

**IT : Where assessee during search proceedings in reply to specific query raised by Assessing Officer expressed his inability to explain discrepancy in stock in order to substantiate manner in which income in question had been derived rather categorically stated that he had made voluntary surrender of Rs.21 crores in order to buy peace of mind and avoid litigation, assessee having failed to specify manner and substantiate manner in which undisclosed income was derived rather embarked upon mercy plea that he was making surrender to buy peace of mind and avoid litigation, he would not be entitled for benefit of section 271AAA(2)**

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**[2018] 94 taxmann.com 17 (Delhi - Trib.)**

**IN THE ITAT DELHI BENCH 'G'**

**Assistant Commissioner of Income-tax, Central Circle- 7, New Delhi**

**v.**

**SSA International Ltd.**

**N.K. SAINI, ACCOUNTANT MEMBER  
AND KULDIP SINGH, JUDICIAL MEMBER  
IT APPEAL NO. 5051 (DELHI) OF 2013  
[ASSESSMENT YEAR 2010-11]  
MAY 30, 2018**

**Salil Kapoor, Sumit Lal Chandani and Ms. Ananya Kapoor, Advs. for the Appellant. S.S. Rana for the Respondent.**

## **ORDER**

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**Kuldip Singh, Judicial Member** - The appellant, Assistant Commissioner of Income-tax, Central Circle – 7, New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal, sought to set aside the impugned order dated 03.06.2013 passed by Ld. CIT (Appeals)-1, New Delhi qua the assessment year 2010-11 deleting the penalty levied u/s 271AAA on the grounds inter alia that :-

- "1. The order of Ld. CIT (A) is not correct in law and facts.**
- 2. On the facts and circumstances of the case Ld. CIT(A) has erred in deleting the penalty imposed by AO amounting to Rs.2,10,00,000/- u/s 271AAA of income Tax Act. 1961."**

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : Assessee is into the business of rice milling and processing. During the search and seizure operation conducted at the business and residential premises of SSA International Group of companies wherein they have admitted Rs.21 crores as undisclosed income. AO completed the assessment at the returned income of Rs.25,52,64,410/-, however directed to initiate the penalty proceedings u/s 271AAA of the Income-tax Act, 1961 (for short 'the Act'). AO initiated the penalty proceedings u/s 271AAA but declined to accept the contention of the assessee that the assessee has surrendered additional income of Rs.21 crores at the time of search to buy peace and to avoid any protracted litigation and has deposited the tax on the additional income in AY 2010-11 and levied the penalty of Rs.2,10,00,000/-u/s 271AAA.

3. Assessee carried the matter by way of appeal before the Id. CIT (A) who has deleted the penalty by

accepting the appeal. Feeling aggrieved, the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, during the search and seizure operation conducted at the business and residential premises of the assessee u/s 132(1) on 11.12.2009, assessee surrendered additional income of Rs.21 crores. It is also not in dispute that in the return filed by the assessee for AY 2010-11, assessee declared undisclosed income of Rs.21 crores which includes Rs.9.25 crores on account of excess stock and Rs.11.75 crores as income from other sources in the computation of income annexed with the tax return. It is also not in dispute that the assessee has expressed his inability to explain certain seized documents rather stated that those may be included to form part of the amounts surrendered during search and seizure operation. It is also not in dispute that assessee has already paid tax together with interest on the surrendered income of Rs.21 crores.

6. In the backdrop of the aforesaid facts and circumstances of the case, order passed by Id. Revenue authorities below, arguments advanced by Id. AR for the parties, the sole question arises for determination in this case is :-

***"as to whether assessee has failed to substantiate the manner in which the undisclosed income of Rs.21 crores was derived and is liable to be penalized u/s 271AAA of the Act."***

7. To proceed further, provisions contained under section 271AAA (2) are reproduced as under for ready perusal :-

***"271AAA. (1) The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of June, 2007 but before the 1st day of July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year.***

***(2) Nothing contained in sub-section (1) shall apply if the assessee,—***

***(i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;***

***(ii) substantiates the manner in which the undisclosed income was derived; and***

***(iii) pays the tax, together with interest, if any, in respect of the undisclosed income"***

8. Under section 271AAA(2)(i) of the Act, penalty @ 10% of the undisclosed income shall not be imposed if the assessee, *"in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived"* substantiates the manner in which the undisclosed income was derived and pays the tax together with interest if any on the undisclosed income.

9. During the course of search, a specific question was put to Shri Anil Mittal, MD of the assessee company to explain certain seized documents and discrepancies in the stock who has answered as under :-

*"I have seen question no.43 and the reply of Shri A.K. Nijhawan to it and acknowledge the same to be true. Regarding the discrepancy to stock found by your search team, during the course of search, I am unable to reconcile the same. However, in order to buy a peace of mind and avoid the litigation with department, I will accept the inventory of stock taken by your team during the course of search on 11.12.2009. This will form the part of surrender which I had already made at the time of search. This voluntary disclosure is made in order to buy peace of mind and avoid any litigation made by the department. It is stated that this disclosure is made to avoid any panel-action including penalties and prosecution".*

10. The Id. CIT (A) deleted the penalty on the premise that if no specific question was put to assessee u/s 132(4), it cannot be concluded that the assessee has failed to reply or specify/substantiate the manner of concealment. It is settled principle of law that assessee has to specify the manner in which income has been derived and substantiated the manner in which the undisclosed income was derived at the time of search in its statement recorded u/s 132(4) and not thereafter.

11. However, answer to the question no.43 reproduced above categorically goes to prove that the assessee has shown his inability to reconcile the discrepancy in the stock found and failed to substantiate the manner in which income has been derived by the search team during the course of search, however has made the disclosure only in order to buy peace of mind and to avoid litigation. So, we are of the considered view that the assessee has failed to satisfy the conditions laid down in section 271AAA (2) so as to get the general amnesty u/s 271AAA(2) because the assessee has neither specify the manner nor substantiate the manner in which the undisclosed income was derived.

11A. The Id. AR for the assessee relied upon plethora of case laws cited as under :-

S. No.	Case Name	Citation
1.	<i>Pr. CIT v. Mukesh Bhai Raman Lal</i>	<i>Tax Appeal 434 of 2017</i>
2.	<i>PCIT v. Emirates Technologies Pvt. Ltd.</i>	<i>[2017] 399 ITR 189 (Delhi)</i>
3.	<i>PCIT v.. Sandeep Gupta (DHC)</i>	<i>ITA No. 967-68/2017 dated 13.11.2017</i>
4.	<i>PCIT v. Swapna Enterprise</i>	<i>[2018] 401 ITR 488 (Gujrat HC)</i>
5.	<i>Smt. Raj Rani Gupta v. DCIT (Delhi I.T. Trib.)</i>	<i>ITA No. 3371/De1/2011 dated 30.03.2012</i>
6.	<i>ACIT v. Shreenarayan Sitaram Mundra</i>	<i>[2017] 83 taxmann.com 231 (Ahmedabad- Trib)</i>
7.	<i>Neerat Singal v. ACIT</i>	<i>[2013] 37 Taxmann.Com 189 (Delhi-Trib.)</i>
8.	<i>ACIT v. Bhavi Chand Jindal (Delhi I.T. Trib.)</i>	<i>ITA No. 6810/De1/2015 dated 17.04.2018</i>
9.	<i>DCIT v. Ashok Nagrath</i>	<i>[2015] 57 taxmann.com 15 (Delhi-Trib.)</i>
10.	<i>Ashwani Kumar Arora v.ACIT</i>	<i>[2017] 81 taxmann.com 440 (Delhi-Trib.)</i>
11.	<i>Concrete Developers v. ACIT</i>	<i>[2013] 34 taxmann.com 62 (Nagpur-Trib.)</i>
12.	<i>Sita Ram Gupta v. ACIT</i>	<i>[2014] 48 taxmann.com 327 (Delhi-Trib.)</i>
13.	<i>CIT v. Radha Kishan Goel</i>	<i>[2005] 278 ITR 454 (Allahabad- Trib.)</i>
14.	<i>CIT v. Mahendra C. Shah</i>	<i>[2008] 299 ITR 305</i>
15.	<i>Mothers Pride Education Pertsonna P. Ltd. (Delhi I.T. Trib.)</i>	<i>ITA No. 3372/De1/2011 dated 12.10.2012</i>
16.	<i>JCIT Vs. Shri Jayendra N. Shah (Ahmedabad I.T. Trib.)</i>	<i>ITA No 1552/Ahd/2016 dated 16.03.2018</i>
17.	<i>Santosh Kumar Vs. DCIT (Delhi I.T. Trib.)</i>	<i>ITA No. 267/Del/2014 dated 13.04.2018</i>

12. More particularly, the decision of Hon'ble High Court of Gujarat cited as *Pr. CIT-2 v. MukeshBhai Ramanlal Prajapati – Tax Appeal No.434 of 2017 order dated 24.07.2017* wherein decision rendered in *CIT v. Mahendra C Shah – 299 ITR 307* and *CIT v. Radha Kishan Goel – 278 ITR 454 (All.)* have been discussed and in the case cited as *PCIT v. Emirates Technologies Pvt. Ltd. – [2017] 399 ITR 189 (Delhi)* relied upon by the Ld. AR also wherein Hon'ble Delhi High Court held that when no query raised by the AO regarding manner of derivation of such income and its substantiation, penalty u/s 271AAA is not sustainable.

13. However, Hon'ble High Court of Delhi in a case relied upon by the Id. CIT DR cited as ***Pr.CIT v. Smt. Ritu Singal*** – [2018] 92 taxmann.com 224 (Delhi) after discussing the decisions relied upon by the Id. AR rendered by ***Hon'ble Apex Court in ACIT v. Gebilal Kanhaialal*** 348 ITR 561 (SC) and ***Mak Data (P.) Ltd. v. CIT*** 358 ITR 539 (SC), ***Hon'ble High Court of Gujarat in CIT v. Mahendra C. Shah*** – 299 ITR 305 (Guj.), ***Hon'ble Allahabad High Court in CIT v. Radha Kishan Goel*** - 278 ITR 454 (All.), ***Hon'ble Delhi High Court in Mothers Pride Education Personnel (P.) Ltd. v. DCIT ITA No.3372 (Delhi of 2011 dated 12.10.2012)***, reversed the decision rendered by the Tribunal setting aside the penalty on the ground that in the absence of the query raised by the authorized officer during the course of recording of statement u/s 132 (4) to specify and substantiate the manner in which the undisclosed income was derived by returning the following findings :-

***"16. That the income which was ultimately brought to tax pursuant to the disclosure made, which was voluntary on the part of the assessee is stating the obvious. The assessee merely stated that the sums advanced were undisclosed income. However, she did not specify how she derived that income and what head it fell in (rent, capital gain, professional or business income out of money lending, source of the money etc). Unless such facts are mentioned with some specificity, it cannot be said that the assessee has fulfilled the requirement that she, in her statement (under Section 132 (4)) "substantiates the manner in which the undisclosed income was derived". Such being the case, this court is of opinion that the lower appellate authorities misdirected themselves in holding that the conditions in Section 271 AAA (2) were satisfied by the assessee."***

14. However, the instant case is on better footing than ***Smt. Ritu Singhal*** (*supra*) case because in reply to the specific query raised by the AO during search proceedings, assessee has expressed his inability to explain the discrepancy in the stock in order to substantiate the manner in which income in question has been derived rather categorically stated that he has made voluntary surrender of Rs.21 crores in order to buy peace of mind and avoid litigation. So, when the assessee has failed to specify the manner and substantiate the manner in which the undisclosed income was derived rather embark upon the mercy plea that he is making surrender to buy peace of mind and avoid litigation, he is not entitled for benefit of section 271AAA(2) of the Act. Case laws relied upon by the assessee is not applicable to the facts and circumstances of the case. Following the decision rendered by Hon'ble Delhi High Court in case cited as ***Pr.CIT v. Smt. Ritu Singal*** (*supra*), we are of the considered view that Id. CIT (A) has erred in deleting the penalty of Rs.2,10,00,000/- u/s 271AAA, hence appeal filed by the Revenue is hereby allowed and penalty order passed by the AO is restored.

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