

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A", NEW DELHI
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.1100/Del/2015
Assessment Year : 2011-12**

DCIT, Central Circle- II, Faridabad.	Vs.	Pradeep Aggarwal, 26- P, Sector- 33, Gurgaon.
		PAN : AAGPA9350D
(Appellant)		(Respondent)

Department by : Shri Ragnath, Sr. DR
Assessee by : Shri Ved Jain, CA
Shri Ashish Goel, CA

Date of hearing : 20 09-2018
Date of pronouncement : 15-10-2018

ORDER

PER R. K. PANDA, AM :

This appeal filed by the Revenue is directed against the order dated 29.12.2014 of the CIT(A)- 3, Gurgaon relating to assessment year 2011-12.

2. The grounds raised by the Revenue are as under :-

“(i) Whether on the facts and circumstances of the case, the Ld. CIT(A) has erred in deleting the total penalty levied u/s 271AAA even when the assessee was given appropriate opportunity of being heard.

“(ii) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in granting relief to the assessee when the basic requirement of the section 271AAA is not fulfilled i.e. the assessee failed to elaborate the manner in which the undisclosed income was derived.”

3. Facts of the case, in brief, are that the assessee is an individual and derives income from business. A search and seizure action u/s 132(1) of the I.T.

Act, 1961 was carried out at the residential as well as office premises of the assessee on 28.01.2011. In response to notice u/s 153A, the assessee filed his return of income for the impugned assessment year declaring total income of Rs.23,22,78,376/- on 30.10.2012. During the course of assessment proceedings the Assessing Officer observed that that during the course of search conducted at the residential premises of the assessee certain documents were found and seized. On the basis of these documents, the assessee, in his statement recorded u/s 132(4), had surrendered a sum of Rs.21,00,00,000/- over and above his normal income. He further noted that during the course of search action a sum of Rs.16,46,300/- in cash as well as jewellery valued at Rs.50,00,000/- was found from the residential premises which has also been surrendered by the assessee in the instant assessment year. Further, the assessee had also surrendered an amount of Rs.1,33,53,700/- on account of other discrepancies either in personal income or in group companies. Thus, the total surrender made by the assessee is Rs.23,00,00,000/- which was included by the assessee in his return of income under the head "Income from other sources".

4. During the course of assessment proceedings, the assessee was specifically asked to give explanation regarding the application of provisions of section 271AAA. The reply submitted by the assessee was not accepted by the Assessing Officer since the assessee was not able to substantiate the manner in which the above undisclosed income has been earned. According to the

Assessing Officer, had the assessee given the details about the nature and the persons who helped him in earning the undisclosed income it would have enabled the Department to take action against such persons. He, therefore, issued a show-cause notice asking the assessee to explain as to why penalty u/s 271AAA should not be levied since the assessee has not explained the manner in which such income was earned. Rejecting the various explanations given by the assessee and applying the provisions of section 271AAA, the Assessing Officer levied penalty of Rs.2,20,00,000/- being penalty at the rate of 10% of the undisclosed income of Rs.22,00,00,000/-.

5. Before the Id. CIT(A), the assessee challenged the levy of penalty u/s 271AAA of the I.T. Act. It was argued that the surrendered amount was admitted u/s 132(4) and the same was disclosed in the return filed and due taxes were paid and the Assessing Officer has accepted the same. It was further argued that the amount was surrendered to buy peace and avoid litigation. It was also submitted that no specific question about substantiation was asked by the search party to the assessee during the course of search. Since the assessee had fulfilled all the three conditions i.e. surrender of income, payment of due taxes thereon and manner of substantiation of such income, therefore, no penalty u/s 271AAA is called for. Various decisions were also relied upon to the above proposition.

