IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA

Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member

I.T.A. Nos. 302, 303, 304 & 306/KOL/2022
Assessment Years: 2008-09, 09-10, 10-11 & 2012-13

Beni Prasad Lahoti,.....Appellant
12, Hardutt Rai Chamaria Road,
Howrah-711101
[PAN: AAUPL9647E]

-Vs.-
Deputy Commissioner of Income Tax,.....Respondent
Central Circle-2(2), Kolkata,
Aayakar Bhawan (Poorva),
110, Shanti Palli, Kolkata-700107

Appearances by:
Shri Rajeeva Kumar, Advocate, appeared on behalf of the assessee
Shri Vijay Kumar, Addl. CIT, Sr. D.R., appeared on behalf of the Revenue

Date of concluding the hearing : October 20, 2022
Date of pronouncing the order : December 27, 2022

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present four appeals are directed at the instance of assessee against the separate orders of ld. Commissioner of Income Tax (Appeals)-20, Kolkata

passed on 23.12.2021 for assessment years 2008-2009 to 2012-2013 except 2011-2012.

2. The assessee has raised common ground of appeals in all these assessment years. His grievance is that the ld. 1st Appellate Authority has erred in confirming the penalty of Rs.2,87,198/-, Rs.1,62,495/-, Rs.10,82,927/- and Rs.1,52,310/- in A.Ys. 2008-09 to 2012-13 except A.Y. 2011-12, which were imposed by the ld. Assessing Officer under section 271(1)(c) of the Income Tax Act.

3. The facts on all vital points are common in all these assessment years, therefore, for the facility of reference, we are taking up the facts from A.Y. 2008-09.

4. Brief facts of the case are that the assessee has filed his return of income under section 139 of the Income Tax Act on 31.07.2018 declaring total income of Rs.1,17,100/-. A search under section 132 of the Income Tax Act was carried out at the residence, Office and other business concerns of the Rashmi Group and its Associate. The residence of the assessee was also covered under the search proceedings. A notice under section 153A was issued and served upon the assessee. In response to the notice, the assessee has filed the return of income. The ld. Assessing Officer has passed the assessment orders in all these years on 31.03.2015. The

assessee has submitted details in tabular form, which would exhibit the details of original return filed in response to notice under section 153A and income disclosed under section 132(4) of the Income Tax Act. We deem it appropriate to take note of these details, which read as under:-

"*Asst. Year: 2008-09*

Returned income under section 139	*Rs. 1,17,100/-*
Returned income under section 153A	*Rs.10,17,100/-*
Income disclosed under section 132(4)	*Rs. 9,00,000/-*
Assessed income	*Rs.10,17,100*

Penalty proceedings were initiated in respect of the additional income disclosed under section 132(4) of Rs.9,00,000/-.

Asst. Year: 2009-10

Returned income under section 139	*Rs. 1,49,028/-*
Returned income under section 153A	*Rs.8,52,720/-*
Income disclosed under section 132(4)	*Rs. 7,00,000/-*
Assessed income	*Rs.8,52,720/-*

Penalty proceedings were initiated in respect of the additional income disclosed under section 132(4) of Rs.7,00,000/-.

Asst. Year: 2010-11

Returned income under section 139	*Rs. 16,68,761/-*
Returned income under section 153A	*Rs.21,89,190/-*
Income disclosed under section 132(4)	*Rs. 6,00,000/-*

Assessed income	*Rs.60,33,000/-*

Sl.	*Particulars of addition*	*Amount*
1.	*Speculation loss disallowed*	*Rs.28,83,322/-*
2.	*Disallowance under section 14A*	*Rs. 9,60,489/-*

Penalty proceedings were initiated in respect of the income disclosed under section 132(4) of Rs.6,00,000/- and disallowance of speculation loss of Rs.28,83,322/- .The disallowance of speculation loss of Rs.28,83,6322/- was deleted by the CIT(A).

Asst. Year: 2012-13

Returned income under section 139	*Rs. 1,68,765/-*
Returned income under section 153A	*Rs. 8,76,720/-*
Income disclosed under section 132(4)	*Rs. 7,50,000/-*
Addition under section 14A	*Rs. 1,37,648/-*
Assessed income	*Rs.10,14,368/-*

Penalty proceedings were initiated in respect of the additional income disclosed under section 132(4) of Rs.7,50,000/-".

5. The ld. Assessing Officer has initiated the penalty proceedings and issued notice under section 271(1)(c) of the Income Tax Act. He ultimately imposed a penalty upon the assessee under section 271(1)(c) read with Explanation 5. The case of the Revenue is that had the search not carried out, then the assessee would have not disclosed the income, which has been disclosed under section 153A of the Income Tax Act. In other words, the

difference between the amounts available in the return filed originally, vis-a-vis return filed in response to notice under section 153A has been treated for visiting the assessee with penalty. Ultimately ld. Assessing Officer has imposed penalty as mentioned above.

6. Appeal to the ld. CIT(Appeals) did not bring any relief to the assessee.

7. The short question before us is, whether the assessee to be visited with penalty for enhancement of his income in response to a notice received under section 153A of the Income Tax Act. The case of the assessee is that Explanation 5A to section 271(1)(c) could only be invoked if during the course of search, any money bullion, jewellery or document, notings found during the course of search on the basis of which addition in the hands of the assessee are being made. If an assessee enhanced his income voluntarily, then no penalty would be imposed upon the assessee.

8. It is pertinent to note that on due consideration of the record, we are of the view that somewhat identical situation was considered by ITAT, Rajkot in the case of Shri Mansukhbhai R. Sorathia in ITA No. 46/RJT/2012 for A.Y. 2008-09, one of us i.e. Vice-President authored the order. The discussion made by the Tribunal in that case reads as under:-

"7. The ld. Counsel for the assessee relied upon the judgment of the Hon'ble Gujarat High Court in Income Tax Appeal No.1181 to 1185 of 2010 in the case of Kirit Dayabhai Patel Vs. ACIT. Copy of this decision has been placed on the record. The Hon'ble Court while construing the meaning of Explanation 5 has put reliance upon the decision of the Hon'ble Supreme Court in the case of ACIT Vs. Gebilal Kanbhaialal (HUF), 348 ITR 561 (SC). According to this decision, the Explanation 5 is deeming provision. It provides where in the course of search under section 132, the assessee is found to be owner of unaccounted asset and he claims that such assets have been acquired by him by utilizing whole or part of his income from any previous year, which has ended before the date of search or which is to end on or after the date of search, then in such a situation, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall be deemed to have concealed the particulars of his income for the purpose of imposition of penalty under section 271(1)(c) of the Act. The Hon'ble Court, thereafter, propounded that sub-clause (1) and (2) Explanation 5 provides exceptions for deeming the concealment of particulars of income. In that case, the Hon'ble Court was dealing in sub-clause (2) of Explanation-5 and observed that in order to claim immunity as per sub-clause (2), three conditions have to be satisfied by the assessee. These three conditions are (a) that the assessee himself makes a statement under section 132(4) of the Act in the course of search stating that the unaccounted assets and incriminating documents found from his possession during the search have been acquired out of his income which has not been disclosed in the returns of income to be furnished before the expiry of time specified in section 139(1); (b) that the assessee should specify in his statement under section 132(4) of the Act, the manner in which the income stood derived, and (c) the assessee has to pay tax together with interest, if any, in response to such undisclosed income. According to the assessees present before us, they have made voluntary disclosure, filed returns and paid taxes. Their explanation for availing the benefit of judgment of the Hon'ble Gujarat High Court in the case of Kirit Dahyabhai Patel (supra) has been rejected by the ld.First Appellate Authority on the ground that the Explanation 5 is applicable on the cases where the search was initiated on or before the 1st June, 2007. After 1st July, 2007, the Explanation 5A to sub-section (1) of Section 271(1)(c) has been inserted vide Finance Act, 2007. Along with this Explanation, Section 271AAA has also been

inserted by Finance Act, 2007. The Explanation 5A and Section 271AAA read as under:

"Explanation 5A.— Where, in the course of a search initiated under section 132 on or after the 1st day of June, 2007, the assessee is found to be the owner of—

(i) any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any previous year; or

(ii) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year,

which has ended before the date of search and,—

(a) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or

(b) the due date for filing the return of income for such previous year has expired but the assessee has not filed the return,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income.

271AAA. (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 132on or after the 1st day of June, 2007 but before the 1st day of July, 2012, 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 87[Principal Chief Commissioner or] Chief Commissioner or 87[Principal Commissioner or] Commissioner before the date of 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".

8. A perusal of both these sections together would indicate that the immunity akin to Explanation 5 is available to the assessee under Explanation-5A also, if he fulfills the conditions

narrated in section 271AAA. The Explanation appended to Section 271AAA provides the definition of undisclosed income and specified previous year. A perusal of the expression "specified previous year" would indicate that the year of search and immediately earlier year, if due date of filing of the return has not expired and income-tax return for such year has not been filed. Since the assessment years involved before us are the Asstt.Years 2008-09 and 2009-10, the due date for filing of the return for the Asstt.Year 2009-10 was expired before the search action. Thus, both these years do not fall within the ambit of "specified years". Since the period of these two assessment years does not fall within the expression "specified year" provided in Section 271AAA, therefore, we do not deem it necessary to construe and explain the meaning of Explanation 5A within the scope of Section 271AAA. The assessees as such cannot claim immunity akin to one available in sub-clause (1) and (2) of the Explanation 5, more particularly, on the strength of the judgment of Hon'ble Gujarat High Court in the case of Kirit Dahyabhai Patel (supra). The ld.First Appellate Authority has dealt with these situation in an analytical manner and in right perspective. As far as the construction of meaning of Explanation 5A to section 271AAA by the ld.First Appellate Authority is concerned, we do not find any error.

9. At the cost of repetition, we would like to observe that as per Explanation 5A, if in the course of search initiated under section 132 on or after the 1st June, 2007, the assessee is found to be owner of any money, bullion, jewellery or other valuable article or things and the assessee claims such assets have been acquired by him by utilsing the whole or partly of his income from any previous year or any income based on any entry in any books of account or other documents or transactions found during the course of search, and the assessee claims that such entry in the books of account or other documents or transactions represents his income from any previous year, which has ended before the date of search, then, notwithstanding such income is declared by him in any return of income furnished on or after the date of search, he shall for the purpose of imposition of penalty under clause (c) of sub-section (1) of this Section be deemed to have been concealed particulars of income or furnished inaccurate particulars. The moot question for attracting this explanation is that in the course of search money, bullion, jewellery or income based on any entry in the books of accounts or other documents ought to have been found. In a given situation, no money or bullion or jewellery or income might have found from the assessees for the assessment years which were not part of "specified previous year" contemplated in section 271AAA or immunity available to the assessees under sub-clause (a) and (b) of Explanation 5A, then also, if in response to the notice under section 153A, the assessee disclosed some additional income voluntarily,

would he be deemed to have concealed the income for visiting him with penalty under section 271(1)(c) of the Act ? The ld.Revenue authorities had drawn inference that since the assessee has not disclosed additional income in the original returns, meaning thereby, it is to be assumed that they have disclosed this amount only when some incriminating material was found. To our mind this assumption ought to be supported with reference of that incriminating material. Let us see the finding in the assessment order.

10. We have perused the assessment order of Shri Mansukhbhai R. Sorathia in the Asstt.Year 2008-09. All other assessment orders are also similarly worded. It is a very brief assessment orders running one-and-half pages. In the first page, the ld.AO has narrated procedural aspect about the search action, issuance of notice and filing of the return, service of notice under section 143(2) etc. In the next page finding of the AO read as under:

> *"2. The assessee is engaged in the business of fabrication and engineering job work and also derives income from Agricultural activities, remuneration and interest from partnership firms etc. Copies of P&L account, capital account and balance sheet, was filed with the return. Various issues were discussed at length.*
>
> *2.1 It is seen that the assessee had made disclosure unaccounted income of Rs 22,00,000/- which was not disclosed in the return filed u/s. 139(1). This being concealed income, penalty proceedings u/s. 271(l)(c) of the I T Act is being initiated.*
>
> *3. After verification, the total income is determined as under:-*
>
> *Total income as per return of income Rs 28,45,960/-*
>
> *Total assessed income Rs 28,45,960/-*
>
> *Agricultural income for rate purpose Rs.6,14,131/-*
>
> *4. Assessed u/s. 153A of the I T Act, 1961. Charge tax. Charge interest u/s. 234A, 234B and 234C of the I T Act, if any. Give credit for prepaid taxes after due verification. Demand notice and challan issued accordingly. Issue notice u/s. 271(1)(c)of the IT Act."*

11. We have perused the penalty order also. There are only three paragraphs i.e. para-4, 6 and 7, where the AO has made some observation at his own, otherwise, in rest of the paragraphs he reproduced the submissions or the head-notes of the case laws. The observation of the AO in these paras read as under:

> *"4. I have carefully considered the submissions made by the assesses. The contention of the assessee is not acceptable because, the additional income offered by the assesses only surfaced due to the search action carried by the department. Had there been no search, the portion of additional income would have remained concealed eternally. If in a regular case, on detection of concealment, penalty u/s. 271(1)(c) is leviable, how much more penalty becomes true and potent in a case where the concealment has been detected on account of proactive search action initiated by the department. In the case of the assessee, the assessee has not recorded details of his income and the same was worked out only during search and that too on the basis of the seized materials. In fact, it is an established judicial decision that 'documents seized during the search cannot be said the books of accounts maintained for any source of income, for the purposes of Explanation 5 (CIT Vs Glamour Restaurant (2003) 80 TTJ (Mum) 763. Diaries found and seized during course of search cannot be considered as books of account maintained by the assessee for the purpose of immunity to be granted to him under the provisions of Explanation 5 to section 271(1)(c) - Dr T P Kulkarni Vs CIT (2003) 86 ITD 696 (Mum). It has also been held that Only books of account maintained in the regular course can make the assessee eligible for grant of immunity from penalty and not just any of such books, which have not been maintained in regular course of business - Brij Lal Goyal Vs CIT (2004) 88 ITD 413 (Delhi)."*

12. In this background, if we appreciate the evidences available on the record, then it would reveal the whole case of the Revenue for visiting the assessee with penalty is based on the statement of Shri Jayantilal R. Sorathia recorded during the course of search. We have extracted the relevant part of the statement in the foregoing paragraphs of this order. The evidentiary value of such statement has been explained in various authoritative pronouncements. Let us first take note of section 132(4) of the Act.

> *"The authorised officer may, during the course of the search or seizure, examine on oath any person who is found to be in possession or control of any books of account, documents, money, bullion, jewellery or other valuable article or thing and any statement made by such person during such examination may*

thereafter be used in evidence in any proceeding under the Indian Income- tax Act, 1922 (11 of 1922), or under this Act.

Explanation.- For the removal of doubts, it is hereby declared that the examination of any person under this sub- section may be not merely in respect of any books of account, other documents or assets found as a result of the search, but also in respect of all matters relevant for the purposes of any investigation connected with any proceeding under the Indian Income- tax Act, 1922 (11 of 1922), or under this Act."

13. A bare perusal of section would reveal that it empowers the authorized officer to examine during the course of search or seizure any person on oath. The disclosure made during the statement recorded under this section will be admitted in the evidence and can be used against the assessee in the proceeding.

14. No doubt, the disclosure or admission made under section 132(4) of the Act during the course of search proceedings is an admissible evidence but not conclusive one. This presumption of admissibility of evidence is a rebuttable one, and if an assessee is able to demonstrate with the help of some material that such admission was either mistaken, untrue or based on misconception of facts, then solely on the basis of such admission no addition is required to be made. It is true that admission being declaration against an interest are good evidence, but they are not conclusive, and a party is always at liberty to withdraw the admission by demonstrating that they are either mistaken or untrue. In law, the retracted confession even may form the legal basis of admission, if the AO is satisfied that it was true and was voluntarily made. But the basing the addition on a retracted declaration solely would not be safe. It is not a strict rule of law, but only rule of prudence. As a general rule, it is unsafe to rely upon a retracted confession without corroborative evidence. Due to this grey situation, CBDT has issued Circular No.286/2/2003 prohibiting the departmental officials from taking confession in the search. The board is of the view that often the officials used to obtain confessions from the assessee and stop further recovery of the material. Such confessions have been retracted and then the addition could not withstand the scrutiny of the higher appellate authority, because no material was found supporting such addition.

15. An issue whether addition solely on the basis of statement u/s.132(4) can be made was considered by the Hon'ble Jurisdictional High Court in the case of Kialashben Manharlal Chokshi Vs. CIT, 220 CTR (Guj) 138. In this case, search was conducted upon the assessee under section 132 of the Income Tax Act on 4.11.1988. The statement of the assessee was recorded under section 132(4) of the Act. He made disclosure of Rs.7 lakhs. Later on, in January, 1989, the assessee retracted from the disclosure and stated the disclosure of Rs.50,000/- was acceptable to him. The ld.AO made an addition of Rs.7 lakhs on the basis of his statement and observed that the retraction was made after a lapse of 2 months. The assessee did not have any reason for retracting from the disclosure. The ld.First Appellate Authority concurred with the AO and confirmed the addition of Rs.7 lakhs to his income. The Tribunal has also confirmed the addition by observing that there was nothing on record which indicated that the disclosure was taken from the assessee under duress, pressure or coercion. The retraction after lapse of two months from the date of disclosure by the assessee was considered as after-thought. The issue travelled before the Hon'ble High Court. The Hon'ble High Court has deleted the addition by observing that merely on the basis of disclosure, addition cannot be made. There should be some corroborative material. The following observations in para-26 of the judgement of Hon'ble Court are worth to note. It reads as under:

> *"26. In view of what has been stated hereinabove we are of the view that this explanation seems to be more convincing, has not been considered by the authorities below and additions were made and/or confirmed merely on the basis of statement recorded under section 132(4) of the Act. Despite the fact that the said statement was later on retracted no evidence has been led by the Revenue authority. We are, therefore, of the view that merely on the basis of admission the assessee could not have been subjected to such additions unless and until, some corroborative evidence is found in support of such admission. We are also of the view that from the statement recorded at such odd hours cannot be considered to be a voluntary statement, if it is subsequently retracted and necessary evidence is led contrary to such admission. Hence there is no reason not to disbelieve the retraction made by the Assessing Officer and explanation duly supported by the evidence. We are, therefore, of the view that the*

Tribunal was not justified in making addition of Rs. 6 lakhs on the basis of statement recorded by the Assessing Officer under section 132(4) of the Act. The Tribunal has committed an error in ignoring the retraction made by the assessee.

27. In the above view of the matter, addition of Rs. 1 lakh made on account of unaccounted cash is confirmed and the addition of Rs. 6 lakhs is hereby deleted."

16. This decision has been followed by the Hon'ble High Court in the case of CIT Vs. Chandrakumar Jethmal Kochar, 55 taxmann.com 292 (Guj). The Hon'ble High Court has reproduced the discussion made by the Tribunal, and thereafter, concurred with the conclusions of the Tribunal by observing as under:

"6. In view of the above discussion and considering the principal laid down in the case of Kailashben Manharlal Chokshi (supra),we are of the considered opinion that the view taken by the Tribunal is just and proper. We are not convinced with the submissions made by Mr. Mehta, learned advocate for the appellant that the Tribunal has not given cogent reasons. Therefore, the answer to the first question would be against the Revenue and in favour of the assessee. The second question will also enure for the benefit of the assessee as from the record it is clear that other concerns were not Benami concerns of the assessee.

7. For the forging reasons, the present appeal is dismissed. Accordingly, both the questions which were referred to this Court are answered in favour of the assessee and against the revenue."

17. Had this statement been retracted by the assessee, and they have not offered this undisclosed income, forget to take action of levying the penalty, even additions would not have been sustained. The inference of ownership of any money, bullion, jewellery or other valuable articles, to our mind, ought not to be based on this statement. When the assessees have taken specific plea that no money, bullion or jewellery or income based on any entries for these two assessment years was found during the course of search, the AO ought to have immediately

referred the documents, entries or any asset found which is relevant to these assessment years in the penalty proceedings. He should have rejected the explanation of the assessee by demonstrating it as factually incorrect. Rather, the authorities have proceeded on the assumption that had there been no money, bullion, jewellery or income based on entries was not found, the assessee would have not made voluntary disclosure of the income in these returns. They failed to note the question no.25 also, where the assessees claimed immunity from penalty, and peace from litigation. To our mind inference of availability of money, bullion or assets embedded in the entries cannot be drawn from the statement of the assessee (extracted supra). They should have been found in physical form and pertaining to these years, only then, deeming fiction of concealment would trigger. Thus, the Revenue authorities have not referred any documentary evidences demonstrating the fact that voluntary income offered by assessees in these two years actually unearthed during the course of search. Therefore, to our mind, the assessees do not deserve to be visited with penalties. We allow all the appeals of the assessees and delete penalties.

18. In the result, all the appeals of the assessee are allowed.

Order pronounced in the Court on 4th November, 2015 at Ahmedabad.

Sd/- *Sd/-"*

9. In the case of Shri Mansukhbhai R. Sorathia, some declaration was made under section 132(4) and in the return of income, assessee has enhanced the income in the return filed in response to notice under section 153A, vis-a-vis the return filed under section 139(1). The Tribunal while considering all these contentions has observed that Revenue Authorities had drawn inference that since the assessee has not disclosed additional income in the original return, i.e. the return filed under section 139 meaning thereby it is to be assumed he has disclosed this amount only when some incriminating

material was found. In other words, Revenue has assumed the existence of incriminating material for persuading the assessee to file return of income under section 153A of a higher amount. Identically the facts in these appeals are available. We have noticed break-up of the amounts disclosed by the assessee in the return filed under section 139, vis-a-vis in response to notice 153A. We have also taken note of the income disclosed under section 132(4) but as discussed in the case of Shri Mansukhbhai R. Sorathia, simply the assessee has made disclosure under section 132(4) that does not mean some money, bullion, jewellery or valuable was found and seized. The extra income disclosed has not been demonstrated as representing that money, bullion or jewellery.

10. Before us, ld. Counsel for the assessee has relied upon the decision of Hon'ble Delhi High Court in the case of Principal Commissioner of Income Tax –vs.- Neeraj Jindal (79 taxmann.com 96). The Hon'ble Delhi High Court has also considered the scope of Explanation 5A and held that unless money, bullion, jewellery or asset found during the course of search representing the extra income disclosed by an assessee in response to section 153A, vis-a-vis the income filed under section 139(1), the assessee cannot be visited with penalty.

11. Relying upon both these decisions, we allow all these appeals of the assessee and delete the penalties.

12. The Registry has pointed out a delay of 95 days in filing these appeals, but actually there is no delay because the period noticed by the Registry has already been condoned *suo motu* by the Hon'ble Supreme Court i.e. the COVID period. Therefore, there is no delay in filing these appeals.

13. In the result, all the appeals of the assessee are allowed.

Order pronounced in the open Court on 27th December, 2022.

Sd/-	Sd/-
(Girish Agrawal)	**(Rajpal Yadav)**
Accountant Member	**Vice-President (KZ)**

Kolkata, the 27th day of December, 2022

Copies to : *(1)* ***Beni Prasad Lahoti,***
12, Hardutt Rai Chamaria Road,
Howrah-711101

(2) Deputy Commissioner of Income Tax,
Central Circle-2(2), Kolkata,
Aayakar Bhawan (Poorva),
110, Shanti Palli, Kolkata-700107

(3) Commissioner of Income Tax (Appeals)-20, Kolkata;

(4) Commissioner of Income Tax, Kolkata- ;

(5) The Departmental Representative

(6) Guard File

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By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.