

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI S. S. GODARA, JUDICIAL MEMBER
AND
SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER

आयकर अपील सं. / ITA No.1578/PUN/2018
निर्धारण वर्ष / Assessment Year: 2012-13

Sanjay Babasaheb Patil, 252, E-Ward, Dipti Park, Assembly Road, Kolhapur- 416001. PAN : ABLPP1660K	Vs.	ACIT, (Central) Circle, Kolhapur.
Appellant		Respondent

Assessee by : Shri M. K. Kulkarani
Revenue by : Shri M. G. Jasnani

Date of hearing : 30.09.2022
Date of pronouncement : 07.10.2022

आदेश / ORDER

PER S. S. GODARA, JM:

This assessee's appeal for assessment year 2012-13 arises against the CIT(A)-11, Pune's order dated 31.05.2018 passed in case no. Pn/CIT(A)-11/ACIT Cen. Cer. Kolhapur/Kol/973/2014-15, involving proceedings u/s 271AAA of the Income Tax Act, 1961; in short "the Act".

Heard both the parties. Case file perused.

2. We notice at the outset that the assessee's sole substantive grievance challenging correctness of both the learned lower authorities' action imposing section 271AAA penalty of

Rs.3,59,200/-; hardly requires us to delve deeper in the relevant factual matrix. We make it clear that the impugned penalty provision comes into play when an assessee concerned fails to satisfy the three conditions of admitting the undisclosed income followed by the manner of having derived the sums, substantiation thereof and payment of taxes; as the case may be.

3. We keep in mind the foregoing statutory provision and proceed to deal with the facts of the instant case. We make it clear that the department had carried out the search in issue on 25.08.2011. The assessee had disclosed unaccounted investment of Rs.5,49,000/- therein. There is further an issue of foreign unexplained expenses amount of Rs.3,63,482/- as well. It is these two heads which form subject matter of penalty imposed herein u/s 271AAA of the Act. We find from a perusal of the Assessing Officer's penalty order dated 17.12.2014 and CIT(A)'s order that the Revenue has not been able to pinpoint any specific averment of violation the foregoing three statutory conditions in their respective orders. Mr. Jasnani quoted PCIT vs. Smt. Ritu Singal [2018] 92 taxmann.com 224 (Delhi) that it is not a mandatory condition for the department to raise any specific query regarding the above three conditions whereas hon'ble Gujarat high court in PCIT vs. Mukeshbhai Ramanlal Prajapati [2018] 99 taxmann.com 447

(Gujarat) appears to have decided the very issue in assessee's favour. Faced with this situation and in light of facts the hon'ble jurisdictional high court having not adjudicated the instant legal question, we go by the latter case law to decide the issue in assessee's favour and against the department in light of CIT vs. Vegetable Products Ltd. [1973] 88 ITR 192 (SC). The impugned penalty is directed to be deleted therefore.

Delay of 41 days in filing of the instant appeal stands condoned in light of assessee's contentions and in larger interest of justice.

4. This assessee's appeal is allowed in above terms.

Order pronounced on this 07th day of October, 2022.

Sd/-
(G. D. PADMAHSHALI)
ACCOUNTANT MEMBER

Sd/-
(S. S. GODARA)
JUDICIAL MEMBER

पुणे / Pune; दिनांक / Dated : 07th October, 2022.

Sujeet

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

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-11, Pune.
4. The Pr. CIT (Central), Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "B" बेंच, पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

आदेशानुसार / BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.