

आयकर अपीलिय अधिकरण, 'ए' न्यायपीठ, चेन्नई  
**IN THE INCOME TAX APPELLATE TRIBUNAL  
'A' BENCH, CHENNAI**

श्री वी दुर्गा राव, न्यायिक सदस्य एवं श्री मंजुनाथ. जी, लेखा सदस्य के समक्ष  
**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER AND  
SHRI MANJUNATHA. G, HON'BLE ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.: 2207/Chny/2019  
निर्धारण वर्ष / Assessment Year: 2013-14

M/s. Mangal & Mangal,  
25, N.S.B. Road, Teppakulam,  
Trichy – 620 002.

**[PAN: AAIFM-3378-B]**

v. The Assistant Commissioner of  
Income Tax,  
Central Circle -1,  
No. 44, Williams Road,  
Cantonment, Trichy – 620 001.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by

: Shri. S. Sridhar, Advocate &  
Shri. N. Arjunraj, CA

प्रत्यर्थी की ओर से/Respondent by

: Shri. R Mohan Reddy, CIT

सुनवाई की तारीख/Date of Hearing

: 12.12.2022

घोषणा की तारीख/Date of Pronouncement

: 22.02.2023

**आदेश / O R D E R**

**PER G. MANJUNATHA, ACCOUNTANT MEMBER:**

This appeal filed by the assessee is directed against the order passed by the learned Commissioner of Income Tax (Appeals)-19, Chennai, dated 11.07.2019 and pertains to assessment year 2013-14.

2. The assessee has filed the following grounds of appeal:

*"1. The order of the Commissioner of Income Tax (Appeals) - 19, Chennai dated 11.07.2019 in I.T.A.No.298/17-18 for the above mentioned Assessment Year is contrary to law, facts, and in the circumstances of the case.*

*2. The CIT (Appeals) erred in erred in confirming the levy of penalty u/s 271AAB of the Act without assigning proper reasons and justification and ought to have appreciated that the provisions of section 271AAB of the Act was wrongly invoked to the factual matrix of the case thereby vitiating the consequential levy of penalty.*

*3. The CIT (Appeals) failed to appreciate that the provisions of section 271AAB of the Act should not be construed as automatic and ought to have appreciated that the misconstruction of the said provisions envisaging penalty would vitiate the decision rendered in relation thereto.*

*4. The CIT (Appeals) failed to appreciate that the sustenance of levy of penalty for excess stock of jewellery was wholly unjustified and ought to have appreciated that there was no excess stock of jewellery on the consideration of the facts available on record while the presumed excess stock of jewellery was assailed on various facets which stand of the Appellant was not adjudicated upon in the impugned order.*

*5. The CIT (Appeals) failed to appreciate that the presumption of undisclosed profit on account of undervaluation of stock was wholly unjustified and factually not correct while vitiating the penalty imposed in relation thereto.*

*6. The CIT (Appeals) erred in sustaining the levy of penalty for the other addition on the presumed excess stock of jewellery without assigning proper reasons and justification and ought to have appreciated that the presumption of excess stock of jewellery while ignoring the facts of the present case was wholly unjustified and completely arbitrary.*

*7. The CIT (Appeals) failed to appreciate that the explanation offered in the reply dated 19.8.2017 to the show cause notice issued in the penalty proceedings under consideration was completely ignored and brushed aside inasmuch as ought to have appreciated that the search proceedings took place in the*

*middle of the previous year relating to the Assessment Year under consideration while the transactions were fully updated and incorporated in the books of accounts would vitiate the presumption of excess stock of jewellery, thereby negating the levy of penalty in relation thereto.*

*8. The CIT (Appeals) failed to appreciate that the levy of penalty u/s 271AAB of the Act should relate to the undisclosed income assessed and ought to have appreciated that the estimated addition not emanating from the search records and the other addition ignoring the updated/recorded transactions would not fall within the ambit and scope of undisclosed income, thereby vitiating the levy of penalty in relation thereto.*

*9. The CIT (Appeals) failed to appreciate that the notes of arguments filed on 11.2.2019 was completely brushed aside and ought to have appreciated that the decisions relied upon had no application to the facts of the case while the recent trend on the issue decided by the Jurisdictional Bench of the Income Tax Appellate Tribunal was completely ignored.*

*10. The CIT (Appeals) failed to appreciate that the levy of penalty u/s 271AB of the Act on various facets was wrong, erroneous, unjustified, incorrect and not sustainable in law and ought to have appreciated, further that the order imposing penalty under consideration was passed out of time, invalid, passed without jurisdiction and not sustainable both on facts and in law.*

*11. The CIT (Appeals) failed to appreciate that there was no proper opportunity given before passing of the impugned order and any order passed in violation of the principles natural justice would be nullity in law*

*12. The Appellant craves leave to file additional grounds/arguments at the time of hearing."*

3. The brief facts of the case are that M/s. Mangal & Mangal, is engaged in the business of trading in gold jewellery, silver articles, electronics, home appliances and metal wares. A search was conducted in the business premises of the assessee on 30.10.2012. During the course of search in the

jewellery division of the firm, physical stock of inventory was taken which revealed possession of excess stock of jewellery of 22,837.72 grams as against the entries made in stock register maintained by the firm. During the course of search, a sworn statement from managing partner of the firm, Shri. P. Mogan has been recorded and in response, he admitted undisclosed income of Rs. 6,00,40,077/- towards value of undisclosed stock of jewellery and also disclosed undisclosed income in the return of income filed for the relevant assessment year. Further, during the course of search, it was also found that the assessee had not correctly valued the closing stock as on 31.03.2012. In the statement recorded u/s. 132(4) of the Income-tax Act, 1961 (hereinafter referred to as "the Act"), the managing partner of the firm agreed for revaluation of stock and accordingly, the stock has been revalued by adopting six months average purchase price on new jewellery. Accordingly, profit and loss account was redrawn after revaluation of opening and closing stock, including excess stock found during the course of search, which resulted in undervaluation of stock of Rs. 18,30,77,920/-. The assessee firm has admitted undeclared

income towards undervaluation of stock and agreed to pay tax.

4. Consequent to search, the assessment has been completed u/s. 143(3) r.w.s. 153A of the Act, where the AO noted that the assessee had admitted undisclosed income towards excess stock found during the course of search in jewellery division amounting to Rs. 6,00,40,0777/- and accordingly, initiated penalty proceedings u/s. 271AAB of the Act. Similarly, the AO had also noted that the assessee had admitted undisclosed income of Rs. 18,20,77,920/- towards undervaluation of stock as on the date of search and also disclosed said income in the return of income filed for relevant assessment year and thus, initiated penalty proceedings u/s. 271AAB of the Act and called upon the assessee to explain as to why penalty shall not be levied in terms of provisions of section 271AAB of the Act. In response, the assessee through his authorized representative filed a reply on 23.08.2017 and argued that admission of additional income towards excess stock found during the course of search and revaluation of stock by adopting a method which is not recognized as per Accounting Standard -2, does not lead to a conclusion that there is a undisclosed income within the meaning of section

271AAB of the Act, which necessitates levy of penalty. The Ld. AO, after considering relevant submissions of the assessee and also taken note of various facts gathered during the course of search and post search investigation, opined that the assessee had disclosed undisclosed income in the statement recorded u/s. 132(4) of the Act, and also substantiated the manner in which such undisclosed income has been derived and also paid the tax altogether with interest and filed return of income on or before the specified date. Therefore, the AO opined that the assessee is liable to pay penalty u/s. 271AAB(a) of the Act @ 10% of total undisclosed income which works out to Rs. 2,43,11,800/-. The relevant findings of the AO are as under:

*"6. The assessee neither appeared to defend his case nor sent a written reply in response to the above letter. Another opportunity was given to the assessee vide letter dated 17.8.2017 to explain the case as to why penalty should not be levied. In response, the assessee firm's representative filed a reply on 23.8.2017. The assessee's representative, in his reply, requested to drop the penalty proceedings on account of the following reasons which are not acceptable in view of the facts of the case discussed below:-*

<i>Sl. No.</i>	<i>Assessee's contention</i>	<i>Fact of the case</i>
<i>1</i>	<i>The assessee has not concealed particulars of income nor had it filed inaccurate particulars thereof</i>	<i>During the course of the search, physical inventory of particulars of stock was taken to ascertain any difference in stock as income nor had it filed against the</i>

		<p>stock entered in manual books. This exercise revealed excess stock of gold jewellery of thereof 22833 grams over and above what is shown in the books. Further, it was found during the search that the assessee firm had intentionally undervalued the stock to suppress the income by adopting unacceptable and inconsistent method of stock valuation. Hence, it is apparent that this is clear case of concealment.</p>
2	<p>The assessee had valued its closing stock at lower of cost or market price adopting cost formula of "Last-in First-out" (LIFO) method but the search party directed the assessee to re-work the valuation on the average of six months purchase price.</p>	<p>The assessee's contention that stock inventory is valued based on LIFO method is not acceptable as the same is not supported by any closing stock records. It was further observed that the assessee has adopted different rates for valuing the opening stock of previous method but the search year and the unsold stock purchased during the year. It is further observed from the entries in the stock to re-work the valuation on register and the inventory of stock found during the search that the items of Jewellery could not be identified and differentiated based on the year of purchase. In the return filed u/s 153A on 25.7.2013, the firm had adopted different rates for valuing the closing stock as on 31.3.2012 from the one adopted in the original return filed on 19.7.2012.</p> <p>During the course of search u/s 132, a question was raised regarding method of stock valuation before Sh. V.Gurumurthy, Accountant of M/s Mangal &amp; Mangal who replied as under:-</p> <p>Q.No.21 : P. explain why the closing stock is undervalued Instead of actual purchase value of the same. For</p>

	<p><i>Instance, you have adopted the rate of Rs.1625/- Instead of actual purchase value of Rs.2635/-?</i></p> <p><i>Ans : As I said earlier, I have maintained quantitative details of stock only. Though, I can ascertain the purchase value from the latest purchase bills, I only forward the quantitative details to the managing partner, who In turn suggested orally some values for the closing stock. The same I adopted as suggested my Managing partner, Shri Mookan and accordingly I worked out the closing stock at Rs.125,91,92,261 as on 31.3.2012.</i></p> <p><i>The above statement of the accountant was accepted by Shri Mookan, Managing Partner in his Sworn statement. Sh. Mookan accepted that there was a discrepancy in adopting the value of closing stock as on 31.3.2012 and he agreed to rectify the discrepancy and accepted the actual value as Rs.197,65,00,724 Instead of value adopted at Rs.125,91,261 In the sworn statement, he admitted the additional income to the tune of Rs.71,72,08,463 for the A.Y.2012-13.</i></p> <p><i>Hence, apparently assessee had intentionally suppressed the value of closing stock by adopting incorrect and inconsistent method of valuation with amotive to conceal the real Income.</i></p> <p><i>Besides finding the above discrepancy In stock on account of under valuation, excess stock to the tune of 22833.72 grams of gold as compared to manual stock book entries were</i></p>
--	--

		<i>also found during the search which the firm has accepted as unaccounted stock.</i>
3	<i>It is stated In the reply that the firm has disclosed all the stock as on 31.3.2013 In its return of income. The assessee had also proved had been that it consistently valuing the stock as per LIFO. The difference In the income admitted pursuant to the statement u/s 132(4) is entirely due to the change in the method of valuation. This valuation cannot be classified as concealment of particulars of income and The assessee has quoted few case laws in support of its claim</i>	<i>The actual stock was admitted by the assessee only after the findings through physical stock taken and revaluation of stock done during the course of search. Further as explained above, the assessee did follow Inconsistent and unacceptable method for valuation of stock In order to undervalue the stock with a motive to suppress the Income. The assessee himself admitted that there is discrepancy In valuation of stock as pointed out by the search authorities and also that the excess stock found was unaccounted. Hence, the value of stock arrived consequent to revaluation exercise Inclusive of unaccounted excess stock found, were not merely based on change in opinion but after proper findings by the search authorities. The case laws concealment quoted by the assessee have no relevance to the facts and circumstances of the assessee's case.</i>
4	<i>The assessee stated that action initiated u/s 271(1)(c) In respect of identical addition for the A.y.2012-13 had been dropped and based on the same requested to drop the penal action for this year also.</i>	<i>The provisions of section 271(1)\(c) is different from the one u/s 271AAB which clearly states as under: If the Assessee (a) Admits the undisclosed income (any income represented wholly or partly, by any Money. Bullion, Jewellery or other valuable article or thing or any entry In the books of account or other document or other document or transactions, found In the course of a Search u/s 132 which has not been</i>

		<p>recorded on or before the date of search In the books of account or other documents and otherwise not disclosed to PCCIT/CCIT/PCIT/CIT before the date of search) &amp; specifies the manner in which undisclosed income was derived in a statement u/s 132(4),</p> <p>(b) Substantiates the manner in which undisclosed income was derived, and</p> <p>(c) Pays tax alongwith interest in respect of undisclosed Income, and furnishes return of income declaring such income therein, on or before the specified date, then 10% of the undisclosed income is leviable as penalty.</p> <p>In the instant case, it was found only during the Course of search that the assessee was in possession of excess stock of gold jewellery and also undervalued the stock in the physical stock book maintained. The assessee admitted the undisclosed income in the sworn statement and declared such income therein in the return filed subsequent to search. But for the search conducted by the authorities, the assessee would not have disclosed the unaccounted stock and the actual value of gold. Hence, the assessee's case clearly attracts levy of penalty under specific clause of sec. 271AAB of the Act.</p>
5	As regards the excess stock of gold	The physical inventory stock The physical inventory of stock of jewellery

<p>found during the search, the assessee states that there Was only omission In the recording of the transaction and therefore there Is no concealment. Further, the assessee claims that no penalty u/s 271AAB can be levied since, during the course of search, no specific query by the authorized officer was raised to specify the manner In which the Income had been derived nor had the assessee been asked to substantiate the manner in which such undisclosed income had been derived and in the absence of such query the assessee explained the facts.</p> <p>The assessee mentioned few case laws in support of his claim.</p>	<p>taken the during the course of search revealed that the actual gold jewellery found was 22833.72 grams in excess of only what is entered in the manual stock register. The assessee had suppressed the actual stock and on and finding the same by the search authority, the same was admitted by the assessee in the sworn statement as 'unaccounted investment'. But for the search action, the excess stock would not have transpired. assessee Therefore the contention of the assessee that there is u/s no concealment is unacceptable.</p> <p>The assessee's contention that no specific question was raised during the search as to the manner in which the undisclosed Income had been derived is a false the statement. In fact, a specific question (question no.9 of sworn statement recorded from Shri P.Mookan. Managing Partner, M/s Mangal &amp; Mangal, relating to excess stock Touno) was asked which mentioned as under :</p> <p>.....there is an excess stock of gold Jewellery to the tune of 22833. 72 grams. Please explain the source for the Investment in this excess gold not recorded In your books of account.'</p> <p>The assessee replied as under:- '... I accept that this Investment represents my unaccounted Income and accordingly I am ready to offer the same to tax....I admit this Investment in gold Jewellery as my undisclosed investment.....</p> <p>The case laws mentioned by the assessee have no relevance to the facts and circumstances of the assessee's case. The casa was quoted</p>
--	--

		<p>by the assessee refers to section 271AAA which provides that no penalty is livable If the assessee admits additional income found during search and explains the manner In which the additional income was derived and pays taxes thereon.</p> <p>Whereas the assessee's case relates to sec. 271AAB(1) which mandates the AO that even If the assessee admits unaccounted Income, explains the manner in which such income was derived and pays taxes, penalty is livable @10% of such admitted Income.</p> <p>Therefore even if a question is not raised during the search as regards the manner In which unaccounted income was derived, penalty is still leviable.</p>
6.	<p>The addition of Rs. 3,50,00,000 (undisclosed income as investment in brass vessels and utensils) had been deleted by CIT(A) and thus addition does not survive anymore</p>	<p>The assessing officer made addition of Rs.3.5 crores on grounds that the unaccounted Investment in brass vessels and utensils admitted by the assessee during the course of search was subsequently not declared in the return filed, though admitted by the assessee as unaccounted stock. CIT(A) has set aside the addition stating that subsequent to search, the assessee had drawn trading account on 30,1.0.2012 and declared the admitted excess stock of Rs.3.5 crore in the closing stock arrived as on 30,10.2012 and increased the profit of the remaining period of the year and therefore further addition cannot be made.</p> <p>On this issue, the Revenue has filed second appeal before the Hon'ble ITAT against the CIT(A)}'s order. Accordingly, in terms of section</p>

		275(1A) of the Income tax Act, 1961, levying of penalty u/s 271AAB or otherwise on this issue will be considered after disposal of the case in ITAT.
--	--	--

*In the circumstances, the assessee firm's case is clearly covered by the provisions of section 271AAB(1) of the Income tax Act, 1961.*

5. *From the foregoing, levy of penalty u/s. 271AAB(1)(a) of the Income tax Act, 1961 is very much eligible and necessarily warranted in this case.*

6. *The undisclosed income found during the course of search on which penalty is leviable is as follows:*

<i>(i) undisclosed income on account of excess stock of jewellery</i>	<i>Rs. 6,00,40,077</i>
<i>(ii) Undisclosed profit on account of undervaluation of stock</i>	<i>Rs. 18,30,77,920</i>
<i>Total</i>	<i>Rs. 24,31,17,997</i>

7. *Accordingly I levy a penalty of a sum of Rs. 2,43,11,800/- u/s. 271AAB(1)(a) of the Income tax Act, 1961, being 10% of total undisclosed income, which should be paid as per demand notice and challan enclosed."*

5. Being aggrieved by the assessment order, the assessee preferred an appeal before the CIT(A) . Before the CIT(A), the assessee has filed detailed written submissions on the issue which has been reproduced at para 5 of page 7 & 8 of Ld. CIT(A) order. The sum and substances of arguments of the assessee before the CIT(A) are that, undisclosed income offered towards excess stock found during the course of search

does not lead to the conclusion that there is an undisclosed income within the meaning of section 271AAB of the Act, more particularly when the Department has taken confessional statement without allowing the assessee to reconcile the physical stock found during the course of search with book stock. The assessee, further contended that with regard to the additions of Rs. 18,30,77,920/- towards undervaluation of stock, it is a matter of fact that the department had ascertained excess stock on account of change in method of valuation of stock from weighted average cost method to six months average purchase price, even though said method does not give correct figure of stock in trade. Therefore, even if assessee admits additional income towards undervaluation of stock, it cannot be said that there is an undisclosed income within the meaning of section 271AAB of the Act, which warrant penalty u/s. 271AAB(1)(a) of the Act.

6. The Ld. CIT(A), after considering relevant submissions of the assessee and also taken note of relevant provisions of section 271AAB of the Act, and also by relying upon certain judicial precedence including the decision of Hon'ble Supreme

Court in the case of Mak Data (P) Ltd vs CIT reported in 358 ITR 539 (SC), opined that there is no error in the reasons given by the AO to levy penalty u/s. 271AAB of the Act, because the assessee has admitted undisclosed income in the statement recorded u/s. 132(4) of the Act, and also specified the manner in which undisclosed income was derived and further paid tax together with interest and filed return of income on or before the specified date. Therefore, the Id. CIT(A) rejected arguments of the assessee and upheld penalty levied by the AO. The relevant findings of the CIT(A) are as under:

"7. It is apposite to refer to the penalty of provisions as under:

7.1 The provisions of s. 271AAB as it stood at the relevant point in time are reproduced hereunder:

*'271AAB. 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 July, 2012, 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 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 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 sub-section (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 which shall not be less than thirty per cent but which shall not exceed ninety per cent of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).*
- (2) *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).*
- (3) *The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.*

*Explanation.—For the purposes of this section,—*

- (a) *"specified date" means the due date of furnishing of return of income under sub-section (1) of section 139 or the date on which the period specified in the notice issued under section 153A for furnishing of return of income expires, as the case may be;*
- (b) *"specified previous year" means the previous year—*
  - (i) *which has ended before the date of search, but the date of furnishing 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 date of search; or*
  - (ii) *in which search was conducted;*
- (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 Chief 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.'.

