

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 7618/Del/2018  
(Assessment Year : 2014-15)

ACIT Central Circle – 28 New Delhi  PAN No. ADSPA 0329 D <b>(APPELLANT)</b>	Vs.	Charchit Agarwal 1245, Kucha Mahajani, Chandni Chowk New Delhi - 110006  <b>(RESPONDENT)</b>
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Assessee by	Shri Rajiv Saxena, Advocate
Revenue by	Shri Kumar Pranav, Sr. D.R.

Date of hearing:	22.11.2021
Date of Pronouncement:	25.11.2021

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the Revenue is directed against the order dated 14.09.2018 of the Commissioner of Income Tax (Appeals) – 29, New Delhi relating to Assessment Year 2014-15.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is an individual. AO has noted that survey u/s 133A of the Act was conducted on 02.07.2014 at the premises of the assessee and during the course of survey operation disclosure of unaccounted income amounting to Rs. 4.50 crore was made by the assessee. Thereafter assessee electronically filed the return of income u/s 139 of the Act on 29.11.2014 declaring total income at Rs.3,53,56,340/- by *inter alia* including the income of Rs.3,35,00,000/- surrendered during the survey operation that pertained to the year under consideration. The case was taken up for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 26.12.2016 and the total income was determined at Rs.3,53,56,340/-, being the same income that was declared by the assessee. On the income of Rs.3,35,00,000/- that was surrendered during the course of survey operation and including into the return of income, AO vide order dated 30.06.2017 levied the penalty of Rs.1,14,75,092/- u/s 271(1)(c) of the Act. Aggrieved by the penalty order passed by AO, assessee carried the matter before CIT(A) who vide order dated 14.09.2018 in Appeal No.114/17-18/CIT(A)-29 deleted the levy of penalty. Aggrieved by the order of CIT(A), Revenue is now in appeal and has raised the following grounds:

- “1. *On the facts and the circumstances of the case, the Ld CIT(A) has erred in totally deleting the penalty of Rs.1,14,75,092/- imposed by the AO on account of concealment and inaccurate particulars of income.*
2. *On the facts and circumstances of the case, the Ld. CIT(A) has failed to appreciate the facts that :-*

- i) *In his profit and loss account, the assessee has furnished inaccurate particulars of his income by claiming various business expenses against the surrendered undisclosed income (from bogus transactions in the garb of LTCG) on account of survey u/s 133A of the IT Act.*
  - ii) *In his return of income, assessee has not explained the sources of surrendered undisclosed income which has been established that the bogus transaction of LTCG was against unaccounted cash payments.*
3. *On the facts and in the circumstances of the case, the Ld CIT(A) has failed to appreciate the issue of inaccurate particulars of income and the provisions of the first part of clause – A of the explanation 1 of section 271(1) (c) of the IT Act.*
  4. *That the order of the CIT(A) is perverse, erroneous and is not tenable on the facts and in law.*
  5. *That the grounds of appeal are without prejudice to each other.*
  6. *That the appellant craves to add, amend, alter or forgo any ground (s) of appeal either before or at the time of hearing of the appeal.”*
4. Though various grounds have been raised but the solitary issue is with respect to the deletion of levy of penalty u/s 271(1)(c) of the Act.
5. Before us, Learned AR submitted that during the course of survey action, assessee had surrendered total undisclosed income of Rs.4.50 crore, out of which Rs.3,53,56,340/- pertains to the year under consideration. He submitted that the income of Rs.3.53 crore that pertained to the year under consideration was included in the return income for A.Y. 2014-15 filed on 29.11.2014 u/s 139(1) of the Act. He submitted that last date of filing of return of income for A.Y. 2014-15 was 30.11.2014. He submitted that once the income surrendered during the course of

survey has been included in the return of income and taxes paid thereon, there cannot be any concealment of income or non-disclosure of income on the part of the assessee. He submitted that CIT(A) has rightly, following the decision in the case of **CIT vs. SAS Pharmaceuticals 355 ITR 259 (Delhi)**, deleted the addition. He thus supported the order of CIT(A).

6. Learned DR on the other hand supported the order of lower authorities.

7. We have heard the rival submissions and perused the materials available on record. The issue in the present ground is with respect to the deletion of levy of penalty u/s 271(1)(c) of the Act. It is an undisputed fact that assessee had declared undisclosed income of Rs.4.50 crore during the course of survey and it included Rs.3.53 crore which pertained to the A.Y. 2014-15. It is also an undisputed fact that the last date for filing of return of income for A.Y. 2014-15 was on 30.11.2014 and the assessee has filed return of income which included the surrendered undisclosed income pertaining to the year under consideration in the return of income for A.Y. 2014-15 on 29.11.2014. Hon'ble Delhi High Court in the case of SAS Pharmaceuticals (supra) had held that when the income surrendered by the assessee during survey had been shown in the return of income filed within the prescribed time, penalty could not be imposed u/s 271(1)(c) of the Act. We find that CIT(A) by following the decision rendered by Hon'ble Delhi High Court in

the case of **SAS Pharmaceuticals (supra)** has deleted the levy of penalty. Before us, no fallacy in the findings of CIT(A) has been pointed by Revenue. In such a situation, we find no reason to interfere with the order of CIT(A) and **thus the grounds of Revenue are dismissed.**

**8. In the result, appeal of the Revenue is dismissed.**

**Order pronounced in the open court on 25.11.2021**

**Sd/-  
(AMIT SHUKLA)  
JUDICIAL MEMBER**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 25.11.2021

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**Copy forwarded to:**

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI