

आयकर अपीलीय अधिकरण, हैदराबाद पीठ
IN THE INCOME TAX APPELLATE TRIBUNAL
Hyderabad ' A ' Bench, Hyderabad

श्री रविश सूद, न्यायिक सदस्य एवं श्री मधुसूदन सावड़िया लेखा सदस्य समक्ष।
Before Shri Ravish Sood, Judicial Member
A N D
Shri Madhusudan Sawdia, Accountant Member

आ.अपी.सं / **ITA No.1461/Hyd/2025**
(निर्धारण वर्ष / Assessment Year: 2019-20)

Shri Srinivas Chowdary Vallabhaneni, Secunderabad PAN:AEIPV3757R (Appellant)	Vs.	Dy. C. I. T Central Circle 1 (4) Hyderabad (Respondent)
निर्धारिती द्वारा / Assessee by: Shri Phaneendra Nag, CA		
राजस्व द्वारा / Revenue by: Smt. Reema Yadav, Sr. DR		
सुनवाई की तारीख / Date of hearing: 03/12/2025		
घोषणा की तारीख / Pronouncement: 19/12/2025		

आदेश/ORDER

Per Madhusudan Sawdia, A.M.:

This appeal is filed by Shri Srinivas Chowdary Vallabhaneni ("the assessee"), feeling aggrieved by the order passed by the Learned Commissioner of Income Tax (Appeals)-12, Hyderabad ("Ld. CIT(A)") dated 15.07.2022 for the A.Y. 2019-20.

2. The assessee has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in not quashing the order of the

A.O levying penalty u/s 271AAB of the Income Tax Act on the appellant is absolutely illegal, arbitrary and ab initio void.

2. On the facts and circumstances of the case, the Ld. CIT (A) has erred in law in not considering the submissions of the appellant that: (i) Initiation of penalty, by the AO without giving any reasons for initiating penalty u/s 271AAB(1A) of the Income Tax Act is bad in law. (ii) Initiation of penalty, without any specific finding in the assessment order as to the discovery, as a result of search action, of any "undisclosed income" within the meaning of clause (c) of explanation to Section 271AAB(1A) of the Income Tax Act is bad in law, (ii) initiation of penalty, without any specific finding in the assessment order as to the discovery, as a result of search action, of any "undisclosed income" within the meaning of clause (c) of explanation to section 271AAB(1A) of the Income Tax Act, is bad in law, (iii) That initiation of penalty solely on the basis of offer of additional income voluntarily made for the purpose of buying peace and for avoiding further litigation is bad in law. (iv) That initiation of penalty on the voluntarily offered income without any finding as to requirement to maintain books of account by the Assessing Officer and the Investigation Wing, is bad in law.

3. On the facts and circumstances of the case, the Ld. CIT(A) has erred in law in not quashing the penalty imposed by the A.O without specifying the default prescribed u/s 271AAB(1A) of the Income Tax Act. (i) Ld CIT(A) also erred in law in not quashing the penalty levied on the basis of stereotyped Notice issued under section 271 read with section 274 of the Income Tax Act which does not mention the specific default committed by the appellant rendering the appellant liable to penalty under Income Tax Act.

4. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in upholding the validity of the penalty order by observing that AO has mentioned the main section. (i) The Ld CIT(A) further erred in law in observing that the appellant is well aware of the clause under which its case is covered ignoring the fact that reply of the assessee in compliance does not absolve the AO nor cure the defect in the notice issued. (ii) The Ld. CIT (A) further erred in law in holding that no prejudice is caused to the appellant because of not specifying of particular clause which is completely in defiance of the settled legal position which categorically holds that prejudice is on the face of the mechanical methods the Revenue adopts in sending a statutory notice.

5. On the facts and circumstances of the case and in law the Ld. CIT(A) erred in ignoring the finding of hon'ble Tribunal in

appellant's own case on quantum appeal [ITA No175 to 177 of 2023] wherein it is held that merely because the assessee has admitted an amount to buy peace of mind, bringing the amount of the additional income declared by the respective assessee to higher rate as per the provisions of section 115BBE is not justified especially when no other incriminating material was found, meaning that it is not undisclosed income. Further in the case of Appellant the income is declared with respect to Investment in companies, which is fully explained/ disclosed source. The Ld. CIT(A) did not consider the submissions of the appellant which is unjust.

6. The appellant craves leave of the Hon'ble Tribunal to amend OR raise any other ground, cross objection, including any additional ground of appeal not set out in the appeal Memo.”

3. The brief facts of the case are that the assessee is an individual deriving income from remuneration, income from house property and income from other sources. A search and seizure operation under section 132 of the Act was conducted on 05.10.2018 in the cases of various persons, including the assessee. Subsequently, the assessee filed return of income for the Assessment Year 2019–20 under section 139(1) of the Act on 31.08.2019 admitting a total income of Rs.98,03,260/-, which included Rs.35 lakhs offered as additional income during the course of search. The case of the assessee was selected for scrutiny and notices under sections 143(2) and 142(1) of the Act were issued by the Learned Assessing Officer (“Ld. AO”). During the assessment proceedings, the Ld. AO taxed the entire sum of Rs.35 lakhs, including Rs.7.00 lakhs in cash seized during the search, by invoking section 69B read with section 115BBE of the Act. The appeal against the quantum addition of Rs.35.00 lakhs reached this Tribunal, wherein vide order dated 30.08.2023 in ITA No.177/Hyd/2023, this Tribunal held that section 69B read

with section 115BBE of the Act would apply only to the cash component of Rs.7 lakhs, while the balance Rs.28 lakhs was liable to be taxed under normal rate. In pursuance of this order, the Ld. AO passed a consequential order on 17.10.2023 taxing Rs.7 lakhs under section 69B read with section 115BBE of the Act and Rs.28 lakhs at normal rates. Subsequently, the Ld. AO initiated penalty proceedings under section 271AAB (1A) of the Act in respect of Rs.28 lakhs and levied a penalty of Rs.9,60,960/- vide order dated 27.03.2024.

4. Aggrieved with the penalty order of the Ld. AO, the assessee filed appeal before the Ld. CIT (A). The Ld. CIT(A) upheld the penalty levied by the Ld. AO.

5. Aggrieved with the order of the Ld. CIT (A), the assessee is in further appeal before this Tribunal. During the course of appellate proceedings, the Learned Authorised Representative ("Ld. AR") submitted that the assessee had offered Rs.28 lakhs during the search only to buy peace of mind and had duly included this sum in the return of income filed under section 139(1) of the Act and paid the taxes. The Ld. AR submitted that no incriminating document or material was found during the course of search in relation to the sum of Rs.28 lakhs. Inviting our attention to para no. 21 of the Tribunal's quantum order in ITA No.177/Hyd/2023 placed at page no. 78 of the paper book, he submitted that this Tribunal had given a categorical factual finding that no incriminating material was found for the addition of Rs.28 lakhs, and on that basis directed the Ld. AO to tax the same under normal rate. The Ld. AR further submitted that the

Ld. AO levied penalty under section 271AAB(1A) of the Act on the addition of Rs.28.00 lakhs. He further submitted that for penalty to be leviable, the income must fall within the definition of “undisclosed income” as defined under clause (c) of the Explanation to section 271AAB of the Act. Since no material, paper, document or evidence was found relating to the sum of Rs.28 lakhs, the said income cannot be treated as “undisclosed income” and therefore no penalty is leviable. Accordingly, the Ld. AR prayed before the Bench to delete the penalty levied by the Ld. AO.

6. Per contra, the Learned Departmental Representative (“Ld. DR”) relied on the order of the lower authorities and submitted that but for the search, the assessee would not have disclosed the income of Rs.28 lakhs, and therefore the income falls within the scope of “undisclosed income.” Accordingly, the Ld. DR submitted that there is no infirmity in the orders of the lower authorities.

7. We have considered the rival submissions and perused the material available on record. We have also gone through para no. 21 of the Tribunal’s order in the quantum appeal in ITA No.177/Hyd/2023 placed at page no. 78 of the paper book, which is to the following effect:

“21. Apart from the cash of Rs.7.00 lakhs found during the course of search; we find no other incriminating material has been found nor any unexplained investment or unexplained expenditure or unexplained asset were found. Under these circumstances, merely because the assessee has admitted total income of Rs.35.00 lakhs, which includes cash found of Rs.7.00 lakhs, the provisions of section 69A/69B/115BBE in our opinion, cannot be applied to the entire amount. In our

opinion, the provisions of section 69B r.w.s. 115BBE at best can be applied to the amount of Rs.7.00 lakhs of cash found during the course of search but not to the remaining Rs.28.00 lakhs. We therefore modify the order of the learned CIT (A) and direct the Assessing Officer to apply the provisions of section 115BBE to the amount of Rs.7.00 lakhs and to tax the remaining amount of Rs.28.00 lakhs at normal rate. The grounds raised by the assessee are accordingly partly allowed.”

8. On perusal of the above, it is evident that this Tribunal, while adjudicating the quantum addition, recorded a clear and categorical factual finding that no incriminating material was found in respect of the amount of Rs.28 lakhs, and accordingly directed the Ld. AO to tax the said sum at normal rates. We have further examined the definition of “undisclosed income” as provided in clause (c) of the Explanation to section 271AAB of the Act, which is to the following effect:

“271AAB. (1)
 (1A).....
 (2).....
 (3).....
 Explanation ...
 (a).....
 (b).....
 (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.”

9. On a perusal of the above, it is abundantly clear that the definition specifically requires that the income must be represented by any money, bullion, jewellery or other valuable article or thing, or must be indicated by any entry in books of account or other documents or transactions found during the course of search under section 132 of the Act. This statutory definition makes it explicit that finding of incriminating material during search is a mandatory precondition for bringing any income within the meaning of “undisclosed income” for purposes of levy of penalty under section 271AAB(1A) of the Act. In the present case, as already recorded by this Tribunal in the quantum proceedings, no incriminating material was found for the addition of Rs.28 lakhs. In the absence of such incriminating material, the amount of Rs.28 lakhs does not fall within the definition of “undisclosed income” as provided under clause (c) of Explanation to section 271AAB of the Act. Once the statutory condition is not satisfied, penalty under section 271AAB(1A) of the Act cannot be sustained. In view of the above discussion and in conformity with the earlier factual finding of this Tribunal, the Ld. AO is directed to delete the penalty levied under section 271AAB(1A) of the Act in respect of the addition of Rs.28 lakhs.

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

Order pronounced in the Open Court on 19th December 2025.

Sd/-

Sd/-

(RAVISH SOOD) JUDICIAL MEMBER	(MADHUSUDAN SAWDIA) ACCOUNTANT MEMBER
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Hyderabad, dated 19th December 2025

Vinodan/sps

Copy to:

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4	DR, ITAT Hyderabad Benches
5	Guard File

By Order