

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

I.T.A No.813/DEL/2019
Assessment Year 2012-13

DCIT, Central Circle-II, Faridabad.	v.	M/s. A2Z Infra Engineers Ltd., (previously A2Z Maintenance & Engineering Services Ltd.) O-116, 1 st Floor Shopping Mall, Arjun Marg, DLF, Phase-I, Gurgaon.
TAN/PAN: AAECA1203A		
(Appellant)		(Respondent)

Assessee by:	Ms. Ritu Kamal Kishore, CA		
Department by:	Shri P. Praveen Sidharth, CIT-DR		
Date of hearing:	07	02	2023
Date of pronouncement:	29	03	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Revenue against the order of the Commissioner of Income Tax (Appeals)-III, Gurgaon ['CIT(A)' in short], dated 30.11.2018 arising from the penalty order dated 12.03.2018 passed by the Assessing Officer (AO) under Section 271AAA of the Income Tax Act, 1961 (the Act) concerning AY 2012-13.

2. The Revenue in the instant case has challenged the action of the CIT(A) holding the penalty imposed by the Assessing Officer under Section 271AAA of the Act on account of

additions made under Sections 68 and 69C of the Act for the reason that the assessee could not substantiate the manner in which the income was derived.

3. Briefly stated, the search and seizure operation under Section 132 of the Act was carried out at the premises of the assessee on 24.04.2012. During the financial year 2012-13, the assessee filed return of income subsequent to search and the assessment was carried out under Section 153A r.w. Section 143(3) of the Act. The Assessing Officer initiated penalty proceedings under 271AAA of the Act in respect of disclosure of Rs.35,92,22,907/- as the assessee failed to substantiate the manner of earning such undisclosed income.

4. Aggrieved by the imposition of penalty, the assessee preferred appeal before the CIT(A). The CIT(A) took note of the enactment of Section 271AAA of the Act and also the submissions made on behalf of the assessee. The CIT(A) found merit in the plea of the Assessee for reversal of penalty imposed on disclosure made. The relevant operative paragraph of the order of the CIT(A) granting relief to the assessee from imposition of penalty under Section 271AAA of the Act reads as under:

“I have gone through the assessment order, penalty order and the submissions filed by the appellant for the year under consideration and the following observations are made:-

(i) The order us 271AAA of the Act was passed by the AO is as per provisions of the Act as it relate to "undisclosed income" of "specified previous year" as defined in Explanation to Sec. 271AAA of the Act.

(ii) The AO has imposed to the penalty as it was held that the

appellant company did not fulfil the condition for immunity specified in section 271AAA(2)(1) related to substantiating the manner in which the undisclosed income was derived.

(iii) The contention of the AO cannot be accepted because

a) The disclosure was made by the appellant on the basis of seized documents.

b) In the case of the appellant, during the search, two versions of AS-7 working were found in the safe of Sh. Subash Mehta, VP Finance of the appellant company. The version mentioned as 'As per accounts' reflected the version on the basis of which Balance Sheet was to be prepared, while the version for the 'perusal of MD' reflected the version stating the true financial affairs of the company. It is noticed that these versions had different figures of sales and expenses, so as to inflate the expenses and reduce the sales. The appellant company offered an amount of Rs.20,26,21,907/- which was the difference in net sales during the year under consideration. The appellant further offered as additional income, the sum of Rs.15,66,01,000/- on account of bogus expenses, bogus sub contract, unaccounted scrap sale etc. for the year under consideration. Thus, the total amount offered as additional income was Rs.35,92,22,907/-.

c) On the other hand, in the case of the appellant, source of earning income is not under dispute. The surrender made by the appellant is on account of the difference in two sets of versions of AS-7 working found during the search. It is thus clear that the income declared was on basis of certain documents found and not on the basis of any amount credited in the books of accounts maintained by the appellant. The AO has provided the scanned copies of the said documents at page 3 and 4 of the assessment order. The appellant company has taken the higher figure of revenue in audit balance sheet itself i.e. the higher figure marked for MD. Further, disclosure of Rs.15.66 crore u/s. 132(4) was made toward bogus purchase, unaccounted scrap sales and bogus subcontract expenses etc which are also related to the business of the appellant.

d) Thus, it is evident that the additional income declared by the appellant during the course of search us 132(4) of the Act emanated from the seized papers during search and this substantiated the manner in which undisclosed income was derived.

In view of the above discussion, it is held that penalty us 271AAA of the Act cannot be imposed on the appellant for not substantiating the manner in which the undisclosed income was derived. As a result, the appellant get immunity from Penalty u/s.

271AAA as it fulfills the conditions specified in section 271AAA (2) of the Act.

Hence penalty imposed by the AO is deleted.

As a result, the appeal of the appellant is allowed.”

5. Aggrieved by the relief granted by the CIT(A), the Revenue is in appeal before the Tribunal.

6. The imposition of penalty of Rs.3,59,22,290/- @ 10% of the undisclosed income is in issue. As pointed out on behalf of the assessee and perusal of the records, it appears that the assessee has duly explained the surrender of Rs.35.92 crores in his statement under Section 132(4) of the Act. The surrender was made on the basis of document(s) seized from the premises of the assessee and such documents itself are the proof of manner in which such income was derived. The source of revenue derived from the projects was explained in the course of search. The assessee included the income surrendered in the return of income and paid taxes as applicable.

7. The only question remains whether the assessee has failed to substantiate the manner in which the undisclosed income was derived. In this regard, the assessee submits that no specific question was raised under Section 132(4) of the Act for substantiation but however the seized documents itself substantiate the manner of deriving undisclosed income. The Assessee contends that there was no occasion for the Assessee to elaborate on manner and substantiation of undisclosed income in the absence any inquiry in the course of search.

8. The issue is squarely covered by the judgment of Hon'ble

Delhi High Court in the case of *Pr.CIT vs. Emirates Technologies P. Ltd.*, (2017) 399 ITR 189 (Del) and *Pr.CIT vs. Sundeep Gupta (DHC) IT Appeal No.967-68/2017* dated 13.11.2017.

9. The obligation cast on the assessee spelled out under Section 271AAA are thus fully complied in the facts of the case and hence we see no error in the conclusion drawn by the CIT(A). We thus decline to interfere therewith.

10. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on 29/03/2023.

Sd/-
[ANUBHAV SHARMA]
JUDICIAL MEMBER

DATED: /03/2023

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER