

IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted Through Virtual Court)

**Before: Smt. Annapurna Gupta, Accountant Member  
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA Nos: 535 & 567/RJT/2014  
Assessment Year: 2011-12**

M/s. Backbone Project Ltd., A-9, Kumud Apartment, Nr. AMCO Bank, Stadium Circle, Ahmedabad  PAN: AABCB1582E	Vs	The Deputy Commissioner of Income Tax, Central Circle-II, Rajkot
The Asstt. Director of Income Tax, Central Circle-2, Rajkot (Appellant)	Vs	M/s. Backbone Project Ltd., A-9, Kumud Apartment, Nr. AMCO Bank, Stadium Circle, Ahmedabad  PAN: AABCB1582E (Respondent)

**Assessee Represented: Shri D.M. Rindani & Ms. Devina  
Patel, ARs.**

**Revenue Represented: Ms. Jaya Chaudhary, CIT-DR**

Date of hearing : 25-09-2023

Date of pronouncement : 18-10-2023

**आदेश/ORDER**

**PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-**

These cross appeals are filed by the Assessee and Revenue as against the appellate order dated 22.08.2014 passed by the Commissioner of Income Tax (Appeals)-1V, Ahmedabad arising out of the Penalty order passed under section 271AAA of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2011-12.

2. The brief facts of the case is that the assessee company engaged in the works contracts with the Govt. and Semi Govt. Bodies. For the Assessment Year 2011-12, the assessee filed its Return of Income on 07-09-2012 declaring total income of Rs. 2,64,25,250/-. There was a search action u/s. 132 of the Act carried out at the premises of the assessee company on 24-06-2010 as well as survey action in the case of the assessee business premises wherein two diaries (BF-13) and (BF-14) containing details of unaccounted cash receipts/expenses were found and impounded. The Director of the assessee company Shri Jayantilal M. Jakasania considered the cash transaction in the two diaries and made voluntary disclosures of Rs. 2 crores on account of discrepancy found in the said diaries, on behalf of the company for the Assessment Year 2011-12. However the Assessing Officer found assessee has only offered an amount of Rs. 62,02,614/- under the head "other income" as additional income with the Return of Income filed by the assessee. The assessee was requested to explain why the assessee company has not disclosed Rs. 2 crores as admitted during the course of search.

3. In response, the assessee filed reply letter dated 25-02-2013 stating that the Director of the company has admitted Rs. 2 crores based on the two diaries found from the business premises. After obtaining Xerox copy of the diaries, the major entries tallying with the books of accounts. Therefore after reconciliation of accounts, the assessee company disclosed only Rs. 64,00,000/- as additional income in the Return of Income. The total tax liability works out approximately to Rs. 62 lakhs. Due to scarcity of funds, the assessee company is not possible to make payment of tax. However the Tax Deducted at Source from rent, interest and contract receipts all amounting to Rs. 1,20,82,926/- is more than the tax demand and further the Return of Income resulting in a refund of Rs. 33,00,130/-. Therefore the assessee requested not to proceed with the any penal proceedings.

3.2. The above reply though reproduced in the assessment order at para 3.1 of the assessment order. However the Assessing Officer held that the assessee has not offered balance amount of Rs. 1,67,68,242/- for taxation and treated the same as unaccounted income disclosed during the course of search and also initiated Penalty proceedings u/s. 271AAA of the Act.

4. Pursuant to the assessment order, the Assessing Officer proceeded with levying penalty u/s. 271AAA of the Act by issuing a show cause notice dated 19-03-2013. In reply, the assessee submitted that it has surrendered the respective income and filed the Return of Income disclosing Rs. 62,02,614/- as additional income, since the remaining incomes are already reflecting in its

books of accounts. Further the Return of Income also resulting in refund and hence no question of levying penalty u/s. 271AAA of the Act.

4.1. The above explanation was not accepted by the Assessing Officer, since the assessee failed to file the disclosures of income as admitted in the statement recorded u/s. 132(4) of the Act. Therefore the Ld. A.O. levied a penalty of Rs. 22,97,058/- being 10% of the undisclosed income.

5. Aggrieved against the same, the assessee filed an appeal before Commissioner of Income Tax (Appeals). The Ld. CIT(A) after considering the submissions of the assessee deleted the penalty u/s. 271AAA in respect of undisclosed income to the extent of Rs. 62,02,214/- and confirmed the penalty in respect of the balance undisclosed income of Rs. 1,67,68,242/- which was not declared in Return of Income and thereby partly allowed the appeal observing as follows:

*“...6.2 Admittedly, in the statement recorded u/s 132(4), one of the Directors of the appellant company had disclosed income of Rs.2,00,00,000/-. As against this, in the return of income only Rs.62,02,614/- were offered for taxation. Thus, the criteria mentioned in sub-section-2 of section 271AAA has not been fulfilled as appellant has failed to offer the income and did not pay taxes on the same. It is noted by the AO in the penalty order in 'para-4' that appellant has not made payment of taxes due on the said income even till the date of issue of penalty order. From the above facts, firstly, it is clear that the appellant has partly fulfilled the first condition by disclosing income of Rs.2,00,00,000/- in the statement u/s 132(4) as against the undisclosed income calculated at Rs.2,29,70,856/- from the two seized diaries. Secondly, the second condition of showing the undisclosed income in the returns is also partially fulfilled as against undisclosed income of Rs.2,29,70,856/-, income only to the extent of Rs.62,02,214/- was reflected in the return. The appellant has also not substantiated the manner in which such undisclosed income was earned. Lastly, the due taxes were not paid by the appellant as clear from the observation of the AO in 'para-4' of the penalty order.*

*6.3 It is seen that AO has levied penalty in respect of entire undisclosed income of Rs.2.29,70,856/-. From the above discussion, it is clear that regarding undisclosed income of Rs.62,02,214/-, the appellant has fulfilled the conditions*

mentioned in section 271AAA. This amount was disclosed in 132(4) statement, shown as income in the return and due taxes were paid thereupon. This is clear from the copy of return collected during appeal proceedings. Only condition not fulfilled by the appellant in respect of undisclosed income of Rs.62,02,214/- is failure to explain the manner in which the income was earned. On this issue the decision of the Hon'ble High Court of Gujarat in the case of Mahendra C. Shah [2008] 299 ITR 305 (GUJ) which is in the context of immunity from penalty u/s 271(1)(c) read with Explanation 5 is reproduced as under:

"15. Insofar as the alleged failure on the part of the assessee to specify in the statement under section 132(4) of the Act regarding the manner in which such income has been derived, suffice it to state that when the statement is being recorded by the authorized officer it is incumbent upon the authorized officer to explain the provisions of Explanation 5 in entirety to the assessee concerned and the authorized officer cannot stop short at a particular stage so as to permit the revenue to take advantage of such a lapse in the statement. The reason is not far to seek. In the first instance, the statement is being recorded in the question and answer form and there would be no occasion for an assessee to state and make averments in the exact format stipulated by the provisions considering the setting in which such statement is being recorded, as noted by Allahabad High Court in case of Radha Kishan Goel (SUpra) Secondly, considering the social environment it is not possible to expect from an assessee, whether literate or illiterate, to be specific and to the point regarding the conditions stipulated by Exception No.2 while making statement under section 132(4) of the Act. The view taken by the Tribunal as well as Allahabad High Court to the effect that even if the statement does not specify the manner in which the income is derived, if the income is declared and tax thereon paid, there would be substantial compliance not warranting any further denial of the benefit under Exception No.2 in Explanation 5 is commendable."

6.4 From the above, it is held that AO was not justified in levying penalty u/s 271AAA in respect of undisclosed income to the extent of Rs.62,02,214/- as all the conditions prescribed in sub-section 2 of section 271AAA have been fulfilled. It is also held that in respect of balance undisclosed income of Rs. 1,67,68,242/-, the AO has correctly levied the penalty u/s 271AAA as undisclosed to this explanation was neither offered in the return of income nor the due taxes were paid thereupon. Therefore, A.O. is directed re-compute the penalty in accordance with the above findings.

7. In the result, the appeal is partly allowed."

6. Aggrieved against the same, both Assessee and Revenue are in appeal before us.

**7. ITA No. 535/Rjt/2014 (Assessee Appeal)**, the grounds of appeal raised by the Assessee reads as under:

*(1) The Learned Commissioner of Income Tax (Appeals)-IV, Ahmedabad has erred in confirmed the penalty proceedings u/s. 271AAA of the IT Act amounting to Rs. 16,76,824/- is unwarranted, unjustified and bad in law.*

**8. ITA No. 567/Rjt/2014 (Revenue Appeal)**, the grounds of appeal raised by the Revenue reads as under:

*1. The Ld. CIT(A) has erred in law and on facts in deleting partly the penalty levied on entire undisclosed income of Rs.2,29,70,856/- u/s. 271AAA to the tune of Rs.22,97,058/- on the ground that the penalty could not be levied on the income which is disclosed by the assessee in the return of income.*

*2. In doing so, the Ld.CIT(A) has not appreciated the facts that despite disclosure of Rs.2,29,70,856/- during the search proceedings, the assessee has made part disclosure in return of income, which does'nt tantamount to full disclosure and till date the assessee has not paid taxes even on part disclosure.*

9. Ld. Counsel Shri D.M. Rindani appearing for the assessee filed a detailed Paper Book containing copy of the acknowledgement and computation of income for the Assessment Year 2011-12, copy of audited accounts, copy of the statement recorded u/s. 132(4) of the Act on 25-06-2010 and summary of receipts and payments as reflecting in the diaries (BF-13) and (BF-14) which was seized from the business premises of the assessee and letter dated 25-02-2013 addressed to the Assessing Officer and Commissioner of Income Tax, Central Circle and explaining that the undisclosed income is only Rs. 64 lakhs and not Rs. 2 crores as admitted u/s. 132(4) of the Act. Thus Ld. Counsel submitted both Assessing Officer and Appellate Authority failed to consider assessee's letter dated 25-02-2013 thereby confirmed the penalty levied u/s. 271AAA of the Act. The Assessing Officer also failed to consider Tax Deducted at Source of Rs. 1,20,82,926/- which is more than the tax demand, therefore no question of invoking 271AAA of the Act. Thus the Ld.

Counsel pleaded the entire penalty of Rs. 22,97,058/- levied u/s. 271AAA of the Act is liable to be deleted.

10. Per contra, Ld. Counsel CIT-DR Ms. Jaya Chaudhary appearing for the Revenue supported the order passed by the Lower Authorities and pleaded to uphold the levy of penalty to its entirety.

11. We have given our thoughtful consideration and perused the materials available on record including the Paper Book filed by the assessee. It is an undisputed fact that during the course of search action and statement recorded u/s. 132(4), the Director of the assessee company admitted Rs. 2 crores as undisclosed income on the basis of the seized diaries BF-13 & BF-14. During the course of assessment proceedings the Assessee in its reply letter dated 26-12-2012 against notice u/s. 143(2) explained the entries in the seized diaries and on detailed verification, majority of the entries are reflected in the books of accounts as per explanation given therein. It is also included the entries, which are reflected as income in the books of the assessee company. The summarized portion is explained as below:

*The Summarized position is explained below :-*

**[A)Diary 2009 (BF-13) (1 to 129)**

SUMMARY OF RECEIPTS AND PAYMENTS	
Total Credit Amount	14549636
LESS :-	
a) Entries recorded only for noting purpose as per Annexure A(i)	5727421
b) Total as per above details	8822215
Income reflected / disclosed in Books as per Annexure A(ii)	6481860
Cash Withdrawal from Banks and reflected in the books as per Annexure A(iii)	677000

Balance	1663355
Utilization for deposit in banks and reflected in. the books as per Annexure A(iv)	1125000
A) Balance receipt and Payment	538355
B) Total Expenses as per diary , Less Balance Deposit	6869675
C) Expenses being claimed to the extent of available receipts	538355
D) FINAL BALANCE	0

**(B) Diary 2010 (BF-14) (1 to 47)**

SUMMARY OF RECEIPTS AND PAYMENTS	
Total Credit Amount	11225000
LESS :-	
a) Cash transfer entries from one site to other site duly reflected in books of accounts Annx.- B(i)	11225000
Unexplained Entries	NIL

11.1. Similarly, the assessee vide its letter dated 25-02-2013 addressing to the Assessing Officer explained the disclosure of additional income as follows:

February 25, 2013.

The Deputy Commissioner of Income Tax,  
CC-2, Rajkot

Sub: Disclosure of Rs.2 crores made at the time of search Proceedings on 24.6.2010 Filing of block assessment returns.

With reference to the above, in this connection we have to submit the following for your kind and sympathetic consideration:

1. Search and seizure proceedings were carried out at residential premises and burvey proceedings were carried out at business premises at Ahmedabad Office. During the period Shri Jayantilal M Jakasania, MD of the company has disclosed Rs.2 crores on the basis of two diaries found from the business premises. After getting the Xerox copy of the diary, the same is tallying with the books of accounts, but there are some changes found in the diaries. At the time of filing the block period return the accountant of the company has prepared the block period return on the basis of the credit entries given effecting books with diary and net income shown Rs.64 lacs as additional Income. But as soon as undersigned came to know that the accountant had asked for the credit of Rs.1.36 crores to be deducted from Rs.2 crores and remaining income is disclosed as income. But during the search proceedings the undersigned had disclosed Rs. 2 crores and to avoid long drawn litigation and buy mental peace the entire amount of Rs.2 crores is offered for taxation for the block period. Further, we draw your kind attention that, total tax works out to Rs.62 lacs approximately. Due to scarcity of funds, it is not possible

*for me to make the payment at present. So, I request your honour that the tax deducted at source is more than tax demand. So, you are requested to kindly deduct from the same and remaining amount may be refunded. The above disclosure is made by me subject to immunity from penalty proceedings. I hope that your honour will do the needful in the matter and oblige.*

*Thanking you,*

*Yours faithfully,  
For Backbone Projects Pvt. Ltd,*

*Jayantilal M Jakasania  
M.D.*

11.2. Further in the Return of Income filed by the assessee on 07-09-2012, the Return of Income resulted in a refund of Rs. 33,00,130/- after taking into credit of TDS amount of Rs. 1,20,82,926/-. However the Assessing Officer in the assessment order has mainly relied upon the statement recorded u/s. 132(4) of the Act and held that the assessee declared only an amount of Rs. 62,02,214/- and balance of the undisclosed income of Rs. 1,67,68,242/- was not disclosed by the assessee, thereby levied penalty of Rs. 22,97,058/- u/s. 271AAA of the Act. Even in the tax working in the demand notice u/s. 156 of the Act, the A.O. determined the tax payable by the assessee as Rs. 1,51,70,997/- and adjusted the tax paid of Rs. 87,77,794/- and demanded balance tax of Rs. 63,93,203/-. We do not find that the TDS credit of Rs. 1,20,82,926/- is considered by the A.O., while quantifying the above demand. If the Assessing Officer could have considered reply letter dated 25-02-2013 of the assessee, reconciliation the seized diaries (BF-13 & BF-14), the undisclosed income is not Rs. 2 crores but only Rs. 64 lac. Without considering the above reply of the assessee, the Assessing Officer wrongly proceeded only with the statements recorded during the course of search proceedings,

which is not correct in law. Further there is no evidence placed in the assessment order framed by the Assessing Officer with relevant materials to the extent of undisclosed income of Rs. 2 crores by the assessee. Whereas the assessee during the assessment proceedings clearly reconciled the undisclosed income in the diaries (BF-13 & BF-14). Therefore in our considered opinion, the A.O. wrongly initiated the penalty proceedings u/s. 271AAA of the Act. Consequently the levy of penalty of Rs. 22,97,058/- is also not correct in law. Therefore the same is liable to be deleted.

12. In the result, the appeal filed by the Assessee in ITA No. 535/Rjt/2014 is hereby allowed and the appeal filed by the Revenue in ITA No. 567/Rjt/2014 is hereby rejected.

Order pronounced in the open court on 18-10-2023

**Sd/-**  
**(ANNAPURNA GUPTA)**  
**ACCOUNTANT MEMBER True Copy**  
**Ahmedabad : Dated 18/10/2023**

**Sd/-**  
**(T.R. SENTHIL KUMAR)**  
**JUDICIAL MEMBER**

आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
राजकोट