

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

**BEFORE SHRI S.RIFAUR RAHMAN, ACCOUNTANT MEMBER
AND
SHRI SUDHIR KUMAR, JUDICIAL MEMBER**

**ITA No.2148/DEL/2024
(Assessment Year: 2021-22)**

DCIT,
Delhi.

vs.

Tanya Jaiswal,
68, Banarasi Dass Estate,
Timar Pur,
Delhi – 110 054.

(PAN : AFIPA8902Q)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Amit Goel, CA
Shri Pranav Yadav, Advocate
REVENUE BY : Shri B.S. Anand, Sr. DR

Date of Hearing : 02.09.2024
Date of Order : 06.09.2024

ORDER

PER S.RIFAUR RAHMAN,AM:

This appeal has been filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals)-30, New Delhi ["Ld. CIT(A)", for short] dated 23.02.2024 for Assessment Year 2021-22.

2. Brief facts of the case are, a search under section 132 of the Income-tax Act, 1961 (for short 'the Act') was conducted on 06.01.2021 at the residence/business premises of Hans Group. The assessment proceedings of the assessee were transferred to Central Circle 31, New Delhi vide order under

section 127 of the Act. Proceedings under section 153A of the Act were initiated by issue of notices u/s 143(2) and 142(1) and served on the assessee through ITBA. In response, the assessee submitted relevant details and clarifications from time to time. The return of income u/s 139 of the Act was filed on 14.01.2022 declaring income of Rs.6,54,15,120/-.

3. Assessment was completed u/s 143(3) of the Act read with section 153A of the Act for the current AY 2021-22 on 30.03.2022 and assessed the income at Rs.6,54,42,120/- by making an addition of Rs.2,27,000/- on account of unexplained cash commission expenses u/s 69C of the Act.

4. In penalty proceedings u/s 271AAB of the Act, the AO observed that it was found from the seized material and records that assessee had purchased property below the fair market value of the property and the value determined by the Valuation Officer at Rs.30,95,200/- which was taken as a fair market value. The difference of the value of Rs.2,27,000/- (Rs.30,95,200/- minus Rs.28,68,000/-) was made as per the provisions of section 50C of the Act. Further, he observed that assessee has taken bogus LTCG to the tune of Rs.4,65,00,798/- which was declared in the ITR by the assessee. The assessee had also disclosed cash transaction of Rs.57,00,000/-, Rs.25,00,000/- and Rs.7,50,000/- in her ITR. He observed that it is pertinent to mention here that in this disclosure of additional income i.e. bogus LTCG and cash transactions in ITR was consequent to search action u/s 132 of the Act. Had the search was not

taken place the assessee would not have declared the income. Accordingly, he proceeded to impose the penalty at Rs.30% of the undisclosed income at Rs.24,53,100/- u/s 271AAB of the Act.

4.1 Subsequently, Assessing Officer noticed that on perusal of computation of tax liability, it was found that while calculating the penalty amount, the undisclosed income was taken as 81,77,000/- instead of Rs.5,46,77,798/-. Accordingly, notice was issued u/s 154 of the Act to rectify the above mistake and he passed an order u/s 154 of the Act by increasing the penalty and imposed the penalty at 30% of the undisclosed income at Rs.1,64,03,339/-.

5. Aggrieved, assessee preferred an appeal before the Id. CIT (A)-30, New Delhi and filed detailed submissions which are reproduced at pages 5 to 18 of the Id. CIT (A)'s order. After considering the detailed submissions of the assessee, Id. CIT (A) deleted the penalty with the following observations :-

“7.1 The appellant objected the penalty imposed by the AO u/s 271AAB(1A) and submitted that the AO was factually wrong in presuming that it would not have declared its income on account of LTCG and cash receipts had no search and seizure took place on the appellant. The declaration of share trading income and cash receipts in ITR are not based on any incriminating material found during the search but it was declared in the normal course. The appellant is an individual and does not maintain any books of account. Therefore, any presumption that the appellant would not have disclosed the amount is self serving and baseless.

7.2 I have carefully perused the penalty order, assessment order and the written submissions filed by the appellant. With regard to bogus LTCG / share trading appellant submitted during the assessment proceedings as under:

“(Query No.2) As alleged by you that I have taken bogus capital gain amounting to Rs.2,65,83,060/- by way of bogus trading, I would like to submit that there is no bogus capital gain claimed by me in the return filed by me, During the year under consideration I have done business of share trading in which I have already shown sale of shares amounting to Rs.2,66,74,240/- in by Profit & Loss account. Further the commission accounting to Rs.20,71,000/- which includes Brokerage / Commission / STT GST on Purchases / Professional Charges / Security Transaction Tax Security Transaction Tax is duly accounted in our books of accounts, the details of the same along with supporting documents is enclosed Further I had already paid taxes on the same at highest rate and the same is duly recorded in my original return.”

The AO accepted the above submission of the appellant and did not treat the amount shown by the appellant as unexplained/undisclosed. The amount declared by the appellant has been taxed at normal rates as normal income. Similarly cash transaction of Rs.79,50,000/- declared by the appellant in ITR was accepted and was taxed at normal rates and no seized material / incriminating document was referred by the AO either in assessment order or penalty order to establish that it was undisclosed income of the appellant. The disclosed income as per provisions of section 271AAB is defined as under:

“(c) “Undisclosed income” means- .

(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has-

(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or

(B) otherwise not been disclosed to the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner before the date of search; or

(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted."

7.3 In view of the facts and legal position, I observe that the AO did not bring on record any seized material found during the search to substantiate his finding that the appellant had taken bogus LTCG or unexplained cash transactions and that the appellant had no intention to disclose the impugned amount in its ITR had search action u/s 132 did not take place. The appellant is an individual and does not maintain any books of account, therefore, it is not a case of no entry or false entry of income or expenses in his books. The AO did not bring any other evidence on record to establish how the amount in question was covered in the definition of 'undisclosed income' in terms of section 271AAB. As the transactions pertain to F.Y. 2020-21 and appellant had declared them in ITR as income from share trading and cash receipts and they were accepted by the AO, it cannot be held to "undisclosed income" in terms of section 271AAB. Therefore, penalty u/s 271AAB(1A) held to be not sustainable and is deleted."

6. Aggrieved, the Revenue is in appeal before us by raising following grounds of appeal :-

“1. Whether in the facts and circumstances of the case, the Ld. CITCA) has erred in law and on facts in deleting the penalty u/s 271 AAB of the Act.

2. Whether in the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in deleting the penalty u/s 271 AAB of the Act of amounting to Rs.1,64,03,339/-.

3. Whether in the facts and circumstances of the case, tile Ld. CIT(A) has erred in law and on facts in ignoring the facts that the penalty u/s 271AAB of amounting to Rs. 1,64,03,339/- levying on based on incriminating material found during the course of search.

4. The order of tile Ld. CIT (A) is perverse, erroneous and is not tenable on facts and in law.

5. The grounds of appeal are without prejudice to each other.”

7. At the time of hearing, ld. DR for the Revenue brought to our notice page 12 of the assessment order u/s 143(3) read with section 153A of the Act and he brought to our notice observations of the Assessing Officer in paras 9 to 11 wherein the Assessing Officer has observed that on perusal of the seized material and records, it was observed that assessee has taken bogus LTCG and cash receipt of Rs.79,50,000/- and had the search not taken place, the assessee would not have declared the above said income. He submitted that the search was conducted on 06.01.2021 and assessee has filed the return of income u/s 139 of the Act on 14.01.2022. Assessee had declared the additional income owing to search conducted in his place. He also brought to our notice page 20 of the ld. CIT (A) order wherein ld. CIT (A) has deleted the penalty levied by the Assessing Officer. He submitted that he relies on the findings of the Assessing Officer and without there being search, the assessee would not have declared the abovesaid undisclosed income. Accordingly, he supported the penalty levied in this case by the Assessing Officer.

8. On the other hand, ld. AR for the assessee brought to our notice page 13 of the assessment order and submitted that the Assessing Officer had merely made addition of Rs.2,27,000/- u/s 50C of the Act after accepting the return of income filed by the assessee. He submitted that the Assessing Officer has completed the assessment only on the basis of return of income filed by the assessee and he proceeded to impose the penalty of Rs.24,53,100/- and in

revision proceedings, he increased the quantum of penalty. He submitted that ld. CIT (A) has discussed the issue under consideration in detail. He brought to our notice the findings of the ld. CIT (A) that Assessing Officer did not bring on record any seized material found during the search to substantiate his finding that assessee has taken bogus LTCG and unexplained cash transaction. Further, he brought to our notice that the assessee is an individual and does not maintain any books of account, therefore, it is not a case of no entry or false entry of income or expenses in her books. Assessing Officer did not bring any other evidence on record to establish how the amount in question was covered in the definition of undisclosed income in terms of section 271AAB of the Act. After bringing to our notice the detailed findings of the ld. CIT (A), ld. AR for the assessee submitted that the Assessing Officer is not justified to impose the penalty when the income disclosed by the assessee is not falling under the definition of undisclosed income given in section 271AAB of the Act. Therefore, he supported the findings of the ld. CIT (A).

9. Considered the rival submissions and material placed on record. We observed that after search conducted in assessee's place, the assessee has filed her return of income on 14.01.2022 u/s 139 of the Act declared the income which includes alleged undisclosed income by the AO. However, we observed that the assessment was completed by accepting the return of income filed by the assessee u/s 139 of the Act and accepted the income declared by the

assessee. We observed from the findings of the Id. CIT (A) that the income declared by the assessee does not fall within the definition of undisclosed income u/s 271AAB of the Act and there is no material with the Assessing Officer that the abovesaid income is linked to the incriminating document found during the search. Id. CIT (A) observed that the Assessing Officer did not bring on record any seized material found during the search to substantiate his finding that assessee had taken bogus LTCG and unexplained cash transactions. We are in agreement with the Id. CIT (A) that the additional income disclosed by the assessee in the return of income should be corroborated with the incriminating material found during the search. The Assessing Officer has not linked the additional income disclosed by the assessee with the materials found during search. As per the record, we observed that assessee has disclosed the additional income without there being any incriminating material found during search. It is a fact on record that assessee has disclosed additional income after search proceedings. In order to impose penalty u/s 271AAB, the onus is on the part of the Assessing Officer to bring on record that the additional income disclosed by the assessee is having direct link with the incriminating material found during search. In absence of the same, the penalty cannot be levied u/s 271AAB of the Act. After considering the detailed findings of the Id. CIT (A), we do not see any reason to disturb the same. Accordingly, grounds raised by the Revenue are dismissed. Even though we observed that ground no.3 raised

by the Revenue that Id. CIT (A) has deleted the penalty over-looking the incriminating material found during the search, however nothing was brought on record linking with the alleged undisclosed income relating to incriminating material found during the search. Therefore, all the grounds filed by the Revenue are dismissed.

10. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on this 6th day of September, 2024.

Sd/-

sd/-

**(SUDHIR KUMAR)
JUDICIAL MEMBER**

**(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**

Dated: 06.09.2024
TS

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)-30, New Delhi.
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI