

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F': NEW DELHI
BEFORE,
SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER
ITA No.840/Del/2023
(ASSESSMENT YEAR 2017-18)**

Smt. Rupiner Kaur D-6/24, Ground Floor Vasant Vihar New Delhi-110 057 PAN-AASPK 0367J (Appellant)	Vs.	Asst.CIT Central Circle-30 Delhi (Respondent)
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Appellant by	Sh. Gautam Jain, Adv.
Respondent by	Ms. Sarita Kumari, CIT-DR

Date of Hearing	16/11/2023
Date of Pronouncement	28/11/2023

ORDER

PER M. BALAGANESH, AM:

This appeal of the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-30, New Delhi, [hereinafter referred to as [‘Ld. CIT(A)’] in Appeal No.10471/2016-17, dated 17/01/2023 against the order passed by Assessing Officer, Central Circle-30, New Delhi (hereinafter referred to as the

'Ld. AO') u/s 271AAB of the Income Tax Act (hereinafter referred to as 'the Act') on 10/08/2021 for the Assessment Year 2017-18.

2. The Assessee has raised the following grounds of appeal:

"1. That the lower authorities have erred in not appreciating either on the facts or circumstances of the case and further has erred in imposing the penalty of Rs. 1,62,150/- u/s 271AAB of the Act which is bad in law.

2. That the ld. CIT(A) has erred in confirming the penalty of Rs. 1,62,150/- u/s. 271AAB of the Act merely on the grounds that the impugned addition of INR 2,70,250/- has been confirmed by the ld. CIT (Appeals) in the quantum appeal.

2.1 That the ld. CIT(A) and ld. Assessing officer went phut in appreciating the submissions of the appellant that search operation was carried out at the residential property of the appellant at R 675, 1st Floor, New Rajinder Nagar New Delhi and Shop No. 27 First Floor, Old Rajinder Nagar, New Delhi - 60 on 22.10.2016 wherein the impugned cash was found which belonged to Shri Surjit Singh (Husband of the appellant) who is running real estate business.

2.2 That the ld. Commissioner of Income Tax (Appeal) has erred in confirming the penalty on the ground that the ld. Commissioner of Income Tax (Appeal) in quantum appeal has appreciated that the impugned cash belongs to husband of the appellant, Shri Surjit Singh but proceeded to withhold the impugned addition by not accepting the cash book of the business of the appellant's husband merely on the ground that the appellant's husband was not maintaining any audited balance sheet to consider the figures of opening cash in hand claimed. The lower authorities completely brushed aside the books of accounts of the Sh. Surjit Singh showing the cash in hand on the date of above mentioned search and proceeded to make/upheld the quantum addition with the pre- conceived opinion on the basis of surmises, suspicion and conjectures especially when the husband of the appellant is also assessed under the same ward. The lower authorities mechanically made/upheld the additions even when no infirmity was found in the above documents.

3. That the lower authorities have erred in mechanically imposing confirming the penalty of Rs. 1,62,150/- against the impugned addition of Rs. 2,70,250/- even when the appellant has neither concealed any facts nor filed any inaccurate particulars.

The order of Assessing Officer being erroneous, illegal and arbitrary, the same may kindly be modified.

The appellant crave leave to add, alter or amend any of the grounds before or at the time of hearing.”

3. The only effective issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in confirming the levy of penalty u/s 271AAB of the Act in the facts and circumstances of the instant case.

4. We have heard the rival submissions and perused the materials available on record. A search and seizure operation was carried out in the premises of the assessee's husband on 22/10/2016 wherein the cash of Rs.2,70,250/- was seized from the residence of assessee. It was submitted by the Ld. AR that Panchanama was drawn at the residential address of the assessee only in the name of the assessee's husband and not in the name of the assessee herein. The assessee submitted that this cash of Rs.2,70,250/- found at residential premises during the course of search was sourced out of cash balance available in the books of account of the business of the assessee's husband. The Ld. AO, however, did not heed to the said contentions of the assessee and proceeded to add a sum of Rs.2,70,250/- as unexplained cash in

the hands of the assessee in the quantum assessment proceedings. This action of the Ld. AO was upheld by the Ld. CIT(A) in quantum proceedings. No appeal has been preferred by the assessee against the quantum assessment order before this Tribunal. The penalty u/s 271AAB was levied by the Ld. AO in the sum of Rs.1,62,150/-, which was confirmed by the Ld. CIT(A) on the ground that quantum addition has been confirmed in the hands of the assessee.

5. The Ld. AR before us submitted that assessee's husband had preferred an application before the Income Tax Settlement Commission and that Interim Board for Settlement had passed an order on 23/06/2023. He submitted that this order was passed subsequent to the order passed by the Ld. CIT(A) in the impugned appeal. The Ld. AR vehemently prayed that the assessee's husband had made certain disclosure of income before the settlement commission, by explaining the source and application of those income thereon. Hence, he prayed for restoration of this appeal to the file of the Ld. AO to decide in the light of the recent order of the Interim Board for Settlement. Per contra, the Ld. DR vehemently relied on para-7 of the Ld. CIT(A).

6. We are of the considered opinion that if the Interim Board for Settlement in the case of assessee's husband had considered the application of cash balance available with the assessee's husband in the sum of Rs.7,19,290/- as on the date of search by accepting the plea that part of such cash was available in the assessee's residence in the sum of Rs.2,70,250/- then, logically there should not be any addition that could be made in the hands of the assessee herein. This is because of the fact that assessee always submitted that cash found in the residence belonged to her husband and that the husband was having sufficient cash balance in his books. However, the quantum proceedings are not in dispute before us. But, in our considered opinion, the finding of the Interim Board for Settlement would indeed have a bearing on the impugned penalty proceedings in the hands of the assessee. If the explanation given by the assessee's husband regarding this impugned cash balance has been accepted by the Interim Board for Settlement, then the penalty that has been levied in the hands of the assessee would have no legs to stand. However, this fact is to be examined from the order of Interim Board for Settlement by the Ld. AO. Further, it was submitted by the Ld. AR that since panchanama at the residential

address was drawn only in the name of the assessee's husband and not in the name of the assessee, there is no obligation on the part of the assessee herein to even explain the cash balance found.

7. In view of the above, we deem it fit and appropriate to restore this appeal to the file of the Ld. AO for *de novo* adjudication in accordance with law and also in the light of the order passed by the Interim Board for Settlement in the case of the assessee's husband. Accordingly, grounds raised by the assessee are allowed for statistical purposes.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 28th November, 2023.

Sd/-

(SAKTIJIT DEY)
VICE PRESIDENT

Dated: 28/11/2023

Pk/sps

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-

(M. BALAGANESH)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI