

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, KOLKATA****BEFORE SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER****AND****SHRI GIRISH AGRAWAL, HON'BLE ACCOUNTANT MEMBER****I.T.A. No. 1504/Kol/2017****Assessment Year: 2011-12**

Shri Jatender Singh Marwaha 29A, Kali Temple Road, Kolkata- 700026 (PAN: BQKPM1218H)	Vs	Deputy Director of Income-tax, (IT)- 1(1), Kolkata.
---	----	--

अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
------------------------	--	--------------------------

Assessee by :	Shri K. K. Goshwami, Advocate & Shri Shubhankar Ghosh, CA
Respondent by :	Shri G. J. Sema, Addl. CIT

सुनवाई की तारीख/Date of Hearing : 06/07/2022

घोषणा की तारीख/Date of Pronouncement: /09/2022

आदेश/ORDER**PER SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER:**

Present appeal by the assessee is against the order of Commissioner of Income-tax (Appeals) -22, Kolkata vide appeal no. 126/CIT(A)-22/11-12/14-15/Kol dated 29.04.2017 which is against the penalty order dated 30.09.2013 u/s 271AAA of the Income-tax Act, 1961 (hereinafter referred to as the 'Act') passed by DDIT (Int'l Taxation) – 1(1), Kolkata.

2. Grounds of appeal taken by the assessee are reproduced as under:-

“1. For that on the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in not appreciating the facts of the case and thus was wrong and unjustified in confirming the penalty imposed by the Ld. A.O. U / s. 271AAA of the Income Tax Act, 1961. The penalty order U / s. 271AAA is liable to be quashed.

2. For that on the facts and in the circumstances of the case, the Ld. CIT(Appeals) was vehemently wrong and unjustified in not appreciating the facts explained by the appellant and was bad in law in confirming the penalty imposed U / s. 271AAA of the Income Tax Act, 1961 amounting to Rs. 7,00,650/- (to be read as Rs. 4,15,050/- after the appeal effect of quantum appeal). The penalty amounting to Rs. 4,15,050/- is liable to be deleted.

3. For that on the facts and in the circumstances of the case, the Ld. CIT(Appeals) erred in confirming the penalty U / s. 271AAA of the Income Tax Act, 1961 although all the conditions precedent for availing the immunity U/s. 271AAA(2) was satisfied by the appellant. The penalty amounting to Rs.4,15,050/- is bad in law and is liable to be deleted.

4. That the appellant craves leave to add or alter, amend and modify substantiate , delete and / or revise all or any of the grounds of appeal and or before the final hearing.”

3. Brief facts of the case are that assessee is a citizen of United Kingdom and a non-resident for the purpose of the Act. A search and seizure operation was conducted under section 132 of the Act on 26.01.2011 in the case of the assessee at the Netaji Subhash Chandra Bose International Airport (NSCBI), Kolkata. As per the search and seizure report of the Deputy Director of Income-tax (Inv.), Unit-IV(5), Kolkata, the assessee was enroute from Delhi to Kolkata by flight number SG-212 and was intercepted at the NSCBI airport at Kolkata on 26.01.2011, based on information received from DDIT, AIU, New Delhi that the assessee was carrying huge amount of cash. Summons u/s 131 of the Act was served on the assessee and a statement was recorded wherein assessee admitted that he was carrying ₹ 51.50 lakhs roughly and 20,000 pounds sterling. A warrant of authorisation under section 132(1) of the Act was issued in the name of the assessee which was executed on the assessee at the NSCBI airport, Kolkata on 26.01.2011.

4. The inventory of cash found in the possession of the assessee in the course of search operation was inventorized at ₹ 51.19 lakhs and £ 20,000. Out of these said cash found, an amount of ₹ 49 lakhs and £ 20,000 were seized and the balance

amount of ₹ 2.19 lakhs was returned to the assessee. Foreign currency of ₹ 20,000 was handed over to the Assistant Director, Directorate of Enforcement, Kolkata.

In the assessment order, at para 3, Id. AO noted in respect of statement recorded of the assessee wherein it was stated that he was coming from Phagwara, Punjab, Dist. Jalandhar by flight number SG – 212, Delhi to Kolkata and that he was carrying roughly ₹ 51.50 lakhs and ₹ 20,000 which was the sale proceeds of ancestral land at Phagwara, Punjab. Id. AO also noted from the statement of the assessee that the said cash amounts were handed over by the property dealer, Avtar Singh (Bablu) of Chahal Nagar, Phagwara Dist. Jalandhar, Punjab, India. Id. AO also stated that an enquiry was made by the ADIT (Inv.), Jalandhar and a statement of Shri Avtar Singh was recorded on 27.01.2011. From the enquiry report of ADIT (Inv.), Jalandhar, Id. AO noted that assessee had sold land situated at Chahal Nagar, Phagwara measuring 18 marlas to Shri Mukesh Kumar @ ₹ 4.25 lakhs per marlas and that the land deal was done through Shri Avtar Singh.

5. In the course of assessment proceedings, Id. AO noted that registered sale deed executed on 24.01.2011 mentioned about the total sale value of the land at ₹ 19.80 lakhs. Against this the assessee has submitted that total sale proceeds of the property was ₹ 76.5 lakhs. Accordingly, Id. AO completed the assessment with assessed total income at ₹ 70,06,500 by adopting the sale consideration of the property at ₹ 76.50 lakhs and not ₹ 19.80 lakhs shown in the registered sale deed. Id. AO also initiated the penalty proceedings u/s 271AAA of the Act. Aggrieved, assessee went in appeal before the Id. CIT(A) after which the total income was computed at ₹ 41,50,500.

6. Penalty proceedings under section 271AAA of the Act were undertaken. A show cause notice was issued on the assessee against which assessee submitted that

penalty is not impossible since all the conditions mentioned in sub-section (2) of section 271AAA of the Act were complied with. However, Id. AO concluded that all the three necessary conditions laid down u/s 271AAA(2) of the Act have not been complied with as no voluntary admission towards undisclosed income has been made by the assessee and imposed a penalty u/s 271AAA of ₹ 7,00,650/- at the rate of 10% of the undisclosed income of ₹ 70,06,500/-. Aggrieved, assessee went in appeal before the Id. CIT(A) who confirmed the penalty. Aggrieved, assessee is in appeal before the Tribunal.

7. In the interim, Id. AO passed an order under section 154rws 271AAA of the Act dated 22.09.2015 to give appeal effect to the order of Id. CIT(A) by which the total income was taken at ₹ 41,50,500/- and consequently the penalty @ 10% was revised to ₹ 4,15,050/-.

8. Before us, Shri K.K. Goswami, Advocate and CA Shubhankar Ghosh represented the assessee and Shri G.H. Sema represented the Department.

9. Ld.Counsel for the assessee placed on record a written submission and reiterated the facts of the case and the contentions in respect of deleting the penalty imposed by the Id. AO. The submissions and contentions made by the Ld. Counsel are not repeated for the sake of brevity since the same have been narrated in detail in the above paragraphs.

10. Ld. Counsel laid emphasis on the fulfilment of all the three conditions of section 271AAA(2) of the Act by the assessee which the Id. AO and the Id. CIT(A) failed to take into consideration for the penalty imposed on the assessee. He referred to the provisions of section 271AAA of the Act which is reproduced as under: –

“271AAA. *Penalty where search has been initiated.*—(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, 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 Chief Commissioner or Commissioner before the date of the 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.’.

11. Reference was made by the Id. Counsel to the statement recorded of the assessee which is reproduced in the impugned order at page 8 and 9 wherein the assessee has admitted the income and specified the manner in the course of search, in which the income has been earned. Income disclosed by the assessee was duly substantiated with documentary evidence as well as by the report of the ADIT (Inv.), Jalandhar and was accepted by the Id. AO in the assessment which was subsequently revised in the first appellate proceedings, after which order under section 154 r.w.s 271AAA was passed on 22.09.2015. He also stated that assessee has paid the necessary taxes on the income assessed in the hands of the assessee in respect of the impugned transaction of sale of land. Id. Counsel pointed out that the amount of sale consideration was seized by the Department and therefore, the assessee has deemed to have paid the taxes as the seized amount was refunded after the deduction of applicable taxes and interest on the assessed income. Id. Counsel stated that assessment was completed with a tax effect of ₹ 19.50 lakhs which was adjusted with the seized amount of cash and the remaining amount of ₹ 8,82,530/- was returned to the assessee for which order under section 154/251/143(3) of the Act was passed dated 14.12.2015.

12. The typed version of the statement recorded of the assessee and reproduced in the impugned order of penalty is extracted below for ease of reference:-

*“Q-2) From where you are coming and how much cash are you carrying with you?
I am coming from Phagwara, Punjab, Dist. Jalandhar by flight number SG – 212, Delhi to Kolkata. I am carrying roughly ₹ 51.5 lakhs and ₹ 20,000.*

Q-3) During the course of search ₹ 51,19,000 has been found from the trolley bag being carried by you from Delhi to Kolkata and ₹ 20,000 has also been found. Please produce the evidence/documents in respect of the above mentioned cash.

I don't have any documents showing the source of said cash and can only say that the said cash is sales proceeds of my ancestral land.

Q-4) In absence of showing the source of the above cash (₹ 51,19,000 and ₹ 20,000) the said amounts has been considered your unaccounted income and without producing evidence the same will be seized. Comments please.

Sir you take action as per law in respect of seizure.”

13. Ld. Counsel pointed to one of the fact noted by the Id. AO in the penalty order in paragraph 6(vi) according to which *“it was only in the course of certain seizure operation conducted in respect of the assessee and statement recorded and given on oath by the assessee on 26.01.2011, it was revealed and confirmed by the assessee that the property was in fact sold at a sale consideration of ₹ 76.50 lakhs.”* Thus, Ld. Counsel submitted that assessee had admitted the income and has specified the manner in which the income was earned. To further corroborate this assertion, Ld. Counsel referred to the assessment order wherein the fact of enquiry conducted by the ADIT (Inv.), Jalandhar is noted which revealed that assessee had sold land situated at Chahal Nagar, Phagwara measuring 18 marlas @ 4.25 lakhs per marlas and the deal was the done through broker named Shri Avtar Singh. He thus claimed that the transaction carried out by the assessee was bona fide. It was further submitted by the Ld. Counsel that income from the sale proceeds of the land has been duly reported in the computation and income-tax return filed by the assessee on 23.02.2012 wherein it has been shown as long-term capital gain on which the assessment has been completed. Assessee had no other income other than the long-term capital gains earned by the assessee on the sale transaction of his ancestral land.

14. Per contra, Ld. Senior DR placed reliance on the orders of the Ld. AO and the Ld. CIT(A) and asserted that penalty has been rightly imposed on the assessee.

15. We have heard the rival contentions and perused the material placed on record. The moot point before us in the present appeal is in respect of claim of the

assessee that penalty under section 271AAA is not impossible since all the three conditions specified in section 271AAA(2) of the Act have been duly complied with. From the facts narrated above, we note that assessee is a citizen of United Kingdom and a non-resident who had no income chargeable under the Act, other than the long-term capital gain reported in the income tax return for the year under consideration in respect of sale of his ancestral land situated at Chahal Nagar, Phagwara, Dist. Jalandhar, Punjab. It is also a fact that enquiry conducted by ADIT(Inv.), Jalandhar revealed the execution of impugned sale transaction of land which has been duly noted by the Ld. AO in the assessment order itself. The total income of the assessee in this respect has been assessed after the first appeal effect at ₹ 41,50,500/- on which penalty u/s 271AAA(1) of the Act has been imposed at the rate of 10%, amounting to ₹ 4,15,050/-.

16. From the perusal of the provisions of section 271AAA(2), we note that upon complying with the three conditions mentioned therein, penalty under section 271AAA(1) of the Act is not imposable. The first condition requires that the assessee admits in the course of search in the statement recorded under section 132(4) of the Act, the undisclosed income and specifies the manner in which such income has been derived. The second condition requires that the assessee substantiates the manner in which the undisclosed income was derived. From the statement recorded of the assessee reproduced above, it is evident that both these conditions had been complied by the assessee. The third condition requires that the assessee pays the tax together with interest in respect of the undisclosed income. Fulfilment of this condition has also been evidently demonstrated by the Ld. Counsel by pointing out that assessment was completed with a tax effect of ₹ 19.50 lakhs which was adjusted with the seized amount of cash and the remaining amount was returned to the assessee. We find ourselves convinced with the conspectus of above factual matrix and the submissions made by the Ld. Counsel of the assessee and accordingly have

no hesitation in directing the Ld. AO to delete the penalty imposed under section 271AAA of the Act in the sum of ₹ 4,15,050/-. Accordingly, grounds raised by the assessee are allowed.

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

Order pronounced in the Court on 26 September, 2022.

Sd/-

**(SONJOY SARMA)
JUDICIAL MEMBER**

Sd/-

**(GIRISH AGRAWAL)
ACCOUNTANT MEMBER**

Dated 26 /09/2022

SC SpP

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata