

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member
AND
Dr. B. R. R. Kumar, Accountant Member**

ITA No. 5610/Del/2016
(Assessment Year: 2012-13)

Vikram Dhirani, D-1039, New Friends Colony, New Delhi (Appellant) PAN: AHTPD6528L	Vs. DCIT, Central Circle-7, New Delhi (Respondent)
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Assessee by :	Shri. P. C. Yadav, Adv Shri Shivam, Adv
Revenue by:	Shri Anuj Garg, Sr. DR
Date of Hearing	04/07/2023
Date of pronouncement	22/09/2023

ORDER

PER C. M. GARG, J. M.:

1. This appeal has been filed by the assessee against the order of the Id CIT(A)-24, New Delhi dated 06.10.2016 for AY 2012-13.
2. The assessee has raised the following grounds of appeal:-
 - "1. *That on facts and circumstances of the case, the order passed by the Ld. CIT (Appeal) is bad both in the eyes of law and on facts.*
 2. *That the Ld. CIT (Appeal) has erred in law and on facts in confirming the penalty of Rs. 50,50,000/- despite the fact that the assessee has satisfied all the conditions for non imposing of penalty.*
 3. *That the Ld. CIT (Appeal) has erred in law and on facts in confirming the penalty of Rs. 50,50,000/- despite the fact that no proper opportunity of being heard was allowed at the time of imposition of penalty.*

4. That the impugned appellate order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.”

3. The Id. counsel submitted that on facts and circumstances of the case, the order passed by the Ld. CIT (Appeal) is bad both in the eyes of law and on facts as the Ld. CIT (Appeal) has erred in law and on facts in confirming the penalty of Rs. 50,50,000/- despite the fact that the assessee has satisfied all the conditions for non imposing of penalty. He further contended that the Ld. CIT (Appeal) has erred in law and on facts in confirming the penalty of Rs. 50,50,000/- despite the fact that no proper opportunity of being heard was allowed at the time of imposition of penalty. The Id. counsel placing on record copy of the order of Hon'ble High Court of Delhi in WPC No. 9082/2017 order dated 05.03.2018 and submitted that the assessee was allowed credit of seized cash for AY 2012-13 and the Department was directed accordingly therefore order of Hon'ble High Court supports the stand of assessee.

4. The Id. counsel also submitted that the Assessing Officer has not made any addition in the assessment order for AY 2012-13 on account of impugned cash seized as the assessee voluntarily included the same in the return of income and also paid tax thereon despite the fact that the assessee subsequent to the search retracted his statements surrendering the cash seized which again supports the stand of the assessee against imposition penalty u/s. 271AAA of the Act. The Id. counsel also drew our attention towards para 8 of assessment order and submitted that the Assessing Officer only made addition on account of foreign currency seized and directed to initiate proceedings u/s. 271(1)c) of the Act without making any addition on account of seized cash.

5. The Id. counsel precisely reiterating written submissions/brief synopsis and placing reliance on the various judgments including judgment of Hon'ble jurisdictional High Court of Delhi in the case of Pr. CIT vs. M/s. Emirates Technologies Pvt. Ltd. (ITA No. 400/2017) order dated 18.07.2017 submitted that no specific query had been put to the assessee by drawing his attention to the provisions of section 271AAA asking him to specify the manner in which the undisclosed income surrendered during the course of search had

been derived then penalty is not leviable under said provision. Therefore he submitted that penalty may kindly be deleted.

6. Replying to the above, the Id. Senior DR supported the penalty order submitted that the assessee has not specified manner in which undisclosed income was derived in the statement recorded u/s. 132(4) of the Act, therefore, penalty was rightly levied by the Assessing Officer. Further drawing our attention towards paras 4.2.8.2 of first appellate order the Id. Senior DR submitted that since the assessee did not comply with the requirement of section 271AAA (2)(ii) of the Act therefore immunity from imposition of penalty is not available for the assessee.

7. Placing rejoinder to the above, the Id. counsel again took us through the relevant paras 4.2.3 to 4.2.9.1 of first appellate order and complete statement of assessee placed at pages 10 to 25 of first appellate order and submitted that there was no specific question by the officer to the assessee to substantiate the manner in which undisclosed income was derived and kept as cash which was found and seized during the search and seizure operation and the assessee has no control over the manner of recording statement by the tax authority therefore in view of judgment of Hon'ble jurisdictional High Court of Delhi in the case of PCIT vs. M/s Emirates Technologies (supra) the penalty is not leviable on the assessee thus penalty may kindly be deleted.

8. On careful consideration of above submissions and perusal of the order of the authorities below alongwith written submissions of assessee and case laws relied by him first of all we note that the assessee for AY 2012-13 filed written of income including the cash seized of Rs. 5 crore under the head income from other sources as other income and has also paid taxes etc. thereon. From the copy of the statement available at page 10 to 25 part of which has also been reproduced by the Id. CIT(A) in the relevant operative part clearly reveals that there was no specific question by the officer recording reasons to the assessee asking to specify the manner in which undisclosed income was derived. The copy of the order of Hon'ble High Court dated 05.03.2018 clearly reveals that the Hon'ble High Court on the writ petition filed by the assessee directed the department to provide credit of seized impugned cash of Rs. 5 crore and the Id. Senior DR has not disputed the fact that the assessee has

included the said amount in the return of income and has paid taxes thereon.

9. In view of preposition rendered by Hon'ble jurisdictional High Court in the case of PCIT vs. M/s. Emirate Technologies P Ltd. when no specific query or question has been put to the assessee by drawing attention of the assessee to the relevant provisions of sub section (2) of section 271AAA of the Act asking him to substantiate the manner in which undisclosed income was derived then penalty under said section would not survive. Their Lordship dismissed the appeal of Revenue after observing that there was no question to the assessee as per requirement of sub section 2 of sec 271AAA of the Act. Identical factual situation has been found in the present case as the officer recording statement had not put any question to the assessee as per mandate of sub section 2 of section 271AAA of the Act. Similar view has been rendered by Hon'ble High Court of Gujarat in the case of CIT vs. Mahendra C Shah reported as 299 ITR 305 (GJ) and in the case of PCIT vs Mukeshbhai Ramanlal Prajapati 398 ITR 0170 (GJ) as relied by the Id. counsel of assessee. The Id. Senior DR could not assist or show us any specific question put to the assessee during his statement to substantiate the manner in which undisclosed income was derived.

10. Reliance has also been placed on the judgment of Hon'ble High Court of Delhi in the case of PCIT vs. Bhavichand Jindal 414 ITR 654 (Del) wherein under identical facts and circumstances it was held that penalty levied u/s. 271AAA on the ground that the assessee had not substantiated the manner in which the undisclosed income was derived is no sustainable where the assessee in the return of income had included that amount and no addition to the returned income has been made by the Assessing Officer. Identical situation lies in the present case as the assessee during the course of search in the statement u/s. 132(4) admitted the undisclosed income and included the same in the return of income and paid due taxes thereon. However, the allegation of the Assessing Officer that the assessee did not specify the manner in which the undisclosed income was derived is concerned, as we have noted above, no specific question was put to the assessee during recording of statement therefore the assessee cannot be expected to control and set the manner of recording statement and thus, it cannot be alleged that the assessee failed to substantiate the manner in which undisclosed income was derived. In

view of above observations, we reach to a logical conclusion that since the assessee has complied with the all requirements of mandate of law envisaged in sub section (2) of section 271AAA of the Act thus he is validity entitled to avail immunity from imposition of penalty u/s. 271 AAA of the Act. Hence, respectfully following the preposition rendered by Hon'ble jurisdictional High Court of Delhi and Hon'ble High Court of Gujarat as respectfully noted above (supra) grounds of assessee are allowed and Assessing Officer is directed to delete the penalty.

11. In the result, the appeal of assessee is allowed.

Order pronounced in the open court on 22/09/2023.

Sd/-
(B. R. R. Kumar)
ACCOUNTANT MEMBER

Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 22/09/2023
A K Keot/NV

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi