

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI
(THROUGH VIRTUAL COURT HEARING)**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No.4280/Del/2018
Assessment Year: 2012-13

ACIT Central Circle-30, New Delhi	Vs.	Sanjiv Gupta 56A/1, New Friend's Colony (E), New Delhi PAN No.ABVPG5653P
(APPELLANT)		(RESPONDENT)

ITA No.2674/Del/2018
Assessment Year: 2012-13

Sanjiv Gupta 56A/1, New Friend's Colony (E), New Delhi PAN No.ABVPG5653P	Vs.	ACIT Central Circle-30, New Delhi
(APPELLANT)		(RESPONDENT)

Appellant by	Sh. Saras Kumar, Sr. DR
Respondent by	Sh. Sanjiv Sapra, CA

Date of hearing:	14/07/2020
Date of Pronouncement:	07/08/2020

ORDER

PER R.K PANDA, AM:

These are cross appeals. The first one is filed by the assessee and the second one filed by the revenue and are directed against the order dated 12.03.2018 of the CIT(A)-30, New Delhi relating to A.Y.2012-13. For the sake of convenience these appeals were heard together and are being disposed of by this common order.

2. The appeal filed by the revenue was dismissed on account low tax effect. Subsequently the Tribunal vide M.A. No.96/Del/2019 order dated 06.08.2019 recalled the order of the Tribunal. Hence, ITA No.4280/Del/2018 is a recalled matter.

3. Facts of the case, in brief, are that the assessee is an individual and had filed his return of income on 28.09.2012 declaring income of Rs.79,37,385/-. A search and seizure operation u/s. 132 of the IT Act was conducted at various business and residential premises of the assessee group on 23.08.2011. In response of notice u/s. 143 (2), the assessee appeared before the AO from time to time. The AO completed the assessment u/s. 143(3) on 27.02.2015 determining the total income of the assessee at Rs.2,37,79,490/- wherein he made various additions. Subsequently the AO initiated penalty proceedings u/s. 271 AAA of the Act. Rejecting the various

explanation given by the assessee the AO levied penalty of Rs.15,84,210/- u/s. 271 AAA on the difference in the assessed income and returned on account of the following additions :-

Sl. No.	Particulars	Amount (RS.)
3.1	Alleged notional interest on bank balance with HSBC	5,27,098/-
3.2	Notional interest on Promissory Note	93,357/-
3.3	Undisclosed investment in jewellery	55,69,850/-
3.4	Undisclosed expenditure on purchase of watches	7,76,800/-
3.5	Undisclosed Cash	31,00,000/-
3.6	Undisclosed expenditure on purchase of jewellery	35,42,000/-
3.7	Undisclosed investment in Silver	22,33,000/-

4. In appeal the Ld. CIT(A) reduced the penalty of Rs.15,84,210/- to Rs.1,05,230/-.

5. Aggrieved with such part relief granted by the CIT(A), the assessee as well as the revenue are in appeal before the Tribunal by raising the following grounds :-

ITA No.4280/Del/2018 (A.Y. 2012-13) (Revenue)

“1. That the order passed by ACIT, Central Circle-30, New Delhi (hereinafter referred to as “AO”) imposing penalty is bad in law and contrary to the facts.

2. That the AO was not justified in imposing penalty by rejecting the request of the appellant to keep the penalty proceedings in abeyance till the disposal of quantum appeal. The imposition of penalty is therefore pre-matured and liable to be quashed on this ground alone.

3. That the entire penalty proceedings are vitiated on account of non-provision of proper and reasonable opportunity to the appellant and therefore the penalty order is liable to be quashed on this ground.

4. That as per settled position of law, the penalty order is liable to be quashed on account of the fact that there is no clear cut finding in the impugned order as to why penalty has been imposed on account of furnishing of inaccurate particulars or on account of concealment of income.

5. That on the facts and circumstances of the case and in law, the AO was not justified in imposing a penalty of Rs. 15,84,210/- on account of the following:-

5.1 Alleged notional interest on alleged balance in bank account with HSBC Bank aggregating Rs. 5,27,098/-;

5.2 Alleged notional interest on Promissory Notes aggregating Rs. 93,357/-;

5.3 Alleged unaccounted investment in jewellery aggregating Rs. 55,69,850/-;

5.4 Alleged undisclosed expenditure on purchase of watches aggregating Rs. 7,76,800/-;

5.5 Alleged undisclosed cash aggregating Rs. 31,00,000/-, overlooking the fact that the said amount already stands declared in Income Tax. Return pertaining to A.Y. 2011-12.

5.6 Alleged undisclosed expenditure on purchase of jewellery aggregating Rs. 35,42,000/- on the basis of certain rough jottings.

5.7 Alleged undisclosed investment in Silver aggregating Rs.22,33,000/-, although, the said Silver articles are fully explained.

6. That the appellant craves leave to add, alter, amend or modify any of the above grounds at the time of hearing or earlier.

ITA No.2674/Del/2018 (A.Y.2012-13) (Assessee)

1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax (Appeals) [CIT(A)] is bad both in the eye of law and on facts.
2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in levying penalty under section 271 AAA of the Act

3. *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in levying penalty on the addition made by him on account of accrual/interest on deposit in alleged foreign bank account, HSBC Geneva*
4. (i) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the action of the AO in levying penalty on the addition of undisclosed investment of Rs.5,24,600/-on account of purchase of watches.*
(ii) *On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in confirming the penalty on the investment already taxed in the hands of assessee in AY 2009-10 & AY 2010-11*
5. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in confirming the penalty despite the fact that the additions made in the assessment order itself being not sustainable, no penalty under section 271AAA can be levied.*
6. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law, in confirming the penalty levied by the AO on an addition made on estimated basis.*
7. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the order levying penalty in contravention of the provisions of Section 275(1)(a) of the Act is bad in law and liable to be quashed.*
8. *On the facts and circumstances of the case, the learned CIT(A) has erred, both on facts and in law in rejecting the contention of the assessee that the penalty proceedings are independent, as such mere addition does not lead to levy of penalty.*
9. *The appellant craves leave to add, amend or alter any of the grounds of appeal.*

6. So far as the appeal filed by the revenue is concerned, the Ld. Counsel for the assessee referring to the consolidated order of

the Tribunal vide ITA No.3367/Del/2016 and Co. No.124/Del/2018 order dated 13.01.2020 for A.Y.2012-13 submitted that all additions made by the AO were finally stand deleted except notional interest on HSBC Bank account which has been set aside and the addition on account of undisclosed expenditure on purchase of watches has been partly sustained. Therefore, the appeal filed by the revenue challenging the deletion of penalty by the Ld. CIT(A) has no merit at all since the vary basis on which penalty was levied does not survive.

7. So far as assessee's appeal is concerned, the Ld. Counsel for the assessee submitted that the penalty notice u/s.274 r.w.s 271 AAA dated 27.02.2015, copy of which is placed at page-135 of the paper book and which was issued alongwith the assessment order u/s.143 (3) dated 27.02.2015 shows that such penalty notice is in printed form where nothing has been tick marked or scored off even though it mentions section 271 AAA. He submitted that the notice does not mention the particular limb of explanation to section 271 AAA defining "undisclosed income" for which penalty is proposed to be levied. Rather such notice reproduces the language under the scope of section 271 (1) (c) and not section 271 AAA. Therefore, such notice is vague and accordingly invalid. The penalty notice clearly shows the non application of mind on the part of the AO and in the absence of any specific ground on which penalty is initiated there is violation of principle of natural justice. Accordingly, such penalty proceedings are bad in law and have to be quashed.

8. Referring to the decision of Hon'ble Karnataka High Court in the case of CIT Vs. Manjunath Cotton and Ginning Factory reported in 359 ITR 565, he submitted that in absence of non striking of the inappropriate words in the penalty notice, the penalty proceedings were quashed. He submitted that the SLP filed by the revenue against the above decision of Hon'ble Karnataka High Court was dismissed by the Hon'ble Supreme Court in appeal (c) No.-1398/2014 dated 11.07.2016. Similarly the Hon'ble Karnataka High in the case of CIT Vs. SSA's Emerald Meadows vide ITA No.380/15 order dated 23.11.2016 reported in 73 taxman.com 241 has also taken similar view and the SLP filed by the revenue has been dismissed by the Hon'ble Supreme Court vide CC No.11485/2016 dated 05.08.2016. He submitted that even though the above decisions of Hon'ble Karnataka High Court are in respect of penalty u/s. 271 (1) (c) of the Act but the ratio laid down there is equally applicable to penalty u/s. 271 AAA or 271 AAB of the Act which are pari-materia. The Ld. Counsel for the assessee also relied on the following decisions :-

1. Deepak Jatia Vs. DCIT vide ITA No. 3363/Mum/2017
2. DCIT Vs. R. Elangovan (ITA No.1199/Chennai/2017)
3. Gillco Developers and Builders Vs. DCIT (ITA No.168/Chd/2017
4. Orbit Enterprises Vs. ITO (ITA No.1596 & 1597 /Mum/2014)

9. So far as the merit of the case is concerned the Ld. Counsel for the assessee submitted that before the AO it was explained that all these three ladies watches worn by his family members are very old and received by them on different family occasions. However, such explanation of the assessee was not accepted without bringing on record any material to controvert such explanation. He submitted that in view of explanation as offered by the assessee these three ladies watches cannot be considered to be undisclosed income as defined in clause (a) to explanation 271 AAA. He submitted that the addition on the basis of which penalty has been sustained is only on account of difference in opinion with regard to the valuation of these three ladies watches. He submitted that the AO had initially valued these three ladies watches at Rs.7,76,800/-. The Ld. CIT(A) reduced such valuation to Rs.5,24,600/-. The Tribunal vide order dated 13.01.2020 further reduced the valuation of the watches to Rs.3,07,600/-. Referring to various decisions he submitted that penalty u/s.271 AAA should not be imposed where the addition sustained is on account of mere difference of opinion with regard to valuation of such watches. He accordingly submitted that the penalty of Rs. 52,460/- deserves to be deleted.

10. Without prejudice to the above he submitted that the penalty of Rs.52,460/- as sustained by the CIT(A) has to be further reduced on account of relief of Rs.2,70,000/- in the quantum addition granted by the ITAT and the final addition

sustained is only Rs.307600/-. Therefore, the penalty cannot be more than Rs.30,760/- being 10% of the addition sustained at Rs.3,07,600/-.

11. The Ld. DR on the other hand submitted that there is no defect in the penalty notice and full opportunity was given to the assessee before the AO. So far as the merit of the case is concerned the Ld. DR submitted that penalty u/s. 271 AAA has to be levied under the amount finally sustained after the order of the Tribunal.

12. We have considered the rival arguments made by both the sides, perused the orders of the AO and the Ld. CIT(A) and the paper book filed on behalf of the assessee. We have also considered the various decisions cited before us. We find the AO in the instant case levied penalty of Rs.15,84,210/- u/s. 271 AAA of the Act on the various additions which has been reproduced in para No. 3 of this order. We find the Ld. CIT(A) restricted the penalty to Rs.1,05,230/- being the addition finally sustained by him on account of valuation of the three ladies watches. A perusal of the order of the Tribunal vide ITA No.3367/Del/2016 and C.O. No.124/Del/2018 order dated 13.01.2020 shows that in the appeal filed by the revenue, the Tribunal in the quantum appeal has upheld the order of the CIT(A) in deleting various additions and gave further relief where in the issue of notional interest on HSBC Bank account

was set aside to the file of the AO and has given further relief on undisclosed expenditure on purchase of ladies watches.

13. From the above we find that the order of the CIT(A) giving relief to the assessee on various addition except the addition on account of watches has attained finality in view of the dismissal of the appeal filed by the revenue in the quantum appeal. Therefore, the penalty deleted by the CIT(A) on account of the various additions made by the AO in the assessment order does not call for any interference and accordingly the appeal filed by the revenue is dismissed.

14. Now, coming to the penalty sustained by the CIT(A) is concerned admittedly the same is levied on account of the addition made by the AO for the three ladies watches at Rs.5,24,460/- which has substantially been reduced to Rs.307600/- after the order of the Tribunal. Before deciding the issue on merit we would first like to decide the legal ground argued by the Ld. Counsel for the assessee challenging the validity of the notice.

15. A perusal of the notice issued u/s. 274 r.w.s. 271 AAA dated 27.02.2015 copy of which is placed at page No.135 of the paper book shows that the same is a printed format without striking of the inappropriate words of the same. For the sake of clarity the same is being reproduced which reads as under :-

“UNDER SECTION 274 READ WITH SECTION 271 AAA
OF THE INCOME TAX ACT 1961
OFFICE OF THE
ASSISTANT COMMISSIONER OF INCOME TAX
CENTRAL CIRCLE – 30, NEW DELHI ROOM NO. 320, 3RD FLOOR, ARA
CENTRE, E-2, JHANDEWALAN EXTN,
NEW DELHI

F.No. ACIT/CC-30/2014-15/

DATE :27.02.2015

To,

Sh. Sanjiv Gupta
56A/1, New Friends Colony (E)
New Delhi

Sir,

Where as in the course of proceedings before me for the assessment year- 2012-13 it appear to me that you.

have concealed the particulars of your income or furnished Inaccurate particulars of such income in terms of section 271 AAA.

You are hereby requested appear before me on. 26.03.2015 and show cause why an order imposing a penalty on you should not be made under section 271 of the Income Tax Act, 1961. if you do not wish to avail yourself of this opportunity of being heard in person or through authorized representative you may showcause in writing on or before the said date which considered before any such order Is made under section 271.

(Ram Niwas)

Asstt. Commissioner of Income Tax
Central Circle-30, New Delhi”

16. The provisions of section 271 (1) (c) reads as under :-

*271 (1) If the [Assessing] Officer or the [***] [Commissioner (Appeals)] [or the [Principal Commissioner or] Commissioner] in the course of any proceedings under this Act, is satisfied that any person-*

*271 (1) (c) “has concealed the particulars of his income or [***] furnished inaccurate particulars of [such income, or]”*

17. Similarly the provisions of section 271 AAA reads as under

:-

“271 AAA. (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 July, 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.

(3) No penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).

(4) The provisions of sections 274 and 275 shall, so far as may be, apply in relation to the penalty referred to in this section.

Explanation.—For the purposes of this section,—

(a) “undisclosed income” means—

(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—

(A) not been recorded on or before the date of search in the books of account or other documents ,maintained in the normal course relating to such previous year ; or

(B) otherwise not been disclosed to the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] before the date of search; or

(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified pervious year which is found to be false and would not have been found to be so had the search not been conducted.

(b) “specified previous year” means the previous year –

(i) Which has ended before the date of search, but the date of filing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the said date; or

(ii) in which search was conducted.]”

18. A perusal of the notice issued u/s. 274 r.w.s 271 AAA shows that such notice does not mention the particular limb of explanation to section 271 AAA defining “undisclosed income for which penalty is proposed to be levied. Rather such notice reproduces the language under the scope of section 271 (1) (c) and not section 271 AAA. Therefore, such notice in our opinion is vague and has to be treated as invalid. Since this notice clearly shows the non application of mind on the part of the AO and there is no specific ground on which penalty proceeding is initiated, therefore, following the decisions of Hon’ble Karnataka High Court in the case of CIT Vs. Manjunath Cotton and Ginning Factory reported in 359 ITR 565 and the decision of Hon’ble Karnataka High Court in the case of CIT Vs. SSA’s Emerald Meadows reported in 74 taxman.com 241 the penalty notice issued u/s. 274 r.w.s 271 AAA is bad in law and, therefore, is invalid. We, therefore, quash the penalty proceedings initiated by the AO u/s. 274 r.w.s 271 AAA. The penalty so levied by the AO and upheld by the CIT(A) is directed to be cancelled. Since the assessee succeeds on this legal ground, the grounds on merit are not being adjudicated being academic in nature.

19. The appeal filed by the assessee is accordingly allowed and the appeal filed by the revenue is dismissed.

Order pronounced in the open court on 07.08.2020.

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 07.08.2020

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	24.07.2020
Date on which the typed draft is placed before the dictating Member	24.07.2020
Date on which the approved draft comes to the Sr.PS/PS	07.08.2020
Date on which the fair order is placed before the Dictating Member for Pronouncement	07.08.2020
Date on which the fair order comes back to the Sr. PS/ PS	07.08.2020
Date on which the final order is uploaded on the website of ITAT	07.08.2020
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	