

**IN THE INCOME TAX APPELLATE TRIBUNAL
“RAIPUR” BENCH, RAIPUR**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI PAWAN SINGH, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A. No. 191/RPR/2016)

(निर्धारण वर्ष / Assessment Year : 2012-13)

Basant Kumar Jain Pro. M/s. Rishabh Builders, D-14, Shailendra Nagar, Raipur (C.G.) 492001	बनाम/ Vs.	Deputy Commissioner of Income Tax, Central Circle-I, Raipur, Central Revenue Building, Civil Lines, Raipur (C.G.) 492001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : ACIPJ1068K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Shri R. B. Doshi, C.A.
प्रत्यर्थी की ओर से/Respondent by :	Shri R. K. Baral, DR

सुनवाई की तारीख / Date of Hearing	12/08/2021
घोषणा की तारीख /Date of Pronouncement	04/10/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-I, Raipur ('CIT(A)' in short) dated 05.02.2016 arising in the penalty order dated 26.09.2014 passed by the Assessing Officer (AO) under s. 271AAA of the Income Tax Act, 1961 (the Act) concerning AY 2012-13 wherein Rs.20,74,830/- was confirmed by the CIT(A).

2. Briefly stated, the assessee is an individual engaged in the business of land developers and contractors. A search was conducted on 21.03.2012 at the premises of the assessee. During the course of search, the assessee admitted an unaccounted income of Rs.2 Crores or thereabout. The income returned including the unaccounted income filed under s.153A of the Act was assessed at the same figure. The penalty under s.271AAA of the Act amounting to Rs.20,74,830/- (being 10% of undisclosed income) was imposed by the AO for AY 2012-13 in question on the ground that conditions specified in Section 271AAA of the Act for exoneration from penalty has not been satisfied by the assessee.

3. The assessee preferred appeal against the imposition of penalty, but, however, could not find any relief. The action of the AO was confirmed by the CIT(A) as under:

“2.3 From the above facts, I find that the appellant will not get a benefit of Sub clause -2 to Sec. 271 AAA since as per clause (ii) of Sub-section (2) the appellant is required to substantiate the manner in which undisclosed income was derived. Appellant has never explained it. It takes the plea that neither at the stage of recording of statement of the assessee nor at the stage of assessment proceedings, the assessee was asked either by authorized officer or by Assessing Officer to substantiate the manner in which unaccounted income was derived. This plea cannot be accepted because the case of the appellant has been represented by Ld CAs who are well aware of the position of law and that certain conditions are required to be satisfied in order that provisions of Sec. 271 AAA don't come into play against the assessee. In the statement u/s 132(4) the person searched upon is always asked to explain the books of accounts and assets found from the premises and its incumbent upon the assessee to explain the source of these assets. Having failed to do so either during the search operation, or before the AO, even before the appellate proceedings the appellant is not utilized the opportunity provided by the Act. Therefore, the AO has rightly imposed the penalty and the same is hereby sustained.”

4. Further aggrieved, the assessee preferred appeal before the Tribunal.

5. The learned counsel for the assessee submitted, at the outset, that there was no occasion for the assessee to meet the requirement of Section 271AAA(2) of the Act. In elaboration, the learned counsel for the assessee submitted that no specific question was put by the authorized officer for providing the manner in which such undisclosed income has been derived. The question of substantiation also did not arise in view of absence of enquiry in this regard. For this position, the learned counsel adverted to page no. 9 to page no.14 of the paper book showing statement for surrender on behalf of the assessee. He pointed out that authorized officer neither asked any question to specify the manner nor towards substantiation of the undisclosed income so offered. In the circumstances, the burden was never shifted upon the assessee. The learned counsel further submitted that even in the course of the assessment proceedings, the AO never required the assessee to comply with the conditions of Section 271AAA(2) of the Act and to provide the manner for deriving undisclosed income and to substantiate it. Similar is the position in the course of the penalty proceedings as well. No question was posed to the assessee even in the course of the penalty proceedings. He thus submitted that the so called undisclosed income as per the statement under s.132(4) of the Act included in the return of income and taxes due thereon having been paid, there was no warrant for the AO to invoke the provisions of Section 271AAA of the Act and impose penalty @10% on undisclosed income. A reference was made to the decisions like *CIT vs. Mahendra C. Shah (2008) 299 ITR 305 (Guj.)*, *Pr.CIT vs. Mukeshbhai Ramanlal Prajapati (2017) 398 ITR 170 (Guj.)*, *Neeraj Singal vs. ACIT (2014) 146 ITD 152 (Del.)*, *ACIT vs. Shreenarayan Sitaram Mundra (2017) 166 ITD 0047* and many more. He thus submitted that the CIT(A) has mis-directed himself in law in confirming the action of the AO. The learned counsel accordingly urged that the relief entitled under s.271AAA of the Act towards

undisclosed income must be provided to the assessee as the failure, if any is attributable to the Revenue and not upon the assessee.

6. The learned DR for the Revenue, on the other hand, submitted that the conditions prescribed under s.271AAA(2) of the Act has not been satisfied in the instant case. The assessee failed to satisfy the pre-requisites laid down in section 271AAA(2) of the Act and therefore the assessee is not eligible to claim exemption from penalty under the aforesaid provision.

7. We have carefully considered the rival submissions. As per Section 271AAA(2) of the Act, one of the conditions for obtaining relief from imposition of penalty under s.271AAA of the Act is that the assessee in the statement recorded under s.132(4) of the Act admits the undisclosed income, pays the taxes thereon and specifies the manner in which such income has been derived. The sub-clause (2) casts another obligation on the part of the assessee to substantiate the manner in which undisclosed income was derived. The primary onus is on the Revenue to raise appropriate questions towards manner of deriving undisclosed income and substantiation thereof. On being put to notice, the onus shifts upon the assessee to satisfy such requirement contemplated in law for availing the benefit of exemption.

8. In the background facts narrated on behalf of the assessee, the factual position discernable from the record, it is manifest that the assessee has not failed to specify the manner of deriving undisclosed income *per se* in the absence of any question directed towards the assessee/deponent of the statement in this regard. The substantiation of the manner of deriving undisclosed income naturally has not been called into question by the Revenue. We further note that the assessee has replied to the queries raised while

recording the statement as called for. The Revenue does not appear to have quizzed the assessee for satisfying the manner in which the purported undisclosed income has been derived. The income considered as undisclosed income under s. 132(4) of the Act was duly incorporated in the return filed pursuant to search. Therefore, the Revenue, in our view, now cannot plead deficiency on the part of the assessee to specify the manner which has not been called into question at the time of search or even at the stage of the assessment. The AO or CIT(A) has not pointed out any query which remained unreplied or evaded in the course of search or post search investigation. Therefore, looking from any angle, it is difficult to endorse the action of the Revenue. Accordingly, we set aside the order of the CIT(A) and direct the AO to delete the impugned penalty.

9. In the result, the captioned appeal of the assessee is allowed.

Order pronounced on **04/10/2021** by placing the result on the Notice Board as per Rule 34(4) of the Income Tax (Appellate Tribunal) Rule, 1963.

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, रायपुर /
DR, ITAT, RAIPUR
6. गार्ड फाइल / Guard file.

By order,

Sr. Private Secretary
ITAT, Raipur (on Tour)