

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री संजय शर्मा, न्यायिक सदस्य
एवं
श्री रकेश मिश्रा, लेखा सदस्य
के समक्ष
Before

**SHRI SONJOY SARMA, JUDICIAL MEMBER
&
SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**I.T.A. No.: 1239/KOL/2023
Assessment Year: 2015-16**

Poonam Mohta <i>(Appellant)</i>	Vs.	ACIT, C.C.-1(1), Kolkata <i>(Respondent)</i>
PAN: AEZPM1243A		

Appearances:

Assessee represented by : P.K. Sanghai, A.R.
Department represented by : Archana Gupta, Addl. CIT, Sr. DR.
Date of concluding the hearing : February 12th, 2025
Date of pronouncing the order : February 20th, 2025

ORDER

PER RAKESH MISHRA, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of the Commissioner of Income Tax (Appeals)-20, Kolkata [hereinafter referred to as Ld. 'CIT(A)'] passed u/s 250 of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for AY 2015-16 dated 31.07.2023, which has been passed against the penalty order u/s 271AAB of the Act, dated 29.06.2017.



1.1. The Registry has informed that the appeal filed by the assessee is barred by limitation by 52 days. An application along with an affidavit seeking condonation of delay has been filed by the assessee for condoning the delay stating as follows:

Application seeking condonation of delay:

“The order of Ld. CIT(A) was passed on 31st July 2023 in the matter of penalty U/s 271AAB for the asst year 2015-16.

On receipt of this order after 3 days itself I had requested my professional CA retainer Sri Rajeev Mohta about filing of appeal before the Hon'ble ITAT Kolkata.

Only last week I was informed by the deputed person that due to his indisposition coupled with festive holidays he missed it to file before the ITAT unintentionally without any malafide intention and regrets now. The accidental delay is about 50 days only your honour. This is my appeal your honour and I need to represent and pursue the case in my interest.

I sincerely submit your honour that delay was purely unintentional, accidental and without any malafide intention on my part and was beyond my control.

In view of the above a sincere pray is made before the hon'ble ITAT for the condonation of delay in filing this appeal as otherwise your applicant will suffer irreparable loss. Hope the matter would be considered favorably to meet the end justice.”

Affidavit seeking condonation of delay:

“I, Poonam Mohta, wife of Sri Shrivardhan Mohta, the appellant hereof residing at 6/2, Queens Park, Ballygunge, Kolkata 700 019, having PAN AEZPM1243A do hereby solemnly affirm and declare as follows:

- 1. That the appellate order u/s 250 dated 31/07/23 in the matter of penalty u/s 271AAB was given to Mr. Rajiv Mohta, Chartered Accountant to file appeal before Hon'ble ITAT immediately after its receipt for the AY 2015-16.*
- 2. That in the second week of November 2023 only, Mr. Rajiv Mohta, Chartered Accountant informed that he could not file the appeal on time as he was not well and expressed his sorrowness.*
- 3. That immediately thereafter the matter was taken up and I could file appeal on 20/11/2023*



4. *The aforesaid delay is unintentional, bona fide and inadvertent on my part.*

5. *I earnestly pray to the Hon'ble Bench ITAT to condone the aforesaid delay in submitting the appeal and accept the appeal on merit.*

6. *All the above facts stated are true to the best of my knowledge and belief."*

1.2. Considering the application seeking condonation of delay as well as the affidavit and the reasons stated therein, we are satisfied that the assessee had a reasonable and sufficient cause and was prevented from filing the instant appeal within statutory time limit. We, therefore, condone the delay and admit the appeal for adjudication on merits.

2. The assessee is in appeal before the Bench raising the following grounds of appeal:

"1) That under the facts and circumstances of the case the Id CIT(A) erred in confirming the action of the Ld. AO in imposition of penalty amounting to Rs. 5,00,000/- u/s 271AAB of the Income Tax Act which under the legal context ought not to be levied.

2) That the appellant craves leave to add, amend, alter or delete the ground or grounds of appeal."

3. Rival contentions were heard and the submissions made have been examined. It was submitted before the Bench that the penalty u/s 271AAB of the Act is not leviable as the voluntary disclosure made by the assessee does not come under the purview of section u/s 271AAB of the Act. Our attention was drawn to page 8 of the paper book being the assessment order, wherein the assessee's disclosure of a sum of Rs. 50 lakh has been added in the computation of the total income. It was submitted that neither any incriminating material was found nor the notice was free from defect as the notice did not specify under which of the three limbs was it issued and this issue is covered by the decision



of the Coordinate Bench in the case of **SVM Cera Pvt. Ltd. vs. ACIT** in **ITA No. 973 & 974/KOL/2023** order dated 28.08.2024. Reliance has also been placed on the decisions of the coordinate benches of the Tribunal in the cases of Smt. Indira Agrawal Vs the DCIT, ITA Nos. 1384 & 1385/JP/2018 and others, order dated 22.03.2019 and Shri Paras Mal Jain Vs the DCIT, Central Circle-1, Jaipur ITA No. 353/JP/2022 dated 22.06.2023 in support of the claim that penalty u/s 271AAB is not leviable. Our attention was also drawn to page 9 of the paper book stating that the notice was defective and therefore, the assessee should not be penalised. The Ld. AR also referred to pages 6, 7 & 8 of the paper book to re-emphasize the fact that there was no incriminating material and so the penalty levied should be cancelled. The Ld. DR countered the argument by saying that in case there was no search, no disclosure would have been made and a similar mention is also made in the assessment order. The incriminating material was found and is mentioned by the Ld. AO in the penalty order but how the same relates to the disclosure has not been correlated.

4. As per the definition of 'undisclosed income' specified in clause (c) of the explanation to section 271AAB of the Act is 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.”

5. The Ld. AR re-emphasized the fact that the assessee had voluntarily disclosed the income and the income was not represented by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other transactions found in the course of search.

6. We have considered the submissions made. However, we are not in agreement with the submission made that since the notice was defective the penalty ought to have been deleted. It has been held in the case of **Principal Commissioner of Income-tax v. Thakur Prasad Sao & Sons (P.) Ltd. [2024] 163 taxmann.com 449 (Calcutta)** where the facts were that for Assessment year 2006-07 and 2007-08 after search and seizure operations assessee declared certain undisclosed income which was added to income disclosed income which was added to income disclosed in returns filed in response to notice issued under section 153A. The Assessment orders were followed by notices under section 271(1)(c) read with section 274 and after considering assessee's submissions, Assessing Officer levied penalty under section 271(1)(c). On appeal Tribunal cancelled penalty on ground that show cause notice under section 274 was defective as it did not spell out grounds on which penalty was sought to be imposed. It has been held that when Assessing Officer had recorded in assessment order particulars of concealed income/undisclosed income of the assessee and on that basis initiated penalty proceeding under section 271(1)(c) then consequential notice under section 274 issued by Assessing Officer to assessee to afford him



opportunity of hearing, was specifically a notice for penalty for concealment of particulars of income/undisclosed income. It is also held that such a notice complied with principles of natural justice and was a valid notice under section 274 and Tribunal had committed a manifest error of law by setting aside penalty orders on ground that 'grounds for imposition of penalty were not mentioned in show cause notice under section 274 of Act and thus, show cause notice was defective'.

6.1 However, since no incriminating material was found relating to the addition made and the income was not represented by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other transactions found in the course of search therefore, the same did not partake the character of undisclosed income as defined in clause (c) of the explanation to section 271AAB of the Act. The Ld. DR could not rebut this argument of the assessee. Further, we have also gone through the statement of Poonam Mohta recorded on 08.05.2015, produced in the course of proceeding before us and a perusal of the same shows that though certain valuables were found in the locker of the assessee however, the assessee had not made any disclosure in the statement recorded while the locker no. 932A was subjected to search and seizure on 08.05.2020. Hence, as the disclosure did not relate to the finding of the search and was made *suo motu* and though the Ld. AO has referred to certain seized documents in the penalty order, but he has not correlated how the disclosure of Rs. 50 lakhs had any reference to the seized documents; therefore, the disclosure could not be treated as undisclosed income for the purpose of imposition of penalty u/s 271AAB and the penalty imposed is liable to be cancelled. Hence, Ground No. 1 is allowed and the penalty of ₹



50,00,000 is hereby cancelled. Ground No. 2 is general in nature and does not require any separate adjudication.

7. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open Court on 20th February, 2025.

Sd/-

[Sonjoy Sarma]
Judicial Member

Sd/-

[Rakesh Mishra]
Accountant Member

Dated: 20.02.2025

Bidhan (P.S.)



Copy of the order forwarded to:

1. **Poonam Mohta, 6/2, Queens Park, Ballygunj, Kolkata, West Bengal, 700019.**
2. **ACIT, C.C.-1(1), Kolkata.**
3. CIT(A)-20, Kolkata.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File.

// True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata