

IN THE INCOME TAX APPELLATE TRIBUNAL

PANAJI BENCH : PANAJI

(THROUGH VIRTUAL HEARING AT ITAT : PUNE BENCHES : PUNE)

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

AND

DR. DIPAK RIPOTE, ACCOUNTANT MEMBER

Sl. No.	ITA.No.	Name of Assessee	Respondent	A.Y.	CIT(A)'s Order Appealed Against	Penalty Amount in Rs.	Proceedings under sec.
1.	31/PAN./2021	Deepak Datta Lawande, Dr.	ACIT, Central Circle, Pundalik Niwas, Rua De Ourem, Panaji, Goa PIN 403 001	2012-13	CIT(A)-2/PNJ/10033/2019-20	1,01,540	271(1)(c) of the of the Income Tax Act, 1961 (in short "the Act").
2.	32/PAN./2021	Lawande Hospital,		2013-14	CIT(A)-2/PNJ/10035/2019-20	1,22,230	
3.	33/PAN./2021	Near Power House,		2014-15	CIT(A)-2/PNJ/10037/2019-20	1,35,730	
4.	34/PAN./2021	Aquem, Margao, Goa		2015-16	CIT(A)-2/PNJ/10039/2019-20	1,63,150	
5.	35/PAN./2021	PIN 403 601 PAN AALPL8850E		2016-17	CIT(A)-2/PNJ/10042/2019-20	1,82,730	
6.	36/PAN./2021	Smt. Maya Deepak		2012-13	CIT(A)-2/PNJ/10034/2019-20	1,01,540	
7.	37/PAN./2021	Lawande, Dr. Lawande		2013-14	CIT(A)-2/PNJ/10036/2019-20	1,22,230	
8.	38/PAN./2021	Hospital, Near Power		2014-15	CIT(A)-2/PNJ/10038/2019-20	1,35,730	
9.	39/PAN./2021	House, Aquem,		2015-16	CIT(A)-2/PNJ/10040/2019-20	1,63,150	
10.	40/PAN./2021	Margao, Goa. PIN 403 601 PAN AALPL8849F		2016-17	CIT(A)-2/PNJ/10041/2019-20	1,82,730	

For Assesseees :	Shri P.K. Bansal
For Revenue :	Shri P.S. Shivshankar, CIT-DR

Date of Hearing :	11.10.2023
Date of Pronouncement :	13.10.2023

ORDER

PER BENCH :

The instant batch of ten appeals pertain to twin assessee's viz., Shri Deepak Datta Lawande, and his wife Smt. Maya Deepak Lawande. All other relevant details stand duly tabulated hereinabove in the common cause title.

Heard both the assessee's as well as the department through their respective learned representatives. Case files perused.

2. We note during the course of hearing that these twin assessee's instant ten appeals i.e., five cases each raise identical substantive grounds seeking to reverse the learned lower authorities action imposing sec.271(1)(c) penalties thereby invoking Explanation 5A thereof as this is an instance of a search carried out in the latter assessee's case dated 14.11.2016. And that the former assessee herein Shri Deepak Datta Lawande had been proceeded u/sec.153C of the Act. There is further no dispute between the parties that the Assessing Officer had framed his identical as many corresponding assessments dated 30.11.2018 assessing both these assessee's thereby apportioning the corresponding undisclosed incomes equally in their names as they are governed under the Portuguese Civil Court as prescribed u/sec.5A of the Act.

3. Now comes the impugned penalty proceedings initiated in both of these assessee's cases by the learned lower authorities holding that they had concealed their taxable income which could see light of the day only after the impugned search dated 14.11.2016. It is in this factual backdrop that both the lower authorities have imposed the

above tabulated penalties identically in these twin assessee's cases. This is what leaves these twin assessee's aggrieved who are in appeal before us.

4. It transpires during the course of arguments that the alleged undisclosed incomes in both these assessee's cases had been assessed going back their sec.132(4) search statements only wherein they had admitted to have not disclosed the correct OPD receipts right from F.Y. 2011-12 [A.Y.2012-13] till the date of search. There would be further no quarrel that these assessee's have duly admitted their undisclosed income(s) in question which also stood declared in their post-search returns as the Assessing Officer(s) had not made any addition as it is evident to us from a combined perusal of all these case files.

5. The first and foremost question that arises for our apt adjudication in all these cases therefore, is regarding the applicability of sec.271(1)(c) Explanation-5A itself. Learned CIT-DR vehemently argued that this is a search case which was conducted after 01.06.2007 wherein the assessee's had been found to have concealed their respective particulars of income going by their sec.132(4) statements. We are afraid that such a course of invoking impugned penal provision is nowhere contemplated u/sec.271(1)(c), Explanation-5A, clauses-(I) and (II) wherein the legislature has made it clear

that the searched person has to be as the owner of “any money, bullion or jewellery etc.” in former category and “any income based on any entry in any books of accounts” in the latter one; respectively. We do not see any actual material apart from the assessee’s so-called sec.132(4) admissions in case files atleast in the former four assessment years i.e., 2012-13 to 2015-16. The Revenue is equally fair in not disputing this clinching factual position.

6. This is also coupled with the fact that so far as the last assessment year before us i.e., A.Y. 2016-17 is concerned, we again note that sec.271(1)(c) would hardly apply as there is yet another specific provision i.e., Sec.271AAB of the Act dealing with a searched assessee’s case in the “specified previous year”. Faced with the situation, we conclude that these impugned identical penalties in the former four assessment years are not sustainable since not based on any actual evidence found during the course of search in light of sec.271(1)(c) Explanation-5A(I) and (II) and in the last assessment year; for the reason that the same falls in the definition of “specified previous year” in sec.271AAB Explanation (b) of the Act in the nature of a special provision having overriding effect over sec.271(1)(c) of the Act. We thus accept the assessee’s submissions challenging correctness of the impugned penalties in all these ten cases. The Revenue’s

arguments through learned CIT-DR supporting the same are declined in very terms. Ordered accordingly.

All other pleadings on merits stand rendered academic.

7. These twin assessee's instant ten appeals are allowed in above terms. A copy of this common order be placed in the respective case files.

Order pronounced in the open Court on 13.10.2023.

Sd/-
[DR. DIPAK P. RIPOTE]
ACCOUNTANT MEMBER

Sd/-
[SATBEER SINGH GODARA]
JUDICIAL MEMBER

Pune, Dated 13th October, 2023

VBP/-

Copy to

1.	The applicant
2.	The respondent
3.	The CIT(A)-2, 3 rd Floor, Pundalik Niwas, Rua Documentary evidence Ourem, Panaji, Goa-403 001
4.	Pr. CIT (Central), Bangalore
5.	D.R. ITAT – 'Panaji' Bench, Panaji
6.	Guard File.

//By Order//

//True Copy //

Assistant Registrar, ITAT, Pune Benches,
Pune.