

**IN THE INCOME TAX APPELLATE TRIBUNAL
“SMC” BENCH, AHMEDABAD**

BEFORE MS. SUCHITRA KAMBLE, JUDICIAL MEMBER&

I.T.A. No.2219/Ahd/2018
(Assessment Year: 2005-06)

Smt. Sarita S. Gupta C-701, Dhananjay Tower, Satellite, Ahmedabad-380015 [PAN No.ACVP1722G]	Vs.	ITO Ward-3(3)(5), Ahmedabad
(Appellant)	..	(Respondent)

I.T.A. Nos. 215 to 218/Ahd/2019
(Assessment Years: 2008-09 to 2011-12)

Smt. Sarita S. Gupta C-701, Dhananjay Tower, Satellite, Ahmedabad-380015 [PAN No.ACVP1722G]	Vs.	ITO Ward-3(3)(5), Ahmedabad
(Appellant)	..	(Respondent)

Appellant by :	Shri Ravish Bhatt, C.A.
Respondent by:	Shri Ravindra, Sr. D.R.

Date of Hearing	18.10.2022
Date of Pronouncement	09.11.2022

ORDER

PER Ms. SUCHITRA KAMBLE - JM:

This bunch of appeals filed by the assessee are filed against the orders passed by the Ld. CIT(A)-3, Ahmedabad on different dates for different Assessment Years.

2. The grounds of appeal raised by the assessee in ITA No. 2219/Ahd/2018 for A.Y. 2005-06 read as under:

“1. Because the hon’ble CIT(A) has erred in law and on facts in upholding the penalty imposed by the Ld AO invoking provisions of section 271(1)(c) in case of suo-moto additional income offered in the return u/s. 153A of the Act, where no additional income is unearthed by the Ld AO and in absence of any findings of inaccurate particulars of income or concealment of income by the Ld AO.”

3. The additional grounds of appeal raised by the assessee in ITA No. 2219/Ahd/2018 for A.Y. 2005-06 are read as under:

“2. Because the impugned judgment and order is passed in violation of the Principles of Natural Justice as various submissions specifically raised by The Appellant have not at all been dealt with in the impugned judgment and order.

3. Because the impugned judgment and order is vitiated as having been passed placing reverse burden of proof upon The Appellant absent any primary evidence to establish that The Appellant had concealed the income or had furnished inaccurate particulars.

4. Because the entire penalty proceedings beginning with the show cause notice are vitiated for violation of The Principles of Natural Justices as the SCN is a Performa show cause notice which doesn't even state the grounds to be met specifically by The Appellant and which does not even specify the limb of Sec.271 (1) (C) under which the penalty was sought to be levied.

The Appellant states that the grounds sought to be raised as pointed out above are legal grounds raised on the basis of material available on record and don't require appreciation of any new material/facts.”

4. As we taking ITA No. 2219/Ahd/2018 for A.Y. 2005-06 for lead case. The assessee filed her original return of income under Section 139(1) of the Income Tax Act for A.Y. 2005-06 on 05.12.2005 showing income of Rs. 4,49,591/-. A search action under Section 132 of the Act was conducted at her residential premises. Notice under Section 153A of the Act dated 07.01.2011 was issued by the ACIT, Central Circle-2(2), Ahmedabad on the assessee. In response return of income under Section 153A of the Act was filed by the assessee on 18.01.2012 showing an income of Rs. 5,95,330/- offering an additional income of Rs. 1,45,739/- as income from other sources. The DCIT, Central Circle-2(2), Ahmedabad passed assessment order under Section 143(3) r.w.s. 153A of the Act dated 18.03.2013 making an addition of Rs. 1,60,000/- which was challenged by the assessee before the CIT(A) to delete all the additions made by the Assessing Officer and restore the assessed income to Rs. 5,95,330/- as offered by the assessee under Section 153A of the Act. The Assessing Officer initiated penalty

proceedings under Section 271(1)(c) of the Act and issued a show-cause notice dated 18.03.2017 and 18.01.2017. The assessee made a detailed submission on 30.01.2017. The Assessing Officer after taking cognizance of the submissions imposed a penalty under Section 271(1)(c) of the Act at Rs. 64,486/- thereby observing that there is an element of concealment of income.

5. Being aggrieved by the penalty order the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The Ld. A.R. submitted that the very basis of the quantum has been deleted by the CIT(A) upon which the penalty has been imposed by the Assessing Officer. Therefore, the penalty does not survive and the same may be deleted. The Ld. A.R. further submitted that the Assessing Officer did not consider the submissions of the assessee and imposed a penalty under Section 271(1)(c) of the Act. The Ld. A.R. further submitted that by imposing a penalty the onus lies on the Assessing Officer to prove with substantial evidence the presence of concealment of income or inaccurate particulars of income. The show-cause notice dated 19.03.2013 did not disclose upon which limb the penalty was imposed. The Ld. A.R. relied upon the decision of Hon'ble Supreme Court in case of CIT vs. SSA's Emerald Meadows (2016) 73 taxmann.com 248 (SC) and CIT vs. Manjunatha Cotton & Ginning Factory (2013) 359 ITR 565 (Karnataka High Court). The Ld. A.R. further submitted that on merit the additional income of the assessee was discovered by the assessee when the assessee compared the income offered under voluntary disclosure under Section

139(1) of the Act and this cannot tantamount to concealment of particulars of income on filing inaccurate particulars of income.

7. The Ld. D.R. relied upon assessment order, penalty order and the order of the CIT(A). The Ld. D.R. further submitted that the assessee has not declared full income in the original return filed by the assessee. This amounts to concealment of particulars of income under Section 271(1)(c) of the Act.

8. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the notice issued under Section 271(1)(c) of the Act has not specified the limb under which penalty was imposed, therefore, the decision of the Supreme Court in case of SSA's Emerald Meadows (Supra) will be applicable in assessee's case. Besides this on merit the assessee has given the details of income during the proceedings under Section 153A which cannot be stated as the concealment of income or inaccurate furnishing of income. Therefore, ITA No. 2219/Ahd/2018 for A.Y. 2005-06 filed by the assessee is allowed.

9. The grounds of appeal raised by the assessee in ITA No. 215/Ahd/2018 for A.Y. 2008-09 read as under:

“1. Because the Hon'ble CIT(A) has erred in law and on facts by upholding action of the Ld. AO in invoking provisions of section 271(1)(c) in case of additional income offered in the return u/s.153A of the Act, where no additional income is unearthed by the Ld AO.

2. Because the Hon'ble CIT(A) and the Ld. AO have erred in law and on fact in applying the provisions of section 271(1)(c) of the Act while the element of mens rea is missing which is sin-qua none in the case of any penalty proceedings.

3. Because the Hon'ble CIT(A) and the Ld AO have erred in law and on facts in imposing penalty u/s.271(1)(c) of the Act in absence of any findings of inaccurate particulars of income or concealment of income.”

10. The additional grounds of appeal raised by the assessee in ITA No. 215/Ahd/2018 for A.Y. 2008-09 are read as under:

“4. Because the impugned judgment and order is passed in violation of the Principles of Natural Justice as various submissions specifically raised by The Appellant have not at all been dealt with in the impugned judgment and order.

5. Because the impugned judgment and order is vitiated as having been passed placing reverse burden of proof upon The Appellant absent any primary evidence to establish that The Appellant had concealed the income or had furnished inaccurate particulars.

6. Because the entire penalty proceedings beginning with the show cause notice are vitiated for violation of The Principles of Natural Justices as the SCN is a Performa show cause notice which doesn't even state the grounds to be met specifically by The Appellant and which does not even specify the limb of Sec.271 (1) (C) under which the penalty was sought to be levied.

The Appellant states that the grounds sought to be raised as pointed out above are legal grounds raised on the basis of material available on record and don't require appreciation of any new material/facts.”

11. As regards to ITA No. 215/Ahd/2019, ITA No. 216/Ahd/2019 and ITA No. 217/Ahd/2019 for A.Ys. 2008-09, 2009-10 and 2010-11 respectively are identical Assessment Year 2008-09 and no distinguishing facts were brought on record by the Ld. D.R. Therefore, the said appeal filed by assessee are allowed.

12. Now taking up ITA No. 218/Ahd/2019 for A.Y. 2011-12 the grounds of appeal raised by the assessee are as follows:

“1. Because the Hon'ble CIT(A) has erred in law and on facts by upholding action of the Ld AO in invoking provisions of section u/s. 271AAA of the Act in absence of any findings of inaccurate particulars of income or concealment of income.

2. Because the Hon'ble CIT(A) and the Ld AO have erred in law and on fact in applying the provisions of section 271AAA of the Act while the element of mens rea is missing which is sin-qua none in the case of any penalty proceedings.”

13. The additional grounds of appeal raised by the assessee in ITA No. 218/Ahd/2019 for A.Y. 2011-12 are as under:

“3. Because the impugned judgment and order is passed in violation of the Principles of Natural Justice as various submissions specifically raised by The Appellant have not at all been dealt with in the impugned judgment and order.

4. Because the entire penalty proceedings beginning with the show cause notice are vitiated for violation of The Principles of Natural Justices as the SCN is a Performa show cause notice asking to show cause as to why penalty should not be imposed u/s. 271(1)(c) and in the final judgment penalty comes to be imposed u/s. 271AAA.

The Appellant states that the grounds sought to be raised as pointed out above are legal grounds raised on the basis of material available on record and don't require appreciation of any new material/facts.”

14. As regards ITA No. 218/Ahd/2019 for A.Y. 2011-12 the Assessing Officer initiated penalty proceedings under Section 271AAA of the Act on the additions upheld under Section 143(3) and issued a show-cause notice dated 05.02.2017. The Assessing Officer has made the original additions as unaccounted deposits rejecting the explanation offered by the assessee and the source of such cash receipts. The Ld. A.R. submitted that all the said additions were towards alleged unexplained cash receipts on which assessee furnished her explanation with substantial prerogative evidence, but the Assessing Officer do not find the same sufficient and treated the cash receipts for unexplained sources. In so far as the business income offered under Section 44AD was concerned the Ld. A.R. relied upon the decision of Chandigarh Tribunal in case of Nand Lal Popli vs. DCIT (2016) 71 taxmann.com 246 (Chandigardh-Trib.). The Ld. A.R. submitted that it is the onus on the Revenue to establish lack of bona fide and the assessee is not responsible to establish if his explanations are bona fide. The Ld. A.R. further submitted that the assessee has explained the sources of cash receipts during the course of search action under Section 132 which was recorded in the statement under Section 132(4) of the Act. The assessee furnished her bank account evidence of withdrawal cash from her account and the same

cannot be treated as unexplained cash and penalty under Section 271AAA cannot be imposed.

15. The Ld. D.R. relied upon the assessment order, penalty order and the order of the CIT(A). The Ld. D.R. further submitted that the CIT(A) and Assessing Officer have brought on record that the manner of deriving income has not been substantiated by the assessee, hence provisions of Section 271AAA are attracted in this case.

16. Heard both the parties and perused all the relevant material available on record. The finding of the CIT(A) that the assessee was not in position to explain the cash deposit which was pointed out in the search action related to non-explanation of the cash deposits. Section 271AAA was initiated on undisclosed income and when the assessee could not explain the same has to be invoked. But in the present case, while issuing notice under Section 274 r.w.s. 271 of the Act dated 19.03.2013 & 18.01.2017 the Assessing Officer has not explained that the penalty is regarding Section 271AAA. Further in the order under Section 271AAA, the Assessing Officer has simpliciter stated that the assessee failed to produce any evidence in support of his claim of business of undisclosed income and therefore, penalty under Section 271AAA will be attracted. It is pertinent to note that the notice issued by the Assessing Officer was not explaining the show-cause under Section 271AAA. In fact, assessee's reply reproduced in order under Section 271AAA explains that notices were issued in respect of Section 271(1)(c) of the Act. Thus, the decision of Hon'ble Apex Court in case of SSA's Emerald Meadows (Supra) is applicable in present case. Besides this it can be seen from the Assessment Order that the assessee

explained the sources of cash receipts during the course of search action under Section 132 which was recorded in statement under Section 132(4) of the Act. During the assessment proceedings, the assessee substantiated the manner in which the said income was derived through confirmations, bank statements, tax credit statements, third party ledger confirmations. So per se, Section 271AAA cannot be invoked in the present case. Thus, order under Section 271AAA related to penalty does not survive. Therefore, ITA No. 218/Ahd/2019 is allowed.

17. In result, all five appeals filed by the assessee are allowed.

This Order pronounced in Open Court on	09/11/2022
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Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad; Dated 09/11/2022

TANMAY, Sr. PS

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

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

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad