

IN THE INCOME TAX APPELLATE TRIBUNAL,
NAGPUR BENCH, NAGPUR

BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER.

(S.M.C.)

I.T.A. No. 593/Nag/2016
Assessment Year : 2008-09.

Shri Sunil Raisonii,
Nagpur.
PAN AAQPR2672D.

Dy. Commissioner of Income-tax,
Vs. Central Circle-2(3), Nagpur.

Appellant.

Respondent.

Appellant by : Shri Mukesh Agrawal.
Respondent by : Shri A.R. Ninawe.

Date of Hearing : 17-01-2017
Date of Pronouncement : 18th January, 2017.

ORDER.

This appeal by the assessee is directed against the order of learned CIT(Appeals)-3, Nagpur dated 03-10-2016 and pertains to assessment year 2008-09. The ground of appeal reads as under :

“That on the facts and in the circumstances of the case the learned CIT(Appeals) has erred in confirming penalty of Rs.3,92,500/- levied by AO u/s 271AAA of I.T. Act. The levy of penalty is unjustified, arbitrary and deserves to be deleted.”

2. Brief facts of the case are as under :

Search and seizure operation u/s 132 of the Act was conducted at the residential premises of the assessee on 07-09-2007. During the course of search following assets were found from residence of the assessee:

Cash	Rs. 13,00,000.00
Gold Jewellery	Rs. 12,00,000.00
Silver Utensils	Rs. 11,25,000.00
Total	Rs. 36,25,000.00

3. The assessee in his statement u/s 132(4) recorded on the date of search surrendered income of Rs.37,00,000/- for fixation in the return of income for the relevant current year i.e. A.Y. 2008-09. The assessee paid taxes on the surrendered income and filed the return of income showing the income surrendered in the statement u/s 132(4) of the Act. The assessee filed regular return of income u/s 139(1) of I.T. Act on 08-10-2008 declaring income of Rs.1,86,50,560/- which included the admitted undisclosed income of Rs.39,25,000/- shown as income from other sources.

4. The assessee has claimed that he had complied with all the three conditions of Sub-section (2) of Section 271AAA of the I.T. Act.

5. The AO passed order u/s 143(3) accepting the returned income. The AO initiated penalty proceedings u/s 271AAA and levied penalty of Rs.3,92,500/- stating that the assessee has neither specified nor substantiated the manner in which income was earned. The assessee further stated that had there been no search u/s 132 of Income Tax Act, 1961, the assessee would have successfully evaded taxes on the impugned undisclosed income declared u/s 132(4) of the Income Tax Act, 1961.

6. Upon assessee's appeal learned CIT(Appeals) confirmed the AO's action. Learned CIT(Appeals) inter alia, placed reliance upon several case laws including that from ITAT, Nagpur Bench in the case of Shri Anand Sancheti vs. DCIT in ITA No. 305/Nag/2015 dated 22-09-2016.

7. Against the above order the assessee is in appeal before the ITAT.

8. I have heard both the counsel and perused the records. I find that identical issue was considered by this Tribunal in the case of Shri Omprakash Chokhani in ITA No. 310/Nag/2015 vide order dated 5th Dec., 2016.. The Tribunal's adjudication reads as under :

“Learned counsel of the assessee submitted that penalty u/s 271AAA should not be levied in this case. For this proposition he made reference to following case laws :

“1. CIT vs. Mahendra C. Shah 299 ITR 305 (Guj.).

2. CIT vs. Radhakisan Goel 278 ITR 454 (All.).

3. Concrete Developers vs. ACIT 34 Taxmann.com 62 (Nagpur Trib.)

4. ACIT vs. V. Nandini Realtors Pvt. Ltd. (ITA No. 415/Nag/2015) Nagpur Trib.).

5. The above judgments of Hon'ble Gujarat and Allahabad High Courts have been followed by various Tribunals and held that if the assessee has declared income in 132(4) statement, showed in the return of income and paid taxes on it, then it is sufficient compliance not to levy penalty u/s 271AAA. Assessee need not explain the manner in which such income was earned.

32 CCH 260 DCIT v. Rajendra Prasad Dhoknla. (Ahd. Trib.)

77 DTR 244 Pramod Kumar Jain v. DCIT (Ctk. Trib.).

146 ITD 152 (Del.) Neerat Singh v/s ACIT.

ITA No.3371/Del/2011 Smt. Raj Rani Gupta v. DCIT. (Del.ITAT)

ITA No.5261/Del/2013 Brij Bhushan Singal v. Dept.of I.T.(Del.ITAT).

ITA No.1052/Ahd/2012 DCIT v. Sulochanadevi Agrawal (Ahd. Trib.).

ITA No.6763/Mum/2011 ACIT v. Kanakia Spaces Pvt.Ltd. (Mum. Trib.).”

Learned counsel further placed reliance upon the decision of this Tribunal in the case of M/s Nandini Realtors Pvt. Ltd. in ITA No. 415/Nag/2015

vide order dated 6th May, 2016 where similar penalty u/s 271AAA was deleted by the Tribunal.

7. Per contra learned D.R. supported the orders of the authorities below.

8. I have heard both the counsel and perused the records. I find that the learned counsel of the assessee has submitted that in identical situation levy of penalty u/s 271AAA in case of a group concern, namely, M/s Nandini Realitors Pvt. Ltd. in ITA No. 415/Nag/2014 vide order dated 05-05-2016 was deleted by the ITAT. The decision of the ITAT in the said case reads as under :

“ We have heard both the sides at some length The facts narrated herein above are not in dispute that a search u/s 132 was conducted and thereupon it was found that the assessee has purchased a land as per the registered deed wherein the consideration money was Rs.2,75,65,000/-. A statement u/s 132(4) was recorded and after confronting with the evidences an amount of Rs.2 crores was offered being cash consideration over and above the sale consideration mentioned in the registered deed. As a consequence a revised return was filed. The assessment was completed u/s 143(3) and the income was assessed at Rs.2,15,60,620/-. We have been informed that the surrendered amount u/s 132(4) was accepted as such by the AO. There is no dispute that the tax on the amount offered had also been paid by the assessee. In the light of the above mentioned admitted facts we have perused the provisions of section 271AAA which has provided that a penalty at the rate of 10% is to be levied on the amount of undisclosed income found as a consequence of search u/s 132 of I.T. Act. However, vide sub-section (2) an exception is also provided that in a situation when the offer is made of the undisclosed income u/s 132(4) of I.T. Act and it is specified the manner in which the income was earned and duly substantiated the manner in which the undisclosed income was derived and that the tax with interest was paid then out of the ambits of penalty provisions. Further it has also been brought on record that the income offered was duly disclosed in the books of accounts of the assessee and the manner in which the investment was made has also been duly incorporated in the accounts, moreover the tax was paid Hence we hereby hold that the learned CIT(Appeals) has rightly held that the question of levy of penalty u/s 271AAA was out of the scope of sub-section (1) but within the ambits of the exception prescribed under sub-section (2) of the said section. Resultantly the view taken by the learned CIT(Appeals) is hereby confirmed.”

9. I find that in the present case the case laws as mentioned above

come to the rescue of the assessee. The assessee in this case is engaged in earning income from business. Learned CIT(Appeals) has observed that individual entities having no regular business are distinguishable from other business entities like proprietary concerns, firms, corporate entities etc. Hence learned CIT(Appeals) chose to distinguish the assessee's case. I find that the plank of distinction brought by the learned CIT(Appeals) is not cogent enough. As per the return of income and assessment order the assessee's source of income is house property, business income and other sources. Hence the assessee is having business income. Learned CIT(Appeals)' distinction is not sustainable. Accordingly respectfully following the precedents as above, I set aside the orders of the authorities below and decide the issue in favour of the assessees.

10. In the result, these appeal filed by the assessees stand allowed.”

9. Per contra learned D.R. relied upon the order of the learned CIT(Appeals).

10. Upon careful consideration I find that the facts of the case and the above referred case by the learned counsel of the assessee are similar. In the present case also the assessee inter alia derives income from business. Hence the learned CIT(Appeals)' reliance upon ITAT's decision mentioned above is not at all applicable on the facts of this case as in the order referred by the learned CIT(Appeals) the assessee was deriving income only from the salary. Hence I hold that the assessee in this case does not deserve rigours of penalty u/s 271AAA. Accordingly following the precedent as above, I set aside the orders of learned CIT(Appeals) and delete the levy of penalty.

11. In the result this appeal filed by the assessee stands allowed.

Order pronounced in the Open Court on this 18th day of January., 2017.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER.

Nagpur,
Dated: 18th January, 2017.

Copy forwarded to :
1. Shri Sunil Raison, 75, Shivaji Nagar, Nagpur-440010.
2. D.C.I.T., Central Circle-2(3), Nagpur.
3. C.I.T.-(Central), Nagpur.
4. CIT(Appeals), -3, Nagpur.
5. D.R., ITAT, Nagpur.
6. Guard File

True Copy

By Order

Assistant Registrar,
Income Tax Appellate Tribunal,
Nagpur Bench, Nagpur.

Wakode.