

IN THE INCOME TAX APPELLATE TRIBUNAL “ D ” BENCH, AHMEDABAD
(BEFORE SHRI SHAILENDRA Kr. YADAV, J.M & SHRI ANIL CHATURVEDI, A.M.)

I.T. A. No. 1614/AHD/2011
(Assessment Year: 2008-09)

The Deputy Commissioner of Income Tax, Central Circle-1, Surat	V/S	M/s. Evergreen Industries (P) Ltd., N-Tower, Gr. Floor, Ashirwad Palace, Jamnanagar, Ghod-Dod Road, Surat
(Appellant)		(Respondent)

PAN: AAACE5088R

Appellant by : Smt. Sonia Kumar, Sr. D.R.
Respondent by : Shri S.B. Vaidya, A.R.

(आदेश)/ORDER

Date of hearing : 04-06-2015
Date of Pronouncement : 10 -06-2015

PER ANIL CHATURVEDI, ACCOUNTANT MEMBER.

1. The present appeal filed by the Revenue is against the order of CIT (A)-II, Ahmedabad dated 01-04-2011 for the assessment year 2008-09 whereby the penalty of Rs 2,50,00,000/- levied u/s. 271AAA by the A.O. was deleted by CIT (A).
2. The relevant facts as culled out from the material on record are as under:-
3. Assessee is a partnership firm stated to be engaged in the business of construction of residential flats on contract basis. A search u/s. 132 of the

Act was carried out at the business premises of the Assessee . During the course of search, Assessee disclosed Rs. 25 crore on account of unaccounted income for financial year 2007-08 i.e. A.Y. 08-09. Assessee thereafter filed its return of income for A.Y. 08-09 on 30.09.2008 declaring total income of Rs. 28,89,31,220/- which included the undisclosed income of Rs. 25 crore offered by the Assessee at the time of search. Thereafter assessment was framed u/s. 143(3) r.w.s. 153A vide order dated 31.12.2009 and the total income was determined at Rs. 31,55,51,660/-. On the undisclosed income of Rs. 25 crore that was offered by Assessee, A.O vide penalty order dated 29.06.2010 levied penalty of Rs. 2,50,00,000/- u/s. 271AAA of the Act mainly for the reason that according to A.O in the statement given by Assessee u/s. 132(4), Assessee had not given particulars of unaccounted income. Aggrieved by the penalty order of A.O., Assessee carried the matter before CIT(A) who vide order dated 01.04.2011 deleted the penalty by holding as under:-

4. I have considered the facts and the submissions. I agree with the appellant's views for the following reasons:

The Assessing Officer has levied the penalty u/s.271AAA of the Act merely because the first two conditions of section 271AAA(2) are not fulfilled by the appellant. The provisions of sub section (2) of section 271AAA is reproduced as under:-

(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.

Clause (i) lays down the first condition that undisclosed income should have been admitted by assessee in the statement u/s. 132(4) and assessee should specify the manner in which it has been derived. Shri Gopalbhai Dokania in his statement recorded on 15.02.08 u/s.132(4), in the course of the search, stated in reply to Q.No.14 that he was disclosing Rs.25 crores in the name of assessee for projects of Ashirwad Palace for F.Y.

07-08 representing net on money receipts as income from undisclosed sources. Accordingly, assessee admitted Rs.25 crores as undisclosed and also specified the manner in which it has been derived, so condition in clause (i) is satisfied. The assessee in the statement recorded u/s. 132(4) disclosed Rs.25 crores on account of net income from on-money receipts so assessee specified the manner in which Rs.25 crores was earned being understatement of income earned from receipts on sale of flats in the form on money.

Clause (ii) lays down the second condition that assessee should substantiate the manner in which undisclosed income has been derived. In the assessment order, the Assessing Officer himself has discussed the evidence in respect of on-money and estimation of on-money receipts at Para no. 7.5 to 7.12. Further he has also discussed the evidence in case of Anil M. Khurana and Maganlal B. Rohit at Pg. 23 of the assessment order. Accordingly, assessing officer made the estimation of on-money receipts at Rs.162 crores and by adopting N.P ratio of 16% made addition of Rs.94,65,000/- over and above the disclosure of unaccounted profits of Rs.25 crores. The estimation of NP of Rs.25,94,65,000/- is itself based on on-money receipts supported by the evidences mentioned by Assessing Officer in assessment order. Assessing officer himself at Pg.10 of the penalty order has given references to various incriminating evidences documents and transactions in support of receipt of on-money by assessee. So the manner in which income of Rs.25 crores has been earned and disclosed is proved by incriminating documents found during the search and referred by the Assessing Officer in assessment order and penalty order.

The manner in which undisclosed income was derived is substantiated by virtue of various evidences collected in the course of search itself and has also been referred by assessing officer in the assessment order.

Clause (iii) lays down the third condition is regarding the payment of tax along with interest on undisclosed income admitted in the course of search and; which has been paid by assessee. Assessing officer has himself stated in Point 3 of table at Page no.8 of the order dated that assessee has fulfilled the third condition.

The Assessing Officer has computed undisclosed income on the basis of evidences referred in the assessment order and on the other hand in the penalty order he contends

that there is no evidence available in support of the manner of earning the income by way of on-money receipts which is contradictory.

Assessee can be considered to have discharged the onus of substantiating the manner of earning undisclosed income where the assessing officer makes assessment of disclosure made by assessee on the basis of actual income and not on the basis of the investment/expenditure under the deeming provision of section 69.69A, 69B & 69C. Here assessing officer made the assessment of income from on-money receipts which is source of income and not on application of income.

In view of these facts, it is held that the Assessing Officer was not justified in levying the penalty u/s. 271AAA of the Act and the same is deleted.

4. Aggrieved by the order of CIT (A), the Revenue is now in appeal before us and has raised the following grounds:-
 1. *On the facts and circumstances of the case and in law, the ld. CIT(A) erred in law and in facts in deleting the penalty u/s. 271AAA amounting to Rs. 2.5 crores.*
5. Before us, ld. D.R. supported the order of A.O. On the other hand ld. A.R. reiterated the submissions made before A.O and ld. CIT(A) and further placed reliance on the decision of Hon'ble Gujarat High Court in the case of CIT vs. Mahendra C. Shah (2008) 299 ITR 305 (Guj).
6. We have heard the rival submissions and perused the material on record. The issue in the present case is with respect to levy of penalty u/s. 271AAA. We find that ld. CIT(A) while deleting the penalty has noted that Assessee had disclosed the amount in the statement made u/s. 132(4), has substantiated the undisclosed income by quantifying the amount of Rs. 25 crore and thus the requirement of specifying the manner for which the income has been earned has been complied by the Assessee. He has further given a finding that the

A.O in principle has accepted the disclosure and the method of earning the income. Before us, Revenue has not brought any material on record to controvert the findings of Id. CIT(A). Considering the aforesaid facts, we are of the view that Id. CIT(A) has rightly deleted the penalty and therefore we find no reason to interfere with the order of Id. CIT(A) and thus this ground of Revenue is dismissed.

7. In the result, the appeal of Revenue is dismissed.

Order pronounced in Open Court on 10-06-2015.

Sd/-

(SHAILENDRA Kr. YADAV)
JUDICIAL MEMBER
Ahmedabad.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

TRUE COPY

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad