

IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH, CHENNAI

**BEFORE Dr. O.K. NARAYANAN, VICE-PRESIDENT  
AND SHRI VIKAS AWASTHY, JUDICIAL MEMBER**

I.T.A.No. 1634/Mds/2012  
Assessment year : 2009-10

The Assistant Commissioner  
of Income-tax,  
Central Circle II,  
Madurai.

(Appellant)

Vs. Shri A.N.Annamalaisamy  
(HUF),  
No.5A, Chairman A  
Shanmuga Nadar Road,  
Sivakasi.  
PAN – AADHA1635C  
(Respondent)

Appellant by : Shri Guru Bashyam, IRS, JCIT  
Respondent by : Shri K.V.Raman, FCA

Date of Hearing : 4<sup>th</sup> February, 2013  
Date of Pronouncement : 5<sup>th</sup> February, 2013

**O R D E R**

**PER Dr. O.K. NARAYANAN, VICE-PRESIDENT**

This appeal is filed by the Revenue. The relevant assessment year is 2009-10. The appeal is directed against the order of the Commissioner of Income-tax(Appeals)-II at Madurai,

dated 11.5.2012. The appeal arises out of the penalty levied under sec.271AAA of the Income-tax Act, 1961.

2. There was a search in the present case under sec.132. In the course of search, on the basis of materials found therein, the assessee had admitted an additional income of ₹ 38,45,416/- pertaining to jewellery. While filing the original return, the assessee admitted an income of ₹ 10,98,146/-. But in the course of assessment proceedings, before the completion of assessment, the assessee filed a revised return offering the entire value of jewellery amounting to ₹ 38,45,416/-. The assessment was accordingly completed. But the Assessing Officer levied penalty under sec.271AAA for the reason that the assessee has not acted according to the statement made under sec. 132(4) in the course of search, wherein undisclosed income was admitted.

3. In first appeal, the Commissioner of Income-tax(Appeals) found that the penalty cannot be levied if the four conditions laid down in that section were satisfied by the assessee. The four conditions are as follows :

1. If the assessee in a statement under sec. 132(4) in the course of search, admits the undisclosed income.

2. Further, he specifies the manner in which such income has been derived.

3. He substantiates the manner in which the undisclosed income was derived.

4. He pays the tax together with interest, if any, in respect of the undisclosed income.

4. The Commissioner of Income-tax(Appeals) found that the assessee has admitted the income in the course of search; he has returned the undisclosed income by way of revised return; he has explained the nature of sources of undisclosed income and the assessee had paid the tax together with interest. Therefore, he held that the assessee has complied all the conditions and the penalty cannot be levied.

5. We heard both sides in detail.

6. The learned chartered accountant appearing for the assessee submitted that the total cash withdrawals of the family for the period covered under search around was ₹ 40 lakhs and that amount itself is sufficient to acquire the jewellery found in the course of search. Therefore, he stated that there cannot be a

case of that much undisclosed amount in the hands of the assessee, as admitted in the course of search. He also stated that in spite of all these things, he offered the entire admitted income through a revised return. According to him, all the conditions laid down in sec.271AAA have been complied with by the assessee and, therefore, the Commissioner of Income-tax(Appeals) has rightly deleted the penalty.

7. We find that the Assessing Officer was carried away by the original return filed by the assessee, wherein originally the income admitted in the course of search was not returned by it. But the fact is that the assessee had filed a revised return before completing the assessment. When that is the case, the first return filed by the assessee is a non est. The only valid return is the revised return filed by the assessee. In that return, the amount admitted by the assessee at the time of search was offered for taxation. The assessee has paid the tax; he has paid the interest. He has not preferred any quantum appeal. He has also explained about the business and stated that the jewellery was acquired over a period of time. When all the pieces are put together, we find that the Commissioner of Income-tax(Appeals)

is justified in holding that there is no ground to levy penalty in the present case under sec.271AAA. Accordingly, the order passed by the Commissioner of Income-tax(Appeals) is upheld.

8. In result, this appeal filed by the Revenue is dismissed.

Order pronounced on Tuesday, the 5<sup>th</sup> of February, 2013 at  
Chennai.

Sd/  
(VIKAS AWASTHY)  
Judicial Member

Sd/-  
(Dr.O.K.NARAYANAN)  
Vice-President

Chennai,  
Dated the 5<sup>th</sup> February, 2013

mpo\*

Copy to : Appellant/Respondent/CIT/CIT(A)/DR