

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "D", MUMBAI

BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER) &
KAVITHA RAJAGOPAL (JUDICIAL MEMBER)

ITA No. 1972/MUM/2020 (A.Y.2013-14)

Shri Ramavatar Mandavewala 1304, Advent Palazzo Ram Baug Lane Off S V Road, Malad East PAN : AABPM6600R	vs	JT.CIT(OSD)-CC-2(4), Mumbai
APPELLANT		RESPONDENT

Assessee represented by	Pratha Aggarwal
Department represented by	Shri T Shankar (Sr.AR CIT)

Date of hearing	10/06/2022
Date of pronouncement	13/06/2022

ORDER

Per Kavitha Rajagopal (JM):

This appeal has been filed by the assessee against the order of Ld.CIT(A)-48, Mumbai dated 38/08/2020 under section 271AAB of the Income-tax Act, 1961 for the Assessment Year 2013-14.

2. The solitary issue that has been raised by the assessee in the present appeal is the penalty levied under section 271AAB to the tune of Rs.4,50,000/- for the relevant assessment year.

3. The brief facts of the case are that the assessee being an individual derives income from business and other sources. Pursuant to a search and seizure operation under section 132 of the Act carried out in case of M/s Gold

Sukh Safety Vaults Ltd which is involved in the business of providing lockers on rent to various persons, on 18/11/2012, cash of Rs.15 lakhs was found in locker No.122 which was alleged to be in the name of the assessee. Having admitted to the ownership of the locker, a statement under section 132(4) of the Act was recorded from the assessee. The impugned cash was seized and proceeding under section 153C of the Act was initiated for assessment years 2007-08 to 2012-13. Regular assessment proceedings was initiated under section 143(3) of the Act for the impugned assessment year. Assessing Officer made addition of Rs.15 lakhs in the hands of the assessee as unexplained cash and penalty proceedings were initiated under section 271AAB of the Act. The assessing officer then levied the minimum penalty of Rs.4,50,000/- at the rate of 30% of the undisclosed income under section 271AAB of the Act vide order dated income under section 271AAB of the Act vide order dated 27/03/2019. Aggrieved by the impugned order, the assessee preferred appeal before the Ld.CIT(A) who confirmed the order of the assessing officer.

4. The assessee is in appeal before us against the order of the Ld.CIT(A). During the appellate proceedings, the Ld.AR contended that the conditions required for initiating penalty proceeding under section 271AAB was not satisfied in the assessee's case and further stated that the assessment order for the impugned assessment year was held to be invalid and thereby quashed by the order of Hon'ble ITAT, Mumbai Bench in ITA No.6314/Mum/2017 on the ground that the Assessing Officer has wrongly assumed jurisdiction under section 143(3) of the Act. The Ld.DR on the other hand relied on the statement of the assessee recorded under section 132(4) wherein he has admitted to the material seized during the search proceedings and brought our attention to para 2.2 of AO's order. The Ld.DR relied on the order of the lower authorities.

5. We have considered the rival submissions and perused the materials on record. It is evident from the facts of the case that no search has been conducted on the assessee *per se* under section 132 of the Act. The provisions of section 271AAB warrants that upon search under section 132 of the Act, any

undisclosed income, if identified, will be the prima facie requirement to levy penalty under section 271AAB. The present case in hand, does not satisfy the prima facie requirement as search was conducted in M/s Gold Sukh Safety Vaults Ltd and not on the assessee. Though the assessee, in his statement under section 132(4) has admitted that he owns the locker No.122 in which the impugned undisclosed cash of Rs.15 lakhs was recovered, it becomes pertinent to point out that section 271AAB mandates that search has to be initiated to levy penalty.

6. From the above observations, we are of the view that penalty cannot be levied in the present case as the mandatory search proceedings were not initiated on the assessee under section 132 of the Act. Resultantly, section 271AAB is not applicable in assessee's case.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 13th day of June, 2022.

Sd/-

sd/-

(OM PRAKASH KANT)	(KAVITHA RAJAGOPAL)
ACCOUNTANT MEMBER	JUDICIAL MEMBER

Mumbai, Dated: 13/06/2022

Pavanan

Copy of the Order forwarded to :

1. The Appellant ,
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai