

आयकर अपीलीय अधिकरण "D" न्यायपीठ मुंबई में

IN THE INCOME TAX APPELLATE TRIBUNAL "D" BENCH, MUMBAI

श्री महावीर सिंह, उपाध्यक्ष एवं श्री एस रिफाउर रहमान, लेखा सदस्य के समक्ष
BEFORE SHRI MAHAVIR SINGH, VP AND SHRI S. RIFAUER RAHMAN, AM

आयकर अपील सं./ ITA No. 258/Mum/2018

(निर्धारण वर्ष / Assessment Year 2009-10)

M/s Ronak Gems Pvt. Ltd. 311, Mehta Bhavan, Shop NO.5, Ground Floor Opera House, Hinduja College Lane, Mumbai- 400 004	बनाम/ Vs.	The Dy. Commissioner of Income Tax, Central Circle- 2(4), Mumbai, 802, Old CGO Annex Building, M.K. road, Churchgate, Mumbai-400 020
(अपीलार्थी / Appellant)		(प्रत्यर्थी/ Respondent)
स्थायी लेखा सं./PAN No. AABCR7550G		

अपीलार्थी की ओर से/ Appellant by	:	Shri Dharmesh Shah, AR
प्रत्यर्थी की ओर से/ Respondent by	:	Smt. Leena Srivastava, CIT DR

सुनवाई की तारीख / Date of hearing:	15.07.2021
घोषणा की तारीख / Date of pronouncement:	30.09.2021

आदेश / ORDER

महावीर सिंह, उपाध्यक्ष के द्वारा /
PER MAHAVIR SINGH, VP:

This appeal of the assessee is arising out of order of the Commissioner of Income Tax (Appeals)-48, Mumbai [in short CIT(A)], in Appeal No. CIT(A)-48/I.T-195/DCCC-2(4)/2016-17 vide

dated 16.11.2017. The Assessment was framed by the Dy. Commissioner of Income Tax, Central Circle 2(4) (in short ITO/ AO) for the A.Y. 2009-10 vide order dated 26.12.2016 under section 143(3) of the Income-tax Act, 1961 (hereinafter 'the Act'). The penalty was levied by the DCIT, Central Circle-2(4), Mumbai under section 271AAA of the Act vide order dated 26.12.2016.

2. At the outset, it is noticed, that the assessee in original grounds have filed argumentative grounds for single issue. Hence, he was asked to file a concise grounds and he filed the following concise grounds:-

"1. The Ld. Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming the action of the assessing officer in issuing notice and passing the penalty order under section 271AAA of the Act dated 26.12.2016 which is bad and invalid in the eyes of law.

2. The Ld. Commissioner of Income Tax (Appeals) has erred in law and in facts in confirming the action of the assessing officer in levying penalty of ₹ 22,50,000/- under section 271AAA of the Act."

3. The only issue in this appeal of assessee is against the order of CIT(A) confirming the levy of penalty under section 271AAA of the Act.

4. Briefly stated facts are that a survey was conducted on the business premises of the assessee on 13.08.2008 and consequent to this survey, a search under section 132 of the Act was conducted on 14.08.2008. During the course of search, due to discrepancies in stock-in-trade, cash-in-hand and other discrepancies assessee disclosed a sum of ₹2.25 crore as an additional income for the Financial Year 2008-09 relevant to this assessment year 2009-10. The relevant disclosure in view of statement given by Jayendra P. Jhaveri on 27.10.2008 on behalf of the assessee's firm M/s Ronak Gems Pvt. Ltd. was as under: -

Assessment Year	Description of declaration	Amount ₹
2009-10	Excess Cash found at business premises	12,80,000/-
2009-10	Jewellery found in the locker	3,20,000/-
2009-10	Renovation and repair expenses made out of books for Lonavala Project.	34,00,000/-
2009-10	Unaccounted investment in gold bars and gold biscuits	1,75,00,000/-
	Total	2,25,00,000/-

5. The assessee declared an additional income of ₹ 2.25 crores as business income and the Assessing Officer assessed under section 143(3) of the Act vide order dated 31.12.2010, the declaration made by assessee of ₹ 2.25 crore, as income from business and the relevant computation is given in Para 3 of the assessment order at page 11 which reads as under: -

6. 3. Subject to the above remarks. The income of the assessee is computed as under:

I	<u>Income from Business or Profession</u>		
	Net profit as per Profit and Loss Account	(-) 6,17,43,478	
	Less: Considered Separately:		
	a. Income Declared	(-) 2,25,00,000	
	b. Property Dealing Income	<u>(-) 1,18,34,820</u>	
			(-)9,60,78,298
	Add: Considered Separately:		
	A. Depreciation	9,36,801	
	Add: As discussed in Para 2.1.1		
	a. Property Dealing Income (substantive)	55,96,487	
	b. Property Dealing Income (protective)	62,38,333	
	Add: Disallowance of expenses		
	a. As per Para 2.3.2	1,41,14,224	
	b. Fringe Benefit Tax	86,800	
	c. Donation	<u>17,200</u>	
			<u>2,69,89,845</u>
	Less: Allowable Expenses		(-)7,53,26,786
	a. Allowable Depreciation under section 32(1)	(-) 5,24,801	
	b. Deferred Tax Asset	<u>(-)1,46,012</u>	
		<u>6,70,813</u>	
			(-)6,90,88,453
II	Income From Various Sources		
	Income offered to taxation in response to Action Under section 132(1) to cover up any and every discrepancy in Business and Acc. Records		2,25,00,000
	Gross Total Income		(-)4,65,88,453
	Total Taxable Income		(-)4,65,88,453
	Total Taxable Income Rounded Off		(-)4,65,88,450

7. There is no change in the income declared by the assessee accepted in the above computation of income by the AO at item II as income from various sources as income offered to taxation in response to action under section 132(1) of the Act to cover up any and every discrepancy accounts and records. The disclosure accepted was at ₹22,50,000/- as declared by assessee. The Assessing Officer

initiated the penalty proceedings under section 271AAA of the Act read with section 274 of the Act. The Assessing Officer levied the penalty by stating that assessee during the course of statement has neither specified the manner in which such income was derived nor substantiate the manner in which the undisclosed income was derived. Therefore, according to Assessing Officer, the assessee has not fulfilled the conditions stipulated in Section 271AAA of the Act and levied the penalty at 10% of the amount of income disclosed and thereby penalty worked out was ₹ 22.50 lakh. Aggrieved, assessee preferred the appeal before CIT(A).

8. The CIT(A) noted that the assessee has not disclosed modes of application of unaccounted amount of ₹22.50 lakhs and in the manner in which it was earned and further assessee did not pay any taxes on the undisclosed income, actually disclosed. The CIT(A)'s finding is also that even assessee has neither substantiate the manner in which he has earned this income nor pay taxes on it. Hence, the CIT(A) confirmed the action of the Assessing Officer in levying the penalty under section 271AAA of the Act. Aggrieved, now assessee is in appeal before Tribunal.

9. We have heard the rival contentions and gone through the facts and circumstances of the case. We noted that search was conducted on the business premises of the assessee under section 132 of the Act on 14.08.2008. The assessee during the course of search explained and the relevant extract of the statement recorded on 27.10.2008 is reproduced below:

Q1. Please identify yourself and confirm that oath is administered to you and you are made aware of the consequences of giving a false statement on oath.

Ans. My name is Jyendra P. Jhaveri, I am son of Shri Pravinchandra R. Jhaveri, I am aged 54 years, residing at 29 Nidhi Buldg, 1st Floor, Khotachi Wadi, V.P. Road Mumbai-400 004, I am Director of Ronak Gems Pvt. Ltd. and I do hereby confirmed that the oath is administered to me and I am made aware of the consequences of making false statement.

Q2. Kindly explain the discrepancies in stock in trade, cash in hand and please explain the issue of renovation expenses of your Lonavala Project of 12 bungalows.

Ans. You are well a aware that my books of accounts for the current year are incomplete as my accountant has not entered all the transactions which have taken place during the current financial year and hence I am not in position to reconcile my financial position and explain the discrepancies.

Q3. How do you intend to cover up the above mentioned discrepancy?

Ans. To cover up any and every discrepancy in my books of account, in my business and in my accounting record and to set things right and to avoid unnecessary

litigatin, I hereby offer an additional income of ₹2.25 crores over and above my current years regular income as my current year regular income for Financial Year 2008-09 pertaining to AY 2009-10. I promise to pay the tax of ₹76.50 lacs and I request that I.T. authorities to adjust the seized cash of ₹12.80 lacs as advance tax for AY 2009-10 and I will pay the remaining tax of ₹63.70 lacs in three installments and the 1st Installment of ₹20 lacs will be paid on or before 15th Dec 2008 and the balance of ₹18.70 lacs on or before 15th March, 2009. I am giving this declaration under the bonafide belief that because of my coming forward with the above disclosure of ₹2.25 crores that I will be protected fully from penalty proceedings and prosecution under the Income Tax Act, 1961 (hereinafter referred to as 'Act'), 1961.

Q4. Do you have anything else to say?

Ans. That my above referred additional income of rs.2.25 crores over and above my current years regular income for AY 2009-10 includes my excess above my current years regular income for AY 2009-10 includes my excess cash balance of ₹ 12.8 lacs, gold ornaments lying in locker No.14 at M/s Siddhi Safe Fault Pvt. Ltd. of ₹3.2 lacs, the amounts of ₹34 lacs spent on renovation of 12 bungalow at lonavala which

I want to sell after completion of entire renovation and the balance of ₹1,785 crores is my stock in trade, janghad, receivable etc. To substantiate the above mentioned facts, I am giving three post dated cheques of Standard Chartered Bank, Fort Branch, Mumbai for above mentioned amount which will be honoured by me."

10. Further we noticed that Shri Yogin P. Jhaveri, Director of the assessee company wrote a letter to the investigation wing, giving bifurcation of this declaration to cover up the discrepancies noticed during the search. Contents of the letter are reproduced below:

"i. "That our company have disclosed a sum of ₹2.25 crores, as additional income for AY 2009-10 being undisclosed for various business sources which will be credited to reserve and surplus of our company in our books of accounts for Financial Year 2008-09 pertaining to AY 2009-10 and it covered all our discrepancies in our business and in our accounts.

ii. The out of the said undisclosed income of ₹2.25 crores, a sum of ₹12.80 lacs is in form of unexplained cash in hand seized by the Income tax department and we have requested to Income Tax Department to adjust the same towards our first installment of Advance tax for AY 2009-10.

iii. That out undisclosed income of ₹2.25 crores, our company have given gift of gold ornaments of ₹3.20 lacs to Kumari ronak on her marriage and she has kept said gold ornaments with her mother Smt. Mala Yogin Jhaveriin the joint locker at Siddhi safe Vault for which we have already offered the said amount for taxation. Siddhi Safe Vault for which we have already offered the said amount for taxation. Siddhi safe vault for which we have already offered the said amount for taxation. In spite of the same being the gift given by the company being allowable expenditure.

iv. That our of said undisclosed income of ₹2.25 crores, our company has carried out necessary repairs and renovations worth ₹34 lacs in 12 bungalows, Lonavala project as on completion of total renovation our company want to sell the said bungalows at higher price and said amount is debited to our Lonavala Porject.

That out of said undisclosed income of ₹2.25 Corres our company has acquired 15 Kilo Gold Bars and Gold Biscuits (15 Kg @ ₹ 11,66,666/- per Kg = ₹1.75 Cr) for giving the same on junghad basis for earning some rent on such janghad and said amount is debited to our Janghad stock for specific purposes of giving the same on hire basis and I have to mention that these

excess gold bars and biscuits were not accounted for in our books of accounts.

Vi. That I promise to pay the Income tax voluntarily on the above referred declaration of ₹ 2.25 Crores in due course of time for which I have already handed over to you the post dated cheques for such advance tax payment and I hereby request you to adjust the seized cash of ₹12.80 lacs towards Advance Tax payment”

11. We also noted that the assessee is engaged in the business of trading in rough cut and polished diamonds, gold bars jewellery and property. The assessee purchases property, carries out renovation thereon, makes the title of the property marketable and sale the same in the market for consideration. The assessee also gives its property on rent till the sale is affected. The assessee has huge stock of gold hence, they also gives its gold stock on rent popularly known as on Janghad Basis for earning Jhangad Rent/ Jhangad Commission in Metal Terms. The assessee maintains Composite Books of Accounts of the company on computer at its Accounting office away from its Head office, Branch office, property units at Ravindra Niwas. The assessee maintains books of accounts at Ravindra Niwas for the period under consideration. The directors, executives, outdoor salesman, supervisors are reporting the business Transactions carried out by them from time to time to the Accounting office at Ravindra Niwas and hence, the books of accounts of the

current year are not fully complete till the Accounting effect is given to the business transactions reported by the Directors, executives, outdoor salesman, supervisors etc. from time to time and till the report comes from such person. A survey under section 133A of the Act was carried out by the Investigation Authority of Scindia House, Mumbai at all the business premises of the assessee and found that books of accounts for the current year are not fully complete as their accountant has not given effect to all the transactions which have taken place during the current financial year and hence, it was not possible to reconcile the financial position as on date till all the transactions, vouchers Bank Statements are fully accounted for and the discrepancies if any in reconciliation is on account of incomplete accounts. In order to cover up any and every discrepancy in business and in Books of Accounts the assessee has offered voluntarily declaration of Rs. 2.25 Crore under section 132(4) of the Act on the basis of the Accounting record consisting of its Income from all the sources.

12. The assessee has made the voluntarily declaration on the officers giving assurance that the assessee will be protected fully from penalty proceeding and prosecution under the Act. The assessee was under bonafide belief that subject to their declaring the 2.25 Crore as an additional income and making payment of appropriate tax, no penalty proceeding will be initiated and/or no penalty will be levied as assured.

13. The assessee has authorized the officer to adjust the seized cash of Rs. 12.80 lacs against the Advance Tax for A.Y. 2009-10 and has given three Post dated Payees Account cheques of Advance Tax to the Officer for 15th September, 15th December and 15th March Advance Tax Installment of Rs. 20 Lakh Rs. 18.70 lakhs and Ps. 25 Lakhs respectively and thereby made the payment of Additional Income Tax of Rs. 76.50 lakhs as computed on Additional income of Rs. 2.25 Crore.

14. The assessee has also explained to the Survey party its nature of business and the manner in which the said income is received by them for the period under consideration. The assessee has explained that they are giving their Gold Stock on Rent / Commission popularly known as Janghad basis for earning Rent/ Commission in Metal Terms which results in accumulation of Gold under Janghad system which is to be accounted for at the end of the year as a Janghad Stock representing the Rent / Commission Income in Metal Terms receivables. The assessee also explained that the renovation is under process at Lonavala Twelve Bungalow Project by contactor/Supervisor for which the payment is pending and the said renovation is accounted for at the end of the year as a renovation expense which increase the value of the property which is to be sold at higher price after renovation is completed in due course of time. The assessee also explained that there is some cash sales by our Outdoor salesman who sends cash to the office through Angadia and then reports the details of cash sales transactions to the accounts department. The cash balance of Rs. 12.80 lakhs is on account of cash sales etc. The

assessee has explained to the officer that for using the name of RONAK in the name of the company Ronak Gems Pvt. Ltd. the assessee has given gift of Gold Ornaments to the RONAK a daughter of one of the Director Mr. Yogin P. Jhaveri. The said Gold ornaments were given on the occasion of marriage of Ronak and were in the custody of the Ronak daughter of Yogin P. Jhaveri which was kept in the locker of her Mother Smt. Mala Yogin Jhaveri. The Officer has included the value as determined by the Govt. approved registered Valuer at Rs. 3.20 Lakhs in Computation of Disclosure of Income.

15. The assessee has carried out Renovation of Rs. 34 Lakhs through their contractors/ supervisors. The said Amount is also taken in Computation of disclosure of income. The delay in accounting the said renovation expense was due to delay in raising bills by the Contractor/ Supervisors. The delay in Accounting for certain regular expenses and certain regular income was on account of several branch offices, reporting the same, several property under renovation reporting the renovation expense in respect of various property at various places. We have noticed from the facts of the case that the assessee has accounted for all the Properties for Trading purpose under the Stock in Trade since, the same is the nature of business. The assessee has accounted for the said normal business transactions taking place from time to time and there is no concealment of income. The delay in recording the said business transactions was due to delay in reporting by the Director, Executives, Outdoor Sales Man and also on account of delay in recording the transactions in the books of accounts by the accounting

staff. The Income offered to Taxation is our normal income which is to be offered to taxation even otherwise since, without claiming renovation expense, the assessee cannot give effect to the proper income in property trading, without giving proper effect to the Janghad Income in metal terms the assessee cannot give proper effect to our Stock in trade of Gold given on Jhangad basis, without giving effect our cash sales, the assessee cannot give proper effect to cash on hand to be deposited in bank from time to time. The Books of Accounts were incomplete for few days due to the circumstances beyond the control of the assessee and magnitude of multiple business activity and complicated nature of business.

16. In view of the above facts and circumstances, now question arises whether the assessee has complied with all the three conditions as prescribed under the provision of section 271AAA of the Act. We noted that the three conditions mentioned in the provision of section 271AAA are (i) that the assessee should admit the undisclosed income in a statement made under section 132(4) of the Act. (ii) The assessee specify the manner in which such income has been derived and substantiate the manner in which the undisclosed income was derived. (iii) The assessee should pay the taxes together with interest in respect of undisclosed income. In term of the above provision, in the present case the assessee has disclosed the entire source of income and manner of undisclosed income earned, which is noted in Para 14 and 15 of this order. The assessee has also paid the taxes and the details are noted in Para 13 of this order. The assessee has admitted the undisclosed income of ₹ 2.25 crores and voluntarily

declared the same under section 132 (4) of the Act on the basis of accounting records consisting of its income from all the sources. It means that the assessee has complied with all the conditions mentioned in section 271AAA(2) of the Act and once the assessee has complied with all the conditions the assessee should not be called upon to pay a penalty under this section.

17. This position has been deliberated in detail by the co-ordinate Bench of this Tribunal in the case of DCIT vs. Salasar Stock Broking Ltd. (2016) 47 ITR (Trib.) 616 (Kolkata), wherein the Tribunal has discussed the issue in Paras 8.1, 8.2, 8.3, 9 and finally held as under:-

"8.1. From the above disclosure statement , we find that the assessee had substantiated the fact that the income in the form of advances, margin money and deposits etc which might not be proved to the satisfaction of the department with proper documentation and paper work. We also find that even the Learned AO had accepted the said offer for the said reason in his assessment order. We find that the assessee had not retracted from the disclosure petition . We find that the assessee had duly offered the additional income of Rs. 2,00,00,000/- in the case of M/s SalasarStockBrokingLtd for the Asst Year 2009-10 in the return filed u/s 153A of the Act and paid taxes thereon. In the disclosure petition itself, we find that

the assessee had clearly demonstrated the inability to substantiate the manner of deriving the undisclosed income in the case of M/s SalasarStockBrokingLtd. We find that the offer of Rs. 2 crores has been made voluntarily by the assessee in the disclosure petition u/s 132(4) followed by filing of return u/s 153A of the Act. It is also pertinent to note that this offer has been voluntarily by the assessee without any incriminating materials found during the course of search. Hence it goes to prove beyond doubt that the offer of undisclosed income of Rs. 2 crores was made voluntarily by the assessee without any detection by the department and accordingly the argument of the Learned DR that but for the search, this income would not have been offered does not hold any water and deserves to be dismissed. It is already well settled that though the income is not disclosed in the return filed u/s 139(1) of the Act, but duly disclosed in the petition filed u/s 132(4) of the Act followed by the filing of return in response to section 153A of the Act and taxes paid thereon, then the assessee would not be invited with the levy of penalty. We find that if the argument of the Learned DR that since the assessee had not offered the said income in return filed u/s 139(1) of the Act thereby levy of penalty is in order is to be accepted, then it would make the immunity provisions

contemplated u/s 271AAA(2) of the Act redundant. The legislature in its wisdom had given a thoughtful consideration on the facts and circumstances under which the assessee would not be invited with the levy of penalty pursuant to the search subject to fulfillment of certain conditions stipulated in the said section . Hence in view of the above, we hold that the levy of penalty is not automatic and assessee is clearly entitled for immunity from levy of penalty.

8.2. *We also find that the decision of the Hon'ble Supreme Court in the case of Sudarshan Silks & Sarees v. CIT [2008] 300 ITR 205/169 Taxman 321 supports the case of the assessee. The brief facts of this are as below:—*

"3. A search was conducted on the premises of the assessee on 14 and 15-10- 1987 and incriminating documents evidencing concealment of income by the assessee were unearthed apart from cash and jewellery found at the time of search. It was found that the appellant was maintaining double set of books and was accounting for only 50 per cent of sales in the regular set of books. This fact was admitted by Shri 1.S. Ramesh, a partner of the firm in the statement recorded under section 132(4) of the Act. Shri 1.S. Ramesh is the person-in- charge

of the entire group. The total turnover suppressed by the assessee for the assessment year 1987-88 was found to be to the tune of Rs. 44,07,783. These have been discussed in detail in the order of assessment. Assessing Officer estimated that the sales of the assessee were Rs. 50,000 per day, whereas the accounted sales were not found even 50 per cent of the total sales. Apart from this, it was found that certain purchases were also not being accounted for. Similarly certain payments made were not being accounted for. All these were pointed out to the assessee. The assessee came forward with offer of additional income. Assessee filed a revised return on 31-3-1989 declaring a total income for this year at Rs. 3,74,226 as against the earlier amount of Rs. 43,650. This was accepted and after verification the assessment was completed on 29-12- 1989.

4. During the course of recording the statement under section 132(4) of the Act, Shri Ramesh agreed to declare such additional income as had been estimated by the search party in the office of the appellant and its sister concerns. On the basis of these calculations, revised returns were filed by the appellant for all the years under appeal. The income as per revised returns were also accepted in toto. In

the course of assessment proceedings, penal action under section 271(1)(c) of the Act was initiated and, after considering the reply filed by the appellant, the learned Assistant Commissioner of Income-tax/Assessing Officer chose to levy maximum penalty under section 271(1)(c). While levying the penalty, the Assessing Officer repelled the contention of the appellant that a promise had been made not to levy the penalty, as there was no evidence to this effect on record. It was also held that the appellant was not entitled to the immunity given under section 132(4) read with section 271(1)(c) of the Act."

The Learned CIT(A) deleted the levy of penalty u/s 271(1)(c) of the Act. On second appeal by the revenue, the tribunal held as follows:—

"Although there is nothing on record to show that he was given an assurance that no penalty would be levied, the fact however clearly suggest that such an inducement must have been given by the searching party. When only partial evidence in support of concealment for a very limited period was detected during the search, why would a man go to offer much higher amounts for a large number of years unless he was promised some reciprocal benefit like

not being visited with penalty? The learned DR has tried to argue before us that a change of heart might have taken place as a result of which Sri Ramesh came forward with all the disclosures for different years voluntarily. But looking into the hard facts of life and the general experience of mankind, especially with regard to financial affairs, it would be difficult to accept such a proposition. Evidently, huge amount of unexplained investments including unexplained stock was found at the time of search. Ultimately, almost the same amount of income was offered by the assessee over a number of years. As the tax rates over the entire period was more or less the same, the tax effect, either from the point of view of the Department, or the assessee would have more or less the same, had the entire undisclosed assets been subjected to tax in the year of search or the entire income was spread over a number of years as has been done in the present assessments. In view of the deposition given under section 132(4) followed by the cooperating attitude of the assessee in paying up the tax, it would be clear that no penalty under section 271(1) would have been leviable had the entire undisclosed income been assessed in the year of search. Instead of going for that simple way, Sri Ramesh went into

the question of admitting undisclosed income on estimated basis for the different past years. He must have felt that in that process alone, he would avoid the levy of penalty by the departmental authorities. The facts and circumstances strongly indicate that an inducement and an allurements had been provided to him at the time of search in that matter.

Again, although incriminating materials were found out during the search, such materials were however ultimately not used by the departmental authorities in making the assessments. The assessments were made totally on the basis of estimation income for the earlier years as disclosed in the revised returns. The revised returns should therefore be considered as having been filed in good faith. So far as assessment of the undisclosed income is concerned, such revised returns would be sufficient evidence for that purpose. However, for levying penalty, some further and stronger evidences were surely required. In the cases relied upon by the learned DR, the search itself discovered the undisclosed income. In the instant cases, the search merely led to certain clues to the undisclosed income and but for the statement made by Sri Ramesh, it would perhaps have not been possible for the Department to assess

the undisclosed income over all these years in the way in which such assessments have been made. The only way for the department in such a case would have been to assess the entire amount of undisclosed investments for the year of search as has been discussed by us above, the Deptt. could not have been in a position to levy penalty for concealment in such a case. We are therefore of the opinion that the case laws as cited by the Department, do not exactly support its case, so far as the present appeals are concerned. On the other hand, most of the judgments cited by the learned counsel for the assessee support the case of the assessee that on account of strong circumstantial evidences being there about inducement having been given by the departmental authorities for not levying penalty in case of disclosure of income over the earlier years, no penalty can actually be levied by the Department."

These findings have been finally approved by the Hon'ble Supreme Court by observing as under:-

17. Accordingly, the orders under appeal are set aside and that of the CIT(Appeals) and Tribunal restored. It is held that in the facts and circumstances of the case, penalty under section

271(1)(c) was not exigible. The appeals are accepted with costs.

8.3. We find that the following decisions support the case of the assessee :—

(a) Decision of co-ordinate bench of Cuttack Tribunal in the case of Pramod Kumar Jain v. Dy. CIT [2013] 33 taxmann.com 651 (Cuttack - Trib)

'6. We have heard the rival contentions and perused the material available on record. On consideration of the facts and circumstances of the case, we are inclined to hold that no definition could be given to the "specified manner" insofar as the very statement on oath u/s. 132(4) specifies the manner on which the assessee is prepared to pay tax thereon. The inscribing in the books of account was taken care of by the assessee when he filed the returns in pursuance to notice u/s. 153A accounting the assets. Therefore, the case laws cited at the Bar clearly indicate that the penalty is not automatic if one of the purported condition is not fulfilled although all the conditions have been agreed to of having fulfilled by the Assessing Officer insofar as the tax and interest has been recovered. Penalty has been levied after the tax has been recovered therefore answers the queries raised by the learned

DR for that the said provisions become redundant was not the intention of the legislation. The manner, during the search operation, is noted by the search party which the Assessing Officer has acceded to. Therefore, following the decisions as relied upon by the learned Counsel for the assessee, wherein the Tribunal was pleased to consider cancelling the penalty so levied are also applicable to the assessee's cases before us insofar as there is no prescribed method to indicate the manner in which income was generated when the definition of "undisclosed income" has been defined in the Act itself when no income of the specified previous year represented "either wholly or partly" which onus lay upon the assessee stood discharged. In view of the above, we are of the considered view that the levy of penalty u/s. 271AAA in the instant cases are not justified and as such, we cancel the penalty so levied u/s. 271 AAA for the AYs under consideration in the case of respective assesseees.

In the result, all the appeals filed by the assesseees are allowed.'

(b) Decision of co-ordinate bench of Nagpur Tribunal in the case of Concrete Developers v. Asstt. CIT [2013] 34 taxmann.com 62 (Nagpur - Trib)

"Section 271AAA of the Income-tax Act, 1961 - Penalty - Where search has been initiated - Assessment year 2009-10 - Whether where during course of search assessee admitted undisclosed income, paid tax together with interest, filed return showing said income as business income and Assessing Officer had accepted same, it could not be said that assessee had not specified manner or could not substantiate manner in which income was derived - Held, yes - Whether, therefore, penalty under section 271AAA was not leviable as assessee's case fell under sub-section (2) of section 271AAA - Held, yes [Para 9] [In favour of assessee]"

9. *In view of the aforesaid facts and circumstances and specific findings given by us and in view of the judicial precedents relied upon hereinabove, we hold that the assessee is entitled for immunity from levy of penalty u/s 271AAA(2) of the Act and accordingly the penalty levied by the Learned AO is cancelled. The grounds raised by the revenue are dismissed."*

18. In view of the above factual discussion and the position of law and the fact that the assessee has complied with the conditions of section 271AAA(2) of the Act, the assessee is not liable for penalty



under this provision. We reverse the orders of the lower authorities and allow this appeal of the assessee.

19. In the Result, the appeal of the assessee is allowed.

Order pronounced in the open court on 30.09.2021.

Sd/-

(एस रिफऔर रहमान/ S. RIFAUR RAHMAN)

(लेखा सदस्य / ACCOUNTANT MEMBER)

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(उपाध्यक्ष / VICE PRESIDENT)

मुंबई, दिनांक/ Mumbai, Dated: 30. 09.2021

सुदीप सरकार ,व .निजी सचिव/ *Sudip Sarkar, Sr.PS*

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील)/ The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि आयकर ,अपीलीय अधिकरण मुंबई ,/
DR, ITAT, Mumbai
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True_ व .निजी सचिवSr. Private Secretary /

आयकर अपीलीय अधिकरण ,मुंबई / ITAT, Mumbai