

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**

**BEFORE HON'BLE RAJPAL YADAV, VICE PRESIDENT**  
**AND**  
**SHRI MANISH BORAD, ACCOUNTANT MEMBER**  
**VIRTUAL HEARING**

ITA No.935/Ind/2019  
Assessment Year: 2015-16

ACIT-5(1)

Indore

: Appellant

V/s

Ku. Nishita Singhal

Mhow

PAN:FCKPS7475C

: Respondent

CO No.12/Ind/2020  
(Arising out of IT No.935/Ind/2019)  
Assessment Year: 2015-156

Ku. Nishita Singhal

Mhow

PAN: FCKPS7475C

: Appellant

V/s

ACIT-5(1)

Indore

: Respondent

Revenue by	Shri Harshit Bari, Sr. DR
Respondent by	Shri Sanjay Mehta, AR
Date of Hearing	05.08.2021
Date of Pronouncement	04.10.2021

**ORDER**

**PER MANISH BORAD, A.M**

The above captioned appeal filed at the instance of the Revenue & Cross Objection by the assessee for Assessment Year 2015-16 are directed against the orders of Ld. Commissioner of Income Tax(Appeals) (in short 'Ld. CIT]-II Indore dated 09.08.2019 which are arising out of the order u/s 271AAB of the Income Tax Act 1961(In short the 'Act') dated 28.05.2018 framed by DCIT-5(1), Indore.

The Revenue has raised following grounds of appeal in ITANo.935/Ind/2019:

*“Whether in the fact and circumstances the Ld. CIT(A) erred in deleting the penalty amount imposed u/s 271AAB of the IT Act by saying that the section u/s 271AAB is not applicable in this case where as the income of which reference the said penalty as levied is justified as per penalty order.*

*2. Whether in the fact and circumstances the ld. CIT(A) erred in allowing the appeal of the assessee without considering the facts that the father of the assessee declared in his statement on oath that the amount was provided as a unaccounted cash loan given by the assessee who considered the same as undisclosed in her hand and filed ITR for the relevant AY by mentioning the same income accordingly.*

*3. Whether in the facts and circumstances the Ld. CIT(A) erred in relying the case law of I.T.A.T. bench in the case of DCIT vs. Volga Dresses ITANo.201 & 202/PAN/2016 whereas that does not pertain to jurisdictional by the dept. and further appeal was filed by the revenue.*

*4. The appellant craves leave to add to or deduct from or otherwise amend the above grounds of appeal.*

The Assessee has raised following grounds of appeal in CONo.12/Ind/2020:

1. *The Ld. AO has grossly erred under the facts and circumstances of the cases in levying of Rs.65,00,000/- under section 271AAB without proving concealment.*
2. *The Ld. AO has erred in his order on fact by setting that the surrendered income was declared in return filed on 21.04.2017 after issue of notice u/s 153C of the Income Tax Act, 1961.*
3. *The Ld. AO has grossly erred on law in invoking provision of section 271AAB in a case assessed u/s 143(3) r.w.s. 153C of the Income Tax 1961.*
4. *The Ld. AO has grossly erred on provision of section 271AAB by levying more than 100% penalty without specifying the subsection and clause of 271AAB which was applied for arriving at above rate.*
5. *The Ld. AO has grossly erred on invoking of section 271AAB without proving the requirement of maintenance of books of accounts.*
6. *Show cause notice of u/s 274 r.w.s. 271AAB of the Income Tax dated.22.11.2017 is defective and no penalty can be levied on base of a defective notice*
7. *The order passed u/s 27AAB is defective/erroneous not based on the facts and legal provision is liable to be quashed.*
8. *AO has rejected the cited case law of Volga Dresses, in support of the legal provision without rebutting the error in the case, but simply stating it is from a Bench, other than jurisdictional I.T.A.T. bench, despite of the fact that there is no contradictory case decided in jurisdictional courts.*
9. *The respondent craves leave to add to or deduct from or otherwise amend the above grounds of Cross objections.*

First we take up Revenue's appeal in ITANo.935/Ind/2019

2. Brief facts of the case as culled out from the records are the assessee is individual earning income from salary and other sources. A search u/s 132 of the Act was conducted at the residential premises of Mr. Shailendra Singhal of Agoh Group. In the statement dated 31.08.2014 he stated that various gifts amounting to Rs. 2 crore were accepted by his daughter Ku. Nishita Singhal during F.Y. 2014-15 and the said amount was

given to different borrowers by Shri Shailendra Singhal. He also admitted the amount of Rs.2 crore as undisclosed income in the hands of his daughter. Subsequently, assessee e-filed the return of income on 31.08.2015, declaring income of Rs.2,09,67,530/- which *inter alia* included a sum of Rs.2 crore surrendered by Shri Shailendra Singhal in his statement given on 31.08.2014. Proceedings u/s 153C of the Act were initiated followed by issuing of notices u/s 143(2) & 142(1) of the Act. Returned income was accepted as assessed income vide assessment order dated 22.11.2017 framed u/s 143(3) r.w.s. 153C of the Act.

3. Subsequently, penalty proceedings u/s 271AAB of the Act were initiated by issuance of notice u/s 274 of the Act and after considering the submissions made by the assessee penalty of Rs.65,00,000/- was levied.

4. Aggrieved assessee preferred an appeal before the ld. CIT(A) and succeeded.

5. Now revenue is in appeal before this Tribunal. Ld. Departmental Representative (DR) vehemently argued supporting the order of Ld. AO and also submitted that the surrender of Rs.2 crore was made by the assessee's father who was real owner of the undisclosed income which he routed as gifts in the hands of

his daughter. Supporting the order of Ld. AO he requested confirm the penalty levied u/s 271AAB of the Act.

6. Per contra Ld. counsel for the assessee supported the finding of Ld. CIT(A) and also submitted that the notice of search was not issued in the name of assessee. Notice u/s 274 of the Act issued to assessee is defective as it does not specify specific charge against the assessee. He also referred to the written submissions running from pages 1 to 8 and paper book pages running from 1 to 67.

7. We have heard rival contentions and perused the records placed before us. Revenue's sole grievance is that the Ld. CIT(A) erred in deleting the penalty levied u/s 271AAB of the Act at Rs.65 lakhs. We observe that the assessee's father was subjected to search u/s 132 of the Act. In the statement recorded u/s 132(4) assessee's father admitted that various gifts amounting to Rs.2 crore were accepted by his daughter Ku. Nishita Singhal i.e. the assessee which was utilized for giving loans to different borrowers on interest. Thereafter assessee was served with a notice u/s 153C of the Act. Return of income was filed on 31.08.2015 and income from gifts of Rs.2 crore was offered to tax.

8. We also observe that ld. CIT(A) decided in favour of the assessee on observing that the provisions of section 271AAB of the Act are applicable on the person who is subjected to search but since the assessee was not subjected to search u/s 132 of the Act, penalty cannot be levied u/s 271AAB of the Act. The finding of Ld. CIT(A) reads as follows:-

*Ground No.1*

*4.0 This ground of appeal is with regard to imposing penalty of Re. 65,00,000 u/s 271AAB of the IT Act, 1961. I have carefully gone through the penalty order as well as submission of the appellant in this regard.*

*4.1 The brief facts of the case are that the appellant had filed her return of income on 31.08.2015 declaring total income of Rs. 2,09,67,530 for the A:Y. 2015-16. The appellant had declared income from salary of Rs. 1,05,000, income from interest at Rs. 9,30,730 and amount of income surrendered during search proceedings of Rs 2 crore being a search related case. The AO has issued a notice u/s 153C of the Act. In response to the case, the appellant has filed her return wherein she had declared the said surrenders income of Rs. 2 crore. The assessment proceeding was completed u/s. 143(3) r.w.s. 153C of the Act and penalty u/s 271AAB was separately initiated on undisclosed income so surrendered by the appellant on the basis of search conducted in Agroh Group.*

*4.2 The appellant has taken the plea that the said section does not attract in the appellant's case due to following reasons:-*

*01- The search was conducted on the father of, the assessee, not on assessee otherwise assessment of assessee would have been done u/s 153A ,. not 153C, since no assessment is done u/s 153\_ and name of assessee was not included in notice u/s 132(4), it is evident that search was not conducted on assessee. Section 271AAB starts with the words "Penalty where' search has been initiated" whereas no search was initiated against the assessee therefore section is not applicable , Assessment was done on assessee u/s 143(3) r.w.s, 153C which itself is evidence of search not being conducted on. assessee. Therefore, section 271AAB is not applicable.*

02- Statement u/s132(4) where income is surrendered was given by father of the assessee and not the assessee herself, therefore, sub-clause (i) of sub section (11( a) of section 271AAB also is not complied in present case .. '

03~ Section 271AAB is applicable only on the assessments conducted u/s 153A not on cases assessed u/s153C.

4.3 It would be pertinent to reproduce the language of section 271AAB of the IT Act, 1961:-

"271AAB. (1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1 st day of July, 2012 [but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President], the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,-

(a) a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such assessee-

i) in the course of the search, in a statement under sub-section (4) of section 132, admits 'the undisclosed income and specifies the manner in which' such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date-

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of twenty per cent of the undisclosed income of the specified previous year, if such assessee-

(i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and

(ii) on or before the specified date-

(A) declares such income in the return of income furnished for the specified previous year; and

(B) pays the tax, together with interest, if any, in respect of the undisclosed Income;

(c) a sum 43[computed at the rate of sixty per cent] of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).

44 [(1 A) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,-

(a) a sum computed at the rate of thirty per cent of the undisclosed income of the specified previous year, if the assessee-

(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in

which such income has been derived;

(ii) substantiates the manner in which the undisclosed income was derived; and

(iii) on or before the specified date-

(iv) (a) prays the tax, together with interest, if any, in respect of the undisclosed income and

B furnished the return of income for the specifies previous year declaring such undisclosed income therein.

(b) a sum computed at the rate of sixty per cent of the undisclosed income of the specified previous year, if it is not covered under the provisions of clause (a).)

(2) No penalty under the provisions of 45[section 270A or} clause (c) of subsection (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1) 45a!or sub-section (1 A}}).

(3) The provision of sections 274 and 275 shall, as far as may be, apply in © relation to the penalty referred to in this section ..

Explanation.-For the purposes of this section,-

(a) "specified date" means the due date of furnishing of return of income under sub-section (1) of section J39 or the date on which the period specified in the notice issued under section 153A for furnishing of return of income expires, as the case may be;

(b) "specified previous year" means the previous year-

(i) which has ended before the date of search, but the date of furnishing the return of income under sub-section (1) of section 139Jor such year has not expired before the date of search and the assessee has not furnished the return. of income for the previous year before the date of search; or

(ii) in which search was conducted; (c) "undisclosed income" means-

(i) any income of the. specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has- (A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to. such previous year; or

(B) otherwise not been disclosed to the Principal Chief Commissioner or Chief Commissioner or Principal Commissioner or Commissioner .. before the date of search; or

(it) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded 'in the .books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false' an. Been found to be so had the search not been conducted."

4.4 The language of the said section starts from the word " in a case where search has been initiated under section 132" but in the instant case, no search proceeding was initiated. The same plea was taken by the appellant in its written reply. The same view is also supported by the Hon'ble ITAT Bench of

*Panaji in the case of DCIT vs Volga Dresses ITA No 201 & 202/PAN/2016 wherein it was held by the Hon'ble Bench of ITAT, Panaji that "penalty under section 271AAB could not be levied unless there is a search under section 132 of the Act on the assessee."*

4.5" *The assessment was completed in the appellant's case u/s 143(3) LW.S. 153C; hence~ the section 271A.A.g is also not applicable in this case. The said section applies only in those cases where assessment has been completed u/s 153A. of the Act .*

