

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.6313/DEL/2019
Assessment Year 2008-09

M/s. BLK Lifestyle Ltd., B-1/E-23 Extension, Mohan Co- operative Industrial Estate, Mathura Road, New Delhi.	vs.	ACIT, Central Circle-15, New Delhi.
TAN/PAN: AABCB8273C		
(Appellant)		(Respondent)

Appellant by:	Shri Saurav Rahtogi, CA		
Respondent by:	Mrs. Suman Malik, Sr.D.R.		
Date of hearing:	23	06	2022
Date of pronouncement:	18	07	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-XXVI, New Delhi ['CIT(A)' in short] dated 13.06.2019 arising from the assessment order dated 29.12.2009 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2008-09.

2. As per its grounds of appeal, the assessee has challenged imposition of penalty of Rs.3,00,880/- under Section 271(1)(c) of the Act.
3. We have heard the rival submissions on the issue.
4. As stated on behalf of the assessee, a search and seizure operation under Section 132 of the Act was conducted on

19.02.2008 in the case of M/s. B.L. Kashyap & Sons Group of cases including the assessee herein. The assessee thereafter filed return on 26.09.2008 and declared a loss of Rs. (-) 5,84,55,622/-. The income was assessed under Section 143(3) of the Act vide order dated 29.12.2009 assessing the loss of Rs. (-) 5,14,96,350/-. The penalty proceedings were simultaneously issued under 271(1)(c) of the Act. A penalty of Rs.3,00,880/- was imposed under Section 271(1)(c) of the Act after taking into account certain reliefs granted by the appellate order in the quantum proceedings. In his factual backdrop, the assessee contends that the penalty in the instant case has been initiated under Section 271(1)(c) of the Act whereas the case of the assessee clearly falls under Section 271AAA of the Act applicable at the relevant time. The assessee thus contends that the whole proceedings under Section 271(1)(c) culminating in imposition of penalty of Rs.3,00,880/- is void *ab initio* and requires to be struck down being appose to the Scheme of the Act.

5. As noted, a search was carried out on 19.02.2008, i.e., during the currency of Financial Year 2007-08 relevant to Assessment Year 2008-09 in question. Thus due date for filing of return of income for Assessment Year 2008-09 had neither expired nor the assessee filed any return prior to search. The case of the assessee thus falls within the purview of expression 'specified previous year' contemplated under Section 271AAA of the Act. Hence, the undisclosed income by way of difference in closing stock and disallowances of expenses on the basis of seized material could culminate in penal action under the specific provision provided under Section 271AAA of the Act meant for such situation. Section 271AAA seeks to impose penalty where

undisclosed income is detected during the course of search initiated under Section 132 of the Act on or after 01.06.2007 which condition has been fulfilled. The return of income is neither filed nor due date for furnishing the return of income has expired on the date of search, and therefore, the case of the assessee also falls within the sweep of 'specified previous year'. Hence, the Assessing Officer could not take resort to Section 271(1)(c) instead of Section 271AAA of the Act providing concessional treatment to assessee in the situation as the assessee is placed herein. Hence, the action of the Revenue in imposing penalty under Section 271(1)(c) cannot be countenanced in law. We thus find merit in the plea of the assessee for cancellation of penalty in question.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 18/07/2022.

Sd/-

Sd/-

**[CHALLA NAGENDRA PRASAD]
JUDICIAL MEMBER**

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**

DATED: /07/2022

Prabhat