

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

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER

**ITA No.2342/DEL/2023
[Assessment Year: 2017-18]**

Kartikay Nayyar, 2B/12 East Punjabi Bagh, West Delhi Delhi-110026	Vs	DCIT, Central Circle-20, Delhi-110055
PAN-ALXPN4900G		
Assessee		Revenue

Assessee by	Sh. Anil Jain, CA
Revenue by	Sh. Om Prakash, Sr. DR

Date of Hearing	08.01.2024
Date of Pronouncement	16.01.2024

ORDER

This appeal by the assessee is directed against the order of Learned Commissioner of Income Tax (Appeals)-27, New Delhi, dated 18.07.2023 pertaining to Assessment Year 2017-18.

2. The issue raised is the levy of penalty u/s 271AAB(1) amounting to Rs.2,60,400/-

3. Brief facts of the case leading to levy of penalty as under:-

The brief fact of the case are that the assessment in this case was completed u/s 153A/143(3) of the act vide order dated 29.12.2018 at an assessed income of Rs.38,56,280/- after making following additions:=-

- i. Addition of Rs. 9,54,015/- on account of unexplained cash u/s 68 r.w.s. 115BBE of the Act.

ii. Addition of Rs. 14,69,250/- on account of unexplained expenditure u/s 69C r.w.s.115BBE of the Act.

iii. Addition of Rs. 10,34,018/- on account of unexplained investment u/s 69 r.w.s. 115BBE of the Act.

Penalty proceedings u/s 271AAB(1) of the Act were initiated by the AO for undisclosed income for the A.Y. 2017-18.

4.2 Aggrieved with the assessment order, the appellant filed first appeal before Id. CIT(A). The Id. CIT(A) vide order dated 16.10.2019 in appeal no. 685/18-19 has partly allowed the appeal of the appellant and;

- On issue (i) has restricted addition from Rs. 9,54,015/- to Rs. 1,34,000/-.
- On issue (ii) has restricted addition from Rs. 14,69,250/- to Rs.11,63,100/-
- On issue (iii) deleted the addition of Rs. 10,34,018/-.

4.3 Subsequently, the AO proceeded with levying of penalty amounting to Rs.7,78,260/- being 60% on the tax sought to be evaded on concealed income of Rs. 12,97,100/- (134000 + 1163100) u/s 271AAB(1) of the Act vide order dated 15.03.2022 on these issues.

4.4 Aggrieved with the order of Id. CIT(A), the appellant had filed second appeal against quantum addition, before the Hon'ble ITAT, Delhi. The Hon'ble ITAT vide order in ITA Nos. 25 & 26/Del/2020 dated 23.06.2022 has restricted the addition of Rs. 11,63,100/- to Rs. 3,00,000/- on account of unexplained expenditure u/s 69C of the Act on foreign travelling by observing as under:

"8. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that the assessee went to UK. It is not also in dispute that the stay of the assessee was of 349 days. The only point of dispute is the earning of the assessee as claimed by him by working during his vacation period in M/s. Comfort Hotel Leicester, though in the paper book the assessee has furnished certain documentary evidences but the same need verification. We are of the considered view that by remanding the matter back to the files of the AO for verification from U.K. will be a cumbersome procedure when the tax revenue involved is very less. Therefore, in the interest of justice we direct the AO to restrict the addition to Rs. 5,00,000/- in A.Y, 2016-17 and Rs. 3,00,000/- in A.Y. 2017-18. This Should meet the ends of justice."

4. Against the levy of penalty on the aforesaid amount, the assessee has file appeal before the Ld. CIT(A). Against the resultant amount of addition, the Ld. CIT(A) directed for levy of penalty as under:-

"5.4. To conclude, the Assessing Officer is hereby directed to recalculate the amount of penalty u/s 271AAB(1) on:

- i. Restricted addition of Rs.3,00,000/- u/s 69C of the Act on account of unexplained expenditure incurred on foreign travel; and*
- ii. Restricted addition of Rs.1,34,000/- u/s 68 of the Act on account of unexplained cash.*

5. Against this order, the assessee is in appeal before the Tribunal.

6. I have heard both the parties and perused the records. Before me, the ld. counsel for the assessee submitted that these additions are solely on estimate basis, in such circumstances this penalty is not sustainable in law.

7. Upon carefully consideration, I agree with the submission of the assessee's counsel that penalty in this case has been levied on additions which are purely on estimate basis. In these facts and circumstances of

the case, in my considered opinion, the penalty is not leviable. More so, the conduct of the assessee is not found to contumacious, hence, I direct the Assessing Officer to delete the penalty.

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

Order pronounced in the open court on 16th January, 2024.

Sd/-
[SHAMIM YAHYA]
ACCOUNTANT MEMBER

Delhi; 16.01.2023.

Shakhar,

Copy forwarded to:

1. Assessee
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi