

**IN THE INCOME TAX APPELLATE TRIBUNAL PATNA BENCH
VIRTUAL HEARING AT KOLKATA**

**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER
AND SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**ITA No. 33/PAT/2025
Assessment Year: 2021-22**

Rohit Khandelwal S/o Bijay Khandelwal Main Road, Jaynagar Near Surekha Atithi Bhawan, Madhubani, Bihar-847226. (PAN: JAGPK8824M)	Vs	AC/DCIT, Central Circle, MZF
(Appellant)		(Respondent)

Present for:

Appellant by : Shri Sanjeev Kr. Anwar, Advocate
Respondent by : Shri Ashwani Kr. Singal, JCIT

Date of Hearing : 27.02.2025
Date of Pronouncement : 27.02.2025

ORDER

Per Bench :

This is an appeal filed by the assessee against the order of the Ld. Commissioner of Income Tax (Appeals), Patna-3 [hereinafter referred to as “the Ld. CIT(A)”] vide order no. ITBA/APL/S/250/2024-25/1070658454(1) dated 26.11.2024 passed u/s. 250 of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) for AY 2021-22 confirming the levy of penalty levied u/s. 271AAC(1) of the Act.

2. Shri Sanjeev Kr. Anwar, Advocate appeared on behalf of the assessee and Shri Ashwani Kr. Singal, JCIT appeared on behalf of the revenue.

3. It was submitted by the Ld. AR that there was an information received from the authorities designated for Bihar Assembly Election 2020 that cash amounting to Rs.1,11,05,650/- had been intercepted by SST (Static Surveillance Team) at Bishanpur Thana, Darbhanga on 06.10.2020 during the course of vehicle checking. It was submitted that this issue relates to the assessment year 2021-22. The assessee had filed his return of income on 20.02.2022 disclosing the amount of Rs.1,11,05,650/- and had paid the tax u/s. 115BBE of the Act. The return filed by the assessee came to be accepted and assessment u/s. 143(3) came to be completed on 23.03.2022. Penalty proceedings u/s. 271AAC(1) were initiated. It was the submission of the Ld. AR of the assessee that as per the proviso to section 271AAC(1), penalty was not leviable in so far as the assessee filed his return u/s. 139 of the Act and had also disclosed his income and paid taxes thereon u/s. 115BBE of the Act. It was the submission that the Assessing Officer did not accept the contention of the assessee and had held that as the return was filed in response to a notice issued u/s. 142(1) of the Act on 25.01.2022, proviso to section 271AAC(1) would not come into play and the penalty was levied. On appeal, the Ld. CIT(A) confirmed the penalty levied. It was the submission that for the Assessment Year was 2021-22, the financial year ending was on 31.03.2021. Accordingly, the time limit for filing the return u/s. 139(1) is 31.07.2021. Notice u/s. 142(1) had been issued on 25.01.2022. The time limit for filing the return u/s. 139(4) was 31.03.2022. It was the submission that the return filed by the assessee was u/s. 139(4). It was further submitted that proviso to section 271AAC(1) refers to return filed u/s. 139 and thus, does not differentiate between the return filed u/s. 139(1) or 139(4) or 139(5) of the Act. It was the submission that as return had been filed u/s. 139, the proviso came into play and that penalty was liable to be deleted.

4. In reply, the Ld. Sr. DR vehemently supported the order of the Assessing Officer and the Ld. CIT(A). It was the submission that the notice u/s. 142(1) had been issued on 25.01.2022 and it was only after the notice was issued u/s. 142(1) that the assessee filed his return on 20.02.2022. It was the submission that the proviso to section 271AAC(1) of the Act refers to and the section 139 has to be read as sec. 139(1). It was the prayer that the orders of the Ld. CIT(A) and that of the Assessing Officer have to be upheld.

5. We have considered the rival submissions. For better understanding of the proviso, it is worthwhile to extract the proviso to section 271AAC(1) which reads as follows:

“271AAC(1) The Assessing Officer may, notwithstanding anything contained in this Act other than the provisions of section 271AAB, direct that, in a case where the income determined includes any income referred to in section 68, section 69, section 69A, section 69B, section 69C or section 69D for any previous year, the assessee shall pay by way of penalty, in addition to tax payable under section 115BBE, a sum computed at the rate of ten per cent of the tax payable under clause (i) of sub-section (1) of section 115BBE:

6. The section referred to in the proviso is section 139 which does not specify 139(1) or 139(4). Admittedly, the return filed by the assessee is a return u/s. 139(4); even assuming that the return was filed u/s. 139(1) of the Act, we are live to the fact that the provisions of section 139(4) refers to the words “return for any previous year at any time before three months prior to.” This amendment was brought in by the Finance Act 2021 w.e.f. 01.04.2021 . Therefore, this amendment would take effect from the AY 2022-23 and the impugned assessment year is 2021-22. We may also refer to the provisions of section 142(1) where also the term section 139 is referred to and specifically 139(1) has also been referred to. Therefore, when the legislature wanted to refer to section 139(1) the legislature used the specific term 139(1) but in the proviso to section 271AAC(1) the legislature in its wisdom has used the term 139. Therefore, the section 139

refers to in the proviso cannot be extended to be read as 139(1). In the present case as the assessee has filed his return of income and complied with the provisions as required in the proviso to section 271AAC(1), we are of the view that the penalty levied is unsustainable and consequently, the same stands deleted.

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

Order dictated and pronounced in the open court.

Sd/-

(Sanjay Awasthi)
Accountant Member

Sd/-

(George Mathan)
Judicial Member

Dated: 27th February, 2025

JD, Sr. P.S.

Copy to:

1. The Appellant: Rohit Khandelwal
2. The Respondent. AC/DCIT, Central Circle, MZF
3. CIT(A), Patna-3.
4. Pr. CIT
5. DR, ITAT, Patna Bench, Patna
6. Guard file.

True Copy

By Order

Assistant Registrar
ITAT, Patna