

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "G": NEW DELHI  
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER  
AND  
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 673/Del/2014  
(Assessment Year: 2009-10)

Rakesh Kumar Garg, G-15, Maharani Bagh, New Delhi PAN:AADPG0991M	Vs.	DCIT, Central Circle-12, New Delhi
<b>(Appellant)</b>		<b>(Respondent)</b>

Assessee by :	Sh. Sudesh Garg, CA
Revenue by:	Sh. SS Rana, CIT DR
Date of Hearing	11/05/2017
Date of pronouncement	29/05/2017

**ORDER**

**PER PRASHANT MAHARISHI, A. M.**

1. The assessee against the order of the Id CIT (A)-XXXI, prefers this appeal, new Delhi dated 27.11.2013 for the Assessment Year 2009-10.
2. The assessee has raised the following grounds of appeal:-  
"1. *The Id CIT(A) erred in law and facts by confirmed the penalty of Rs. 9114595/- levied u/s 271AAA of IT Act, 1961.*"
3. The brief facts of the case are that search and seizure operation u/s 132 of the Act was carried out in Raj Darbar Group of Cases on 31.07.2008. The assessee is one of the members of that group. During the course of search, handwritten details of cash payment for renovation and decoration work of various premises and advances for brokers for acquisition of land at Jaipur was found. On the basis of the same the assessee surrendered Rs. 68604950/- on account of renovation and construction of Delhi and Mathura property and further a sum of Rs. 22541000/- on account of cash advances. In nutshell on the basis of the above diary a sum of Rs. 91145950/- was surrendered. At the time of filing of return of income assessee included a sum of Rs. 9 crores as construction of the hotel project and Rs. 1145950/- . For the year, the return of income filed by the assessee on 03.09.2010 wherein, assessee has declared income of Rs. 93900720/- comprising of salary income, income from house

property, capital gain and income from other sources. It also included the disclosure of Rs. 91145950/-. The total income of the assessee was assessed at Rs. 208899730/- vide order dated 29.12.2010 u/s 143(3) of the Act. The issue involved is the penalty u/s 271AAA of Rs 9114595/- on undisclosed income of Rs. 91145950/- included in the return of income. According to the Id Assessing Officer the assessee has surrendered above sum in his statement u/s 132(4) of the Act on 01.08.2008, but at the time of recording of statement the assessee failed to specify the manner in which it is earned and therefore, penalty proceedings were initiated. Therefore penalty u/s 271AAA @10% of undisclosed income of Rs. 91145950/- amounting Rs. 9114595/- was levied by order dated 27.06.2011.

4. The assessee being aggrieved with the order of the Id Assessing Officer preferred appeal before the Id CIT (A), who confirmed the penalty by order dated 27.11.2013 for the same reason that appellant has failed to specify or substantiate the manner of earning the above income. Therefore aggrieved with the order of the Id CIT(A) and preferred an appeal before us.
5. The Id AR before us submitted that it was not asked during the course of statement to substantiate the manner of earning undisclosed income therefore if it is not asked. It was further submitted that the income was offered in the return of income and therefore, same was not undisclosed according to explanation 2 section 271AAA. It was further contended that Id CIT(A) has arrived at hypothetical justification for surrender and for substantiating the manner of earning of income. He further relied upon the decision of coordinate bench in case of Rajrani Gupta 3371/ Del 2011 dated 30.03.2012, Mother's Pride Education Ltd. Vs. DCIT 3372/Del/2011, Anand Kumar Bansal ITA No. 1057/Del/2013, Neeraj Singhal Vs. ACIT, 37 Taxmann.com 189, Concrete Developers Vs. ACIT 34 Taxmann.com 62. In view of the above facts it was submitted that the levy of penalty u/s 271AAA is unjustified. In the end it was also stated that it is just technical or venial breach of law and therefore, penalty should not be levied. He relied upon the decision of the Hon'ble Supreme Court in case of Hindustan Steel Ltd Vs. State of Orissa 83 ITR 26.
6. The Id DR vehemently submitted that Id Assessing Officer and Id CIT(A) has given the valid reason for upholding the penalty. He further submitted that coordinate bench in Anand Sanchati Vs. DCIT ITA 305/Nagpur/2015, the penalty has been confirmed.
7. We have carefully considered the rival contentions. According to the provisions of section 271AAA immunity from penalty is available with respect to undisclosed income of previous year if the assessee makes declaration of the undisclosed

income in the statement recorded u/s 132(4) of the Act admitting the undisclosed income and specifies the manner in which such income has been derived and further substantiate the manner in which it was derived. Of course, the taxes have been paid thereon. It is not in dispute here that the assessee has admitted in his statement u/s 132(4) of the Act during the course of search and paid due tax thereon. However, the dispute is that assessee has not specified the manner in which such income has been arrived as well as not substantiated the manner of earning such income. It is also an uncontroverted facts that assessee has never been asked to substantiate the undisclosed income declared. Assessee has categorically denied and that he has been asked to substantiate the manner of earning undisclosed income and unless asked assessee did not have any opportunity to explain it. Revenue also could not explain that specific question was asked and assessee did not furnish the answer. The condition regarding specifying and substantiating the manner in which undisclosed income has been earned is always difficult for the assessee for obvious reason that no records of such income are kept in a meticulous manner. Generally, no person usually keeps the evidences of undisclosed income which has not been recorded in the regular books of account. The Hon'ble Gujarat High Court in CIT Vs. Mahendra C. Shah 215 CTR 493 has held that assessee having declared the value of diamonds in his statement u/s 132(4) and paid due tax thereon, he was entitled to immunity from penalty according to explanation 5 to section 271(1)(c) of the Act. It is important to note that in that particular section has the requirement of specifying the manner of earning undisclosed income. Such view is also taken by coordinate benches in following cases:

- a. Pramod Kumar Jain Vs. DCIT 33 Taxmann.com 651
- b. Ashok Kr. Sharma Vs. DCIT 33 TAXmann.com 652
- c. Rajrani Gupta Vs. DCIT ITA No. 3371/Del/2011
- d. Sunil Kr. Bansal Vs. DCIT 37 ITR (Trib) 576
- e. CIT Vs. Radha Kishan Goel 278 ITR 454
- f. Concrete Developers Vs. ACIt 34 Taxmann.com 62
- g. ACIT Vs. Nandini Realtors ITA No. 415/Nagpur/2015
- h. Brij Bhusan Singhal Vs. ITO 5261/Del/2013
- i. DCIT Vs. Sulachana Devi Agarwal 1052/Ahd/2012
- j. ACIT Vs. Kanakiya Spaces Pvt. Ltd. 6763/Mum/2011
- k. Neeraj Singhal Vs. ACIT 146 ITD 152.
- l. ACIT V Ajit singh 76 Taxmmann.com 212 (jp)

8. Coming to the decision cited by the Id Departmental Representative of Anand Sancheti Vs. DCIT ITA No. 305/Nagpur/2015, wherein it has been held that the decision of Gujarat and Allahabad High Court were not in reference penalty u/s 271AAA but u/s 271(1)(c) of the Act. We do not agree with the order of the SMC in the above case as in explanation 5 of section 271(1)(c) there was also a requirement of specifying the manner in which such income has been derived to obtain the immunity. Further the decision relied up on by the Id DR is also of SMC where in the views of coordinate benches are heavily loaded in favour of the assessee. Therefore, On the facts and circumstances of the cases and respectfully following various decision of coordinate benches mentioned in para no 7 above we reverse the finding of the Id CIT (A) and direct the Id AO to delete the penalty u/s 271AAA of the act
9. In the result appeal of the assessee is allowed.  
Order pronounced in the open court on 29/05/2017.

-Sd/-

(H.S.SIDHU)  
JUDICIAL MEMBER

-Sd/-

(PRASHANT MAHARISHI)  
ACCOUNTANT MEMBER

Dated: 29/05/2017  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi