

**IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad 'A' Bench, Hyderabad**

**Before Shri Rama Kanta Panda, Accountant Member
AND
Shri Laliet Kumar, Judicial Member**

ITA.No.519/Hyd/2022		
Assessment Year: 2017-18		
Raja Reddy Nalla, Warangal. PAN : AAXPN3602Q. (Appellant)	Vs.	The Deputy Commissioner of Income Tax, Central Circle 1(3), Hyderabad. (Respondent)
Assessee by:		Sri K.C.Devdas.
Revenue by:		Sri K.P.R.R. Murthy.
Date of hearing:		19.04.2023
Date of pronouncement:		25.04.2023

ORDER

PER LALIET KUMAR, J.M.

This appeal is filed by the assessee, feeling aggrieved by the order of Commissioner of Income Tax (Appeals) – 11, Hyderabad dt.11.08.2022 invoking proceedings under section 271AAC(1) of the Income Tax Act, 1961 (in short, “the Act”).

2. The grounds raised by the assessee read as under :

“1. The Ld.CIT(A) erred in confirming the penalty order of learned Assessing Officer passed under section 271AAC of Rs.4,24,875 of Income Tax Act, 1961.

2 The Ld.CIT(A) erred in concluding that the amount disclosed by the appellant during the search had fit into the provisions of section 271AAC.

3. The Ld.CIT(A) erred in concluding the declaration of income by appellant during the course of search was not voluntary and therefore, the same is liable for levy of penalty under section 271AAC of the Act.”

3. The brief facts of the case are that assessee has filed the return of income on 21.03.2018 for A.Y. 2017-18 admitting total income of Rs.28,31,930/-. Subsequently, search and seizure operation u/s 132 of the Act was conducted on 09.08.2018 in the case of M/s. Moksha Infracon Pvt. Ltd and related parties including the assessee. Accordingly, notice u/s 153A of the Act was issued to the assessee on 18.03.2019 and in response, the assessee filed return of income on 15.04.2019 by admitting total income of Rs.55 lakhs on account of being consideration paid over and above the sum recorded in the books and the same was admitted under the head income from other sources in the return filed u/s 153A of the Act. Thereafter, the assessment was completed vide order u/s 153A dt.30.04.2021 by accepting the returned income and the additional income of Rs.55 lakhs was treated as unexplained investment u/s 69 of the Act. Further, penalty proceedings u/s 271AAC(1) were initiated and the Assessing Officer had passed penalty order u/s 271AAC(1) of the Act on 18.03.2022 levying penalty of Rs.4,24,875/-.

4. Feeling aggrieved by the penalty order passed by the assessing officer, assessee filed appeal before the Ld. CIT(A) who dismissed the appeal of assessee.

5. Feeling aggrieved with the order of ld.CIT(A), assessee is now in appeal before us.

6. It is the case of assessee that the Assessing Officer had made addition of Rs.55 lakhs for A.Y. 2017-18 and Rs.20,62,000/- for A.Y. 2018-19 on account of the fact that the assessee had purchased the property from Sri Chandra Mohan Reddy and paid sale consideration over and above the recorded

consideration. The assessee had filed an affidavit during the course of assessment and furnished detailed breakup of additional income admitted. Para 6 of the order of Assessing Officer mentioned the above said and the addition made by the Assessing Officer u/s 69 of the Act. Along with the assessment, the Assessing Officer also mentioned for initiation of penalty proceedings u/s 271AAB(1) and 271AAC of the Act. The Assessing Officer thereafter issued show cause notice and levied penalty of Rs.4,24,875/- u/s 271AAC of the Act being 10% of tax payable under section 115BBE of Rs.42,48,750/-. On appeal, the Id.CIT(A) had confirmed the addition made by the Assessing Officer vide para 11 of his order by holding as under :

“6.....

It is clear that the appellant in the instant case has only taken the plea of putting quietus on the issues which was also of the case as the search operation u/s 132 led to the admission of income. It will not be out of place to mention that the incriminating material and evidences unearthed along with statements during the search and seizure operation u/s 132 of the I.T. Act ultimately lead to admission of income by the appellant and it was not even a voluntary disclosure. If not for the search u/s 132, there is no way the appellant would have admitted the undisclosed income.

In view of the above discussion, the penalty of Rs.4,24,875/- levied u/s 271AAC(1) of the Act is hereby confirmed and the ground nos.1 and 2 are dismissed accordingly.”

7. Before us, the learned Authorised Representative of the assessee had contended that the assessee had mentioned the source of income i.e., other source of income in the computation of income filed along with the return and further submitted that as the assessee has disclosed source of income, it is not permissible to the Assessing Officer to make addition u/s 271AAC(1) of the Act. The Id. AR had relied upon the following decisions to buttress his submissions :

1. *CIT Vs. Emeskay Financial Services Ltd – 128 TITJ 474 – Visakhapatnam Bench.*
2. *Royal Metal Printers (P) Ltd. Vs. ACIT – 37 SOT 139 – Mumbai Bench.*
3. *CIT Vs. Sunil Kumar Goel – 315 ITR 163 – Punjab and Haryana High Court.*
4. *Citizen Co-operative Society Vs. ACIT – ITAT Hyderabad Bench.*
5. *Ch. Srinivasulu Reddy Vs. ITO – Order dt.01.12.2015 of ITAT Hyderabad Bench.*
6. *CIT Vs. M. Ramakrishnan – 378 ITR 437 of Madras High Court.*
7. *PCIT Vs. JKD Capital and Finlease Ltd – 378 ITR 614 of Delhi High Court.*
8. *ACIT Vs. BBL Foods Pvt. Ltd. – order dt.23.05.2008 of ITAT, Hyderabad Bench.*
9. *CIT Vs. Akhilesh Yadav & Dimple Yadav – 379 ITR 177 of Allahabad High Court.*
10. *PCIT Vs. M/s. Radha Krishna Vihar – order dt.13.02.2017 of Andhra Pradesh High Court.*
11. *Padan Chand Pungliya Vs. ACIT – 181 ITD 261 of ITAT Jaipur Bench.*
12. *CIT Vs. Harjeev Aggarwal – 241 Taxman 199 of Supreme Court.*
13. *CIT Vs. S. Khader Khan Son – 352 ITR 480 of Supreme Court.*
14. *CIT Vs. S. Khader Khan Son – 300 ITR 157 of Madras High Court.*
15. *CIT Vs. Ramdas Motor Transport – 238 ITR 177 of Andhra Pradesh High Court.*
16. *PCIT Vs. Best Infrastructure (India) (P) Ltd – 397 ITR 82 of Delhi High Court.*

8. Per contra, the ld. DR relied upon the orders passed by the lower authorities.

9. We have heard the rival submissions and perused the material on record.

9.1. Section 271AAC(1) of the Act provides as under :

The Assessing Officer or the Commissioner (Appeals)] may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:

Provided that no penalty shall be levied in respect of income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D to the extent such income has been included by the assessee in the return of income furnished under section 139 and the tax in accordance with the provisions of clause (i) of sub-section (1) of section 115BBE has been paid on or before the end of the relevant previous year.

(2) No penalty under the provisions of section 270A shall be imposed upon the assessee in respect of the 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.]

10. From the reading of provision u/s 271AAC(1) of the Act, it is abundantly clear that if the Assessing Officer made the addition u/s 69A and B of the Act, then the assessee shall be levied the penalty in addition to the tax payable u/s 115BBA of the Act. Undisputedly, in the present case, the said income was not included in the return of income filed by the assessee which is clear from the assessment order as the assessee has originally filed the return of income for an amount of Rs.10,50,000/- on 21.03.2018 as against the return of Rs.28,31,930/- under section 153A of the Act. However, the assessee had admitted the aforesaid amount during the course of search and seizure and thereafter, the Assessing Officer had made the addition in the hands of the assessee.

10.1. We further find that none of the decisions relied upon the by the assessee are applicable to the facts and circumstances of the present appeal and hence distinguishable.

11. In the present case, since additions were made by the Assessing Officer u/s 69 of the Act, therefore, we do not find any reason to interfere in the finding recorded by the Id.CIT(A) whereby he has upheld the imposition of penalty of Rs.4,25,874/- levied u/s 271AAC(1) of the Act. Accordingly, the appeal of the assessee is dismissed.

12. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court on 25th April, 2023.

Sd/- (RAMA KANTA PANDA) ACCOUNTANT MEMBER	Sd/- (LALIET KUMAR) JUDICIAL MEMBER
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Hyderabad, dated 25th April, 2023.

TYNM/sps

Copy to:

S.No	Addresses
1	Raja Reddy Nalla, 1-8-107, Balasamudram, Hanamkonda, Warangal – 506001, Telangana, India. C/o. M. Poorna Chander Rao, Partner Sriramamurthy & Co., Chartered Accountants, H.No.6-3-185, Flat No.201, Sai Damodar Residency, New Bhoiguda, Secunderabad, Hyderabad – 500080.
2	The Deputy Commissioner of Income Tax, Central Circle 1(3), Hyderabad.
3.	The PCIT (Central), Hyderabad.
4	DR, ITAT Hyderabad Benches
5	Guard File

By Order