INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI N. K. CHOUDHRY, JUDICIAL MEMBER

ITA No. 7470/Del/2017
(Assessment Year: 2012-13)

RupinderDhanoaSidhu, C/o. R.S. Ahuja& CO, CA C-353, Defence Colony, New Delhi PAN: ACIPD0250F	Vs.	**ACIT, Central Circle-31, New Delhi**
(Appellant)		**(Respondent)**

Assessee by :	Shri R. S. Ahuja, CA
Revenue by:	Shri. Atiq Ahmed, Sr. DR
Date of Hearing	29/12/2021
Date of pronouncement	27/01/2022

O R D E R

PER N.K. CHOUDHRY, J. M.:

1. The Assessee has preferred this appeal against the order dated 27/10/2017 impugned herein passed by the ld. Commissioner of Income Tax (Appeals)-30, New Delhi (hereinafter referred to as 'ld. Commissioner'), for Assessment Year 2012-13 u/s 250(6) of the Income Tax Act, 1961 (for short 'the Act"), whereby, the CIT(A) affirmed the levy of penalty to the tune of Rs. 66,000/- u/s 271AAA of the Act, by the AO.

2. Brief facts of the case are that the Assessee had filed its return of income on 11.02.2013 by declaring income to the tune of Rs. 15,11,496/-. Thereafter, search and seizure action u/s 132 of the Act was initiated on 23.08.2011 and during the search of lockers in HSBC Bank situated at Gurgaon and Delhi, maintained by the Assessee jointly with her husband Shri Raman Singh Sidhu, cash of Rs. 13 lakhs (Rs. 12,50,000 + 50,000) was found. Consequently, statement of the Assessee and her husband were recorded on 23.08.2011 and 01.10.2011 respectively u/s 132of the Act. As per revenue's allegation, it has been clearly established beyond any doubt that cash found in the locker belongs to the Assesseeonly. During the course of assessment proceedings the Assessee was afforded opportunity to explain the source of cash of Rs. 13 lakhswith documentary evidence, though the Assessee explained, however, did not find favour from the AO and the AO made the addition of Rs. 13 lakhs u/s 69A of the Act. Simultaneously, also initiated penalty u/s 271AAA of the Act by issuing notices dated 27.02.2015 and 08.04.2015 u/s 274 read with section 271AAA of the Act.

3. The Assessee challenged the said addition also before the ld CIT(A), who vide order dated 23.10.2015 confirmed the addition to the tune of Rs. 6,60,000/- out of addition of Rs. 13 lakhs. Thereafter, fresh show cause notices dated 20.01.2016 and 24.03.2017 have been issued to the Assessee for penalty proceedings u/s 271(1) of the Act. Though, the Assessee replied the said show cause notices by submitting that the addition of Rs. 10,59,987/- (including amount of Rs. 6,60,000/-) sustained in quantum appeal pertains to amount regarding other receipts as reimbursement of expenses. The Assessee was not confronted with any document with regard to the same and no incriminating

material with regard to the above was found and seized during the search. It was also claimed by the Assessee, since the addition in an unabated assessment not based on incriminating document found and seized during the search are under challenge, there is no case of penalty. Hence, no penalty should be imposed u/s 271AAA of the Act on sustaining of the additions in appeal. The AO although considered the explanation of the Assessee, however, imposed the penalty u/s 271AAA of the Act on the ground that the Assessee could not prove the source of this unexplained cash and not declared in her total income. It was assessed as unaccounted income of the Assessee. The said penalty order was challenged by the Assessee before the ld. CIT(A) who vide impugned order dated 27.10.2017 affirmed the levy of penalty amounting to Rs. 66,000/- against which the Assessee is in appeal before us.

4. Heard the parties and perused the material available on record.

5. At the very outset the Assessee has emphasized that in this particular case no specific query was raised and/or posed to the Assessee by drawing her attention to the provisions of section 271AAA of the Act. Therefore, in view of the jurisdictional High Court judgment in Pr. CIT vs. Emirates Technologies Pvt. Ltd. In ITA No. 400/2017 decided on 18.07.2017,the penalty is unsustainable. There is no denial from the ld. DR to the facts contended by the Assessee.

6. We have given thoughtful consideration to the facts and circumstances of the case and on the statements of the Assessee and her husband recorded by the AO, nothing appears qua putting an specific query by referring the provisions of section 271AAA of the Act and drawing the attention of the Assessee to the same while

asking her to specify the manner in which the undisclosed income had been derived, hence as per judgment of jurisdictional High Court in the case of Pr. Commissioner of Income Tax (Central)-1 Versus M/s Emirates Technologies Pvt. Ltd. (supra) wherein it has been affirmed "*when no specific query had been put to the Assessee by drawing his attention to Section 271 AAA of the Act asking him to specify the manner in which the undisclosed income, surrendered during the course of search, had been derived, the jurisdictional requirement of Section 271AAA was not met* ", the penalty is not leviable.

6.1 Even Hon'ble Gujarat High Court in the case of CIT vs. Mahendra C shah 298 ITR 305 and the Hon'ble Allahabad High Court in the case of RadhaKishanGeol 378 ITR 454 dealt with the identical situation and deleted the penalty. For ready reference the concluding part of the judgment passed by the Hon'ble Gujarat High Court in case of CIT Vs. Mahendra C Shash is reproduced herein below:-

> *In so far as the alleged failure on the part of the assessee to specify in the statement under Section 132(4) of the Income Tax Act, 1961 regarding the manner in which such income has been derived, suffice it to state that when the statement is being recorded by the authorized officer it is incumbent upon the authorized officer to explain the provisions of Explanation 5 in its entirety to the assessee concerned and the authorized officer cannot stop short at a particular stage so as to permit the Revenue to take advantage of such a lapse in the statement. The reason is not far to seek. In the first instance, the statement is being recorded in the question and answer form and there would be no occasion for an assessee to stage and make averments in the exact format stipulated by the provisions considering the setting in which such statement is being recorded, as noted by the Allahabad High Court in the case of CIT vs. RadhaKishanGoel*

: (2005) 278 ITR 454. Secondly, considering the illiterate, to be specific and to the point regarding the conditions stipulated by exception No. 2 while making statement under Section 132(4) of the Income Tax Act, 1961. The view taken by the Tribunal as well as the Allahabad High Court to the effect that even if the statement does not specify the manner in which the income is derived, if the income is declared and tax thereon paid, there would be substantial compliance not warranting any further denial of the benefit under exception No. 2 in Explanation 5 is commendable.

6.2 In view of the aforesaid discussions,and respectfully following the dictums laid down by Hon'ble High Courts, we are inclined to delete the penalty imposed by the AO and confirmed by the ld.CIT(A) u/s 271AAA of the Act, hence ordered accordingly.

7. In the result, appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 27/01/2022.

-Sd/-	-Sd/-
(ANIL CHATURVEDI)	(N.K. CHOUDHRY)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Dated: 27/01/2022
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi