

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"A" BENCH, AHMEDABAD**

**BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER**  
**AND**  
**SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

**ITA No.1226/Ahd/2019**  
**Assessment Year : 2014-15**

Shri Jagdishbhai R. Patel 55, Para Ambika Society B/h. Rajkamal petrol Pump Mehsana, Gujarat. PAN : BMUPP 4203 R	ACIT Cent.Cir.1(2) Ahmedabad.
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<b>(Applicant)</b>		<b>(Responent)</b>
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Assessee by :	None
Revenue by :	Shri S.S. Shukla, Sr.DR

सुनवाई की तारीख/Date of Hearing : 19/04/2022

घोषणा की तारीख /Date of Pronouncement: 13/07/2022

**आदेश/O R D E R**

**PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER**

Present appeal has been filed by the assessee against order passed by the ld.Commissioner of Income-Tax (Appeals)-11, Ahmedabad [hereinafter referred to as "CIT(A)"] dated 3.5.2019 passed under section 250(6) of the Income Tax Act, 1961 [hereinafter referred to as "the Act" for short] confirming levy of penalty under section 271AAB of the Act.

2. Grounds raised by the assessee are as under:

*1. On the facts and circumstances of the case as well as in law, the Learned CIT(A) has erred in confirming the action of Learned*

*Assessing Officer of levying penalty of Rs.19,50,000/- U/s.271AAB of the Income Tax Act, 1961.*

*2. The penalty levied by the Ld. AO on account of non- furnishing return with in time framed U/S 139 (1) is not in consonance with the facts of the case and in law.*

*3. The learned Assessing officer ought to have appreciated the fact that the money was already lying with the department and Hence it can not be said that there was delay in making payment of tax or filing of Income tax return.”*

3. None appeared on behalf of the assessee nor filed application for seeking adjournment. We have noted from the order-sheet entries pertaining to the hearing of the appeal before us that on previous two occasions also the appeal had remained unrepresented by the assessee. The assessee, we have noted, had filed an application seeking adjournment on one occasion, and on the other occasion no such application has been filed. Today also none came present on behalf of the assessee. It seems that the assessee is not interested in pursuing his appeal, and therefore, the appeal was proceeded to be decided *ex parte*.

4. A perusal of the orders of the authorities below reveals that in the present case, search action was conducted on the assessee from 1.7.2013 to 5.7.2013 and during the course of search cash of Rs.65 lakhs was seized. The assessee admitted during the course of search in a statement given on oath that cash belonged to him. Thereafter for the impugned year, return of income was filed by the assessee on 31.8.2015 showing total income of Rs.65,40,060/- which was accepted by the AO vide his order dated 4.2.2016. The AO also initiated penalty proceedings under section 271AAB of the Act and levied penalty at the rate of 30% of the undisclosed income noting that the assessee had not filed return of income before the

specified date i.e. 31.7.2015. Accordingly, penalty of Rs.19,50,000/- was levied on the undisclosed income of Rs.65 lakhs.

5. Before the Id.CIT(A), the assessee contended that he had filed his return of income on 31.8.2015 which was well within the time allowed under section 139(4) of the Act and that section 139(4) was in the nature of proviso to section 139(1) providing that a person who has not furnished return within the time allowed under section 139(1) may furnish return at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment whichever is earlier. He contended therefore that section 139(1) invariably included section 139(4) in section 139(1) of the Act. He further contended that he had disclosed in his statement an amount of Rs.65 lakhs; offered the same for taxation in the return of income and taxes on the same have also been paid by way of adjustment of seized cash. The Id.CIT(A) has however rejected all the contentions of the assessee holding as under:

*"5. Submission of the appellant, assessment order and penalty order have been considered carefully. The only ground of appeal is against the penalty of Rs.19,50,000/- levied by the AO u/s.271AAB of the Act. The facts of the case in brief are that search was conducted from 1/7/2013 to 5.7.2013 upon the appellant and during the course of search, cash of Rs.65 lakhs was seized. Shri Jagdish R. Patel admitted during the course of search while giving the statement on oath that the cash seized belongs to him. The appellant filed return of income for AY 2014-15 on 31.8.2015 showing total income of Rs.65,40,060/- and the same was accepted by the AO vide order dated 4th February, 2016. The AO initiated penalty proceedings u/s.271AAB of the Act. The AO imposed penalty u/s.271AAB vide order dated 21st August, 2016 stating that the appellant has not filed the return before the specified date i.e. 31st July, 2015, hence, penalty equal to 30% of the undisclosed income was imposed u/s.271AAB of the Act. The appellant contended that he has filed return of income on 31st August, 2015 which is well within the time limit allowed u/s. 139(1) of the Act but this contention of the appellant is found legally unacceptable for the reason that as per the provisions of section 271AAB of the Act, "specified date" means the due date of furnishing of return of income under sub-section (1) of section 139 and in the appellant's case, the specified date was 31.7.2015, hence, return filed by the appellant was not u/s. 139(1) of the Act. Thus, this contention of*

*the appellant is rejected. The appellant further stated that the cash of Rs.65 lakhs was seized and he has intimated to the AO for adjustment of seized cash against the outstanding tax liabilities and because of getting for this adjustment of seized cash against the tax liability, the appellant could not file return within specified date. The appellant's contention is not legally acceptable for the reason that the seized cash can only be adjusted against any existing liability under this Act as per the provisions of section 132B of the Act. The payment of self assessment tax is not an existing liability, hence, seized cash cannot be adjusted against self assessment tax. From these facts, it is very clear that the appellant has not complied all the conditions mentioned in section 271AAB of the Act, therefore, the penalty u/s.271AAB of the Act at the rate of 30% of the undisclosed income levied by the AO is justified, hence, it is confirmed. This ground of appeal is dismissed.”*

6. We have perused the order of the Id.CIT(A).We find that the Ld.CIT(A) upheld the penalty of Rs.19,50,000/-,levied u/s 271AAB of the Act @ 30% of the undisclosed income of Rs.65 lacs, noting that the assessee had failed to fulfill the following conditions by the specified date as required by the section :

- a) filing its return declaring the undisclosed income
- b) paying all taxes due thereon.

7. That accordingly penalty @ 30% was required to be levied as per the section on account of the above failure of the assessee. The Ld.CIT(A) rejected both the contentions of the assessee of treating belated return filed u/s 139(4) of the Act as being filed u/s 139(1) of the Act and treating cash seized to be treated as adjusted against taxes due thus tantamounting to taxes also being paid by the assessee on the undisclosed income by the specified date. The Ld.CIT(A) rejected the first contention pointing out the clear wording of the section requiring return to be filed as allowed u/s 139(1) of the Act. As for adjustment of cash seized against taxes to be paid he noted that section 132B of the Act allows adjustment of amounts seized against existing liabilities of tax only and self assessment tax being not in the nature of existing liability the cash seized could not

be adjusted against the same. We find no infirmity in the well reasoned order of the Ld.CIT(A) as above.

8. In view of the above, we uphold the order of the ld.CIT(A) confirming the levy of penalty of Rs.19,50,000/- under section 271AAB of the Act. The grounds raised by the assessee are rejected.

9. In the result, appeal of the assessee is dismissed.

**Order pronounced in the Court on 13<sup>th</sup> July, 2022 at Ahmedabad.**

**Sd/-  
(SIDDHARTHA NAUTIYAL)  
JUDICIAL MEMBER**

**Sd/-  
(ANNAPURNA GUPTA)  
ACCOUNTANT MEMBER**

Ahmedabad, dated 13/07/2022