

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI  
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष  
Before Shri V. Durga Rao, Judicial Member &  
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. Nos.868 & 869/Chny/2016  
निर्धारण वर्ष/**Assessment Year:2012-13**

Dr. (Late) S.F.V. Selvaraj,  
Rep. by L/H Dr. Kamala Selvaraj,  
Dr. Deepu Rajkamal Selvaraj, Dr. Priya  
Selvaraj, No. 22, 5<sup>th</sup> Street, Dr.  
Thirumurthy Nagar, Nungambakkam,  
Chennai 600 034.  
**[PAN:AASPS5404L]**

Vs. The Deputy Commissioner of  
Income Tax,  
Central Circle 2(5),  
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri G. Baskar, Advocate  
प्रत्यर्थी की ओर से/Respondent by : Shri M. Rajan, CIT  
सुनवाई की तारीख/ Date of hearing : 17.05.2022  
घोषणा की तारीख /Date of Pronouncement : 06.07.2022

**आदेश /O R D E R**

**PER V. DURGA RAO, JUDICIAL MEMBER:**

Both appeals filed by the assessee are directed against separate orders of the Id. Commissioner of Income Tax (Appeals) 18, Chennai, both dated 08.02.2016 relevant to the assessment year 2012-13 challenging the confirmation of quantum addition of unexplained cash under section 69A of the Income Tax Act, 1961 ["Act" in short] and confirmation of penalty levied under section 271AAA of the Act. Against quantum addition, the assessee has raised the following grounds:

- “1. *The order of the Commissioner of Income-Tax (Appeals) is wrong, illegal and opposed to facts.*
2. *The Commissioner of Income-Tax (Appeals) erred in disposing off the appeal in a summary manner without adverting to the facts of the case and the submissions made before him in the proper perspective.*
3. *The Commissioner of Income- Tax (Appeals) went wrong in holding that the cash found at the time of search of Rs.3,45,00,000/- represents unaccounted income.*
4. *The Commissioner of Income- Tax (Appeals) further went wrong in observing that the money found at the time of search is over and above the share trading income assessed in the earlier years.*
5. *The Commissioner of Income- Tax (Appeals) failed to note that the appellant has proved with the cash flow statement and the bank statements that the cash found forms part of the share trading income which had been assessed in the search assessment of the earlier years.*
6. *The Commissioner of Income- Tax (Appeals) also failed to note that the statement recorded at the time of search from the assessee itself proves that the cash fund doesn't form part of this year's income from Cardio Diagnostic Care.”*

2. Facts are, in brief, that the assessee is an individual and Doctor by profession. A search action under section 132 of the Act was conducted in the premises of the assessee on 24.11.2011. During the course of search, cash of ₹.3,45,45,000/- was found and seized. In the sworn statement, the assessee has explained that the amount of ₹.3,45,45,000/- found in his room was his income earned over a period of time which was not accounted for. Thus, the Assessing Officer has made the addition of ₹.3,45,45,000/- towards unexplained cash. For the sake of convenience, the relevant portion of the assessment is extracted as under:

***“2. Addition under section 69A towards unexplained cash balance found during search on 24/11/2011 Rs.3,45,45,000***

i) During the course of search, in assessee's room, which is in the first floor of his residence, three small briefcases containing currencies totaling to Rs.3,01,35,185 was found. Of this Rs. 3 crore was seized.

ii) As per answer to question number 13, 14 and 16, the assessee has admitted that he has not maintained regular books like cashbook and ledger.

iii) As per answer to question number 18, the assessee has clearly stated that the cash represents self employed professional income.

iv) In answer to question number 29, the assessee has elaborated about the earnings through medical profession and confirmed that this amount of Rs.3 crores were accumulated only from earnings from medical profession.

v) In answer to question number 30, he has categorically stated that these amounts were not offered to tax.

vi) In question number 48, the authorised officer raised questions regarding the professional receipts that were accumulated and not deposited bank of Baroda. He specifically asked whether these amounts were accounted for in returns of income. For this the assessee stated "No".

vii) Another Rs. 46,10,095, was found in the assessee's consultation room on the ground floor of GG Hospital. Of this Rs.45,45,000 was seized. The authorised officer questioned about this at the time of search vide question number 56. For this the assessee replied as under.

*"As explained to you, it is my long-term professional income, but which was not accounted for by omission and commission"*

ix) On the above facts, Rs.3,45,45,000 being seized amount was proposed for addition towards unexplained money in this assessment year.

x) Vide letter dated 24/03/2014, the assessee has claimed as under:

a) "The assessee has accepted that the cash seized was from his unaccounted income of earlier years, which is now computed and returns of income filed.(Please refer to answer to question number 12,20 and 35 in the sworn statement dated 24/11/2011).

b) In (CDC portfolio management) A/c cash on hand of Rs.21,03,91,095 is available throughout the month. Similarly, in

*CDC Med invest A/c cash on hand as on 24/11/2011 is Rs. 63,78,484. Therefore, total cash available as on 24/11/2011 is Rs. 21,67,69,579. Out of which a sum of Rs.3,45,45,000 has been seized. During the assessment year 2012-13, my gross total income is about Rs.13,77,02,215 for which I have already filed return of income. The seized amount of Rs.3,45,45,000 forms part of this income and hence there is no need to offer it as income".*

*xi) The issue was discussed with the representative. The above reply is reiterated in the subsequent letter dated 27-08-2014.*

*xii) a) I have gone through the assessee's 'reply to the relevant question numbers cited by the assessee.*

*b) In answer to Ques.12 the assessee has stated that he has not maintained day book. Therefore this reply is not helpful to the assessee and cannot be relied upon.*

*c) In question No 20, the authorized officer has drawn assessee's attention to the bank slips found on the bundles of cash. He enquired about the dates on the bank slips since those dates were predominantly November 2010 and December 2010. Therefore the authorized officer's question was that how this cash balance can pertain to earlier years. In reply to this question, the assessee has stated that the old currencies were exchanged for transaction convenience and portability and that it cannot be concluded that accumulation of this amount and exchange was done in those period. This reply is not helpful to the assessee and cannot be relied upon for deciding the issue at hand because of the reason that the assessee is a doctor by profession (Medical Professional). Rule 6F read with section 41 AA Is applicable to the assessee. As such, the assessee is required to maintain Cash Book and ledger during the course of his business/profession. This cash balance will be treated as accounted only if it is entered/represented by book entries. At the time of search, as per answer to question number 13, 14 and 16, the assessee has admitted that he has not maintained regular books like cashbook and ledger.*

*d) Question No 35 is a continuation of question no 34. As such it relates to daily collection details and who maintains those details. In reply to question No 34 and 35 the assessee has stated that daily collection would range from Rs.90 thousand to Rs.1.8 lakh and that Ms. Anandi maintains the details. Only after considering the daily collection and that the assessee used to deposit cash in Bank of Baroda, the authorized officer has left*

*certain portion and seized the balance. Hence, the answer to question No 35 is not also helpful to the assessee.*

*e) As per answer to question number 18, the assessee has clearly stated that the cash represents self employed professional income. In answer to question number 29, the assessee has elaborated about the earnings through medical profession and confirmed that this amount of Rs.3 crores were accumulated only from earnings from medical profession. In answer to question number 30, he has categorically stated that these amounts were not offered to tax. In question number 48, the authorised officer raised questions regarding the professional receipts that were accumulated and not deposited bank of Baroda. He specifically asked whether these amounts were accounted for in returns of income. For this the assessee stated "No".*

*f) From these it is evident that this amount represents income earned from medical profession and not deposited in assessee's bank account. Since there is a categorical admission that this amount was not offered to tax, the onus is only on the assessee to rebut the statement with sufficient proof within a reasonable time. The assessee has not rebutted this statement before the Assistant Director after the search. No evidence was filed. No claim was made before the Assessing Officer also that the statement given u/s 132(4) shall not be relied. Only after the proposal for assessment of this sum, such a claim is made. This claim is not supported by any valid evidence. The assessee has admitted that the amounts are from self earned professional income which have not been disclosed in the returns. In the returns in response to notice u/s 153A the assessee has not offered any additional income from medical profession. Therefore, the assessee's, claim, that the seized cash represent income admitted in earlier years is only an afterthought. Hence assessee's claim is not acceptable both on facts and in law.*

*g) During the course of search, the assessee has not produced any other detail which explained the physical availability of the cash balance. The cash balance mentioned at Rs. 21,67,69,579 is a post search event. This is not real. During the search, the assessee has not claimed that this much amount will be available. If assessee's version is taken to be true, at least 21 crore ought to have been available. Fact is not so. If assessee's reply is considered, there is abnormal deficit in the range of about 17 crores. There is no plausible explanation for abnormal cash balance or abnormal deficit. Further, when so much amount of cash balance is likely to be available, the*

*matter could not have been escaped the memory of the assessee. At the time of search, the assessee has not claimed that the amount of Rs.3,45,45,000 was from share transactions. Further, the share transactions are done through banks and there is no chance for, accumulating these income and keeping as cash.*

*h) In the assessee's reply itself it is an accepted fact that the cash balance as per books could not be found physically. The exact reply of the assessee dated 24-03-2014 is reproduced below.*

*"Apart from practicing as a doctor, Dr.S.F.V.Selvaraj is also dealing in shares and mutual funds as an investor. No proper cash book was maintained and hence cash balance could not be checked periodically. Hence pilferage, theft or embezzlement of cash could not be detected. Cash shortage could not be detected as to when it happened, quantity of loss and the persons responsible for it."*

*Further, the assessee has replied as under:*

*"In (CDC Portfolio Management) A/c cash on hand of Rs.21,03,91,095 is available throughout the month"*

*The assessee is having more than 15 Bank accounts. Nobody will keep that much abnormal amount as cash that too for a whole month. The claim is against probability and facts. Therefore, the assessee's reply is not convincing. There is no proper "explanation for the available physical cash balance of Rs.3,45,45,000 on 24-11-2011. Since the seized cash of Rs.3,45,45,000 is not explained this amount is assessed u/s 69A in the assessment year 2012-13."*

3. The assessee carried the matter in appeal before the Id. CIT(A). The assessee has submitted before the Id. CIT(A) that though the assessee has admitted the amount of ₹.3,45,45,000/- as unaccounted income. As per (CDC Portfolio Management) account, the cash on hand of ₹.21,03,91,095/- was available throughout the month. Similarly, in CDC Med invest account, cash on hand as on 24.11.2011 was

₹.63,78,484/-. Therefore, total cash available as on 24.11.2011 was ₹.21,67,69,579/-, out of which, a sum of ₹.3,45,45,000/- has been seized. It was further submitted that during the assessment year 2012-13, the assessee's gross total income was about ₹.13,77,02,215/- for which he has already filed the return of income. It was further submission that the seized amount of ₹.3,45,45,000/- forms part of the income and hence there is no need to offer it as income. The assessee has filed returns of income on 11.02.2013 for the assessment years 2006-07 to 2011-12, after the search was conducted. The Id. CIT(A) considered the entire explanation of the assessee and confirmed the order of the Assessing Officer by observing as under:

*“8. I have considered the Grounds of appeal raised, assessment order and written submission filed by the Authorised Representative.*

*8.1 This is the case of a medical professional who is regularly assessed to tax. Search was conducted on 24.11.2011. The search revealed that the appellant in addition to his medical profession engaged in share trading in the name and style of CDC Portfolio Management, operates number of bank accounts. In the course of search cash of Rs. 3,45,45,000/- in thousand denomination was found. When this was specifically questioned with the Appellant, in the sworn statement answer to question No.18, he had clearly stated as under:*

*"Q.18. On inspection, it is found in your room which is on the first floor of your residence that three small brief cases contains 1000 Rupee currency notes which totally comes to Rs. 3 Crores. Please explain?"*

*Ans. The amount of Rs. 3 Crores (three crores) represents the income earned over a period of time which is not accounted for. The year to which it relates cannot be correlated. This is the hard earned self*

*employed professional income. I am a senior citizen, I already came forward to inform you that such cash is available in my room. I am voluntarily offering this for taxation with a request not to initiate penalty or prosecution proceeding since I offered voluntarily this amount as income not accounted/undisclosed income accumulated over several years for assessment in the current year. I will pay tax thereon."*

8.2 *Before me, the learned counsel for the Appellant argued that as on the date of search after taking into account additional income offered out of the professional income and also the unaccounted share trading activity i.e. CDC Portfolio Management, will result in availability of cash balance as on date of search. Hence the AR's argument was that the cash found at the time of search would become accounted cash.*

8.3 *The fact is that, after search, taking into account the unaccounted transactions in share trading, the appellant works out a Cash Flow statement incorporating all the undisclosed income offered and arrives at the Cash Balance around Rs. 21 crores and pleads for deleting the addition. In his point of view, the cash found on the day of search is accounted for in Cash Flow Statement. But the appellant's categorical reply to Question No. 18 of Sworn Statement is very clear. It talks about Professional income unaccounted over the period. This is further supported by Appellant's statement in answer to question number 29 and 30 which are reproduced as under:*

*"Q. 29. In Answer to Q. No. 18 you have stated that the amount of Rs. 3 Crores found in 3 small brief cases, was the income earned over a period of time which was not accounted for? Can you explain how this amount of 3 Crores was earned?"*

*Ans. The avenues of my daily revenues comes from 1) consultations 2) Diagnostic services like Xray, ECG, Comprehensive blood profiles, Abdominal pelvis sonogram, Pulmonary function test, Hormone SIS 3) Guest House accommodation charges 4) In patient Admission comprising of Advance and treatment charges. This may average count 90 thousand to 1.80 Lakhs per day except all Sundays and holidays or leave. The entire collection with split up comes to my residence at night. Major amount is deposited in the Bank of Baroda CARDIO DIAGNOSTIC CARE account and the rest of the amount is accumulated over a long period to meet out the prospectively planned multispecialty hospital to satisfy 25% borrower's margin."*

*Q. 30. Do these amounts form part of income/ (s) offered to tax? Please ' explain with proof*

*Ans. Not offered to tax."*

8.4 *The Appellant's answer makes the case very clear that the cash found and admitted in additional income represents unaccounted professional income. At no stretch of imagination the appellant's contention can be accepted that the availability of cash balance of Rs 21,03,91,095/- includes Rs.3,45,45,000/-.*

*The Appellant all along questioned the Assessing Officer for making the addition of Rs.3,45,45,000/- being cash seized at the time of search to the income returned for the AY 2012-13 made by the Assessing officer u/s. 69A on account of unexplained money. Section 69A clearly states that:*

*"Where in any financial year the assessee is found to be the owner of any money, bullion, jewellery or other valuable article and such money, bullion, jewellery or valuable article is not recorded in the books of account, if any, maintained by him for any source of income, and the assessee offers no explanation about the nature and source of acquisition of the money, bullion, jewellery or other valuable article, or the explanation offered by him is not, in the opinion of the [Assessing] Officer, satisfactory, the money and the value of the bullion, jewellery or other valuable article may be deemed to be the income of the assessee for such financial year.*

*Thus any cash found at the time of search should be presumed as income of that year only. The AO has rightly applied the presumption empowered in Section 69A.*

8.5 *This cash found and seized at the time of search represents unaccounted professional income as admitted by the Appellant in the Sworn Statement never retracted, cannot be telescoped against cash balance arrived after search. I am of the considered view that unexplained money found at the time of search has been rightly brought to tax, which is over and above the share trading income unearthed as a result of search. Accordingly the addition made by the AO is confirmed."*

4. On being aggrieved, the assessee is in appeal before the Tribunal. Before us, by taking this new plea, the Id. Counsel of the assessee has submitted that the assessee was maintaining an undisclosed bank account in Syndicate Bank, Nungambakkam Branch and that account was not disclosed to the Department and therefore, the cash found during

the course of search is withdrawals made from that account. It was further submission that there were cash deposits as well as cash withdrawals from the said bank account and based on the bank entries, the seized cash deposits was ₹.3,51,64,905, where the withdrawals was ₹.38,73,50,000/-. It was also argued that the cash found is from the cash on hand in the CDC Portfolio Management – unaccounted share trading. It was further submission that a total sum of ₹.32,13,03,687/- represents exempt undisclosed income of the assessee for the assessment years 2006-07 to 2011-12 and the Id. CIT(A) did not accept the explanation and proceeded to confirm the addition as well as penalty. It was also submitted that the assessee has filed Wealth Tax Returns and as per the wealth tax assessment as on 31.03.2011, the cash on hand was ₹.19,31,28,529/- far above the cash found of ₹.3,45,45,000/-. By taking the above pleas, the Id. Counsel for the assessee prayed for deleting the addition.

5. On the other hand, the Id. DR strongly supported the orders of authorities below.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below including paper

book filed by the assessee. In this case, a search under section 132 of the Act was carried out in the premises of the assessee on 24.11.2011 and during the course of search, cash of ₹.3,45,45,000/- was found and seized. In the sworn statement, the assessee has explained that the amount of ₹.3,45,45,000/- found in his room was his income earned over a period of time which was not accounted for. Therefore, the Assessing Officer has made the addition of ₹.3,45,45,000/- towards unexplained cash.

6.1 Before the Id. CIT(A), the assessee has taken a different plea that the assessee has already had ₹.21,03,91,095/- as on 24.11.2011 and the seized amount of ₹.3,45,45,000/- was within that amount. After considering the submissions of the assessee, the Id. CIT(A) has opined that the assessee's categorical reply to Question No. 18 of sworn statement talks about professional income unaccounted over the period, which was further supported by assessee's statement in his answer to question number 29 and 30. Therefore, the Id. CIT(A) has held that by no stretch of imagination the assessee's contention can be accepted that the availability of cash balance of ₹.21,03,91,095/- includes ₹.3,45,45,000/-.

6.2 Before ITAT, the Id. Counsel for the assessee filed gist of submissions, wherein, entirely a different and new plea has been taken by stating that the assessee was maintaining an undisclosed bank account in Syndicate Bank, Nungambakkam and that account was not disclosed to the Department and therefore, the cash found during the course of search is withdrawals made from that account. The assessee has not raised this issue of undisclosed bank account neither before the Assessing Officer nor before the Id. CIT(A). If at all the argument is accepted that the bank account undisclosed to the Department and withdrawals made from such bank account cannot be considered as undisclosed income found during the course of search. A search action under section 132 of the Act was conducted in the premises of the assessee on 24.11.2011 and thereafter returns of income were filed on 11.02.2013 for the assessment years 2006-07 to 2011-12 and for the assessment year 2012-13, the assessee filed his return of income on 27.03.2013. The bank account, which was not disclosed in the return of income filed, cannot be considered at this stage for the reason that it is not legally tenable. Therefore, we are inclined to accept the contrary plea taken by the Id. Counsel for the assessee and accordingly, the arguments of the Id. Counsel is rejected.

6.3 Another argument raised by the Id. Counsel for the assessee is that the assessee filed his return of income for the assessment years 2006-07 to 2011-12. Consequently, the Assessing Officer has accepted and therefore, the amount seized during the course of search is the amount available with the assessee, which was already explained before the Assessing Officer and therefore, addition cannot be made. We find that this aspect has already been considered by the Id. CIT(A) and held that it was only an afterthought as the return was filed after search and rightly rejected the plea of the assessee. We are fully in agreement with the Id. CIT(A).

6.4 The Id. Counsel for the assessee has also raised another plea that the assessee has filed Wealth Tax Returns and as per the wealth tax assessment as on 31.03.2011, the cash on hand was ₹.19,31,28,529/- far above the cash found of ₹.3,45,45,000/-. We have perused the paper book, wherein, at page 124 relates to wealth tax assessment order dated 30.01.2015 for the assessment years 2007-08 to 2011-12, wherein, against the notice under section 17 of the Wealth Tax Act dated 12.11.2013, the assessee filed his return on 19.02.2014, much after the search operation carried out on 24.11.2011 and cash seized of ₹.3,45,45,000/-. It is very clear that as per cash seized from the residence

of the assessee, the assessee may have declared the cash in hand in the wealth tax return. Here, the point at issue is whether undisclosed income is chargeable to tax or not.

6.5 We find that the assessee himself voluntarily gave a statement under section 132(4) of the Act dated 24.11.2011 that the amount seized from his residence belongs to the assessee earned over a period of years from his professional income and accepted for taxation. As per the Id. CIT(A), there was no retraction of the statement of the assessee and subsequently submitted that the assessee had sufficient cash and declared the same after the search is only an afterthought and it cannot be accepted. Before us, the Id. Counsel for the assessee has submitted that the assessee has made a retraction after 14 months. However, the assessee has not filed any evidence to that effect. Even if we dismiss that the retraction is made after 14 months, the reason for such a huge delay was not explained by the Id. Counsel for the assessee. The assessee was not able to furnish any evidence to the fact that the seized cash represent accounted income of earlier years. The assessee himself has submitted that no proper cash book was maintained either for investment in shares, mutual funds, etc. or from his earnings from medical profession. Moreover, in the assessee's reply itself it is an accepted fact

that the cash balance as per books could not be found physically. Under the above facts and circumstances, we hold that the Assessing Officer has rightly made addition under section 69A of the Act, which was duly confirmed by the Id. CIT(A). Thus, we find no reason to interfere with the order passed by the authorities below on this issue.

7. With regard to the appeal filed against confirmation of levy of penalty under section 271AAA of the Act, the assessee has challenged confirmation of penalty levied under section 271AAA of the Act. A search under section 132 of the Act was conducted by the Income Tax Department on 24.11.2011 in the premises of the assessee as well as in the premises of his wife Dr. Kamala Selvaraj. At the time of search cash to the tune of ₹.3,47,45,280/- was found. Cash to the tune of ₹.3,45,45,000/- [₹.3,00,00,000 + ₹.45,45,000] along with some documents were seized from the assessee. The assessee has accepted that the cash seized was from his unaccounted income of earlier years which was not computed and returns of income filed. Moreover, the assessee has not retracted the statements recorded during the search proceedings. After considering the submissions of the assessee, statements recorded during the search proceedings and various documents seized, the Assessing Officer completed the assessment under section 143(3) r.w.s.

153B(1)(b) of the Act dated 28.03.2014 by assessing total income of the assessee at ₹.5,15,32,143/- by making various additions. Subsequently, the Assessing Officer proceeded to initiate penalty proceedings under section 271AAA of the Act. After considering the reply to the penalty notice, the Assessing Officer reiterated that the amount found during the search under section 132 of the Act represented income earned by the assessee in the medical profession which was not recorded in the books of accounts for the assessment year under consideration. The income was not offered to tax in this assessment year in the return of income filed in response to notice under section 142(1) of the Act. The assessee was also not able to furnish any evidence to the effect that the seized cash represented accounted income of earlier years. The assessee himself has admitted that no proper cash book was maintained by the assessee either for the investment in shares, mutual funds, etc. or for the medical profession. In the assessee's reply itself it is an accepted fact that the cash balance as per books could not be found physically. In view of the above facts, the unexplained cash represented undisclosed income of the assessee for the assessment year 2012-13 and since the provisions of explanation to sub-section 4 of section 271AAA of the Act clearly attracts levy of penalty, the Assessing Officer levied penalty of 10% of undisclosed income being cash seized of ₹.34,54,500/- under section

271AAA(1) of the Act. On appeal, the Id. CIT(A) confirmed the penalty levied under section 271AAA of the Act.

7.1 On being aggrieved, the assessee is in appeal before the Tribunal and raised following grounds:

- “1. *The order of the Commissioner of Income-Tax (Appeals) is wrong, illegal and opposed to facts.*
2. *The Commissioner of Income-Tax (Appeals) erred in confirming the levy of penalty u/s. 271AAA of the Income-Tax Act without adverting to the facts of the case and the submissions made before him in the proper perspective.*
3. *The Commissioner of Income-Tax (Appeals) ought to have seen that there being no satisfaction recorded for initiation of proceedings for levy of penalty u/s. 271AAA of the Income-Tax Act the order impugned must have been quashed.*
4. *The Commissioner of Income-Tax (Appeals) failed to note that the conditions for levy of penalty is lacking and as such the penalty order is untenable in law.*
5. *The Commissioner of Income-Tax (Appeals) went wrong in holding that the addition made fall within the ambit of undisclosed income.”*

7.2 On the other hand, the Id. DR strongly supported the orders of authorities below.

7.3 We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. Against the levy of penalty under section 271AAA of the Act, the assessee preferred an appeal before the Id. CIT(A). After considering the submissions of the assessee, the Id. CIT(A) has observed as under:

- “7. *I have considered the Grounds of Appeal, Penalty Order and Written Submissions of the Appellant. In the instant case, search resulted in detection of unaccounted shares trading business, unaccounted professional income to the tune of Rs.3,45,45,000/- being cash seized which was explained by the Appellant at the time of search that it is accumulated Professional Income earned over the*

*period. But while filing the return, the unaccounted income against the cash seized was not admitted on the ground that the cash flow statement prepared subsequent to search resulted in availability of cash balance to the tune of Rs.21 crores. Since the appellant's sworn statement given dearily proved that represents unaccounted professions income, appellant's stand was not correct. AO's observation is reproduced as under:*

*The assessee was not able to furnish any evidence to the effect that the seized cash represented accounted income of earlier years. The assessee himself has admitted that no proper cash book was maintained by the assessee either for the investment in shares mutual funds, etc or for the medical profession. In the assessee's reply itself it is an accepted fact that the cash balance as per books could not be found physically. In the above circumstances the unexplained cash represented undisclosed income of the assessment year 2012-13. The provisions of explanation to subsection 4 of 271AAA is clearly attracted in this case."*

*It is found that u/s.271AAA that under the scheme of Section 271 AAA, there is a complete paradigm shift so far as penalty in respect of unaccounted income unearthed as a result of search operation carried out on or after 1st June 2007 is concerned. Unlike in the case of penalty under section 271(1)(c), Section 271 AAA, without any reference to findings or presumptions of concealment of income or the findings or presumptions of furnishing of inaccurate particulars, provides that in respect of unaccounted income in the cases where search initiated after 1st June 2007, the assessee is to pay a penalty @ 10% of unaccounted income. Sub section 2 of Section 271 AAA, however, relaxes the rigour of this penalty provision in a situation in which (i) in the course of the search, in a statement under section 132(4), 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) pays the tax, together with interest, if any, in respect of the undisclosed income.*

*8. In the instant case the appellant during the course of the search, in a statement has admitted the undisclosed income, but failed to offer in the return filed and pay the tax thereon. Thus the relaxation clause available in clause (2) of 271AAA is not applicable in this case. The addition made by AO on account of cash seized clearly falls within the ambit of undisclosed income and thereby attracts penalty u/s. 271AAA. Thus the order passed by the Assessing Officer is very much in order. Accordingly, the penalty levied is confirmed. The grounds of appeal, therefore, is dismissed."*

7.4 The relevant provisions of section 271AAA of the Act is reproduced as under for ready reference:

***“Penalty where search has been initiated.***

271AAA. (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 1st day of June, 2007 but before the 1st day of July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year.*

- (2) *Nothing contained in sub-section (1) shall apply 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) pays the tax, together with interest, if any, in respect of the undisclosed income.*
- (3) *No penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).*
- (4) *The provisions of sections 274 and 275 shall, so far as may be, apply in relation to the penalty referred to in this section.*

*Explanation.—For the purposes of this section,—*

*(a) "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*
  - (ii) 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 and would not have been found to be so had the search not been conducted;*
- (b) "specified previous year" means the previous year—*
- (i) which has ended before the date of search, but the date of filing the return of income under sub-section (1) of section 139 for 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 said date; or*
  - (ii) in which search was conducted."*

7.5 On perusal of the above provision, we also find that the scheme of Section 271 AAA of the Act, there is a complete paradigm shift so far as penalty in respect of unaccounted income unearthed as a result of search operation carried out on or after 1st June 2007 is concerned. Unlike in the case of penalty under section 271(1)(c), Section 271 AAA, without any reference to findings or presumptions of concealment of income or the findings or presumptions of furnishing of inaccurate particulars, provides that in respect of unaccounted income in the cases where search initiated after 1st June 2007, the assessee is to pay a penalty @ 10% of unaccounted income. Sub section 2 of Section 271AAA of the Act, however, relaxes the rigour of this penalty provision in a situation in which (i) in the course of the search, in a statement under section 132(4), 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) pays the tax, together with interest, if any, in respect of the undisclosed income. Thus, there is no specific requirement of recording satisfaction by the Assessing Officer. Otherwise also, in the penalty order, the Assessing Officer has very well considered various objections of the assessee and thereafter proceeded to levy the penalty under section 271AAA of the Act.

7.6 In the present case, during the course of search, in a statement recorded under section 132(4) of the Act, the assessee has admitted the undisclosed income, but failed to offer in the return filed and pay tax thereon consequent upon the search. Since the addition made by the Assessing Officer on account of cash seized clearly falls within the ambit of undisclosed income and thereby warranting levy of penalty under section 271AAA of the Act. In view of the above, the Id. CIT(A) has rightly confirmed the penalty levied under section 271AAA of the Act. We find no reason to interfere with the order passed by the Id. CIT(A). Accordingly, the grounds raised by the assessee are dismissed.

6. In the result, both the appeals filed by the assessee are dismissed.

Order pronounced on the 06<sup>th</sup> July, 2022 in Chennai.

Sd/-  
(G. MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-  
(V. DURGA RAO)  
JUDICIAL MEMBER

Chennai, Dated, 06.07.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.