

**IN THE INCOME TAX APPELLATE TRIBUNAL
'B' BENCH : BANGALORE**

**BEFORE SHRI PRASHANT MAHARISHI, VICE – PRESIDENT
AND
SHRI SOUNDARARAJAN K., JUDICIAL MEMBER**

ITA No. 918/Bang/2025
Assessment Year : 2020-21

M/s. Trifecta Projects Pvt. Ltd., #66/2, 67/1, Whitefield Main Road, Garuudacharpalya, Mahadevapura S.O., Bengaluru – 560 048. PAN: AACCE9717F	Vs.	The Deputy Commissioner of Income Tax, Central Circle – 2[2], Bengaluru.
APPELLANT		RESPONDENT

Assessee by	:	Shri V. Srinivasan, Advocate
Revenue by	:	Shri Subramanian .S, JCIT-DR

Date of Hearing	:	16-09-2025
Date of Pronouncement	:	05-12-2025

ORDER

PER SOUNDARARAJAN K., JUDICIAL MEMBER

This is an appeal filed by the assessee challenging the order of the Ld.CIT(A)-15, Bengaluru dated 28/02/2025 in respect of the A.Y. 2020-21 and raised the following grounds:

“1. The orders of the authorities below in so far as levying penalty u/s 271AAB of the Act against the appellant are opposed to law, equity. weight of evidence, probabilities, facts and circumstances of the case.

2. The learned CIT[A] Is not justified in upholding the penalty of Rs. 36,47,455/- imposed u/s. 271AAB of the Act without appreciating that the disallowance of Rs. 35,91,818/- made u/s. 40A[3] of the Act and the disallowance of Rs. 24,87,275/- made u/s. 37[1] of the Act

in the assessment proceedings cannot be considered as undisclosed income found at the time of search in order to impose penalty u/s. 271AAB of the Act under the facts and in the circumstances of the appellant's case.

3. Without prejudice to the above, the penalty sustained by the learned CIT[A] is highly excessive and liable to be reduced substantially.

4. For the above and other grounds that may be urged at the time of hearing of the appeal, your appellant humbly prays that the appeal may be allowed and Justice rendered.”

2. The brief facts of the case are that the assessee is a private limited company, in the business of construction of residential apartments, villas and commercial complexes and selling / leasing / renting the same to the customers. The assessee filed their return of income on 09/11/2020. The said return was processed u/s. 143(1) of the Act. subsequently, a search action u/s. 132 of the Act was conducted on 05/02/2020. Thereafter notice u/s. 153A was issued and the year of search i.e. the A.Y. 2020-21 is selected for compulsory scrutiny. Notices u/s. 143(2) and 142(1) were issued for which the assessee appeared and submitted the details as sought for by the AO. The AO disallowed the cash expenses u/s. 40A(3) of the Act since the payments were made in excess of Rs. 20,000/-. Similarly, the AO had added the revenue expenditure claimed by the assessee as capital expenditure. For the said additions, the assessee had accepted the said claims and paid the tax dues to the department to buy peace. The AO had treated the said disallowances as undisclosed income warranting penalty u/s. 271AAB of the Act. Subsequently, the penalty notice u/s. 274 r.w.s. 271AAB was issued in which the AO had alleged that based on the search it was found that you have undisclosed income. The assessee filed their detailed objections by citing that the disallowance of the cash expenses and the disallowance of the revenue expenditure could not be treated as undisclosed income since the said expenses were reflected in the financial statements of the assessee and therefore it could not be termed as undisclosed income warranting penalty u/s. 271AAB of the Act. Similarly, the assessee had submitted that the notice issued u/s. 274 r.w.s. 271AAB

also does not specify under which limb the assessee had committed the offence warranting the penalty u/s. 271AAB of the Act. The assessee also submitted that based on the mere search, the said additions could not be termed as undisclosed income. The AO not satisfied with the reply, confirmed the penalty at 60% of the undisclosed income. As against the said order, the assessee filed an appeal before the Ld.CIT(A) and the Ld.CIT(A) had confirmed the penalty order passed by the AO.

3. As against the said order, the present appeal has been filed before this Tribunal.

4. The assessee in addition to the grounds raised in form 36, had also raised the additional grounds in which the assessee had contended that the penalty order is bad in law and void-ab-initio in as much as no specific limb under which penalty was proposed to be levied has been mentioned in the show cause notice.

5. At the time of hearing, the Ld.AR submitted that at no stretch of imagination, the disallowances could be treated as undisclosed income and also submitted that the said additions were not made based on the result of the search conducted in the premises of the assessee. The Ld.AR further submitted that the penalty u/s. 271AAB of the Act is not automatic when the search has been conducted and additions were made. The Ld.AR also filed a paper book and also a paper book consisting of the case laws and prayed to allow the appeal.

6. The Ld.DR relied on the orders of the lower authorities and prayed to dismiss the appeal.

7. We have heard the arguments of both sides and perused the materials available on record.

8. On perusing the assessment order, we came to know that there was a search and based on the search, no incriminating materials were seized to make the additions u/s. 40A(3) and section 37 of the Act. The case of the

revenue is that the assessee is not entitled to claim the allowance of the expenditure when the said payment exceeds Rs. 20,000/-. Similarly, the revenue expenditure as claimed by the assessee is only a capital expenditure and therefore the debit entries made in the P&L account is not correct and addition should be made u/s. 37 of the Act. From the said additions, we understand that these are all not found out based on the search action conducted by the revenue. In the normal course of business, the assessee had maintained the books of accounts in which the expenditures were claimed but while making the complete scrutiny, the AO had disallowed the said expenditure by saying that the cash payments exceeds Rs. 20,000/-. Therefore the fact remains that the assessee had recorded all the transactions in their books of accounts and claimed the expenditures as eligible for deduction but the AO had disallowed the said expenditure by saying that the payment exceeds Rs. 20,000/-. Similarly, the revenue expenditure was claimed by the assessee by debiting the P&L account but the AO had treated the said expenditure as capital expenditure. This expenditure also reflected in the books of accounts and nothing was suppressed by the assessee but only based on the technical reasons, the expenditure incurred by way of cash as well as the revenue expenditure has been disallowed by the AO. Therefore the provision 271AAB would not be applicable to the facts of the present case.

9. The section 271AAB mandates that there should be an undisclosed income to impose penalty under the said provision. As stated earlier, the two additions made by the AO could not be treated as undisclosed income. Further, we have also considered the additional ground raised by the assessee in which the assessee had raised a plea that the show cause notice issued u/s. 274 r.w.s. 271AAB of the Act does not show under which limb, the penalty has been proposed to be levied. We have also perused the show cause notice which is available in page no. 71 of the paper book and we find that the AO had not mentioned under which limb, the penalty u/s. 271AAB of the Act has been proposed. Therefore, we find that apart from the main grounds raised by the assessee, the additional grounds raised also is having

some force since the show cause notice does not exhibit under which limb of the section 271AAB, the penalty has been proposed to be imposed.

10. We have also gone through the decisions of the various Tribunals relied on by the assessee to the effect that the non-mentioning of the limb under which the penalty has been proposed u/s. 274 r.w.s. 271AAB of the Act is bad in law. In the order dated 15/12/2022 in ITA No. 2274/Kol/2019 in the case of Sushil Kumar Paul vs. ACIT, the Kolkata Tribunal had held as follows:

“13. We, therefore, respectfully following the judgement of decision of Co-ordinate Bench of Chennai in the case of DCIT vs R. Elangovan (supra) and Jaipur Bench in the case of Ravi Mathur vs DCIT (supra) and in the given facts and circumstances of the case wherein the matter written in the body of the notice issued u/s 274 of the Act does not refer to the charges of provision of section 271AAB of the Act makes the alleged notice defective and invalid and thus deserves to be quashed. Since the penalty proceeding itself has been quashed the impugned penalty of Rs. 83,02,410/- stands deleted. Thus the assessee succeeds on legal ground challenging the validity of notice issued u/s 274 r.w.s. 271AAB of the Act.”

11. The Indore Tribunal in the case of Shri Ashok Bhatia vs. DCIT in ITA No. 869/Ind/2018 vide order dated 05/02/2020 held as under:

“15. We, therefore respectfully following the judgment of jurisdictional High Court in the case of PCIT V/s Kulwant Singh Bhatia (supra), decision of Co-ordinate Bench of Chennai in the case of DCIT V/s R. Elangovan (supra) and Jaipur Bench in the case of Ravi Mathur Vs DCIT (supra) and in the given facts and circumstances of the case wherein the matter written in the body of the notice issued u/s 274 of the Act does not refer to the charges of provision of Section 271AAB of the Act makes the alleged notice defective and invalid and thus deserves to be quashed. Since the penalty proceedings itself has been quashed the impugned penalty of Rs.64,22,348/- stands deleted. Thus assessee succeeds on legal ground challenging the validity of notice issued u/s 274 r.w.s. 271AAB of the Act.”

12. In another order dated 04/01/2022 in ITA Nos. 756 & 757/Hyd/2020, the Hyderabad Tribunal had also deleted the penalty

imposed u/s. 271AAB on the very same reasoning that the notice does not contain the limb under which the penalty has been imposed.

13. We have also perused the order of the Jaipur Tribunal in the case of Smt. Aparna Agrawal vs. DCIT reported in [2019] 105 taxmann.com 233 in which it was held as follows:

“5. Hence in view of the facts and circumstances as discussed in detail in foregoing paras as well as following the earlier decision of this Tribunal, we hold that the income surrendered of Rs. 3,85,30,241/- on account of Long Term Capital Gain by the assessee in the statement recorded under section 132(4) does not fall in the ambit of definition of undisclosed income as contemplated in Explanation to section 271AAB of the Act. Regarding cash of Rs 82,50,000/- found during the course of search, there cannot be any dispute that the same falls in the definition of undisclosed income and the same is subject to penalty u/s 271AAB of the Act Accordingly, the penalty levied by the AO and sustained by the ld. CIT (A) on LTCG is deleted and penalty sustained by the ld CIT(A) on cash found during the course of search is upheld.”

14. Considering the facts involved in the present case and also the above referred orders of the various Tribunals, we are also inclined to hold that the show cause notice issued u/s. 274 r.w.s. 271AAB is bad in law and therefore the consequential penalty order imposed u/s. 271AAB is also bad in law .Even on merits also we do not find any valid reasons for imposing penalty u/s 271AAB of the Act.

15. In the result, the appeal filed by the assessee is allowed.
Order pronounced in the open court on 05th December, 2025.

Sd/-
(PRASHANT MAHARISHI)
Vice – President

Sd/-
(SOUNDARARAJAN K.)
Judicial Member

Bangalore,
Dated, the 05th December, 2025.
/MS /

Copy to:

1. Appellant
2. Respondent
3. CIT
4. DR, ITAT, Bangalore
5. Guard file
6. CIT(A)

By order

Assistant Registrar,
ITAT, Bangalore