7.2. Section 271AAB provides the procedure for penalty where the search has been initiated. On analysis of the said section, as per the law as it stood at the relevant point in time, it becomes that the AO may, in respect of specified years, in relation to undisclosed income, levy penalty of (a) 10% if the taxpayer admits the undisclosed income u/s 132(4) : substantiates the manner of earning such undisclosed income and files return of income within the due date and pays tax; (b) 20% if the taxpayer does not admit undisclosed income u/s 132(4): discloses such undisclosed income and files return of income within the due date and pays tax after substantiating the manner in which such income was derived; and (c) 30%, if the taxpayer does not fall under either of the condition prescribed in (a) or (b) supra.

7.3. During the course of penalty proceedings, the AO has specifically brought on record the table extracted from the penalty order and mentioned in para 6.2 above that section 271AAB provisions are squarely applicable.

7.4. In the appellant case, the appellant had filed its return u/s 153A (notice served on 17-07-2013) on 27.07.2013 admitting a total income of Rs.35,02,01,900. The AO vide order dated

*28.09.2017 levied penalties on additions Sustained by CIT(A) on undisclosed income on account of excess stock of jewellery and undisclosed profit on account of undervaluation of stock of Rs.2,43.11,800 being 10%.*

*7.5. As per the section, the impugned AY is a specified year in terms of Explanation (b). In the appellant's case, the factum of suppression and offer falls squarely within the limb of entry in the books of account or other relevant documents / transactions recovered during the course of search and that had not been recorded on or before the date of search in the books of account or other documents that were maintained in the day to day business activity of the appellant.*

*8. In view of the factual matrix of the appellant's case and as per the provisions of Section 271AAB the appellant is liable to pay, by way of, penalty in addition to tax, if any. a sum computed as per the provisions contained in section 271AAB(1) from clause (a) to (c).*

*8.1. The Hon'ble High Court of Allahabad in the case of SandeepChandak Vs. CIT (2018) 93 [taxmann.com](http://taxmann.com) 405/ 405 ITR 648 (Allahabad), has held that the impugned penalty proceedings under Section 271AAB are fully justified and are initiated in accordance with law and had held that the order of the ITAT can't be sustained and therefore the same was set aside and the penalty orders under S 271AAB of the Act passed by the assessing authority, confirmed by the CIT (Appeals), were affirmed and were restored. The Hon'ble Supreme Court has endorsed this decision by dismissing the SLP filed by the assessee in (2018] 93 [taxmann.com](http://taxmann.com) 408(SC) by which it has become a settled position of law that where an assessee in the course of search admits undisclosed income and manner in which such undisclosed income has been derived then the provisions of S 271AAB of the Act would automatically get attracted*

*8.2 The Hon'ble High Court of Delhi in the case of Principal Commissioner of Income-tax Vs. Smt.RituSingal [2018] 92 [taxmann.com](http://taxmann.com) 224(Delhi), though in the context of S.271AAA of the Act, held that*

*"14. In construing Section 271AAA one must not lose sight of its essential purpose which resulted in its enactment. There is a penalty at the rate of 10% of the undisclosed amount declared, if the conditions in Section 271AAA (2) are not met with. This is quite different from*

*the penal provision under Section 271 (1) (c) of the Act, which directs that if income is concealed or inaccurate returns are filed, which are disallowed by the AO, the penalty shall be three times the amount of tax sought to be evaded, in the case of amounts disclosed during the course of search, the penalty amount is only ten percent of the undisclosed income. Parliament has, therefore, given a different treatment to the latter category. At the same time, if an assessee were to successfully urge the "escape route" so to say, of Section 271AAA(2), all three conditions mentioned in the provision, (as held in Gebilai Kanhailal in respect of pari material provisions) have to necessarily be fulfilled."*

*"16. That the income which was ultimately brought to tax pursuant to the disclosure made, which was voluntary on the part of the assessee is stating the obvious. The assessee merely stated that the sums advanced were undisclosed income. However, she did not specify how she derived that income and what head it fell in (rent, capital gain, professional or business income out of money lending, source of the money etc). Unless such facts are mentioned with some specificity, it cannot be said that the assessee has fulfilled the requirement that she, in her statement (under Section 132 (4))-substantiates the manner in which the undisclosed income was derived. Such being the case, this court is of opinion that the lower appellate authorities misdirected themselves in holding that the conditions in Section 271AAA (2) were satisfied by the assessee.*

*8.3. Though this decision has been rendered in the context of S271AAA[ that is applicable to searched conducted from 1.6.2007 to 30.6.2012], the scope and tone & tenor are in accord with S271 AAB[ that is applicable in the appellant case on hand].*

*9. Further, the Hon'ble ITAT Kolkata Bench D in the case of DCIT, Central Circle 2(2), Kolkata Vs Anil Agarwal [2017] 88 [taxmann.com](http://taxmann.com) 288(Kolkata-Trib) in para 9 has held that:*

*"We have heard the Id. DR and perused the materials available on record. It is not in dispute that the assessee's case falls within the ambit of 271AAB(1)(a) of the Act as admittedly the assessee had satisfied the*

*cumulative conditions prescribed thereon. We are not inclined to accept arguments of the assessee that he is not required to maintain books of accounts u/s 44AA of the Act for his commodities transactions, in view of the fact that the assessee himself had considered his case to be eligible for tax audit and had accordingly, filed the return of income w/s 139(1) of the Act on 30.09. 2013 for the assessment year 2013-14. It is not in dispute that the due date for filing return of income for non-tax audit assessee is 31.07.2013 for the assessment year 2013-14. In the instant case, the assessee himself had accepted the fact that he is engaged in commodities trading business and accordingly, he is mandated to maintain books of accounts u/s 44AA of the Act. It is not in dispute that as on date of search ie.01.08.2012, the assessee had not entered the commodities transaction in its books of accounts Hence, as per the definition of undisclosed income given in Explanation C to Section 271AAB of the Act, the additional income disclosed by the assessee indeed takes the character of undisclosed income. We also find that the legislature in its wisdom had consciously omitted to include Section 271AAB of the Act in the provision of section 273B of the Act. Hence there is no requirement to look into any reasonable cause adduced by the assessee warranting grant of any immunity from levying of penalty u/s 271AAB of the Act. Hence, even assuming that the mistake lies on the part of the Accountant by not entering the entries in the books of accounts regarding the commodities transaction, which might tantamount to reasonable cause, the assessee would still be exigible for levy of penalty as no immunity could be claimed in terms of Section 273B of the Act. We find that the Ld. CIT (A) had looked into irrelevant circumstances for deleting the levy of penalty in the instant case forgetting the fact that the levy of penalty u/s. 271AAB of the Act is automatic in nature as per the plain reading of the provisions of the Act. Hence, we hold that the Ld. AO had rightly levied penalty at 10% of undisclosed income amounting to Rs. 30lakhs in the instant case. Accordingly, the grounds raised by the Revenue are allowed"*

Commissioner of Income Tax 358 ITR 539 (SC) held as follows:

*"7. The AO, in our view, shall not be carried away by the plea of the assessee like voluntary disclosure", "buy peace", "avoid litigation", "amicable settlement", etc. to explain away its conduct. The question is whether the assessee has offered any explanation for concealment of particulars of income or furnishing inaccurate particulars of income. Explanation to 271 raises a presumption of concealment, when a difference is noticed by the AO, between reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence. When the initial onus placed by the explanation, has been discharged by him, the onus shifts on the Revenue to show that the amount in question constituted the income and not otherwise. This decision provides that even if income is voluntarily offered by the assessee, he cannot escape from the clutches of levy of penalty.*

*11. The Hon'ble Apex Court in the case of Prasanna Dugar (2017)70 [taxmann.com](http://taxmann.com) 175 endorsing the decision of the Hon'ble High Court of Calcutta in (2015] 59 [taxmann.com](http://taxmann.com) 99 is that even when there is voluntary disclosure during the search even though no incriminating document suggesting any such undisclosed income was found in the search and that the assessee offered such income in the return filed after the search; even though such income was accepted as such the assessment made in pursuance to the search, penalty is leviable if Such income was not offered in the original return. Though this decision has been rendered in the context of Explanation 5A of Sec.271(1) (c), and is applicable in respect of years falling under search assessment. Other than the specified years (for which only this specific provision u/s 271AAB has been brought on the statute) the principle that offer of additional/undisclosed income admitted in the search and offered in the return u/s. 153A is mulctable with the levy of penalty. I find no reason to interfere with the order of the Assessing Officer."*

7. The Ld. Counsel for the assessee, submitted that the Ld. CIT(A) erred in confirming the levy of penalty u/s. 271AAB of the Act, without assigning proper reasons and justifications. The Ld. Counsel for the assessee, further submitted that the provisions of section 271AAB of the Act, should not be construed as automatic and ought to have appreciated that misunderstanding of the said provisions envisaging penalty should vitiate the decision rendered in relation thereto. The Ld. Counsel for the assessee, further referring to the reasons given by the AO for levy of penalty submitted that if you go through two additions made by the AO in the assessment proceedings towards excess stock found during the course of search and undervaluation of stock, both items of additions cannot be considered as undisclosed income within the meaning of section 271AAB of the Act, because as per definition of undisclosed income, 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 u/s. 132, which has not been recorded on or before the date of search in the books of accounts of the assessee. In this case, during the

course of search, the department quantified excess stock for which the assessee could not offer satisfactory explanation, and thus, admitted additional income and paid taxes. Further, the department has quantified undervaluation of stock by changing method of valuation of closing stock, even though method followed by the department is not a prescribed method for valuation of stock which resulted in additional income. Though, the assessee has admitted undisclosed income towards undervaluation of stock, but in reality there is no undervaluation of stock which can be considered for levy of penalty u/s. 271AAB of the Act

8. The Ld. DR, on the other hand supporting the order of the CIT(A), submitted that it is a matter of fact that during the course of search, excess stock of jewellery was found and the assessee has admitted undisclosed income towards value of excess stock. It was also not in dispute that the assessee was not valued the closing stock which resulted in excess stock on account of change in method of valuation of stock, and once again the assessee had admitted undisclosed income towards undervaluation of stock. The assessee had also disclosed undisclosed income offered towards excess stock and valuation

of stock and paid relevant taxes. From the above, it is very clear that the case of the assessee is within the provisions of section 271AAB(1)(a) of the Act and thus, there is no error in the reasons given by the CIT(A) to sustain penalty levied by the AO. In this regard, he relied upon the decision of Hon'ble Supreme Court in the case of Sandeep Chandak vs PCIT [2018] 255 Taxman 367 (SC) and also the decision of ITAT, Kolkata Bench in the case of DCIT vs Amit Agarwal [2018] 168 ITD 370 (Kolkata).

9. We have heard both the parties, perused materials available on record and gone through orders of the authorities below. In order to decide the issue of penalty levied u/s. 271AAB(1)(a) of the Act, it is necessary to understand provisions of section 271AAB and relevant explanation provided thereto to define the meaning of undisclosed income.

The relevant provisions of section 271AAB read as under:

*'271AAB. 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 July, 2012, 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 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 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 sub-section (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 which shall not be less than thirty per cent but which shall not exceed ninety per cent of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b).
- (2) 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).
- (3) The provisions of sections 274 and 275 shall, as far as may be, apply in relation to the penalty referred to in this section.

*Explanation.—For the purposes of this section,—*

- (a) "specified date" means the due date of furnishing of return of income under sub-section (1) of section 139 or the date on which the period specified in the notice issued under section 153A for furnishing of return of income expires, as the case may be;
- (b) "specified previous year" means the previous year—
  - (i) which has ended before the date of search, but the date of furnishing 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 date of search; or

- (ii) *in which search was conducted;*
- (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 Chief 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.'*

10. The provisions of section 271AAB of the Act, deals with procedure for levy of penalty, where search has been initiated u/s. 132 of the Act. As per said section, the Assessing Officer or an Commissioner of Income-tax (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, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him at specified rates. Further, said section provides for levy of penalty at three different rates depending upon conduct of the assessee in

admitting undisclosed income and payment of tax. The provision contains explanation and as per said explanation (c), undisclosed income has been defined to mean 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 search u/s. 132, which has 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 specified previous year, which is found to be false and would not have been found to be so had the search not been conducted. A plain reading of section 271AAB of the Act, makes it clear that penalty is mandatory where search has been initiated after certain dates, where the assessee has admitted undisclosed income and specified the manner in which said income has been derived in a statement recorded u/s. 132(4) of the Act. In fact, the Hon'ble Supreme Court in the case of Sandeep Chandak vs PCIT (supra), has held that where assessee in course of search admits undisclosed income and specified manner in which such income has been derived, than provisions of section 271AAB would automatically attract. The Hon'ble Supreme Court has

confirmed the decision of Hon'ble High Court of Allahabad in Special Leave Appeal filed by the assessee. The similar view has been taken by the ITAT Kolkata Benches in the case of DCIT vs Amit Agarwal (supra), where it has been clearly held that levy of penalty u/s. 271AAB of the Act is automatic in nature and thus, where assessee's accountant failed to record profits derived from commodity trading in books of account seized in the course of search, impugned penalty order passed by the Assessing Officer was to be confirmed. Therefore, we are of the considered view that, the provisions of section 271AAB of the Act is automatic, where the search has been taken place and the assessee has admitted undisclosed income and also specified manner in which said income has been derived. To this extent, we are fully in agreement with the arguments taken by the Ld. DR that the provisions of section 271AAB of the Act, is automatic in a case where search has been taken place after specified date.

11. Having said so, let us come back to the issue, whether in each and every case levy of penalty is mandatory. In order to decide whether in each and every case penalty is mandatory or not, it is necessary to understand the definition of

undisclosed income. As per explanation (c) of section 271AAB of the Act, undisclosed income has been defined to mean any income of the specified previous year represented, in the form of 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 search. The definition also includes any income of the specified previous year either wholly or partly, by an entry in respect of expenses recorded in the books of account or other documents maintained in the normal course relating to specified previous year, which is found to be false and would not have been found to be so had the search not been conducted. A careful reading of meaning of undisclosed income, one has to understand undisclosed income means something which was found during the course of search in the form of money, bullion, jewellery etc and also any entry in respect of expenses recorded in the books of accounts or other documents. In this case, if you go through two additions on which penalty levied by the AO u/s. 271AAB of the Act, the AO had considered two additions. The first and foremost addition is excess stock found during the course of search amounting to Rs. 6,00,40,077/-. The department has quantified excess stock of jewellery to the tune of 22,833.72

grams. The said quantification has been made on the basis of physical stock carried out during the course of search and compare to stock register maintained in the normal course of business of the assessee. Although, the assessee has admitted excess stock of jewellery and also admitted quantification of said excess stock, but argued before the AO that it could not reconcile difference in stock found during the course of search due to unavailability of certain records. The assessee, further claimed that it has reconciled stock found during the course of search with books of accounts and found that excess stock found during the course of search is on account of incomplete stock register where certain purchases were not recorded which resulted in excess physical stock when compared to stock register. In other words, the assessee argued that, it has reconciled physical stock found during the course of search to book stock and find that there is no difference in stock as quantified by the AO, but had admitted undisclosed income because of lack of proper reconciliation of the stock immediately. In our considered view, explanation given by the assessee towards excess stock found during the course of search appears to be reasonable and bona-fide. We, further noted that as per explanation of the assessee certain

purchase bills could not be entered to the stock register which resulted in less stock as per books of accounts and more stock when physical stock is taken. Therefore, we are of the considered view that, when the assessee is able to explain difference in stock found during the course of search with necessary evidence, it cannot be said that said excess stock quantification is in the nature of undisclosed income which warrants levy of penalty u/s. 271AAB of the Act. In our considered view, quantification of stock during the course of search does not lead to a conclusion that there is an undisclosed income within the meaning of section 271AAB of the Act, which attracts penalty. Therefore, we are of the considered view that penalty levied by the AO u/s. 271AAB of the Act, in respect of addition of Rs. 6,00,40,077/- towards excess stock found during the course of search does not survive, and thus, we direct the AO to delete penalty levied u/s. 271AAB of the Act.

12. As regards penalty levied on undisclosed income of Rs. 18,30,77,920/- towards undervaluation of stock, we find that the assessee was following weighted average cost price method for valuation of stock right from the beginning. Even

during the earlier financial years, the assessee has followed weighted average cost method. The Department has find fault with method followed by the assessee for valuation of closing stock and has followed a different method which is not a recognized method for valuation of closing stock, even as per Accounting Standard-2 issued by the ICAI. We, further noted that the Department has followed six months average purchase price of new jewellery and valued total closing stock held by the assessee as on the date of search including opening stock brought forward from earlier financial year, which resulted in excess valuation of closing stock to the extent of Rs. 18,30,77,920/-. Although, the assessee had admitted undisclosed income in the statement recorded u/s. 132(4) of the Act, towards undervaluation of stock, but in our considered view said admission cannot be treated as undisclosed income within the meaning of section 271AAB(1) of the Act, because the method followed by the Department to value the closing stock is not a prescribed method for valuation of closing stock. Further, if you value closing stock as per average cost price method, as followed by the assessee there is no difference in stock as quantified by the Department. In fact, the assessee could able to reconcile

valuation of stock arrived at by the AO on the basis of six months average purchase price with valuation done by the assessee, as per weighted average cost price method. Therefore, we are of the considered view that once assessee is able to reconcile the difference between valuation of stock determined by the AO by adopting the different method with that of its books of accounts and method followed by the assessee is one of the prescribed method, in our considered view difference quantified by the AO towards undervaluation of closing stock cannot lead to a conclusion that there is an undisclosed income within the meaning of section 271AAB of the Act. It was not a case of the AO that there is an undisclosed income which represented any money, bullion, jewellery or other valuable articles and also any income by any entry, in respect of expenditure recorded in the books of accounts or other documents, which is found to be false and would not have been found to be so had the search not been conducted. In our considered view, the conclusion arrived at by the AO and the Ld. CIT(A) to levy penalty u/s. 271AAB of the Act, on the issue of undisclosed income admitted by the assessee towards undervaluation of stock cannot be any stretch of imagination considered as undisclosed income for

the purpose of levy of penalty u/s. 271AAB of the Act. Therefore, we are of the considered view that the AO is completely erred in levying penalty on undisclosed income admitted by the assessee towards undervaluation stock and the Id. CIT(A) without appreciating relevant facts confirmed penalty levied by the AO. Thus, we reject the findings of the Ld. CIT(A) and direct the AO to delete penalty levied u/s. 271AAB of the Act on undisclosed income declared by the assessee on account of under valuation of closing stock.

13. In the result, appeal filed by the assessee is allowed.

Order pronounced in the court on 22<sup>nd</sup> February, 2023 at Chennai.

**Sd/-**

(वी दुर्गा राव)

**(V. DURGA RAO)**

**न्यायिकसदस्य/Judicial Member**

**Sd/-**

(मंजुनाथ. जी )

**(MANJUNATHA.G)**

**लेखासदस्य/Accountant Member**

चेन्नई/Chennai,

दिनांक/Dated: 22<sup>nd</sup> February, 2023

**JPV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

- |                        |                          |                              |
|------------------------|--------------------------|------------------------------|
| 1. अपीलार्थी/Appellant | 2. प्रत्यर्थी/Respondent | 3. आयकर आयुक्त (अपील)/CIT(A) |
| 4. आयकर आयुक्त/CIT     | 5. विभागीय प्रतिनिधि/DR  | 6. गार्ड फाईल/GF             |