6. Based on the argument advanced by the ld. counsel for the assessee, the ld. CIT(A) cancelled the penalty levied by the Assessing Officer by observing as under :-

"I have considered the assessee's submissions as well as the impugned order. It is not in dispute that a sum of Rs.22,00,00,000/- was surrendered u/s 132(4) on account of the following issues:

- (i) Rs.21.00 Crores on account of various payments made as advance towards purchase of agricultural land.*
- (ii) Rs.50,00,000/- on account of excess jewellery found.*
- (iii) Rs.7,73,300/- on account of Cash found.*
- (iv) Rs.42,26,700/- on account of other discrepancies.*

It is however the case of the AO that the manner in which the income was derived was neither specified nor substantiated in as much as the methodology with documentary evidence were not furnished by the assessee. This persuaded the AO hold that the assessee did not fulfill all the conditions as laid down in section 271AAA and proceeded to levy the penalty of Rs.2,20,00,000/.

Before me, the assessee reiterated that the surrendered amount was admitted u/s 132(4) and that the same, as disclosed in the return filed, was also accepted by the AO. He further stated that the due taxes also stood paid. He also stressed that the aforesaid surrender was to buy peace and to avoid litigation, apart from iterating that no such specific question about substantiation was asked of him in the course of search. In other words, it is assessee's contention that he fulfilled all three conditions as laid down in sub section (2) of section 271AAA. He has also relied on various judgment including that of the Hon'ble ITAT Chandigarh and Delhi; besides the Hon'ble Allahabad High Court in the case of Crossings Infrastructure Ltd. vs CIT(Central) reported in 22 Taxmann 26. Specific reliance was also placed on the decision of Hon'ble Delhi High Court in the case of CIT vs. Sudhir Jain in ITA NO.575 of 2013.

It is evident from the impugned order that the additional income of Rs.23 crore surrendered by the assessee u/s 132(4) and taxes paid thereon was disclosed in the return which was accepted by the AO as no adverse inference was drawn except for holding that the same was not substantiated by the assessee. I find that the facts of the case at hand are covered by the various decisions. The Hon'ble ITAT, Delhi decide similar issue in favour of the assessee in Sita Ram Gupta vs. ACIT in ITA No.1835 & 1836 of 2103; Neeraj Singhal vs ACIT in 146 ITD 152; M/s Spaze Tower Pvt Ltd. vs DCIT in ITA no.2296/Del/2012. The Chandigarh Bench of the Tribunal has also accepted assessee's contention in the cases viz ACIT vs. Munish Kumar Goyal reported in 4 Taxmann.com 563; ACIT. CC. Patiala vs. Gian Chand Gupta/ Mohinder Gupta/ Sanjay Kumar Gupta in ITA Nos. 1005/1006/1007/Chd/2013; DCIT Central Circle-2 Chandigarh vs. Amarjit Goyal, Aditya Goyal, Krishan Kumar Goyal (ITA no.1080,1081,1082/2013). The Hon'ble High Courts of Allahabad and Delhi has also decided similar issue in favour of the assessee. Thus without much elaboration respectfully following the cases cited, the penalty levied of Rs. 2,20,00,000/- is directed to be deleted.

6. *In the result the appeal of the assessee is allowed.*”

7. Aggrieved with such order of the Id. CIT(A), the Revenue is in appeal before the Tribunal.

8. The Id. DR relied on the order of the Assessing Officer. He submitted that the assessee during the course of assessment proceedings has not substantiated the manner of earning of the undisclosed income. Although, the assessee had declared such income and paid the due taxes thereon, however, the assessee has not fulfilled one of the three conditions prescribed u/s 271AAA of the I.T. Act. Therefore, the Assessing Officer was fully justified in levying penalty u/s 271AAA and the Id. CIT(A) was not justified in deleting such penalty. He also relied on the recent decision of Hon’ble Delhi High Court in the case of Pr. CIT vs. Smt. Ritu Singal where penalty u/s 271AAA was upheld although the assessee has declared the income in the return filed as per due taxes thereon.

9. The Id. counsel for the assessee on the other hand heavily relied on the order of the Id. CIT(A). Referring to the statement recorded u/s 132(4) during the course of search, he submitted that vide Question No.5, the assessee was asked to explain the entries made on page no.4 against dated 13.12.2010 of Annexure-A-1 found and seized at the residential premises of the assessee. The assessee in his reply had submitted that these pages were a summary of various

payments as advance towards purchase of agricultural land as advance for the land located in District Indore (MP) for 48 acres against 50% of his share. Due to some unavoidable reasons the said deal was cancelled and the money shall be received back in the coming six months time. The investment of Rs.21 crores was made out of current year income and the same income is now offered to tax as current year additional income.

10. Referring to question no.7 of the said statement the Id. counsel for the assessee submitted that the assessee in his reply to question no.7 offered for taxation the undisclosed income of Rs.22 crores as additional income over and above the income from any regular source of income. He submitted that after this question, there was no question raised by the search party to substantiate the manner of earning of the undisclosed income. He submitted that the assessee had duly submitted that the said undisclosed income was earned from sources other than regular source of income. Relying on various decisions, he submitted that the requirement of disclosing the manner of earning the income arises only if question in this regard has been put to the persons whose statement was recorded. Since no question was put to the assessee on this issue during the course of search, therefore, the manner of substantiating such income does not arise. For this proposition, he relied on the decision of the Hon'ble Gujarat High Court in the case of Pr.CIT vs. Shalton Silk Mills Pvt. Ltd. vide ITA No.823 of 2017 dated 05.02.2018 and the decision in the case of CIT vs.

Mahendra C. Shah reported in 299 ITR 305. Further, the Assessing Officer has accepted the voluntary offer made by the assessee in *toto* and, therefore, no penalty can be levied u/s 271AAA of the I.T. Act. For the above proposition, he relied on the decision of the Hon'ble Delhi High Court in the case of CIT vs. Sudhir Jain vide ITA No.575/2013 order dated 26.11.2013.

11. So far as reliance of the decision in the case of Pr. CIT vs. Smt. Ritu Singal is concerned, he submitted that in the said case the assessee never took a stand that there was no specific query raised from the revenue authorities. However, in the case of the assessee, it was submitted before the Assessing Officer as well as before the Id. CIT(A) that no specific query was raised by the search party to the assessee to substantiate the manner of earning of such income.

12. He further submitted that the case of the assessee does not fall under the jurisdiction of the Hon'ble Delhi High Court and falls under the jurisdiction of Hon'ble Punjab & Haryana High Court. He submitted that when two views are possible on the same issue, the view which is favourable to the assessee has to be adopted. For the above proposition, he relied on the decision of the Hon'ble Supreme Court in the case of CIT vs. Vegetable Products Ltd. reported in 88 ITR 192.

13. We have considered the rival arguments made by both the sides and perused the material available on record. We find the Assessing Officer in the

instant case levied penalty of Rs.2,20,00,000/- being 10% of the undisclosed income surrendered during the course of search on the ground that the assessee has not substantiated the manner of earning of such undisclosed income. We find the Id. CIT(A) cancelled such penalty on the ground that the assessee had declared the income during the course of search and paid the taxes thereon and no specific query was raised by the search party during the course of recording statement u/s 132(4) to substantiate the manner of earning of such income. Further, according to the Id. CIT(A), the income returned by the assessee was accepted by the Assessing Officer and no adverse inference was drawn except for holding that the same was not substantiated by the assessee. We find no infirmity in the order of the Id. CIT(A) in deleting the penalty of Rs.2,20,00,000/- levied by the Assessing Officer. It is an admitted fact that the assessee had declared such income in the return of income which was surrendered during the search action and paid the due taxes thereon. The assessee, during the course of search, in his statement u/s 132(4) has explained such income in reply to question no.5 which reads as under :-

“Q. 5. You are requested to explain the entries made on page no.4 against dated 13.12.2010 of Annexure-A-1 found and seized at your residence.

Ans. This page is summary of various payments made datewise towards purchases of agg. land as advance for the land located in District Indore (MP) for 48 acres against my 50% share (the total land under the deal was 96 acres). Due to some unavoidable reasons the said deal was cancelled and the money shall be received back in the coming six months time. The investment of Rs.21 crores was made out of current year unaccounted income and the same income is now offered to tax as my current year additional income.”

14. A perusal of the statement recorded u/s 132(4) by the search party shows that no specific query was put to the assessee regarding the manner of earning of such additional income. We find the Hon'ble Gujarat High Court in the case of Shalton Silk Mills Pvt. Ltd. (supra) has held that if while recording the statement of the assessee during the course of search no question regarding the disclosure of manner in which the income was earned was put by the revenue officer, then in that case no penalty u/s 271AAA cannot be levied. The relevant observation of the Hon'ble High Court from para 2 onwards reads as under :-

"2. Issue arises in connection with the assessment year 2010-11 and pertains to penalty under section 271AAA of the Income Tax Act, 1961 ('the Act' for short). The assessee is engaged in the business of manufacturing of grey fabrics and processing of yarn. Search and seizure operation was carried out at the residential and business premises of the assessee on 28.01.2010. During such search, the assessee disclosed income of Rs.2,09,67,770/- previously undisclosed. Assessment under section 143(3) read with section 153A of the Act was finalized on 29.12.2011. The Income Tax Officer initiated penalty proceedings under section 271AAA of the Act and passed the order of penalty of Rs 20.96 lakhs on the ground that the assessee though had disclosed the income failed to disclose the manner of earning such income and substantiate such manner of earning the income offered to tax.

3. Commissioner of Income Tax (Appeals) as well as the Tribunal both concurrently found that all the requirements of explanation 5 below subsection (4) of section 132 of the Act were satisfied. With respect to disclosure of the manner in which the income was earned, the said authorities were of the opinion that while recording the statement of the assessee during search, no question regarding this issue was put by the Revenue officer. Reliance was placed on the decision of this Court in case of Commissioner of Income Tax v. Mahendra C. Shah reported in [2008] 299 ITR 305 (Guj).

4. Having noted the facts, we find that the issue is covered against the Revenue by virtue of the judgment of this Court in case of Mahendra C. Shah (supra) in which, following observations were made:

"15. In so far as the alleged failure on the part of the assessee to specify in the statement under Section 132(4) of the Act regarding the manner in which such income has been derived, suffice it to state that when the statement is being recorded by the authorized officer it is incumbent upon the authorized officer to explain the provisions of Explanation 5 in entirety to the assessee concerned and the authorized officer cannot stop short at a particular stage so as to permit the Revenue to take advantage of such a lapse in the statement.

The reason is not far to seek. In the first instance, the statement is being recorded in the question and answer form and there would be no occasion for an assessee to state and make averments in the exact format stipulated by the provisions considering the setting in which such statement is being recorded, as noted by Allahabad High Court in case of CIT v. Radha Kishan Goel (supra). Secondly, considering the social environment it is not possible to expect from an assessee, whether literate or illiterate, to be specific and to the point regarding the conditions stipulated by Exception No. 2 while making statement under Section 132(4) of the Act. The view taken by the Tribunal as well as Allahabad High Court to the effect that even if the statement does not specify the manner in which the income is derived, if the income is declared and tax thereon paid, there would be substantial compliance not warranting any further denial of the benefit under Exception No.2 in Explanation 5 is commendable.

5. *In the result, Tax Appeals are dismissed.”*

15. Although a contrary view has been taken by the Hon'ble Delhi High Court in the case of Smt. Ritu Singal (supra), however, it is to be noted that the assessee falls under the jurisdiction of Hon'ble Punjab & Haryana High Court and, therefore, the decision of the Hon'ble Delhi High Court is not binding on the assessee. It is the settled position of law that when two views are possible on an issue the view which is favourable to the assessee has to be accepted in view of the decision of Hon'ble Supreme Court in the case of Vegetable Products Ltd. (supra). Since the assessee in the instant case has surrendered additional income and paid the taxes due thereon and no specific query was raised by the search party at the time of search to substantiate the manner of earning such income, therefore, following the decision of the Hon'ble Gujarat High Court cited (supra) and various other decisions relied on by the Id. CIT(A), we are of the considered opinion that the penalty u/s 271AAA is not leviable in

the instant case. The order of the Id. CIT(A) is accordingly upheld and the grounds raised by the Revenue are dismissed.

16. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on this 15th day of October, 2018.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(R. K. PANDA)
ACCOUNTANT MEMBER

Dated: 15-10-2018.

Sujeet

Copy of order to: -

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

//True Copy//

By Order

Assistant Registrar
ITAT, New Delhi