

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER  
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 267/Asr/2017  
Assessment Year: 2009-10**

Sh. Sham Lal House No.9, Sector, 19A, Chandigarh. [PAN: -AAATP5947R] <b>(Appellant)</b>	Vs.	Dy. Commissioner of Income Tax, Central Circle-Amritsar. <b>(Respondent)</b>
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<b>Appellant by</b>	Sh. P. N. Arora, Adv.
<b>Respondent by</b>	Smt. Ratinder Kaur, Sr.DR.

<b>Date of Hearing</b>	12.07.2023
<b>Date of Pronouncement</b>	21.08.2023

**ORDER**

**Per: Anikesh Banerjee, JM:**

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana, [in brevity 'the CIT (A)'] order passed u/s 250 (6) of the Income-tax Act, 1961 (in brevity the Act) for assessment year 2009-10. The impugned order was emanated from the order of the Id. DCIT, Central Circle, Amritsar, (in brevity the Id. AO) order passed u/s 271AAA of the Act.

2. The assessee has taken the following grounds:

*“1. That the order of the Assessing Officer thereby levying penalty of Rs 35,45,120/- u/s. 271 AAA of the Income Tax Act, as well as the order of Learned CIT(A) are both against the facts of the case and are untenable in law.*

*2. That the worthy CIT(A) has not appreciated the facts of the case and merely relied on order of the AO and without any rhyme & reason, the Ld. CIT(A) has confirmed the penalty order passed by the AO u/s. 271 AAA of the Income Tax Act. As such order of the CIT(A) is liable to cancelled.*

*3. That the appeal has been rejected on the ground that the appellant has not filed an application for condonation of delay in filing the belated appeal.*

*4. That the worthy CIT(A) should have allowed an opportunity of being heard to the assessee for filing the belated appeal. The Learned Chandigarh Bench has taken this view that the CIT(A) must allow an opportunity of being heard to the assessee in filing the belated appeal. This view was followed in the case of Kama! Deen Sheikh vs. ACIT in ITA No.1003/CHD/2016, order dated 26/10/2016 relating to AY 2007-08. A copy of the judgment is made part and parcel of the grounds of appeal. As such the order passed by the Ld. CIT(A) is bad in law and the same is liable to be cancelled.*

*5. That it was pointed out by the assessee and by the Counsel for the assessee on phone also to the worthy CIT(A) that Sh. P.N. Arora, Advocate has undergone heart surgery and is not in a position to*

*come and argue the appeal but the Ld. CIT(A) for the best reason known to him rejected the appeal of the assessee without applying his mind and without appreciating the facts of the case.*

*6. That the worthy CIT(A) did not appreciate that this case does not fall within the mischief of section 271 AAA and as such the penalty levied by the DCIT at Rs.3545120/- should have been deleted.*

*7. That the authorities below did not appreciate that there was unfavourable and tight financial position in the market and there was no malafide intention on the part of the assessee for delaying the payment. There was reasonable and sufficient cause for not making the balance payment by the assessee. As such, the order of the worthy CIT(A) thereby confirming the penalty is bad in law, inasmuch as, the worthy CIT(A) has failed to apply his mind on this proposition and confirmed the penalty without any rhyme & reason and without appreciating the facts of the case. As such, the order of the Ld CIT(A) thereby confirming the penalty levied by the AO is bad in law and the same is liable to be cancelled. Alternatively, the penalty levied is very high & excessive.*

*8. That any other ground of appeal which may be urged at the time of hearing of the appeal.”*

3. Brief facts as culled out from the records are that the search u/s 132 was conducted on 03.09.2009. Consequent upon the same, the assessee filed an application u/s 245C(1) before the Income Tax Settlement Commission (in short ITSC) at new Delhi on 24.11.2011. The order u/s 245D (4) dated 28.05.2013

was passed by the ITSC along with three other cases of this group. Effect to the order of ITSC was given on dated 29.07.2013, wherein major demand of Rs.1,67,78,560/- for impugned assessment year was created and fixed.

3.1 As per the above order, the amount was directed to pay in six equal instalments in every alternate month starting from 15.06.2013. Thus, the amount was supposed to be paid on 15.04.2014. But till the disposal of assessment on dated 05.03.2015, the assessee only paid 30 lacs and the balance Rs.1,37,78,560/- was till outstanding. According to the ld. AO the provisions of section 245H(1A) an immunity granted to a person from penalty and prosecution shall stand withdrawn if he fails to pay any sum specified in order of Settlement within the time specified in such order. So, accordingly ld. AO proceed to levy the penalty u/s 271AAA and the notice was issued accordingly. The notice was remained un-compiled before the ld. AO. The ld. AO levied penalty u/s 271AAA on amount of undisclosed income amount to Rs.3,54,51,237/- @ 10 % penalty which comes to Rs.35,45,120/-. Aggrieved assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld.AO. Being aggrieved assessee filed an appeal before us.

4. The ld.AR filed written submissions which are kept in the record. The ld. AR first argued that the assessee had already paid the tax but not within the stipulated period as directed U/s 245D (4) of the Act but within the time frame

before the filing of appeal to the ITAT. The list of payment is duly annexed in **APB page 37** which is inserted as below:

S.NO	Particulars	Date	Amount	Challan No.
1	Payment of Tax for AY 2009-10	03-03-22	31,50,000	19332
2	Payment of Tax for AY 2009-10	12-08-21	173,561	00003
3	Payment of Tax for AY 2009-10	20-01-20	95,000	05397
4	Payment of Tax for AY 2009-10	17-01-20	1,100,000	05179
5	Payment of Tax for AY 2009-10	16-01-20	1,200,000	06584
6	Payment of Tax for AY 2009-10	10-01-20	1,200,000	00855
7	Payment of Tax for AY 2009-10	02-12-19	800,000	00985
8	Payment of Tax for AY 2009-10	20-11-19	1,000,000	01163
9	Payment of Tax for AY 2009-10	17-10-19	500,000	08022
10	Payment of Tax for AY 2009-10	12-09-19	400,000	01676
11	Payment of Tax for AY 2009-10	11-04-19	400,000	05458
12	Payment of Tax for AY 2009-10	05-10-16	10,00,000	51985
13	Payment of Tax for AY 2009-10	05-10-16	10,00,000	52024
14	Payment of Tax for AY 2009-10	05-10-16	9,00,000	52061
15	Payment of Tax for AY 2009-10	01-10-16	3,50,000	01213
16	Payment of Tax for AY 2009-10	01-10-16	5,00,000	01173
17	Payment of Tax for AY 2009-10	27-03-14	5,00,000	50735
18	Payment of Tax for AY 2009-10	13-03-14	10,00,000	50517
19	Payment of Tax for AY 2009-10	15-01-14	10,00,000	50303
20	Payment of Tax for AY 2009-10	28-10-13	5,00,000	50671
21	Payment of Tax for AY 2009-10	31-07-13	10000	62599
	<b>Total</b>		<b>16778561</b>	

4.1 The Id. AR invited our attention in copy of statement, assessee's brother recorded during search u/s 132 of the Act on dated 04.09.2009, annexed in **APB pages 7to 10** where the in the statement there was not mentioned about the undisclosed income. The Id.AR represented that during search proceeding in recorded statement, no such concealed income was calculated. The Id. AR relied on the catena of judgments which are as below:

I. **Sandeep Singh vs. UOI (2017) 78 Taxmann.com83 (SC)**

*“2. The surviving grievance is only with regard to the immunity from prosecution under Section 245H(1A) of the Income Tax Act, 1961 (for short, 'the said Act'), which reads as follows:*

*"245H(1A) An immunity granted to a person under sub-section (1) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of Section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted."*

*3. In case the payments are not made within the time granted by the Settlement Commissioner or in case the person fails to comply with any other conditions, subject to which the immunity was granted, the immunity shall stand withdrawn. In the case of the appellant, it is not in dispute that the payments have not been made within the time originally granted by the Settlement Commissioner. But at the same time, it is not in dispute that all payments have been made before the appellant approached this Court and filed this appeal by way of special leave petition on 20.01.2016, though the time originally granted by the Settlement Commissioner was only up to 31.07.2015.*

*4. However, we find from the provision that the Settlement Commissioner is free to grant further time for payment, under Section 245H(1A) of the said Act.*

*5. Having heard the learned senior counsel for the appellant and learned Additional Solicitor General appearing for the respondents, we are of the view that in the facts and circumstances of this case, it is not necessary to relegate the appellant to the Settlement Commissioner for enlargement of time, since the payments have already been made.”*

2. **JCIT vs. Jayendra N. Shah ITA No. 1552/Ahd/2016** date of order 16.03.2018, ITAT, Ahd

*“3. Learned Departmental Representative vehemently contends that the CIT(A) has erred in law and on facts in deleting the impugned penalty as imposed by the Assessing Officer on account of assessee’s failure in specifying the manner of having derived the above undisclosed income as well as substantiation thereof during the course of search as well as assessment proceedings. He however fails to rebut the CIT(A)’s clinching finding that no such query of manner of deriving the impugned undisclosed income had been put to the assessee by the authorized officer whilst recording the search statement in question. We notice in this backdrop that hon’ble jurisdictional high court’s recent judgment in PCIT vs. Mukeshbhai Ramanlal Prajapati Tax Appeal No. 434 of 2017 decided on 24.07.2017 holds that it is incumbent for the authorized officer to question the assessee about the relevant manner of having derived the undisclosed income in question and then only the onus shifts on the tax payer to substantiate the same.”*

5. The ld. DR vehemently argued and relied on the order of the revenue authority. The ld. DR drawn our attention in appeal order page 3, the relevant paras of the order are reproduced as below:

*“4. In the light of the above facts, the various grounds of appeal are adjudicated as below:*

*4.1 Grounds of Appeal No. 1 to 4 relate to imposition of penalty under Section 271AAA by the AO. The appellant is aggrieved against the order of the AO imposing penalty amounting to Rs.35,45,120/-. The AO has calculated the penalty @10% of the undisclosed income of Rs.3,54,51,237/-.*

*Facts of the case, the basis of penalty imposed by the AO and the arguments of the appellant during the appellate proceedings have been considered. Apart from the appeal being invalid on account of being time barred by limitation, on the merits also the appeal is liable to be dismissed. The AO has levied the penalty on account of the fact that the assessee did not pay the tax and interest in compliance to the order passed by the Hon'ble Settlement Commission and accordingly, the provisions of Section 245H(IA) are attracted and the immunity granted against penalty and prosecution stands withdrawn. The Hon'ble Settlement Commission vide its order dated 28.05.2013 passed under Section 245D(4) give direction regarding the payment of tax and interest as under:*

*“28. In the light of his request it is decided that the amount of tax and interest will be payable in six equal instalments by 15th of every alternate month starting with 15th June, 2013.”*

*As per AO, the assessee failed to pay the tax/interest and therefore notice for imposition of penalty was issued on 24.12.2014. As per the penalty order, no reply was filed before the AO even after reminder issued on 12.01.2015. The AO levied penalty holding that the immunity granted to the assessee got waived as per the*

*provisions of Section 245H(IA). For clarity the provisions of the Section are reproduced below:*

*“245H(1A) An immunity granted to a person under sub-section (I) shall stand withdrawn if such person fails to pay any sum specified in the order of settlement passed under sub-section (4) of section 245D within the time specified in such order or within such further time as may be allowed by the Settlement Commission, or fails to comply with any other condition subject to which the immunity was granted and thereupon the provisions of this Act shall apply as if such immunity had not been granted. ”*

*In view of the above clear-cut provisions of law in the matter, the action of the AO in invoking the penalty provisions is found valid. Further the search in this case was conducted on 03.09.2009 and the case is fully covered under the provision of Section 271AAA. The submissions of the appellant regarding wrongly assessing his share in M/s J.V. Trading Company is not an issue which can be considered either by the AO or during the appellate proceedings, once the order has been passed by the Settlement Commission. Therefore, apart from the appeal being barred by time limitation, on merit also the appeal filed by the assessee is liable to be dismissed.*

*Accordingly, these grounds of appeal are dismissed.”*

6. We heard the rival submission and relied on the documents available in records. The assessee had dishonoured the direction of ITSC and accordingly the immunity was withdrawn u/s 245 H(1A) and the tax was not paid within the

stipulated period. The ld. DR pointed out that the assessee is failed to comply the direction of the ITSC, so, the penalty is correctly levied by the ld. AO U/s 271AAA of the Act. On perusal of the documents, we find that the assessee paid the tax not within the stipulated period but paid as per the list which is annexed in **APB page 37**. the reflection of payment was also found in Form 26AS which is annexed in **APB page 39 to 41**. In any case, the assessee had not failed to comply the payment as directed by the ITSC. We fully relied on the order of the **Sandeep Singh** (supra). The ITSC has power to extend the limitation period for payment of tax. For application of Section 271AAA of the Act, the statute grants immunity in Sub-Section 2(i) for non-specification of undisclosed income U/s 132(4) of the Act. In the statement recorded no such undisclosed income was derived. The statement of assessee's brother is annexed in **APB pages 7 to 10**. It is duty of the Authorised Officer to ask the relevant question to ascertain the undisclosed income during the statement recorded in search proceeding, relied on **Jayendra N. Shah** (supra). The ld. DR in argument mentioned that the assessee had lost the immunity, so penalty is justified. But remained silent about the application of Section 271AAA(2)(i) of the Act. In our considered view, the assessee is eligible for granting immunity for application of penalty U/s 271AAA of the Act. Accordingly, the penalty u/s 271AAA is bad in law for the assessee amount to Rs.35,45,120/-. We set aside the impugned appeal order and the penalty amount to Rs.35,45,120/- is quashed.

7. In the result, the appeal of the assessee bearing **ITA No. 267/Asr/2017** is allowed.

**Order pronounced in the open court on 21.08.2023**

Sd/-

**(Dr. M. L. Meena)**  
**Accountant Member**

Sd/-

**(ANIKESH BANERJEE)**  
**Judicial Member**

AKV

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy  
By order