

IN THE INCOME TAX APPELLATE TRIBUNAL
GUWAHATI BENCH, GUWAHATI
(VIRTUAL HEARING AT KOLKATA)

SHRI MANOMOHAN DAS, JUDICIAL MEMBER
SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER

I.T.A. No. 31/GTY/2021
Assessment Year 2014-15

Deputy Commissioner of Income Tax,
Circle-Imphal

O/o the DCIT, Circle-Imphal,
Old Lambulane, Central Jail Road,
Imphal West Manipur – 795001

..... **Appellant**

vs.

Shri Laishram Mani Singh,

S/o L. Ibohal Singh, Kangjabi Leirak,
Meinam Leikai, Imphal - 795001
[PAN: ABCPL4956F]

..... **Respondent**

Appearances by:

Assessee represented by : None

Department represented by : Soumendu Sekhar Das, JCIT

Date of concluding the hearing : 22.04.2025

Date of pronouncing the order : 23.04.2025

ORDER

PER SANJAY AWASTHI, ACCOUNTANT MEMBER

1. The present appeal arises from order u/s 250 of the Income Tax Act, 1961 (hereinafter “the Act”), passed by the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi [hereafter the Ld. CIT(A)] vide order dated 29.08.2024 for AY 2018-19.

1.1 Through this appeal, the Ld. CIT(A) has deleted the impugned penalty on the basis of detailed finding given in para 6.1 at page 8 of the impugned order. However, it is seen that the Ld. AO has passed a very cryptic order in which the facts have not been clearly brought out and it is difficult to appreciate the finding in the absence of no response being filed by the assessee before the Ld. AO. It is seen that the Ld. CIT(A) had access to more

records than whatsoever material is available before the ITAT. From the impugned order it is seen that the Ld. CIT(A) has observed that the AO had initiated penalty proceedings both under Section 271(1)(c) and 271AAB of the Act. In fact, the initiation of penalty under both of the sections has persuaded the Ld. CIT(A) to grant relief, apart from some other factual issues.

1.2 We find that in this case, before the ITAT, there have been a sum total of 8 hearings and on majority of the dates none have appeared on behalf of the assessee and only on a couple of dates have adjournment petitions been filed. Accordingly, it is decided to proceed ahead with the adjudication with the help of Ld. DR.

2. The Ld. DR pointed out that the Ld. AO was justified in levying the said penalty since the matter pertained to an order passed under Section 144/153A of the Act. The Ld. DR supported the order of Ld. AO and stated that the Ld. CIT(A) has fallen into an error in granting relief, especially when the assessee had not presented any facts at the time of levy of the impugned penalty before the Ld. AO. The Ld. DR relied on the case of Sandeep Chandak reported in 93 taxmann.com 406 (SC) in his support. The Ld. DR read out from the head notes as under:

“Section 271AAB, read with section 271(1)(c), of the Income-tax Act, 1961 Penalty where search had been initiated (Applicability of) Assessment year 2014-15-A search was carried out in case of assessee in course of which he made a statement admitting certain undisclosed income Assessing Officer added said amount to assessee's taxable income Thereupon, Assessing Officer issued a notice for initiating penalty proceedings to which assessee submitted his reply Assessing Officer having rejected assessee's explanation, passed a penalty order under section 271AAB Tribunal proceeding on presumption that penalty proceedings had been initiated under section 271(1)(c), set aside penalty order High Court took a view that where assessee in course of search admits undisclosed income and manner in which such income has been derived, than provisions of section 271AAB would automatically attract High Court further opined that since opportunity of hearing as prescribed under section 271AAB had been given to assessee, penalty order passed by Assessing Officer was to be restored - Whether on facts, there was no ground to interfere with impugned order passed by High Court and, therefore, instant petition was to be dismissed. Held, yes [Para 2]”

2.1 We have carefully considered the documents before us and the arguments of Ld. DR. We find that the Ld. AO has made a rather poor job of marshalling the facts and has levied the penalty in a routine manner. From a reading of the impugned order, it is not clear what facts were before the Ld. CIT(A) to have enabled him to grant relief to the assessee. We are also aware of several legal precedents where it has been clearly stated that in cases of search, on a particular date, penalty can only be levied under Section 271AAB of the Act and not 271(1)(c) of the Act. To this extent, the case of Jai Maa Jagdamba Flour (P.) Ltd. reported in 150 taxmann.com 26 (Jharkhand) readily comes to mind. The head notes in this case deserves to be extracted as under:

“Section 271AAB of the Income-tax Act, 1961 Penalty For undisclosed income (Scope of provision) Assessment year 2014-15-A search and seizure operation under section 132 was carried out on 3-9-2014 at business and residential premises of a group of company in which assessee was one of members Assessee initially declared certain loss for relevant year but when Assessing Officer, confronted assessee with audited financial statements for concerned period assessee revised return and declared certain profit Assessing Officer therefore, imposed penalty under section 271(1)(c) on assessee for concealing particular of its income and for furnishing inaccurate particulars of such income On appeal, Commissioner (Appeals) held that no penalty could have been imposed on assessee under section 271(1)(c) as penalty on assessee could have been imposed under section 271AAB On further appeal, Tribunal sustained order of Commissioner (Appeals) Whether where a search under section 132(1) was initiated on or after 1-7-2012, penalty would be leviable on undisclosed income at rate and conditions specified under section 271AAB(1) and it excludes applicability of section 271(1) (c), if undisclosed income pertains to specified previous year - Held, yes Whether in view of above facts, case of assessee was squarely covered by section 271AAB as search was conducted on 3-9-2014 i.e., after 1-7-2012 and on date of search due date to furnish return for assessment year 2014-15 had not expired and assessee had not furnished return on 30-11-2014-Held, yes - Whether further since assessee had not admitted any income in a statement recorded under section 132(4) nor paid any taxes on admitted income, therefore, case of assessee was not governed by section 271AAB(1)(a) and section 271AAB(1)(b) but it fell under section 271AAB(1)(c) where minimum penalty prescribed was 30 per cent and maximum penalty was 90 per cent of undisclosed income Held, yes Whether therefore, order passed by Commissioner (Appeals), was in accordance with law and Tribunal rightly affirmed same -Held, yes [Paras 8 and 9]”

3. It is felt that the Ld. AO needs to marshal the facts and thereby consider the assessee's submissions before passing a reasoned order, either levying the penalty or dropping it altogether. Thus, the impugned

order is set aside and this matter is remanded to the file of Ld. AO for fresh proceedings after giving an opportunity of being heard to the assessee. The Ld. AO is directed to bring out the facts and the position of law clearly before either levying or dropping the penalty, as per law.

4. In the result, appeal filed by the Revenue is partly allowed for statistical purposes.

Order pronounced on 23.04.2025

Sd/-
(Manomohan Das)
Judicial Member

Sd/-
(Sanjay Awasthi)
Accountant Member

Dated: 23.04.2025
AK, Sr. P.S.

Copy of the order forwarded to:

1. Shri Laishram Mani Singh
2. Deputy Commissioner of Income Tax, Circle-Imphal
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches

1.