

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND  
DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**ITA No. 403 /Del/2016  
Assessment Year: 2012-13**

ACIT, Central Circle-7,  
New Delhi.

(Appellant)

Versus R.J. Corp. Limited,  
R/o F-2/7, Okhla Industrial Area,  
Phase-I, New Delhi  
**PAN: AAACA2573R**  
(Respondent)

**ITA No. 404/Del/2016  
Assessment Year: 2012-13**

ACIT, Central Circle-7,  
New Delhi.

(Appellant)

Versus Varun Beverages Limited,  
R/o F-2/7, Okhla Industrial Area,  
Phase-I, New Delhi.  
**PAN: AAACV2678L**  
(Respondent)

Revenue by: Sh. P. Praveen Sidharth, CIT/DR  
Assessee by: Sh. Rajat Jain, C.A. &  
Sh. Akashat Jain, C.A.

Date of hearing : 25.04.2023  
Date of pronouncement : 08.05.2023

**ORDER****PER SAKTIJIT DEY, J.M.:**

Captioned appeals by the Revenue in respect of two different assessee arise out of two separate orders of learned Commissioner of Income-tax (Appeals)-24, New Delhi, deleting the penalty imposed u/s. 271AAA of the Act pertaining to assessment year 2012-13. Since, facts in both the appeals are identical and the proceedings arise out of same search and seizure operation, the appeals have been clubbed together and disposed of in a consolidated order, for the sake of convenience.

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2. Briefly, the facts are, the Assessee is a resident corporate entity. A search and seizure operation u/s. 132 of the Act was conducted in case of the Assessee and other group entities on 27.03.2012. In the course of search & seizure operation, in a statement recorded u/s. 132(4) of the Act from a person connected to the group, additional income to the tune of Rs.60.00 crores was offered at the hands of different entities including present Assessee. In so far as present Assessee is concerned, additional income of Rs.10.00 crores was offered on account of disallowance of expenses and others. However, in the return of income filed in response to notice issued u/s. 153A of the Act, Assessee offered additional income of Rs.1.75 crores, being interest income. In the assessment proceedings, Assessing Officer called for various details and ultimately made addition of Rs.17.57 crores by estimating the net profit after rejecting books of account. Of course, additionally, Assessing Officer made disallowance of

an amount of Rs.15.74 crores u/s. 14A read with Rule 8D. However, presently, we are not concerned with that disallowance. Based on the disclosure of income of Rs.10.00 crores made at the time of search and seizure operation, Assessing Officer initiated proceedings for imposition of penalty u/s. 271AAA of the Act and ultimately passed an order imposing penalty of Rs.1.00 crore under the said provision. Against the penalty order so passed, Assessee preferred an appeal before the Id. Commissioner (Appeals). After considering the submissions of Assessee in the context of facts and material on record, Id. Commissioner(Appeals) was of the view that in course of search and seizure operation, no undisclosed income of Assessee was unearthed. Therefore, the provisions of section 271AAA of the Act would not be applicable. In this context, Id. Commissioner (Appeals) referred to the definition of undisclosed income as provided u/s. 271AAA of the Act. Accordingly, he deleted the penalty imposed u/s. 271AAA of the Act.

3. Before us, Id. Departmental Representative submitted that first appellate authority has given an erroneous conclusion that the penalty imposed is not based on any undisclosed income found as a result of search. Drawing our attention to the definition of undisclosed income u/s. 271AAA of the Act, learned Departmental Representative submitted, it comes within the definition of undisclosed income as per clause (a)(ii) under Explanation to section 271AAA of the Act. Proceeding further, he submitted, in course of search and seizure operation, Assessee himself his statement recorded u/s. 132(4) of the Act had declared income of Rs.10.00 crores on account of disallowance of expenses. However, in the

return of income filed, Assessee did not follow up the declaration made of Rs.10.00 crores. Thus, he submitted that Assessee's case will not fall within the exception provided under sub-section (2) of section 271AAA of the Act. Thus, he submitted, penalty imposed may be restored.

4. Strongly relying upon the observations of Id. first appellate authority, Id. Counsel for Assessee submitted that the additional income of Rs.10.00 crores declared at the time of search and seizure operation was not because of any income representing 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 and seizure operation. Thus, he submitted, there is no undisclosed income within the meaning of section 271AAA of the Act. He submitted, even while completing assessment, Assessing Officer has not made addition of Rs.10.00 crores disclosed at the time of search and seizure operation. He submitted, the addition made by Assessing Officer was on account of estimation of profit from business and disallowance u/s. 14A. Thus, he submitted, the additions made were not in the nature of undisclosed income of Assessee. Thus, he submitted, since section 271AAA is not applicable to Assessee, Id. Commissioner (Appeals) has rightly deleted the penalty imposed.

5. We have considered rival submissions and perused the materials on record. Before we proceed to examine validity or otherwise of penalty imposed u/s. 271AAA of the Act in the case of assessee, it is necessary to

look to the provisions of section 271AAA of the Act, which reads as under:

*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 132 on 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 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;*

*(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."*

6. On a reading of sub-section (1) of section 271AAA, it is very much clear that in a case where undisclosed income was found in course of search and seizure operation conducted u/s. 132 of the Act after 1<sup>st</sup> day of June, 2007 but before 1<sup>st</sup> day of July, 2012, in addition to the tax payable, penalty shall be computed @ 10% of the undisclosed income of the specified previous year. However, sub-section (2) carves out certain exceptions to the extent that where Assessee admits the undisclosed income in statement recorded u/s. 132(4) and specifies the manner in which the income was derived and pays the taxes together with interest

in relation to such undisclosed income, then no penalty will be imposed. The expression “undisclosed income” has been defined in Explanation to section 271AAA of the Act. As per said definition, undisclosed income means any income representing either wholly or partly, 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 and seizure operation which has not been recorded before the date of search in the books of account or which has not been disclosed before the date of search. It also means, any income arising out of any entry in respect of an expenditure recorded in the books of account or other documents maintained in normal course relating to specified previous year, which is found to be false and would not have been found to be so, had search not taken place.

7. Keeping in perspective the aforesaid provisions, if we examine relevant facts emerging on record, it can be seen that in course of search and seizure operation, no incriminating material was found, from which undisclosed income emanated. In statement recorded u/s. 132(4) of the Act from a responsible person of the group, additional income of Rs.60.00 crores was declared. Subsequently, in a letter dated 31.07.2012, break-up of additional income of Rs.60.00 crores was furnished, out of which an amount of Rs.10.00 crores was offered as additional income in case of present Assessee on account of disallowance of expenses and others. It is a fact on record that additional income declared at the time of search and seizure operation was not based on any incriminating material indicating undisclosed income. There is nothing on record to

suggest that additional income offered at the time of search and seizure operation was out of either 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 and seizure operation. Even, there is no material on record to suggest that additional income offered at the hands of Assessee is by way of any entry in respect of an expenditure recorded in the books of account or other documents maintained in the normal course. Aforesaid factual position is fortified on the assessment order itself, as Assessing Officer has not made any addition on account of the disclosure made at the time of search and seizure operation. The additions made by him in the assessment order, as discussed earlier, is on account of estimation of business profits after rejection of books of account and disallowance u/s. 14A. Aforesaid facts clearly demonstrate that the search and seizure operation conducted in case of Assessee did not unearth any undisclosed income within the definition as provided in Explanation to section 271AAA of the Act.

8. It will be interesting to note, against the assessment order passed, Assessee had preferred an appeal before the Id. Commissioner (Appeals). While deciding the appeal, though Id. Commissioner (Appeals) deleted the addition made of Rs.17.57 crores on account of estimation of profit, however, he sustained an addition of Rs.8,24,33,171/- on account of disclosure made at the time of search and seizure operation. While deciding Assessee's appeal against aforesaid decision of Id. Commissioner (Appeals), the Tribunal, in ITA No. 4972/Del/2015 dated 25.08.2022, has deleted such addition. Thus, in sum and substance, in

quantum proceedings, Assessee has got the desired relief as the addition sustained by the Id. First Appellate Authority has been deleted. In any case of the matter, on overall analysis of facts and material on record, we are convinced that there is no undisclosed income relating to specified previous year which could have enabled the Assessing Officer to invoke the provisions of section 271AAA of the Act. Therefore, we do not find any valid reason to interfere with the decision of Id. Commissioner (Appeals). Grounds raised by the Revenue, being devoid of merit, are dismissed.

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9. Facts in this appeal are more or less identical to ITA No. 403/Del/2016. In case of the present Assessee, an amount of Rs.39.00 crores was declared as additional income at the time of search and seizure operation. Additional income offered at the time of search and seizure operation was followed up by Assessee in the return of income wherein declared income was taken to Profit & Loss Account, though with slight variation in the manner in which such income was earned. Based on the aforesaid facts, Assessing Officer initiated proceedings for imposition of penalty u/s. 271AAA of the Act and ultimately passed an order under the said provision, imposing penalty of Rs.3,90,00,000/-, being 10% of alleged undisclosed income of Rs.39.00 crores. Assessee challenged imposition of penalty by filing an appeal before learned Commissioner (Appeals). While deciding Assessee's appeal, Id. Commissioner (Appeals) concluded that out of disclosure made of

Rs.39.00 crores, an amount of Rs.4.5 crores can be treated as undisclosed income. However, he also held that even in respect of such undisclosed income of Rs.4.5 crores, the exceptions provided in sub-section (2) of section 271AAA of the Act would apply. Accordingly, he deleted the penalty imposed.

10. Having considered rival submissions, we agree with the Id. Commissioner (Appeals) that except amount of Rs.4.5 crores, balance amount of disclosure made at the time of search and seizure operation, cannot be construed as undisclosed income in view of our detailed discussions made in foregoing paragraphs. In so far as the amount of Rs.4.5 crores treated as undisclosed income, in our view, Assessee has not only offered such income in statement recorded under sub-section (4) of section 132, but specified/substantiated the manner in which such income was derived. It is relevant to observe, while deciding Assessee's appeal against addition made in the assessment order, Id. Commissioner (Appeals) had deleted the additions. Against the said order of the Id. Commissioner (Appeals), Revenue preferred an appeal before the Tribunal. While deciding the said appeal, being ITA No. 5258/Del/2015, the Tribunal in order dated 26.02.2020 has held that additional income declared by Assessee is connected with the business activity of Assessee, hence, is in the nature of business income, which has rightly been taken into profit and loss account. Tribunal has given a categorical finding of fact that Assessing Officer has not brought any material on record to demonstrate that Assessee was doing any other business to which the surrendered income could be linked. Accordingly, the order of Id.

Commissioner (Appeals) was upheld. Thus, on the basis of aforesaid facts, it is clearly established that whatever undisclosed income earned by Assessee was offered to tax in the manner specified in sub-section (2) to section 271AAA of the Act. That being the case, Assessee's case falls within the exception provided under section 271AAA (2). Hence, no penalty can be imposed u/s. 271AAA of the Act. Accordingly, we uphold the decision of Id. Commissioner (Appeals) by dismissing the grounds raised.

11. In the result, both the appeals are dismissed.

Order pronounced in the open court on 08/05/2023.

Sd/-

**(DR. BRR KUMAR)**  
**ACCOUNTANT MEMBER**

Sd/-

**(SAKTIJIT DEY)**  
**JUDICIAL MEMBER**

\*aks/-