

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "C" MUMBAI**

**BEFORE SHRI JOGINDER SINGH (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5703/MUM/2013  
Assessment Year 2010-11**

M/s. Chains Corner Jewellery (I) Pvt. Ltd. Shop No. 9, 1 <sup>st</sup> Floor, Kapadia Bldg., No. 2, 31/33, S.M.Street, Zaveri Bazar, Mumbai- 400 002.	Vs.	The ACIT CC-22, Mumbai.
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PAN No: AABCC7451M		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

Appellant by:	Mrs. Sanjukta Chowdhury, AR
Respondent by:	Mr. Maurya Pratap, DR

Date of Hearing: 21 .11.2016  
Date of Pronouncement: 28. 11.2016

**ORDER**

**PER N.K. PRADHAN, A.M.**

This is an appeal filed by the assessee. The relevant assessment year is 2010-11. It is directed against the order of Commissioner of Income Tax (Appeals)-39, Mumbai and arises out of the order u/s. 271AAA of the Income Tax Act, 1961 ('the Act').

2. The sole ground raised by the assessee in this appeal is that ld. CIT(A) erred in confirming the levy of penalty without appreciating that the appellant had admitted to the undisclosed income during the course of search and specified the manner in which the same was derived and consequently paid the taxes thereon, therefore it is not a fit case u/s

271AAA and the penalty so imposed may be deleted. Also it is stated that the ld. CIT(A) failed to appreciate that in the statement u/s. 132(4) it was conditionally prayed that no penalty be levied and full co-operation was extended by the appellant; hence it is not a fit case for the levy of penalty u/s. 271AAA and the same may be deleted. Without prejudice to above, it is stated that the word 'MAY' does not amount to 'SHALL' and therefore, the exercise of discretion ought not to have been in a routine manner as the levy of penalty is not automatic and under the circumstances, no penalty u/s. 271AAA could be called for and hence, the penalty may be deleted.

3. In a nutshell, the facts are that a search and seizure action u/s 132 was conducted in the business premises of the assessee on 23/11/2009 and on the same day survey was carried out at Shop No. 9, Kapadia Building. Subsequently, return of income was filed by the assessee for the impugned assessment year on 04/02/2010 disclosing income at Rs. 1,91,54,710/-. During the course of search, cash of Rs. 1,48,00,000/- was found in the assessee's premises, out of which cash of Rs. 1,47,00,000/- was seized. During the course of assessment, after examining the seized documents and other statements, the AO found that there was stock deficit of Rs. 15,85,994/-. In the return of income filed in response to notice u/s 153A, the assessee offered Rs. 1,47,00,000/- as undisclosed income. The AO completed the assessment u/s 143(3) on 26/12/2011 assessing the income at Rs. 2,07,40,700/- Then the AO imposed a penalty of Rs.16,30,100/- u/s 271AAA of the Act. The assessee preferred appeal against the order of the AO before the ld. CIT(A). The ld. CIT(A) has dismissed the appeal filed by the assessee.

4. Before us, the ld. Counsel of the assessee submits that merely because quantum is confirmed, it does not become an automatic case for the levy of penalty u/s 271AAA. It is stated that the case of the assessee falls in sub-

sec.(2) of section 271AAA. She further clarifies that during the recording of statement, the Director Shri. Prakash K. Jain has explained about the manner of accumulation of unaccounted cash and its sources. Shri Jain had clarified that they had not accounted this cash accumulation, as it was in the middle of the year. Reliance was placed by her on the decision in the case of *CIT vs. ASK Enterprises* 230 ITR (Bom.); *CIT vs. Shubhagamal Mahavirchand* 142 ITR 747 (Mad); *CIT vs. Smt. P.K.Noorjehan* 237 ITR 570(SC); *P.K.Jain vs. DCIT* 149 TTJ (Ctk)(UO) 36; *Ashok Kumar Sharma vs. DCIT* 149 TTJ (Ctk)(UO) 33; *ACIT vs. M/s. Kanakia Spaces Pvt. Ltd.* (ITA No. 6763/Mum/2011) for the A.Y. 2007-08 ; *ACIT vs. Shri. A.M. Annamalaisamy (HUF)* (ITA No. 1634/Mds/2012) for the A.Y. 2009-10; *Sarat Chandra Sahoo vs. Dy. CIT* (2015) 152 ITD 326(Ctk.); *Sunil Kumar Bansal vs. Dy. CIT* 37 ITR (Trib) 576 (Chd.).

5. The ld. DR supports the order passed by ld. CIT(A) upholding the penalty of Rs. 16,30,100/- imposed by the AO u/s 271AAA of the Act.

6. We have heard the rival submissions and perused the relevant material on record. We find that section 271AAA is applicable if (a) a search is initiated u/s 132 on or after June 1, 2007, but before July 1, 2012 (b) there is some “undisclosed income” and (c) undisclosed income pertains to a “specified previous year”. What is the quantum of concealment penalty ? If the above conditions are satisfied, 10 % of “undisclosed income” of the “specified previous year” is concealment penalty which can be imposed by the Assessing Officer in addition to tax. The aforesaid penalty of 10 % of “undisclosed income” of the “specified previous year” can be avoided if the following conditions are satisfied-

- i. If the assessee in a statement u/s 132(4) in the course of the search, admits the undisclosed income. Further, he specifies the manner in which such income has been derived.

- ii. He substantiates the manner in which the undisclosed income was derived.
- iii. He pays the tax, together with interest, if any, in respect of the undisclosed income.

If the above three conditions are satisfied penalty u/s 271AAA (i.e. 10 per cent of “undisclosed income” of the “specified previous year”) can be avoided.

6.1 As pointed out by the Hon'ble Supreme Court in *Anantharam Veerasinghaiah & Co vs. CIT* (1980) 123 ITR 457,462 (SC), the findings recorded in the assessment order constitute good evidence in the penalty proceedings but those findings cannot be regarded as conclusive for the purpose of the penalty proceedings.

6.2 The only dispute here is that the assessee has failed to substantiate the manner in which the undisclosed income was derived. We find that during the course of search in the premises of the assessee, cash amounting to Rs. 1,48,00,000/- was found out which Rs. 1,47,00,000/- was seized. In the return of income filed in response to notice u/s 153A, the assessee offered Rs. 1,47,00,000/- as undisclosed income. In the statement recorded u/s 132(4) on 23.11.2009, Shri Prakash Jain, Director has stated in response to Q.10 regarding the source of excess cash that 'the cash is generated by way of unaccounted sales in gold ornaments'. Also, Shri Bhagwatilal Motilal Dhakad, Director, M/s. Chains Corner Jewellery (I) Pvt. Ltd. confirmed on 1/12/2009 the said undisclosed income in response to Q. 5 which reads under :

“ I have perused all the above 3 statements given by my colleague, Shri. Prakash Jain. I agree with his statements and confirm that the sum of Rs. 1.47 crores represents unaccounted cash belonging to M/s. Chains Corner Jewellery (I) Pvt. Ltd. The said sum was deployed in the gold jewellery business, outside the books of accounts. Hence, the sum of Rs. 1.47 crores has been offered as additional income for taxation in FY 2009-10 in the hands of the company. Besides, we have also offered a sum of Rs. 15,000/- as

additional income on account of cash salary paid to Mr. Motilal Lodha. I humbly request that no penalty/prosecution proceedings are launched against our company, and we shall fully co-operate with the income tax proceedings.”

6.3 A similar issue arose before ITAT “A” Bench Mumbai in the case of *M/s. Kanakia Spaces Pvt. Ltd. (supra)*. The ground raised by the Revenue before the Tribunal was as under:

“1. On the facts and in the circumstances of the case and in law, the ld. CIT(A) erred in deleting penalty levied u/s. 271AAA of the I.T. Act, 1961 of Rs.55,00,000/- without appreciating the fact that assessee failed to substantiate the manner in which undisclosed income was derived so as to qualify for non-levy of penalty within the meaning of sub-section(2) of section 271AAA of the I.T. Act, 1961.”

The Tribunal followed the judgement of the Hon’ble Gujarat High Court in *CIT vs. Mahendra C. Shah* (299 ITR 305) and that of Hon’ble Allahabad High Court in *CIT vs. Radha Kishan Goel* (2005) 278 ITR 454 (All.) and dismissed the appeal filed by the Revenue.

6.4 Also a similar issue arose in *Sita Ram Gupta vs. ACIT* [2014] 48 taxmann.com 327 (Delhi - Trib.). The Tribunal held that “Where Assessing Officer having completed assessment, passed a penalty order under section 271AAA for default of not substantiating manner in which undisclosed income was derived, in view of fact that assessee made statement that he had earned undisclosed income for various transactions of sale/purchase of land which did not face any rebuttal and, moreover, assessee had paid due tax on said income, impugned penalty order deserved to be set aside.”

6.5 We find that the assessee-company has paid taxes together with interest in respect of the undisclosed income declared in the statement recorded u/s 132(4) of the Act. As narrated in para 6.2 here-in-above, it has provided information regarding the manner in which the undisclosed

income was derived. Therefore, the order of the Ld. CIT(A) upholding the penalty of Rs. 16,30,100/- imposed by the AO u/s 271AAA is cancelled.

7. In the result, the appeal is allowed.

**Order pronounced in the open court on 28 /11/2016**

Sd/-

(JOGINDER SINGH)  
JUDICIAL MEMBER

Sd/-

(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai; Dated: 28/11/2016

**Copy of the Order forwarded to :**

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

//True Copy//

*Pramila*

BY ORDER,

(Dy./Asstt. Registrar)  
ITAT, Mumbai