

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI
(DELHI BENCH 'F' : NEW DELHI)
BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 5462/Del/2014, A.Y. 2011-12

Sh. Padam Singhee 4A, Gali C-1, Sainik Farm, New Delhi PAN : ABLPS5269F	Vs.	DCIT Central Circle-11, ARA Centre Jhandewalan, New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	None
Respondent by	Sh. T. Kipgen, CIT- DR

Date of hearing:	09.05.2023
Date of Pronouncement:	16.05.2023

ORDER

PER ANUBHAV SHARMA, JM:

The appeal has been preferred by the Assessee against the order dated 31.07.2014 of CIT(A)-XXXI, New Delhi (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') arising out of an appeal before it against the order dated 27.09.2013 passed u/s 271AAA of the Income Tax Act, 1961 (hereinafter referred as 'the Act') by the DCIT, Circle-11, New Delhi (hereinafter referred as the Ld. AO).

2. Assessee is in appeal raising following grounds :

- "1. The order passed is illegal, invalid, and bad in law.*
- 2. The Penalty levied at Rs. 42,65,000/- is unjustified and unwarranted.*

3. That on the facts and the circumstances of the case and in law, the penalty shall not be levied ordinarily where the assessee is not at fault or guilty of misconduct. The Ld. AO and Commissioner of Income Tax (Appeals) erred by levying penalty on the appellant without any finding/proving anything on record in relation to the additional income. Hence the penalty levied is uncalled and without any basis.

4. That on the facts and the circumstances of the case, the Ld CIT (A) and the Ld Assessing Officer erred by considering that the appellant fails to fulfill the conditions of section 271 AAA of the Income Tax Act, 1961. Whereas the appellant has truly disclosed all the facts in the course of search whatever being asked by the oath administrator. Hence, penalty levied is against the provisions of the law and shall be deleted.

5. That on the facts and the circumstances of the case, the judgment of Hon'ble Supreme Court in the case of Hindustan Steel v. State of Orissa (1972) 83 ITR 26 still hold good and applicable to the appellant's case. Hence the penalty levied is unjustified.

6. The above grounds of appeal are without prejudice to one another.

7. The assessee craves leave to add, amend, alter or forgo any of the grounds at the time of or before the hearing.”

3. Heard and perused the record.

4. None has appeared for the assessee while the notices issued have been received back to the report that 'assessee has left'. Similar report was received earlier. In fact what transpires from record is that the appeal was earlier disposed of by order dated 03.10.2017 for non-appearance of the assessee/ appellant thereafter on filing in the miscellaneous application the order was recalled. The Miscellaneous application filed for the assessee mentioned the fact that the company was ordered to be wound up by the order of Hon'ble Delhi High Court. Accordingly arguments of Ld. DR were heard who supported the findings of Ld. Tax Authorities below.

5. In the light of aforesaid it can be observed that the impugned order of penalty has been passed u/s 271AAA of the Act. Ld. CIT(A) has observed on the basis of record that no statement u/s 132(4) was recorded while the Ld. AO had mentioned in the penalty order in para 5 that assessee has not furnished any explanation in respect of surrendered income u/s 132(4) amounting to Rs. 4,26,50,000/- either at the time of assessment proceedings or during the course of penalty proceedings.

6. It is relevant to reproduce here Section 271AAA of the Act of convenient determination of the grounds;

'271AAA. 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 June, 2007, 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 Chief Commissioner or Commissioner before the date of the 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.'

7. Admittedly, the surrendered income 4.27 crores was offered in the return of the relevant year and tax has been paid thereon. Further before Ld. CIT(A) it was established that no statement u/s 132(4) of the Act was recorded and the correspondence between the assessee and the department also had no inquiry about the manner in which the surrendered income has been derived. Hon'ble Delhi High Court in case of ***Bhagirath Aggarwal v. CIT (2013) 351 ITR 143 / 215 Taxman 229/89 DTR 362 (Delhi) (HC)*** has held that *"if an assessee voluntarily makes a surrender, the officials of the income tax department are bound to record that statement u/s 132(4) and such a statement, voluntarily made, is relevant and admissible and is liable to be used as evidence"*. Thus where no statement u/s 132(2) of the Act is recorded or specific query is made

during assessment, for the purpose of Section 271AAA of the Act, then no inference can be drawn that assessee failed to specify the manner in which such income has been derived or substantiates the manner in which the undisclosed income was derived, so as to levy the penalty.

8. At the same time, the order dated 02.09.2019 of a *Co-ordinate Bench at Delhi in Rajendra Aggarwal vs. BCIT ITA no. 2702/Del/2015* is also relevant where it is held that the initiation of penalty u/s 271AAA cannot be on the basis of surrendered amount which cannot be termed as undisclosed income for the purpose of Section 271AAA of the Act.

9. In the light of aforesaid the grounds raised are sustained. **Consequently, the appeal of assessee is allowed.**

Order pronounced in the open court on 16th May, 2023.

Sd/-

(SHAMIM YAHYA)

ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)

JUDICIAL MEMBER

Date:-16.05.2023

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI