs.1,84,90,000/- in due time as has been upheld by Id. CIT (A) in the impugned order?

7. So far as question of substantiating the manner by the assessee in which the surrendered income has been earned is concerned, this issue has already been decided by the Id. CIT (A) in favour of the assessee by returning following findings :-

“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.”

8. So, the first question framed in this case is decided in favour of the assessee.

9. Now, coming to the second question of fact framed in this case is, *“as to whether the assessee has failed to specify the condition specified in section 271AAA(2)(iii) of the Act as to payment of taxes together with interest, if any, in respect of undisclosed income.”*

10. Undisputedly, as per computation of income, total tax payable by the assessee was Rs.75,90,283/- out of which

Rs.11,74,362/- was deducted as TDS and the balance tax payable was shown in Form 26AS of the assessee as under :-

| | | |
|-------|---------------------------------|---------------------|
| (i) | Deposited in Bank | Rs.37,13,410 |
| (ii) | Cash seized by adjusted | Rs.30,00,000 |
| (iii) | Self assessment tax paid | Rs.8,05,274 |

11. It is also not in dispute that the date of search was 02.09.2009 and the date of filing return was 31.07.2010 whereas the return was filed by the assessee on 27.10.2010. Ld. CIT (A) after perusing Form 26AS reached the conclusion that the assessee has paid tax beyond due date of return amounting to Rs.58,37,005/- detailed as under :-

| Date of Deposit | Tax paid |
|------------------------|-----------------------|
| 15.10.2010 | Rs.8,05,280/- |
| 16.12.2011 | Rs.2,11,290/- |
| 10.01.2012 | Rs.1,000/- |
| 30.03.2014 | Rs.29,68,435/- |
| 12.06.2014 | Rs.18,49,000/- |

12. Ld. AR for the assessee challenging the impugned order passed by the ld. CIT (A) contended that ld. CIT (A) has returned the incorrect findings on the face of facts on record and drew our attention towards computation of total taxable income which is available on judicial file as Annexure 'A', and detail of tax amounts seized is given in Annexure '1'. Ld. AR for the assessee relied upon the **order dated 15.06.2017 passed by the coordinate**

Bench of the Tribunal in quantum proceedings in case of assessee in ITA No.5079/Del/2012.

13. However, on the other hand, ld. DR for the Revenue contended that the findings returned by ld. CIT (A) are on the basis of marshalling of facts and relied upon the impugned order passed by the ld. CIT (A).

14. Ld. CIT (A) while fixing the liability of the assessee in not paying the income-tax and interest thereon qua surrendered income in due time proceeded to hold that credit of Rs.30,00,000/- seized as cash cannot be treated as advance tax to be adjusted against the total tax liability. However, when we peruse paras 7, 7.1 & 7.2 of **order dated 15.06.2017** (supra) passed by the Tribunal in assessee's quantum proceedings holding inter alia that it has been decided by the coordinate Bench of the Tribunal that assessee surrendered income of Rs.1,84,90,000/-, which include cash found and seized of Rs.30,00,000/- and on account of jewellery amounting to Rs.55,00,000/-; that the assessee was entitled to adjustment of seized cash amount towards advance tax liability; that **order dated 15.06.2017** (supra) passed in quantum proceedings has attained finality having not been challenged further. In these circumstances, findings returned by ld. CIT (A) that assessee is not entitled for credit of amount of cash seized of

Rs.30,00,000/- towards advance tax liability, are not sustainable in the eyes of law.

15. Ld. AR for the assessee drew our attention towards computation of total taxable income available on judicial file as Annexure 'A' wherein he has categorically paid the amount of Rs.27,13,410/- in the bank, as is evident from page 52 of the paper book and has also accounted for an amount of Rs.30,00,000/- (total Rs.57,13,410/-), which is in accordance with the order passed by the coordinate Bench of the Tribunal in assessee's case (supra) qua quantum proceedings. Assessee has given handwritten summary of payment of tax paid before 31.03.2010 as under :-

| | |
|-------------------------------------------------------------------------------------------------------|---------------------------------------------|
| Total tax payable | Rs.75,90,286 |
| MINUS : | |
| Tax on income offered twice (Rs.15,00,000 x 30%) | Rs.4,50,000 |
| Tax on income offered at 30% instead of 20% [Rs.84,90,000 (Rs.99,90,000 – Rs.15,00,000) x 10%] | <u>Rs.8,49,000</u> Rs.12,99,000 |
| Total | Rs.62,91,286 |
| Tax deposited | Rs.68,87,772 |

16. In view of what has been discussed above, we are of the considered view that the assessee has paid taxes along with interest in due time in accordance with the provisions contained under section 271AAA(2)(iii) of the Act thus the penalty sustained by the

ld. CIT (A) is liable to be deleted. However, payment of due taxes along with interest are subject to verification by the AO. Consequently, the appeal filed by the assessee is allowed

Order pronounced in open court on this 9th day of July, 2021.

**Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 9th day of July, 2021.
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-3, Gurgaon.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**