

अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

**BEFORE SHRI MAHAVEER PRASAD, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER**

(Conducted through Virtual Court)

**ITA No. 249/Ind/2021
Assessment Year: 2016-17**

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| ACIT, Central-2, Indore | बनाम/ Vs. | Shri Amit Tiwari, 60, Silver Mansion, Silver Spring, AB Road, Indore |
| (Appellant / Revenue) | | (Respondent / Assessee) |
| P.A. No. ACVPT 3933 C | | |
| Revenue by | Shri Amit Soni, Sr. DR | |
| Assessee by | Shri S.N. Agarwal, Bhavesh Agarwal, ARs | |
| Date of Hearing: | 06.04.2022 | |
| Date of Pronouncement: | 28.06.2022 | |

आदेश / O R D E R

Per B.M. Biyani, A.M.:

1. This appeal filed by the Revenue is directed against the order dated 09.09.2021 of the learned CIT(A)-3, Bhopal [**"Ld. CIT(A)"**] in Appeal No. CIT(A)-3/BPL/IT-12087/2015-16, which in turn arises out of the penalty-order dated 14.12.2020 passed by the learned ACIT(Central)-2, Indore [**"Ld. AO"**] u/s 271AAB(1) of the Income-tax Act, 1961 [**"the Act"**] concerning the assessment-year 2016-17.

2. Precisely stated the facts are such a search u/s 132 of the act was carried out on 17.06.2015 at the premises of Moira Group of Indore including the assessee. During search, the assessee declared undisclosed income of Rs. 8,00,00,000/- u/s 132(4), out of which income of Rs. 68,34,975/- related to assessment year 2015-16 and remaining income of Rs. 7,31,65,025/- related to the assessment-year 2016-17. The Ld. AO initiated penalty proceedings independently for both of the assessment years and finally imposed penalty of Rs. 6,83,498/- (10% of Rs. 68,34,975/-) and Rs. 73,16,503/- (10% of Rs. 7,31,65,025/-) for assessment year 2015-16 and 2016-17 respectively. Against the penalty-order for assessment-year 2015-16, the matter travelled upto this ITAT, Indore Bench in appeal ITA No. 699/Ind/2019 and that appeal had already been decided vide order dated 19.08.2020 against the revenue and in favour of assessee. Against the penalty-order for assessment-year 2016-17, the matter has reached to this ITAT Indore Bench in present appeal and now before us. To sum up, the present litigation is for assessment-year 2016-17, wherein the penalty of Rs. 73,16,503/- imposed by the Ld. AO u/s 271AAB has been deleted by the Ld. CIT(A) and now the revenue is before us challenging the order of Ld. CIT(A).

3. The revenue has raised following Ground:

“1. On the facts and in the circumstances of the case, the ld. CIT(A) erred in deleting penalty amounting to Rs. 73,16,502/- levied u/s 271AAB of the Income-tax Act.”

4. Ld. AR submitted that the assessee was having identical litigation for the assessment-year 2015-16 and 2016-17 and the appeal of assessment-year 2015-16 had already been decided by this **Indore Bench of ITAT in favour of assessee and against revenue in ITA No. 699/Ind/2019 vide order dated 19.08.2020**. A few paras of the order are reproduced below for an immediate reference:

“6. We have heard rival submissions and perused the material available on record and gone through the orders of lower authorities. The submissions of the assessee are that penalty proceedings u/s 271AAB as initiated is bad in law on account of firstly penalty notice so issued is defective as it does not disclose specific charge and secondly there is no concealed income as search took place prior to due date of filing of income-tax return. It is also contented that even otherwise the issue is squarely covered in favour of the assessee by the decisions of the Co-ordinate Benches of this Tribunal.

9. A conjoint reading of both these sections would suggest that where a search has been initiated the AO may direct payment of penalty in addition to tax if any payable by him. However, provisions of section 274 and 275 shall so far as may apply in relation to the penalty referred to in section 271AAB of the Act. As per section 274 of the Act no order imposing a penalty shall be made unless the assessee has been heard, or has been given a reasonable opportunity of being heard. In this case the assessing officer has given notices and in response thereto the representative of the assessee appeared before the assessing officer. Now coming to the question whether notice so issued mention any specific charge. A bare reading of notice demonstrates that notice relate to ingredients of penalty u/s 271(1)(c) of the Act, it does not contain the ingredients of section 271AAB of the Act. Under these facts the notice is improper and is not in accordance with requirement of law. The assessing officer is expected to make his direction clear as to which clause of section 271AAB of the Act, he wishes to invoke. There is clear absence of such direction. Ld. counsel for the assessee has relied upon various judicial pronouncements in

support of his contention that where the notice is being defective, therefore, no penalty can be levied or sustained.

14. In the light of the above binding precedent and coupled with fact that the Ld. CIT(A) observed that the impugned amount would not have been offered for taxation had there been no search and seizure operation, this observation goes to demonstrate that converse of such observation gives benefit of doubt to the taxpayer. In our considered view that is purely a guess work without being substantiated by any material evidence. The impugned penalty, therefore, cannot be sustained. The Assessing Officer is directed to delete the penalty.

15. In the result, appeal filed by the assessee is allowed.”

5. Ld. AR argued that the total undisclosed income surrendered by the assessee u/s 132(4) was Rs. 8,00,00,000/- which had two components, viz. Rs. 68,34,975/- related to assessment year 2015-16 and Rs. 7,31,65,025/- related to assessment-year 2016-17. Ld. AR argued that the factual matrix of the surrender and assessment of both components is same and there is no difference whatsoever. Ld. AR further carried our attention to the Page No. 66 of the Paper-Book where a copy of the show-cause notice dated 30/11/2017 issued by Ld. AO u/s 274 read with section 271AAB for assessment-year 2016-17 under consideration is placed. Thereafter, Ld. AR carried our attention to the Page No. 133 of the Paper-Book where a copy of the show-cause notice dated 30/11/2017 issued by Ld. AO u/s 274 read with section 271AAB for assessment-year 2015-16 is placed. Ld. AR compared these two notices and argued that both of the notices were issued on the same date i.e. 30/11/2017, by the same officer and the contents of the both notices are exactly same. The Ld. AR, therefore, argued that the aforesaid decision of this Indore Bench of ITAT in assessee's own case in **ITA No. 699/Ind/2019** for the assessment-year

2015-16 applies with equal force to the assessment-year under 2016-17 under consideration. Therefore, the Ld. AR prayed to apply the same decision.

6. On a careful consideration, we find sufficient weightage in the submission of Ld. AR. We observe that the issue is squarely covered in assessee's own case for the assessment-year 2015-16. Hence the same decision will prevail for assessment-year 2016-17. Since the penalty imposed in assessment-year 2015-16 was deleted, the penalty for assessment-year 2016-17 is also not sustainable. Therefore, we uphold the deletion of penalty made by Ld. CIT(A).

7. In the result the appeal of revenue is dismissed.

Order pronounced as per Rule 34 of I.T.A.T. Rules 1963 on 28.06.2022.

Sd/-
(MAHAVEER PRASAD)
JUDICIAL MEMBER

Sd/-
(B.M. BIYANI)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 28/ 06/2022

Patel/Sr. PS

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Sr. Private Secretary, Indore

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| 1. | Date of taking dictation | |
| 2. | Date of typing & draft order placed before the Dictating Member | |
| 3. | Date on which the approved draft comes to the Sr. P.S./P.S. | |
| 4. | Date on which the fair order is placed before the Dictating Member for pronouncement | |
| 5. | Date on which the file goes to the Bench Clerk | |
| 6. | Date on which the file goes to the Head Clerk | |
| 7. | Date on which the file goes to the Assistant Registrar for signature on the order | |
| 8. | Date of despatch of the Order | |