

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA 'A' BENCH, KOLKATA**

**Before Shri Pramod Kumar (Accountant Member),
and Shri Mahavir Singh (Judicial Member)**

I.T.A. No.: 1326/ Kol. / 2011
Assessment year: 2008-09

***Deputy Commissioner of Income Tax
Central Circle III, Kolkata***

.....**Appellant**

Vs.

***Pioneer Marbles & Interiors Pvt Ltd
Rawdon Enclave, 10 A Rawdon Street
Kolkata 700 017 (PAN : AACCP7501J)***

.....**Respondent**

Appearances by:

Amitava Roy, for the appellant

J N Gupta, for the respondent

Date of concluding the hearing : February 14, 2012

Date of pronouncing the order : February 17, 2012

O R D E R

Per Pramod Kumar:

1. This appeal, filed by the Assessing Officer, is directed against the order dated 5th July 2011 passed by the Commissioner (Appeals) in the matter of penalty of Rs 5,00,000 imposed on the assessee under section 271AAA of the Income Tax Act, 1961, for the assessment year 2008-09.

2. Grievances raised by the Assessing Officer are as follows:

1. That in the facts and circumstances of the case, the learned Commissioner of Income Tax (Appeals)- Central I Kolkata, erred in appreciating the facts of the case and thus

erred in cancelling the penalty order under section 271 AAA of the Act.

2. That the assessee was in default to pay the tax together with interest in respect of undisclosed income and it is mentioned in sub section 2(iii) of Section 271 AAA of the Act that the assessee 'pays the tax together with interest, if any, in respect of undisclosed income'. Therefore the learned CIT(A) has erred in law in allowing the relief.

3. The issue in appeal lies in a narrow compass of undisputed facts. On 30th August 2007, the assessee company and certain associated entities, collectively referred to as Pioneer Group, were subjected to search and seizure operations under section 132 of the Act. During the course of this operation, the assessee made a disclosure of Rs 50,00,000. There is no dispute that the income so declared was included in the income subsequently returned by the assessee, vide income tax return filed on 28th September 2008. The assessment under section 143(3) was completed on 31st December 2009, but, while finalizing the assessment, the Assessing Officer also initiated the penalty proceedings under section 271 AAA and observed that **"Since the assessee has not paid the full taxes and interest on disclosure made u/s 132(4), penalty proceedings under section 271AAA of the Act are initiated."** In the resultant penalty proceedings, it was submitted by the assessee that while filing the income tax return and due to an inadvertent mistake, the assessee did not compute interest levy under section 234 C. It was for this reason that the self assessment taxes were underpaid by Rs 46,132 but the assessee paid over the shortfall, within permissible time, upon receiving the notice of demand under section 156. It was thus argued that the tax, together with applicable interest, was duly paid by the assessee, and, accordingly, the condition regard payment of tax and interest was duly complied with. The Assessing Officer was, therefore, urged to drop the penalty proceedings. However, the Assessing Officer was not impressed with this submission. He rejected the submissions of the assessee and proceeded to impose the penalty by observing as follows:

The above submission has been considered and the assessment record has been perused. Since the search was conducted on 30/8/2007 and the disclosure was made in the statement recorded u/s 132(4) of the Act for the specified previous year, the penalty provisions of Section 271AAA was squarely applicable in this case. The sub section (2) of Section 271 AAA provides that:

(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.*

It can be seen that, in order to escape the penalty under section 271AAA, the assessee is required to fulfil all the three conditions laid down as reproduced above. In the present case, the assessee admittedly did not pay the mandatory interest payable under section 234 C of the Act. Thus, all the conditions of 271AAA(2) have not been complied with. Ignorance of law cannot be taken as a plea to get immunity. The assessee has exposed himself to the penal provisions of Section 271 AAA(1).

Considering the facts and circumstances of the case, I am of the opinion that it is a fit case for imposition of penalty under section 271 AAA. The quantum of penalty is computed @ 10% of the amount of disclosure at Rs 50,00,000.

4. Aggrieved, assessee carried the matter in appeal before the CIT(A). Learned CIT(A) noted that “from a plain reading of the above section (i.e. 271AAA) it is apparent that if the conditions laid down under sub section 2 of Section 271 AAA are satisfied, no penalty will be imposed” and that “...in section 271AAA, there is no precondition that the tax along with interest must be paid before filing of return or any other specified date”. It was in this backdrop, and in a situation in which it was an admitted position that due tax, along with interest, was paid before the penalty proceedings were concluded, the CIT(A) deleted the impugned penalty. The Assessing Officer is not satisfied with the stand so taken by the CIT(A) and is in appeal before us.

5. We have heard the rival contentions, perused the material on record and duly considered facts of the case in the light of the applicable legal position.

6. We find that Section 271 AAA, which is applicable in respect of undisclosed income unearthed as a result of search operations carried out on or after 1st June 2007, provides as follows:

Penalty where search has been initiated.

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, 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 Chief Commissioner or Commissioner 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 previous 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.

7. We find that under the scheme of Section 271 AAA, there is a complete paradigm shift so far as penalty in respect of unaccounted income unearthed as a result of search operation carried out on or after 1st June 2007 is concerned. Unlike in the case of penalty under section 271(1)(c), Section 271 AAA, without any reference to findings or presumptions of concealment of income or the findings or presumptions of furnishing of inaccurate particulars, provides that in respect of unaccounted income in the cases where search initiated after 1st June 2007, the assessee is to pay a penalty @ 10% of unaccounted income. Sub section 2 of Section 271 AAA, however, relaxes the rigour of this penalty provision in a situation in which (i) in the course of the search, in a statement under section 132(4), 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. While payment of taxes, along with interest, by the assessee is one of the conditions precedent for availing the immunity under section 271AAA(2), there is no time limit set out for such payments

by the assessee. Once a time limit for payment of tax and interest has not been set out by the statute, it cannot indeed be open to the Assessing Officer to read such a time limit into the scheme of the Section or to infer one. There is thus no legally sustainable basis for the stand of the Assessing Officer that in a situation in which due tax and interest has not been paid in full before filing of the relevant income tax return, the assessee will not be eligible for immunity under section 271 AAA(2).

8. While dealing with Explanation 5 to Section 271(1)(c), which is broadly on the same lines, Hon'ble Gujarat High Court, in the case of CIT Vs Mahendra C Shah (299 ITR 305) has observed that, "**.....there is no prescription about the point of time when the tax had to be paid qua the amount of income declared in the statement under section 132(4) of the Act**". We must, however, point out that even after making these specific observations Their Lordships had to treat the conclusion of assessment proceedings as outer limit for making payment of tax and interest but that was because of the peculiar nature of penalty provisions under section 271(1)(c) wherein Assessing Officer has to record the satisfaction in the course of assessment proceedings itself – something which is not a condition precedent for imposition of penalty under section 271 AAA. Their Lordships had held that "**...However, the outer limit has to be the point of time when the assessment proceedings are undertaken by the Assessing Officer because the opening portion of section 271(1) of the Act requires the Assessing Officer to record satisfaction in the course of such proceedings, and the satisfaction has to be as regards the concealment of particulars of income or furnishing inaccurate particulars of income.**" Section 271 AAA, as the statute unambiguously provides, does not require any subjective satisfaction of the Assessing Officer to be arrived at during the assessment proceedings, and, therefore, the outer limit of payment before the conclusion of assessment proceedings will not come into play.

9. In our considered view, therefore, on the facts of the present case wherein entire tax and interest has been duly paid well within the time limit for payment of notice of demand under section 156 and well before the penalty proceedings were concluded, the assessee could not be denied the immunity under section 271AAA(2) only because entire tax, along with interest, was not paid before filing of income tax return or, for that purpose, before concluding the assessment proceedings.

10. For the reasons set out above, we approve the conclusions arrived at by the CIT(A) and decline to interfere in the matter.

11. In the result, the appeal is dismissed. Pronounced in the open court today on 17th day of February 2012.

Sd/xx
Mahavir Singh
(Judicial Member)
Kolkata, the 12th day of February, 2012

Sd/xx
Pramod Kumar
(Accountant Member)

Copies to : (1) The appellant
(2) The respondent
(3) CIT
(4) CIT(A)
(5) The Departmental Representative
(6) Guard File

By order etc

*Assistant Registrar
Income Tax Appellate Tribunal
Kolkata benches, Kolkata*