

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'B', CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं, एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE: SMT.DIVA SINGH, JM & SMT.ANNAPURNA GUPTA, AM

आयकर अपील सं./ ITA No.1372/Chd/2017

निर्धारण वर्ष / Assessment Year : 2010-11

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| Shri Manoj Sahni, Sahni's Ashiana, Circular Road, Solan (H.P.) | बनाम | The D.C.I.T., Central Circle-II , Chandigarh. |
| स्थायी लेखा सं./PAN NO: AFNPS5722P | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

आयकर अपील सं./ ITA No.1373/Chd/2017

निर्धारण वर्ष / Assessment Year : 2010-11

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| Shri Pawan Sahni, Sahni's Ashiana, Circular Road, Solan (H.P.) | बनाम | The D.C.I.T., Central Circle-II , Chandigarh. |
| स्थायी लेखा सं./PAN NO: AERPS9602P | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

आयकर अपील सं./ ITA No.194/Chd/2014

निर्धारण वर्ष / Assessment Year : 2007-08

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| The D.C.I.T., Central Circle II , Chandigarh. | बनाम | Shri Manoj Sahni, Sahni's Ashiana, Circular Road, Solan (H.P.) |
| स्थायी लेखा सं./PAN NO: AFNPS5722P | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

आयकर अपील सं./ ITA No.37/Chd/2017

निर्धारण वर्ष / Assessment Year : 2010-11

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| The A.C.I.T., Central Circle-II , Chandigarh. | बनाम | M/s Dev Bhoomi Apartments(AOP), Kalka Shimla Road, Deonghat, Solan. |
| स्थायी लेखा सं./PAN NO:AAAAD5685P | | |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

आयकर अपील सं./ ITA No.201/Chd/2014

निर्धारण वर्ष / Assessment Year : 2010-11

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| The D.C.I.T., Central Circle-II , Chandigarh. | बनाम | M/s Dev Bhoomi Apartments(AOP), Kalka Shimla Road, Deonghat, Solan. स्थायी लेखा सं./PAN NO:AAAAD5685P |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

&

आयकर अपील सं./ **ITA No.143/Chd/2015**

निर्धारण वर्ष / Assessment Year : 2010-11

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| The A.C.I.T., Central Circle-II , Chandigarh. | बनाम | M/s Dev Bhoomi Green Valley, Kalka Shimla Road, Deonghat, Solan. स्थायी लेखा सं./PAN NO:AAAAD5140P |
| अपीलार्थी/Appellant | | प्रत्यर्थी/Respondent |

निर्धारिती की ओर से/Assessee by: S/Shri Raj Kumar
& Sumit Goyal, CAs
राजस्व की ओर से/ Revenue by : Smt.Anita Sinha, CIT DR
सुनवाई की तारीख/Date of Hearing : 04.09.2018
उदघोषणा की तारीख/Date of Pronouncement: 30.11.2018

आदेश/ORDER**PER BENCH :**

All the above appeals relate to different assessees belonging to the same group, i.e. Sahni Group, where search action was carried out u/s 132(1) of the Income Tax Act, 1961 (in short referred to as 'Act'). While the appeals in ITA No.1372 & 1373/Chd/2017 are assessees appeal against separate orders of the Commissioner of Income Tax (Appeals)-3, Gurgaon dated 15.6.2017, confirming penalty levied u/s 271AAA of the Act, the rest are appeals filed by the Revenue against orders passed by the CIT(A) Since the appeals arise from the common action of search carried out on a group to which all the above assessees relate, they were taken up together for hearing.

3. At the outset, it was pointed out that the tax effect involved in all the appeals filed by the Revenue i.e. in ITA No.194/Chd/2014, ITA No.37/Chd/2017, ITA No. 143/Chd/2015 and ITA No.201/Chd/2014 is less than Rs. 20 lacs. The Ld. DR has also fairly admitted that CBDT circular No. 3/2018 is applicable to this appeal, hence, this appeal of the Revenue is liable to be dismissed.

4. It may be noted that CBDT vide Circular No. 3/2018 dated 11.07.2018 has revised the monetary limit upto Rs.20 lacs for filing appeals by the Department before the Tribunal and further vide para 13 of the said Circular it has been clarified that said circular is applicable retrospectively to the pending appeals also. The Hon'ble Punjab & Haryana High Court in the case of "Principal CIT of Income Tax Vs. Surinder Kumar Singhal" ITA No 406-2016 (O&M) vide order dated 30.1.2017 while further relying upon the decision of the Hon'ble Supreme Court in the case of "CIT Vs. Dhanalekshmi Bank Ltd." (2015) 373 ITR 526 (SC), has dismissed the appeal of the Revenue without going into the merits due to low tax effect leaving the question of law open. In view of the CBDT Circular No. 03/2018 (supra) and in the light of the above referred to decision of the Hon'ble Jurisdictional Punjab & Haryana High Court (supra), the present appeal of the Revenue is dismissed due to low tax effect.

5. It is, however, clarified that the dismissal of the above appeal shall not be taken to be affirmation of the order of

the CIT(A) on merits. The legal issue raised by the Revenue is being left open to be adjudicated in an appropriate case.

6. The Departmental appeals in ITA No.194/Chd/2014, ITA No No.37/Chd/2017, ITA No.143/Chd/2015 and in ITA No.201/Chd/2014 are, therefore, dismissed.

7. We shall now be taking up the assessee's appeal in ITA Nos.1372 & 1373/Chd/2017. It was common ground between both the parties that the penalty was levied u/s 271AAA of the Act on identical set of facts i.e. of cash surrendered. Since the facts and issue involved in both the appeals are common, they are being decided together. For convenience, we shall be dealing with the facts in the case of Shri Pawan Sahni in ITA No.1373/Chd/2017 and the decision rendered therein will apply mutatis mutandis in the case of Shri Manoj Sahni in ITA No.1372/Chd/2017.

ITA No.1373/Chd/2017:

8. As stated above, the assessee has challenged the action of the Ld.CIT(A) in upholding the levy of penalty u/s 271AAA on cash surrendered during search operation carried out on the assessee.

9. Brief facts relevant to the case are that search operations u/s 132(1) of the Act were carried out at the residential and business premises of Sahni Group of Cases including the assessee on 11.9.2009, during the course of which cash of Rs.32,65,270/- was found from the residential premises of the assessee out of which Rs.30,

00,000/- was seized from the group.. The assessee when asked to explain the source of the cash found, in his statement recorded u/s 132(4) of the Act stated that the cash amounting to Rs.9,65,270/- was the cash in hand of all persons and concerns of the group, detail of which was also filed. The balance unexplained cash of Rs.23,00,000/- (32,65,270 - 9,65,270) was surrendered by the assessee as under:

| | |
|-----------------------------|----------------|
| Shri Pawan Sahni (assessee) | Rs.15,00,000/- |
| Shri Girish Sahni | Rs 2,50,000/- |
| Shri Manoj Sahni | Rs. 5,50,000/- |

10. The offer of the additional income was made in the return filed u/s 153A of the Act which was accepted also by the Revenue. However,, penalty proceedings were initiated u/s 271AAA of the Act stating that since the assessee could not specify the manner of earning the undisclosed cash surrendered by him during search. Thereafter the order was passed levying penalty @ 10% of the cash surrendered as per the provisions of section 271AAA of the Act for the said reason. The Ld.CIT(A) upheld the order of the A.O. The relevant findings of the Ld.CIT(A) upholding the levy of penalty at paras 3.4 to 3.6 of the order is as under:

“3.4 During the search proceedings, the appellant had voluntarily surrendered Rs.23,00,000/- as additional income, which was included in the total surrender of Rs.3,00,00,000/- made by the group.

3.5 Further, the appellant had offered additional income of Rs.15,00,000/- made in the return u/s 153A. The AO has imposed penalty of Rs.1,50,000/- u/s 271AAA of the Act on the ground that the appellant had failed to specify the manner of earning the undisclosed income.

3.6 *It is apparent from the case, that the appellant had not disclosed income of Rs.15,00,000/- which relates to the 'Specified Previous Year' in the course of Certified True Copy the search in a statement u/s 132(4) of the Act had not admitted this undisclosed income nor specified the manner in which such income has been derived as mandated in sec 271AAA(2)(i) of the Act to get immunity from Penalty u/s 271AAA.*

In view of the above discussion, penalty u/s 271AM of the Act amounting Rs.1,50,000/- is sustained.”

11. Aggrieved by the same, the assessee has come up in appeal before us. During the course of hearing before us the Ld. counsel for assessee made his submissions dated 4.9.2018 in writing and relying upon the same argued before us that the order of the CIT(A) confirming levy of penalty was bad on various counts as under:

1) since the assessee had complied with all the conditions specified u/s 271AAA sub-section (2) for grant of immunity from levy of penalty under the section by making the surrender during the search specifying the amendment of earning the said cash as being on account of advances received against sale of certain properties which did not mature, which was declared in the return of income filed post search, taxes and interest paid thereon and which surrender was accepted by the A.O. also. Our attention was drawn to the surrender letter specifying the manner of earning the income placed at Paper Book page No.23 as under:

“That out of total cash of Rs.30 lacs seized during the search/survey, Rs.23 lacs was on account of advance received against certain properties and the same not getting matured and hence being

surrendered in the absence of proper details. Balance cash of Rs.7 lacs is duly accounted for in the books of account and hence the same is not being surrendered.”

2) That the A.O. was factually wrong in mentioning that the assessee had not specified the manner in which this income was earned which is evident from the surrender letter as pointed out above and which stood accepted by the Department also.

3. That the CIT(A) was factually incorrect in stating that the surrender of cash was not disclosed in the course of search when the fact was that it was surrendered only during search and had also wrongly held that the manner of earning had not been specified by the assessee.

4) That on identical set of facts on the basis of same surrender letter the assessee's brother, Shri Girish Sahni had surrendered Rs.2,50,000/- explaining the same source and same manner and similar penalty had been levied on him also which was subsequently deleted in appeal by the CIT(A) on the basis of exactly same explanation of same source, manner and specification. Our attention was drawn to the order of the CIT(A) in the case of Shri Girish Sahni placed at Paper Book page No.39 dated 9.6.2017 deleting the penalty levied on cash surrendered of Rs.2,50,000/- at paras 3.4 to 3.6 as under:

“3.4 During the search proceedings, the appellant had voluntarily surrendered Rs.2,50,000/- as additional

income, which was included in the total surrender of Rs.3,00,00,000/- made by the group.

- 3.5 *Further, the appellant had offered additional income of Rs.2,50,000/- made in the return u/s 153A. The AO has imposed penalty of Rs.25,000/- u/s 271AAA of the Act on the ground that the appellant had failed to specify the manner of earning the undisclosed income.*
- 3.6 *It has been submitted by the appellant that it is a settled law that where surrender amount stands offered in the return and taxes and interest stand paid, then no penalty should be levied for technical reasons. It has further been submitted that if the assessee answers the questions raised by the search party regarding surrender amount, it should be deemed that he has completed all his obligations relating to surrender amount and if there is any deficiency, including which may be specifically for not addressing the specific issue by the search party, the assessee cannot be faulted. Reliance placed on following judicial pronouncements.*
- a) *CIT vs. Sudhir Jain 41 Taxmann.com 234 (Delhi HC)*
 - b) *Sunil Kumar Bansal vs. DCIT 70 SOT 137 (Chd Trib)*
 - c) *ACIT vs. Munish Kr, Goyal 152 ITD 458 (Chd Trib)*

I agree with the appellant's contention in view of the judicial pronouncements relied upon which are applicable to the case of the appellant and hence penalty on Rs. 2,50,000 amounting Rs 25,000 is also deleted.

In view of the same, Penalty of Rs. 69,557 imposed by the AO is deleted.

As a result, appeal of the appellant is allowed."

- 5) That in the case of M/s Dev Bhoomi Apartments (AOP) (Group concern) surrender of Rs.25,00,000/- for work in progress made vide the same surrender letter on which penalty u/s 271AAA had been levied was also deleted by the CIT(A) vide his order dated 9.6.2017. Our attention was drawn to the findings of the CIT(A) in the said case at para 4.3(b) as under:

4.3 (b) With regard to penalty on Rs. 25,00,000/- surrendered u/s 132(4) as WIP, it has been stated by the appellant that it is a case where the assessee surrendered the amount, included the same in the return, also explained the manner of deriving such undisclosed income and also paid taxes thereon. Thus, the appellant satisfied all the conditions of sec 271AAA(2) of the Act and hence penalty should not be levied. It has further been submitted that during search as well as during post search period, whatever and whenever any questions were asked including in statement u/s 132(4) of the Act, the appellant always replied fully and completely & relied on judicial pronouncements including CIT. vs. Sudhir Jain 41 Taxmann. Com 234 (Delhi HC) and Sudhir Kumar Bansal vs. DCIT 70 SOT 137 (Chd. Tribunal)

I agree with the contentions of the appellant There is no reason to levy penalty on this surrendered amount in view of the provisions of the Act and the judicial pronouncements on this issue. In view of the same, penalty on surrendered value amounting to Rs. 25,00,000/- is also deleted."

6) Without prejudice to the above contention where surrendered amount stood offered in the return, taxes and interest stood paid and the manner of earning stood explained, no penalty was leviable u/s 271AAA of the Act. Reliance was placed on various decisions of the Hon'ble High Court and the Tribunal in this regard. The submissions filed by the assessee are being produced hereunder:

PENALTY U/S 271AAA Rs.1,50,000/- @10% ON CASH SURRENDERED Rs. 1,50,000/-

ONE

- Search on the group u/s.132 on 1.09.09 (A.Y. 2010-11)
- Cash of Rs. 30,00,000/- was seized from the group
- Out of this cash of Rs.23,00,000/- was surrendered u/s.132 (4) as under:-
 - Pawan Sahni (Assessee) Rs. 15,00,000/-
 - Girish Sahni Rs.2,50,000/-
 - Manoj Sahni Rs. 5,50,000/-
- The assessee also explained the source as "business income" and also the manner as "on account of advance received against certain properties and the same not getting matured and hence being surrendered in the absence of proper details"

- Thus, the surrender was made during search, the manner was also suo moto furnished and it was substantiated also and the A.O. duly accepted the same as and in the manner as surrendered by the assessee
- Thus he substantiated the manner of earning the said income also
- Rs.15,00,000/- were declared in the return filed post search and the surrender was also accepted
- The assessee also paid taxes and interest thereon as per law
- Hence, all conditions vide sec.271AAA (2) stood satisfied for not levying penalty u/s. 271AAA.

TWO

- The A.O. has been **factually wrong** in mentioning that the assessee had not specified the manner in which this income was earned
- The manner was duly specified in the surrendered letter as detailed above
- The surrender stands accepted

THREE

- CIT (A) wrongly held that Rs. 15,00,000/- was not disclosed in the course of search while it was surrendered only during search
- CIT (A) also wrongly held that manner has not been specified while it was duly specified as given in Pg.23 of the paper book

FOUR

- Exactly on similar facts, on the basis of same surrender letters, Sh. Girish Sahni (brother) also surrendered cash of Rs.,2.5 lacs explaining the same source and same manner and similar penalty has been levied on him also
- However, same CIT (A), vide same dated order i.e. 15.06.17. deleted the penalty of Rs, 25, 000/- on surrender of Rs.2,50,000/- on the basis of exactly same/common explanation of source, manner and its substantiation

FIVE

- M/s Dev Bhoomi Apptt. AOP (group concerned) also surrendered Rs.25,00,000/- for WIP vide same surrender letter
- Same Ld. CIT (A) vide order dtd.09.06.17 deleted the penalty on said amt.
- **SIX - Without Prejudice**
- Where surrender amt. stands offered in the return, taxes and interest stands paid and the manner stands explained, no penalty U/S.271AAA can be levied

CASE LAWS

CIT VS. SUDHIR JAIN 41 TAXMANN.COM 234 (DELHI HC) Section 271AAA, read with section 69, of the Income-tax Act, 1961 - Penalty - Where search has been initiated [Conditions precedent] - A certain sum was surrendered as undisclosed income by an AOP at time of search

- Taxes and applicable interest were paid on undisclosed income and manner of earning was recorded in statement of one of members of AOP that income was derived from trading transactions not recorded in books - Whether penalty under section 271AAA could not be imposed - Held, yes [Para 7] [In favour of assessee]

SUNIL KUMAR BANSAL VS..DCIT 70 SQT 137 (CHD. TRIE) IT :
Where no question was asked during statement recorded under section 132(4), in Respect of manner of earning income surrendered, assessee could not be expected to substantiate same later on; penalty could not be levied under section 271AAA.

1'432ACIT VS. MUNISH KUMAR GOYAL 152 ITD 453 (CHD. TRIE) Section 271 AAA of the Income-tax Act, 1961 - Penalty - Where search has been initiated (Applicability of) - Assessment year 2010-11 - Where assessee having surrendered certain income in course of search, filed return wherein said amount was duly disclosed and taxes were paid accordingly, there was sufficient compliance of provisions of section 271 AAA (2) and, thus, impugned penalty order deserved to be set aside - Held, yes [Para 10] [In favour of assessee]

NEERAT SINGAL VS. ACIT 161 TTJ (DEL.) (TRIE.) 483

Penalty u/s. 271 AAA - Conditions precedent - Su render of income vis-a-vis matter of earning - In the absence of query raised by the AO during the course of recording of statement u/s. 132 (4) about the manner in which the undisclosed income has been derived about its substantiation, the AO was not justified in imposing penalty u/s. 271 AAA specially when the offered undisclosed income has been accepted and due tax thereon has been paid by the assessee.

PRAMOD KR. JAIN VS. DCIT (2012) 77 DTR (CTK.) (TRIE.) 244
Assessee having surrendered certain income for the relevant Asstt. Years in the statements during the course of search and filed returns declaring the same pursuant to notice U/s. 153 A which has been accepted by the AO, levy of penalty U/s. 271 AAA was not justified on the ground that the assessee has made disclosure but failed to specify the manner in which such income has been derived.

ASHOK KR. SHARMA VS. DCIT (2012) 77 DTR (CTK.) (TRIE.) 241

Assessee having disclosed concealed income while giving statement U/s. 132 (4) during the course of search and paid tax thereon and showed the said undisclosed income in the return under the head "income from business" which has been accepted by the Deptt., penalty U/s. 271 AAA is not leviable."

12. The Ld. counsel for assessee, therefore, contended that the assessee having complied with all the conditions specified for grant of immunity u/s 271AAA sub-section (2) of the Act and the CIT(A) having himself deleted the penalty levied in identical circumstances in the case of other assessees of the same group and in relation to the same

surrender made, there was no case of levy of penalty u/s 271AAA of the Act.

13. The Ld. DR, on the other hand, relied upon the orders of the A.O. and the CIT(A) emphasizing that the assessee had failed to specify the manner of earning the cash surrendered.

14. We have heard rival contentions and perused the orders of the authorities below. We are convinced with the arguments of the Ld. counsel for assessee that the present is not the fit case for levy of penalty u/s 271AAA of the Act. Undisputedly the penalty has been levied on the cash surrendered by the assessee of Rs.15 lacs. Admittedly the assessee in its surrender letter as reproduced above, had explained the source of earning the said cash as being on account of business receipt against certain properties and the same not getting matured. The aforesaid surrender undisputedly was accepted by the A.O. and was reflected in the return of income filed by the assessee and taxes paid thereon. The Revenue authorities have levied penalty for the reason that the assessee failed to specify the manner of earning the surrendered income/cash. This finding as is evident from the facts stated above is an incorrect finding. Since the surrender letter duly specified the manner of earning the surrendered cash . Also as rightly pointed out by the Ld. counsel for assessee the other conditions specified for grant of immunity from the levy of penalty u/s 271AAA stood fulfilled by the assessee by way of making the

impugned surrender in the statement made during the course of search, returning the same as income and paying taxes thereon. Moreover as rightly pointed out by the Ld. counsel for assessee in identical set facts and circumstances the Ld.CIT(A) had deleted the levy of penalty in the case of Shri Girish Sahni, the brother of the assessee who had made surrender of Rs.2,50,000/- cash explaining the source to be the same as in the case of the assessee and all other conditions also being identical to that in the case of the assessee. Similarly, in the case of M/s Dev Bhoomi Apartments(AOP) the penalty levied on the surrender made on account of WIP which was also duly explained in the surrender letter filed and included in the return of income and taxes paid thereon were also deleted by the CIT(A). The facts and circumstances involved in these cases are identical to that in the case of the assessee. The Ld. DR has been unable to point out any differentiating facts. There is no reason why the CIT(A) took a totally divergent view in the present case and confirmed the levy of penalty.

In view of the above facts and circumstances of the case, we hold that the assessee having demonstrated to have fulfilled all the conditions for grant of immunity from levy of penalty u/s 271AAA as specified in sub-section (2) of the section including specifying the manner of earning the surrendered income, and having deleted penalty levied in identical set of facts in case of other assesseees of the same group, the CIT(A) was wrong in confirming the levy of

penalty in the present case. The penalty so levied is, therefore, directed to be deleted.

The appeal of the assessee is, therefore, allowed.

ITA No.1372/Chd/2017:

15. The issue in this case relates to levy of penalty on the cash surrendered by Shri Manoj Sahni amounting to Rs.5,50,000/-. Since it was common ground that the facts and circumstances leading to the levy of penalty and confirmation of the same by the CIT(A) were identical to that in the case of Shri Pawan Sahni dealt with by us above in ITA No.1373/Chd/2017, the decision rendered therein will squarely apply to the present case also, following which we delete the levy of penalty.

The appeal of the assessee is allowed.

16. In effect;

- 1) The appeal of the assessee in ITA Nos 1272/Chd/2017 & ITA No.1273/Chd/2017 are allowed.
- 2) The appeals of the Revenue in ITA No.194/Chd/2014, ITA No.37/Chd/2017, ITA No.143/Chd/2015 & ITA No.201/Chd/2014 are dismissed.

Order pronounced in the Open Court.

दिवा सिंह
(DIVA SINGH)
न्यायकि सदस्य/ **Judicial Member**

अन्नपूर्णा गुप्ता
(ANNAPURNA GUPTA)
लेखा सदस्य/ **Accountant Member**

दिनांक /Dated: 30th November, 2018

रती

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar

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