4.6 *The provision of the said section IS applicable only on an income which is not recorded in the books of account.' In the instant case, the appellant had not unmaintained regular books of account. The reason given by her was that she did not carry out any business activity during the year under consideration. The said amount was received by her as a gift; therefore, there was no need to her to maintain books' of account. Further, the appellant had deposited entire tax and had filed the return of income before the due date so required u/s 139 of the Act, which had also been accepted by the AO in the first para of the assessment order. The Appellant had also paid tax and return was also filed before the . issuance of notice u j s 153C of the Act.*

4.7 *Hence after taking into account all the factual matrix and circumstances of the case, the following points are emerged out:-*

1. *No search was conducted in the appellant's case, thus the said section does not apply.*

2. *No books of account were maintained by the appellant as she was not engaged in any business activity. She had received the said amount as gift.*

3. *The assessment was completed u/s 143(3) r.w.s. 153C not in the section 153A, therefore, the said section does not attract in the appellant's case.*

4. *The appellant had deposited entire tax and had filed the return of income before the due date u/s 139 of the Act, which had been accepted by the Assessing Officer in the first para of the order. The appellant has also paid tax and return was also filed before the issuance of notices u/s 153C of the Act.*

4.8. *Thus, in view of the above facts, the penalty so imposed by the Assessing Officer is hereby deleted and accordingly, this ground of appeal is allowed.*

9. From perusal of the above finding of Ld. CIT(A) as well as the decision of Coordinate Bench Panji in the case of *Volga Dresses ITA No 201 & 202/PAN/2016* which stands

uncontroverted by the Ld. DR being unable to place any decision favouring revenue on this issue, we are of the view that since no search was conducted in the case of assessee and since assessment has been made u/s 153C of the Act, penalty proceedings cannot be initiated u/s 271AAB of the Act. Even otherwise in the penalty notice Ld. Assessing Officer though has levied the penalty u/s 271AAB of the Act but has not calculated the penalty under the provision of section 271AAB of the Act. In para 8 of the penalty order Ld. Assessing Officer states that the minimum penalty is leviable is Rs.60 lakh and maximum penalty is leviable is Rs.1,80,00,000/- which is normally calculated when applying the provision of section 271(1)(c) of the Act but finally Ld. Assessing Officer levied the penalty of Rs.65 lakhs. It is also not understandable as to how the penalty amount has been worked out u/s 271AAB of the Act. Provision of section 271AAB of the Act as referred above in the finding of Ld. CIT(A) states that the penalty under this section can be levied either @ 10% of the undisclosed income u/s 271AAB(1)(a) of the

Act, or 20% of the undisclosed income if the case of the assessee falls u/s 271AAB(1)(b) of the Act or 60% of the undisclosed income if the case of the assessee falls under the provision of section 271AAB(1)(c) of the Act but the alleged penalty amount does not fall in either of the three cases. This in itself shows that the Ld. Assessing Officer was not aware as to on what basis he was levying the penalty. This action of the Ld. Assessing Officer in itself makes the penalty proceedings *null and void*, as assessee was not served with a correct notice u/s 274 of the Act to initiate the penalty proceedings. We, thus, find no infirmity in the finding of Ld. CIT(A) deleting the penalty levied u/s 271AAB of the Act. Accordingly grounds raised by the revenue stands dismiss.

10. Now we take the Cross objection filed by the assessee. The assessee has raised number of grounds which are repetitive and argumentative in nature. Even otherwise since we have already confirmed the order of Ld. CIT(A) deleting the penalty levied u/s 271AAB of the Act adjudicating the issues raised in the cross

objections will be merely academic in nature and thus the same are dismissed as infructuous.

11. In the result, Revenue's appeal in ITANo.935/Ind/2019 & Assessee's CONo.12/Ind/2020 are dismissed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 04.10.2021.

Sd/-

(RAJPAL YADAV)  
VICE PRESIDENT

Sd/-

(MANISH BORAD)  
ACCOUNTANT MEMBER

दिनांक /Dated : 04.10., 2021

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore