

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH, 'E': NEW DELHI**

**BEFORE, SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**And**

**SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**ITA No.2369/DEL/2023  
[Assessment Year: 2017-18]**

Meena Nayyar, WZ-215, ST No.12, Shiv Nagar, Punjabi Bagh, Delhi-110026	Vs	DCIT, Central Circle-20, Delhi-110055
<b>PAN-AAFPN7914Q</b>		
Assessee		Revenue

Assessee by	Sh. Anil Kumar Jain, CA
Revenue by	Sh. Rajesh Kumar, Sr. DR

<b>Date of Hearing</b>	<b>19.12.2023</b>
<b>Date of Pronouncement</b>	<b>21.12.2023</b>

**ORDER**

**PER M. BALAGANESH AM,**

This appeal by the Assessee arises out of the order of the Learned Commissioner of Income Tax (Appeals)-27, New Delhi, [hereinafter referred to as 'Ld. CIT(A)', in short] in Appeal No.CIT(A), Delhi-27/11127/2016-17, Assessment Year 2017-18, dated 17.07.2023 against the order of assessment passed u/s 271AAB(1) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 16.03.2022 by the DCIT/ACIT, Central Circle-20, New Delhi (hereinafter referred to as 'Ld. AO').

2. The only effective issue to be decided in this appeal is as to whether the Id.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.

3. We have heard the rival submissions and perused the materials available on record. A search and seizure operation u/s 132 of the Act was carried out 18.11.2016 in Nayyar group of cases where residential premises of the assessee was also covered. The year under consideration, being the year of search, the assessee filed her return of income declaring total income of Rs 5,12,210/- on 26.3.2018. The Id. AO during the course of assessment proceedings show caused the assessee as to why the rental income of Rs 1,08,900/- be not brought to tax in the hands of the assessee. In response to the same, the assessee replied that she had already offered the rental income derived from UG-9, UGF, Vaibhabh Khand, Indrapuram, Ghaziabad amounting to Rs 90,000/- in her return of income filed for the Asst Year 2017-18 and that it is not known from where the figure of Rs 1,08,900/- was considered by the Id. AO. The assessee also asked the Id. AO to provide the details from where the figure of Rs 1,08,900/- was arrived at. Without furnishing such detail, the Id. AO directly proceeded to make the addition for the alleged differential amount of rent and completed the assessment after making other additions. This action of the Id. AO was upheld by the Id. CIT(A). Penalty

proceedings u/s 271AAB of the Act were initiated by the Id. AO for the said addition and penalty of Rs 11,340/- vide order u/s 271AAB of the Act dated 16.3.2022. This penalty was upheld by the Id. CIT(A).

4. The Bench directed the Id. AR to file the income tax returns of Asst Year 2016-17 together with the computation of total income of the assessee, which was duly furnished. From the perusal of the income tax return of Asst Year 2016-17 together with the computation thereon, it was noticed that the assessee had offered the rental income of Rs 90,000/- from the very same property itself. Now for the purpose of levying penalty u/s 271AAB of the Act, there should be some undisclosed income found during the course of search. This rental income is the regular income derived by the assessee and being regularly offered to tax by the assessee. It is a fact on record that the lower authorities had not furnished the details of alleged rent figure of Rs 1,08,900/- disclosing the source from where the said figure was arrived at by them, despite specific request made by the assessee in that regard. No seized document reference was also made by the Id. AO in his quantum assessment order while making the addition towards alleged rental income difference. Hence it goes to prove beyond doubt that there was no seized material for making such addition and that the differential figure of Rs 18,900/- is merely a figure on the air without any basis, on which penalty u/s 271AAB of the Act cannot

be made applicable. Accordingly, the grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 21<sup>st</sup> December, 2023.

**Sd/-**  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**  
**Dated: 21.12.2023**

*Shekhar*

**Sd/-**  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI