

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.300/DEL/2022 & 2748/Del/2022
Assessment Year: 2019-20**

Sushil Bansal 77 Shivam Apartment Sector-15, Rohini, Delhi- 110089	Vs	ACIT Central Circle-20 New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Somil Aggarwal, Advocate
Respondent by	Sh. H. K. Choudhary, CIT DR

Date of hearing:	09/01/2023
Date of Pronouncement:	11/01/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.300/Del/2022 and 2748/Del/2022 are two separate appeals by the assessee preferred against two separate orders of the CIT(A)-27, New Delhi dated 21.01.2022 and 09.11.2022 pertaining to A.Y.2019-20 in respect of the assessment order dated 27.02.2021 framed u/s. 143 (3) and penalty order dated 27.03.2022 framed u/s. 271 AAB respectively.

2. Both the appeals are disposed of by this common order for the sake of convenience and brevity.

3. We will first address to the appeal of the assessee in ITA No.300/Del/2022.

4. The peculiar facts of the present appeal are that the appellants father Sh. Om Prakash Bansal, appeared before this Bench on 04.01.2023 and pleaded that the assessee is unable to engage any lawyer/ CA to represent his case and, therefore, the Bench asked advocate Sh. Somil Aggarwal to represent the assessee pro bono.

5. Advocate Somil Aggarwal was kind enough to assist the Bench by representing the assessee. Today i.e. 09.01.2023 the Bench heard Mr. Somil Aggarwal at length and the Ld. DR was also heard on rebuttal.

6. The facts emanating from the record show that a search seizure operation u/s. 132 of the Act was conducted by investigation wing of the income tax department on 01.12.2018 in Faquir Chand Lockers and Valuts Pvt. Ltd. Group of cases. Since the assessee also had a locker there it was also covered u/s. 132 (1) of the Act. The sum of Rs. 88 lacs was found and seized from the locker and the assessee immediately offered the same for taxation and accepted the same to be taxed u/s. 69 A of the Act.

7. The cash was seized by the revenue officers and the assessee was penny less and could not pay the requisite taxes but filed his return of income.

8. The AO found that the sum of Rs. 88 lacs which was offered voluntarily for taxation u/s. 69 A of the Act was not shown in the return of income by the assessee.

9. A show cause notice was issued to the assessee in respect of the same. The assessee stated that he wanted to pay the taxes but had no means to pay the same and further prayed for accepting the revised income through a letter in which the assessee added Rs. 88 lacs. It was further stated that since the income tax portal is not accepting the revised return of income for want of tax, therefore, the income is revised through the letter.

10. This prayer of the assessee was dismissed by the AO and further by the CIT(A) and the assessment was accordingly completed at Rs. 9065830/- after adding the sum of Rs.88 lacs.

11. Before the CIT(A) assessee did not challenge the addition of Rs. 88 lacs but challenged the levy of interest u/s. 234 B of the Act pleading that since the amount of Rs. 88 lacs was with the income tax department and since the assessee had voluntarily accepted to tax the same u/s. 69A of the Act, therefore, the

amount should have been adjusted against the demand by the AO and, therefore, no interest should have been levied from the date of acceptance by the assessee. The CIT(A) did not consider this pleading of the assessee and confirm the levy of interest u/s. 234 B of the Act.

12. Before us the quarrel is only in respect of charging of interest u/s. 234B of the Act. The undisputed fact is that vide email dated 09.11.2020 the assessee made it clear that he wanted to file a revised return to include Rs.88 lacs since the portal is not accepting the return for want of payment of tax. It was also made it clear that since the assessee do not have liquid funds to pay the tax dues the tax liability should be adjusted from the seized amount of Rs.88 lacs lying with the department since 01.12.2018. The same reply was filed when the assessee received notice u/s. 143 (2) of the Act on 10.11.2020 and E-proceeding response was filed on 13.11.2020.

13. In our considered opinion once the assessee has repeatedly asked the revenue to adjust the tax liability against the cash seized on 01.12.2018 the AO should have adjusted the tax liability immediately on framing the assessment order.

14. In our understanding of law the cash seized by the department should have been adjusted with self assessment tax payable with the return of income in accordance with section 132

B of the Act. A similar view was taken by the coordinate Bench Kolkata Tribunal in 82 Taxmann.com 64. The communication of the assessee with the department mentioned elsewhere clearly suggest that the assessee was not asking to adjust the seized cash towards advance tax but was praying the adjustment towards self assessment tax. On these peculiar facts of the case we do not find any merit in charging the interest u/s. 234B of the Act the AO is accordingly directed to delete the interest charged u/s. 234 B of the Act. The other grounds were not seriously contested and are accordingly dismissed.

15. In the result, the appeal of the assessee is partly allowed.

16. We would like to make it clear that our decision is based on the peculiar facts of the appeal in hand and does not set in precedence.

17. Now, we will address ITA No.2748/Del/2022 which relates to the levy of penalty u/s. 271 AAB(1A) of the Act.

18. The facts of the case are that a search and seizure operation u/s. 132 of the Act was conducted in Faquir Chand Lockers & Vaults Pvt. Ltd. Group of cases. Since the locker of the assessee was also there. It was also covered on 01.12.2018 u/s. 132 (1) of the Act.

19. The sum of Rs.88 lacs was found seized and accordingly assessment was completed vide order dated 27.02.2021 u/s. 143 (3) of the Act at an assessed income of Rs.90,65,830/- which included of Rs.88 lacs.

20. The penalty proceeding were separately initiated and accordingly the AO levied penalty @ 60% of the undisclosed income at Rs.52,80,0000/-. The AO observed as under :-

“5. Conclusion: -

5.1 Since, the search was conducted u/s 132 of the Income Tax Act, 1961 on 01.12.2018 in Faquir Chand Lockers & Vaults Pvt. Ltd. Group of cases, the assessee’s Locker No. 106 at 6704A, Khari Baoli, Delhi-110006 was also covered u/s 132(1) of the Income Tax Act, 1961, and as the date of search is after December 2016 i.e the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President (w.e.f. 01.04.2017), the undersigned holds that it is a fit case for imposition of penalty u/s 271AAB(1A) of the Income Tax Act, 1961. The same is reproduced as under:

As per the provisions of the Act u/s 271AAB(1A):

271AAB(1A): *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 date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—*

(a) *a sum computed at the rate of thirty per cent of the*

undisclosed income of the specified previous year, 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) on or before the specified date—

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of sixty per cent of the undisclosed income of the specified previous year, if it is not covered under the provisions of clause (a).

5.2 From the record, it is clear that during the search proceedings and the assessment, the assessee has admitted the ownership of an amount of Rs.88,00,000/- found & seized from the said locker, During the assessment proceedings, the same remained unexplained. Further, the assessee has filed his ITR but did not declare his undisclosed income in the ITR filed u/s 139 and consequently has not paid any taxes on the undisclosed income thereof **Thus, this case clearly falls u/s 271AAB(1A)(b).**

5.3 The aforesaid addition has also been confirmed by the Ld. CIT(Appeals) vide order no. 27/10774/2018-19 dated 21.01.2022 as the assessee failed to substantiate the unexplained money, even before the CIT(A).

5.4 Further, during the course of penalty proceedings, assessee

failed to comply the notices issued on 27.02.2021, 19.08.2021 and 05.03.2022.

6. *The assessee has failed to discharge the onus to provide a satisfactory explanation. Further, it may be noted that the burden of proving to the satisfaction of the Assessing Officer in respect of undisclosed income lies on the assessee, which he failed to discharge. Also, the assessee has not furnished the return of income for the year under consideration declaring the undisclosed income u/s 69A “unexplained money” found during the search & seizure operation and has not paid taxes together with interest. Therefore, I am satisfied that assessee is liable for penalty u/s 271AAB(1A)(b) of the Income Tax Act, 1961.*

<i>Assessed Income u/s 143(3) of the Act</i>	<i>Rs.90,65,830/-</i>
<i>Amount of undisclosed income in respect of which penalty is imposed</i>	<i>Rs.88,00,000/-</i>
<i>Penalty Amount (@60% of the undisclosed income)</i>	<i>Rs.52,80,000/-</i>

7. *Accordingly, I hereby impose penalty u/s 271AAB(1A) of I.T. Act, 1961 of **Rs.52,80,000/-** (@60% of the undisclosed income). This order has been passed with the prior approval of the Addl. Commissioner of Income Tax, Central Range-05, New Delhi vide letter No Addl.CIT/CR-5/2021 -22/1331 dated 24.03.2022.”*

21. Representatives of both the sides were heard at length. Case records carefully perused.

22. Provisions of section 271 AAB read as under:-

(1) 271 AAB The assessee officer [or the Commissioner of (Appeals) 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 July, 2012 [but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President], the assessee shall pay by way of penalty, in addition to tax, if any, payable by him-

(a) a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such assessee-

(i) in the course 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) on or before the specified date-

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) Furnishes the return of income for the specified previous year declaring such undisclosed income therein;

(b) a sum computed at the rate of twenty per cent of the undisclosed income of the specified previous year, if such assessee-

(i) in the course of the search, in a statement under subsection (4) of section 132, does not admit the undisclosed income; and

(ii) on or before the specified date-

(A) declares such income in the return of income furnished for the specified previous year; and

(B) pays the tax, together with interest, if any, in respect of the undisclosed income;

(C) a sum [computed at the rate of sixty per cent] of the undisclosed income of the specified previous year, if it is not covered by the provisions of clause (a) and (b).

23. Clause b is relevant for the facts of the case in hand as in his statement recorded u/s. 131 (1A) on 30.11.2018 response to summon issued on 26.11.2018 the assessee has already surrendered Rs.88 lacs being cash amount in the locker as undisclosed income to be taxed u/s. 69 A of the Act and offered the same for taxation. Therefore, it can be safely concluded that the assessee declared on or before the specified date as per the definition of undisclosed income given in clause C of section 271 AAB (2) of the Act which read as under :-

- (c) *“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 [Principal Chief Commissioner or] Chief Commissioner or [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.]*

24. Clause B is relevant and the assessee has otherwise disclosed Rs.88 lacs in response to the summon issued u/s. 131 (1A) of the Act.

25. Further it has been explained in detail in ITA No. 300/Del/2022 (supra) that the assessee offered the income in the letter filed during the course of the assessment proceedings as the return could not have been revised electronically for want of tax payment and the amount of Rs.88 lacs was lying with the department since 01.12.2018 the assessee was helpless and was not in a position to pay the taxes.

26. Since the income was offered for taxation even before the search was conducted, therefore, it cannot be said that Rs.88 lacs was found and seized as a result of search.

27. Considering the peculiarity of the facts we do not find any merit in the levy of penalty u/s.271 AAB of the Act. We accordingly direct the AO to delete the penalty so levied.

28. We would like to make it clear that our decision is based on the peculiar facts of the appeal in hand and does not set in precedence.

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

Order pronounced in the open court on 11.01.2023.

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

NEHA

Date:- 11.01.2023

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI