

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "F": NEW DELHI**

BEFORE

**DR. BRR KUMAR, ACCOUNTANT MEMBER
AND
MS. ASTHA CHANDRA, JUDICIAL MEMBER**

ITA No. 6251/Del/2016
Asstt. Year: 2012-13

AND

ITA No. 7128/Del/2019
Asstt. Year: 2012-13

Rajesh J Aeren, Aerens Estate, Mall Road, Kishan Garh, D-3, Vasant Kunj, New Delhi – 110 070 PAN AAHPG0479N	Vs.	ACIT, Central Circle 18 New Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Rajeshwar Painuly, CA
Department by:	Shri Vivek Vardhan, Sr. DR
Date of Hearing:	29.08.2023
Date of pronouncement:	10.11.2023

ORDER

PER ASTHA CHANDRA, JM

The appeals filed by the assessee arise out of two separate orders, one dated 31.05.2016 of the Ld. Commissioner of Income Tax (Appeals)-25, Delhi and the other dated 10.06.2019 of the Ld. Commissioner of Income Tax (Appeals) – 27, New Delhi both hereinafter referred to as **(“CIT(A)”**) pertaining to Assessment year **(“AY”)** 2012-13. The quantum appeal is a recalled matter. It was decided by the Tribunal on 13.08.2019 ex-parte for

non appearance of the assessee. The assessee filed miscellaneous application which was accepted and the said order of the Tribunal was recalled.

Appeal No. 6251/Del/16

2. The assessee has taken the following grounds:-

- “1. That the said case learned CIT(A) has not followed instruction No. 20/2003 dated 23.12.2003 issued by CBDT regarding issue of appellate order within 15 days of last hearing of case.
2. That the said case in law and in the facts, on both, the learned CIT(A) has grossly erred in rejecting Grounds of the appellant’s appeal before him and has confirmed addition of Rs. 4,15,400/- which had been made by Assessing Officer, on the basis that the cash of Rs. 4,15,400/- which was found during the search proceeding his sources of income was not proved by the appellant.
3. That the said case in law and in the facts, on both, the learned CIT(A) has erred and has made additional addition of Rs. 13,69,100/- on the basis of the fact that during the search proceeding unexplained ‘Jewellery’ was found at the resident premises of the appellant, in regarding of the same Assessing Officer has stated in assessment order however, by virtue of mistake the same could not added in Assessment order whereas, the same matter was dealt with Assessing Officer.
4. That the said case learned CIT(A) and Assessing Officer, both has erred on law, whereas the provisions of section 234A(3) and 234B(3) are not applicable in the case of the appellant.
5. That the said case the learned CIT(A) and Assessing Officer, both has erred on law in initiate penalty proceeding u/s 271(1)(C) & 271AAA of the Income Tax Act. ”

Appeal No. 7128/Del/19

3. The assessee has taken the following grounds:-

- “1. The Hon’ble CIT(A) has not followed the law and natural justice while confirming penalty by the Ld. AO.
2. That the Hon’ble Commissioner of Income Tax (Appeal) has erred in law and on facts by confirming the penalty of Rs. 1,78,450/- u/s 271AAA of Income Tax Act, 1961.”

Appeal No. 6251/Del/16

4. It is a search case. Search and seizure operations under section 132 of the Income Tax Act, 1961 (**the “Act”**) were conducted on 17.08.2011 in the case of the assessee individual along with other cases of the Group. Notice under section 143(2) of the Act was issued on 30.09.2013. Return was filed declaring income of Rs. 57,35,000/-. Notice under section 142(1) cum questionnaire was issued on 6.11.2013 which was served. In response, the assessee made written and oral submissions and furnished the information, documents, accounts etc. called for as also in support of his submissions. During search cash of Rs. 4,15,400/- was found, besides jewellery valued at Rs. 13,69,100/-.

4.1 During assessment proceedings on being asked to explain the nature of the cash found and acquisition of jewellery wrongly typed as ‘at requisition of jewellery’ in the assessment order, the assessee explained that the cash found was the money received on functions or during meet by elderly members of whole family or close relatives to the younger one.

4.2 The explanation was considered by the Ld. AO as ‘far from satisfactory’ for want of details like occasion, name of relatives or other details. The Ld. AO therefore, treated the entire sum of Rs. 4,15,400/- as unaccounted income and completed the assessment on total income of Rs. 61,50,400/- including therein addition of Rs. 4,15,400/- in order dated 30.03.2014 passed under section 143(3) of the Act.

5. Aggrieved, the assessee challenged the impugned addition in appeal before the Ld. CIT(A) who sustained the said addition by observing and recording the following findings in para 7.4 of the appellate order as under:-

“7.4 The Appellant could not provide any justification regarding the claim that the Assessing Officer had erred in stating that the source of Cash amounting to Rs. 4,15,400/- found at the residence of Assessee was not explained. Such Cash was found during the Search Proceedings u/s 132(1) at the residence of the Assessee on 17.08.11 and the Assessee was duty bound

to explain the nature and source of the Cash found. It was claimed by the Assessee that the Cash found was the money received on functions or during meeting by elder members of the family or close relatives. The Learned Assessing Officer has observed that no details regarding the receipt of Cash could be given, neither the details of the occasions, nor the names of the relatives or any other details could be given by the Assessee. The same situation continues in the Appellate Proceedings and no details or justification regarding the Cash could be given. Hence there is no reason to interfere with the order of the Assessing Officer in this respect and the addition towards Unexplained Cash amounting to Rs. 4,15,400/- treated as Unaccounted Income of the Assessee is hereby confirmed.”

6. Dissatisfied, the assessee is in appeal before the Tribunal and Ground No. 2 relates thereto.

7. During the appellate proceeding, the Ld. CIT(A) issued notice under section 251(2) of the Act on 18.05.2016 for enhancement of income of the assessee by Rs. 13,69,100/-. The assessee responded by filing written submission dated 31.05.2016. The Ld. CIT(A) made the impugned enhancement after considering the assessee's reply reproduced in para 7.2 of his order by observing and recording his findings in paras 7.13 to 7.17 and giving justification therefor taking support of various judicial pronouncements.

8. Aggrieved, the assessee is in appeal before the Tribunal and Ground No.3 relates thereto.

9. Ground No. 1 has not pressed. Hence, it is dismissed as not pressed.

10. Ground No. 4 relating to levy of interest under section 234A and 234B is consequential in nature.

11. Ground No. 5 relates to initiation of penalty proceedings under section 271(1)(c) and 271AAA of the Act. No appeal lies thereagainst. It is premature.

12. Now we proceed to consider the remaining Ground No. 2 and Ground No. 3. During search cash of Rs. 4,15,400/- and jewellery valued at Rs. 13,69,100/- were found at the residence of the assessee. The Ld. AO added the entire cash to the income of the assessee treating it to be his unaccounted income rejecting the assessee's explanation offered during assessment proceedings which according to him was far from satisfactory. Regarding jewellery, though nature and source of acquisition thereof was required to be explained, but no addition was made in the assessment order. However, for failure to explain the nature and source of jewellery satisfactorily, the Ld. AO stated that penalty proceedings will be taken by issue of penalty notice under section 271(1)(c).

13. In quantum appeal filed by the assessee before the Ld. CIT(A), the assessee challenged the addition of Rs. 4,15,400/- being arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence. The Ld. CIT(A) confirmed the addition as stated earlier in para 5 above. Since the Ld. AO in the assessment order had required the assessee to explain the nature and source of jewellery and initiated penalty proceedings under section 271(1)(c) in respect thereto but addition for non-satisfactory explanation being conspicuous by its absence, the Ld. CIT(A) initiated enhancement proceedings by issue of notice under section 251(2) of the Act and eventually directed the Ld. AO to enhance the assessment by an amount of Rs. 13,69,100/- under section 251(1)(a) of the Act. The assessee is aggrieved by the confirmation of addition of Rs. 4,15,400/- as also additional addition of Rs. 13,69,100/- and Ground No. 2 and 3 relate thereto.

14. The Ld. AR submitted before us that the average gross total income of last four assessment years of the assessee and his wife was more than Rs. 50 lacs. He gave the following details:-

S.No.	Assessment Year	Taxable Income of Rajesh J Aeren (Rs)	Taxable Income of Sapna R Aeren (Rs)	Total Family Income (Rs) (Gross Income)
1.	2008-09	57,50,000/-	23,23,000/-	80,73,000/-
2.	2009-10	1,38,10,885/-	97,93,544/-	2,36,04,429/-
3.	2010-11	21,43,319/-	17,73,271/-	39,16,590/-
4.	2011-12	21,43,653/-	25,04,821/-	46,48,474/-

The Ld. AR also gave the following details of family members as on the date of search

S.No	Name of Family Members	Date of Birth	Age (in 2011)	PAN No
1.	Rajesh J Aeren (Husband)	17.02.1966	44 Years	AAHPG0479N
2.	Sapna R Aeren (Wife)	08.06.1970	40 Years	AAHPG0454F
3.	Shagun R Aeren (Daughter)	05.08.1992	18 Years	-
4.	Yashwardhan R Aeren (Son)	21.06.1995	15 Years	-

The case of the Ld. AR is that the average gross total income prima facie justifies reasonableness of cash and jewellery found during search as per settled law and CBDT Instruction No. 1916 of 11.05.1994. Hence both the additions deserve to be deleted. It is also submitted that since no addition was made by the Ld. AO on account of jewellery of Rs. 13,69,000/-, the question of enhancement does not arise.

15. The Ld. DR supported the order of the Ld. CIT(A).

16. We have given our careful thought to the submissions of the parties and perused the records. It is not in dispute that during search which took place on 17.08.2011 at the residential premises of the assessee, cash amounting to Rs. 4,15,400/- was found out of which Rs. 3,50,000/- was seized and Rs. 65,400/- was released. It is also not in dispute that jewellery valued at Rs. 13,69,100/- was found and returned to the assessee. During search the authorised officer recorded the statement of Shri Rajesh J Aeren, the assessee on oath as revealed from page 7 of Paper Book (copy of panchnama). Since the said statement does not form part of the assessee's paper book nor there is any mention thereof in the assessment order, it is not known whether any question was asked during search and/or before

conclusion thereof regarding the source of cash found and/or source of acquisition of jewellery found in search. At pages 9-12 of the Paper Book there is copy of undated and unsigned reply of the assessee to the notice dated 06.01.2014 of the Ld. AO issued under section 153A/143(2) of the Act for the block period AY 2006-07 to 2011-12. At page 9 thereof under the caption "information asked /demanded" the assessee wrote as under:-

"In course of search cash of Rs. 4,15,400/- was found in addition to the jewellery valuing at Rs. 13,69,100/-.

In this connection, you are hereby required to explain the nature and source of the cash found and acquisition of the jewellery."

This amply establishes that during assessment proceedings the Ld. AO did require the assessee to explain the nature and source of cash and also acquisition of jewellery. However, the Ld. AO incorporated the reply of the assessee about the cash that it was received on functions or during meet by elderly members of whole family or close relative to the younger one. This appears at item 3 of the facts of the case narrated by the assessee in the reply to the notice aforementioned. The Ld. AO did not consider the detailed submission about the nature and source of cash as also the source of acquisition of jewellery appearing at pages 10-12 of the Paper Book. The explanation of the assessee about the nature and source of acquisition of jewellery does not find place at all in the assessment order. Strangely enough, in para 4 of the order the Ld. AO says that the assessee failed to explain the nature and source of jewellery found and recorded his satisfaction for initiating penalty proceedings under section 271(1)(c) for such failure. Obviously saying so is contrary to the facts on record.

17. As regards, the explanation of the assessee as to the nature and source of cash found, the Ld. AO rejected the explanation for want of details e.g. occasions and name of the relatives etc. from whom the money was received by the assessee and his family members. Only one opportunity was

given to the assessee to explain. This is not fair. It is opposed to the principles of natural justice. What prevented the Ld. AO to obtain further details from the assessee and consider them judiciously? Nothing is forthcoming from the records as to why the Ld. AO did not consider the explanation of the assessee regarding the nature and source of acquisition of jewellery found in search though sought for in the notice issued by him on 06.01.2014 under section 153A/143(2) of the Act.

18. The Ld. AR submitted before us that since the Ld. AO did not make addition on account of jewellery, the question of enhancement by the Ld. CIT(A) does not arise. We do not subscribe to the view canvassed by him. Section 251(1)(a) of the Act empowers the Ld. CIT(A) to enhance an order of assessment. The only condition precedent to be satisfied by the Ld. CIT(A) as prescribed under section 251(2) r.w. Explanation thereunder is that he shall not enhance an assessment unless reasonable opportunity is given to the assessee to show cause against such enhancement. Record shows that the Ld. CIT(A) afforded ample opportunity to the assessee and after due consideration of the explanation of the assessee directed the Ld. AO to enhance the assessment by an amount of Rs. 13,69,100/- representing the value of jewellery found in search. None-the-less the fact remains that the issue remains to be adjudicated on merits by the Ld. AO/CIT(A).

19. On the facts and in the circumstances of the case as set out above, we deem it fit in the interest of justice and fair play to remit the matter back and restore it to the file of the Ld. AO to decide it denovo after giving reasonable opportunity to the assessee to explain his case. We order accordingly. The impugned assessment order dated 30.03.2014 for AY 2012-13 is hereby set aside. Ground No. 2 and 3 are treated as allowed for statistical purposes.

20. In the result, the appeal of the assessee in ITA No. 6251/Del/2016 is partly allowed for statistical purposes.

Appeal No. 7128/Del/19

21. It is an appeal against imposition of penalty of Rs. 1,78,450/- by the Ld. AO vide order dated 30.3.2018 passed under section 271AAA of the Act for AY 2012-13 which has been confirmed by the Ld. CIT(A).

22. In quantum appeal No. 6251/Del/16 in the case of the assessee the assessment order dated 30.3.2014 for AY 2012-13 which formed the basis of imposition of the impugned penalty stands set aside vide our order of date. Consequently, the impugned order of penalty has no legs to stand and is hereby vacated. The Ld. AO may consider initiation of penalty proceedings under section 271AAA of the Act during the course of denovo assessment proceedings in accordance with law depending upon the exigency of the case.

23. In the result, the appeal of the assessee in ITA No. 7128/Del/2019 is treated as allowed for statistical purposes.

24. Finally, the appeal of the assessee in ITA No. 6251/Del/16 is allowed in part and his appeal in ITA No. 7128/Del/19 is allowed for statistical purposes.

Order pronounced in the open court on 10th November, 2023.

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 10/11/2023

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Copy forwarded to -

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

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
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