

**IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES "B", BANGALORE**

Before Shri A.K.Garodia, AM & Shri George George K, JM

ITA No.1783/Bang/2016 : Asst.Year 2012-2013

Asst.Commissioner of Income-tax, Central Circle 1(1) Bangalore.	Vs.	M/s.Sree Shanmugam Modern Rice Mills Pvt.Ltd. Desihalli, KGF Road Bangarpet – 563 114. PAN : AACCS6537M.
(Appellant)		(Respondent)

Appellant by : Smt.Padmameenakshi, JCIT
Respondent by : Shri Prathisha, Advocate

Date of Hearing : 31.10.2017	Date of Pronouncement : 03.11.2017
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ORDER

Per George George K, JM

This appeal at the instance of the Revenue is directed against the CIT(A)'s order dated 29th July, 2016. The relevant assessment year is 2012-2013.

2. The ground raised by the Revenue reads as follow:-

“1. Whether on the facts and in circumstances of the case, the Ld.CIT(A) erred in deleting the penalty levied under section 271AAA of the Act by Assessing Officer?

2. Whether on facts and in circumstances of the case, the Ld.CIT(A) erred in holding that the assessee has admitted the undisclosed income the statement recorded u/s 132(4) of the Act and filed its Return of Income and paid necessary taxes, hence no penalty is leviable?

3. Whether on facts and in circumstances of the case, the Ld.CIT(A) erred in not appreciating the fact that the

assessee failed to substantiate the manner in which the undisclosed income was derived despite the fact that section 271AAA(1)(ii) emphasizes that the manner in which the undisclosed income was derived should be substantiated?”

3. The briefly stated the facts of the case are as follows:-

3.1 There was a search proceedings u/s 132 of the Act in the premises of the assessee on 20.12.2011. In the course of search proceedings, it was found that the assessee was having cash to the tune of Rs.1,46,82,040. On verification of the books of account it was noticed that the assessee was having only cash balance of Rs.26,82,040 and the Managing Director of the assessee-company was unable to reconcile the difference between the actual cash found and the figures recorded in the books of account. Accordingly, the Managing Director offered unaccounted cash of Rs.1,20,00,000 to be brought to tax for the assessment year 2012-2013 in the hands of the assessee-company. Similarly there was discrepancy in the expenditure amounting to Rs.5,40,599 claimed by the assessee, which was not supported by proper vouchers / bills. Since the assessee was not able to substantiate the claim of expenses incurred, the Managing Director offered the expenses claimed at Rs.5,04,599 to tax for assessment year 2012-2013. Accordingly, the amount of Rs.1,25,40,599 was brought to tax for the assessment concluded for the assessment year 2012-2013.

3.2 Thereafter notice was issued for imposition of penalty u/s 271AAA of the Act. The assessee in the course of penalty proceedings filed objection and that submitted the undisclosed income was offered for taxes and interest was duly paid. However, the Assessing Officer imposed penalty u/s 271AAA of the Act amounting to Rs.12,54,060 stating that the assessee was unable to specify the manner in which the undisclosed income was derived. Further it was stated by the A.O. while imposing penalty, the Managing Director of the assessee was unable to substantiate the expenses which was offered for taxation.

3.3 Aggrieved by the order of imposition of penalty u/s 271AAA of the Act, the assessee preferred an appeal to the first appellate authority.

3.4 The CIT(A), after considering the judicial pronouncement on the subject, held that penalty cannot be imposed on the facts and circumstances of the case, and allowed the appeal of the assessee.

3.5 Aggrieved by the order of the CIT(A), the Department has preferred the present appeal before the Tribunal.

3.6 The learned Departmental Representative relied on the ground raised and supported the order of the Assessing Officer imposing penalty u/s 271AAA of the Act.

3.7 The learned AR, on the other hand, reiterated the submission made before the Income-tax Authorities and relied on the conclusions / findings of the CIT(A).

4. We have heard the rival submissions and perused the material on record. Admittedly in this case, the assessee had disclosed the concealed income while giving the statement u/s 132(4) of the Act in the course of search. The assessee also duly paid the taxes and interest thereon. The CIT(A) while allowing the appeal of the assessee had held that the money belonged to the group concern and some friends living near the factory, who had entrusted the same to the Managing Director of the assessee-company. Since the Managing Director was unable to explain / prove it, the same was offered to taxation. The CIT(A) has held that the Assessing Officer was unable to prove the explanation offered by the assessee as wrong. The finding of the CIT(A) reads as follow:-

“The appellant has stated that the money was belonging to the group concern and some friends living near the factory who were keeping with Mr.R.N.Shanmugham and he offered as undisclosed income as he found that it will be difficult for him to prove it. The explanation of the appellant has not been found to be wrong by the Assessing Officer. No evidence has been found which will suggest that the appellant was earning undisclosed income in the form of some unaccounted transactions recorded outside the books. The appellant has admitted in his sworn statement about this undisclosed income, has filed the return of income showing the same as his income & has paid the necessary taxes on this. From the case laws mentioned above, it is clear that on similar facts of the case, penalty u/s 271AAA has been cancelled.

Therefore, humbly following the case laws as cited supra, the penalty u/s 271AAA is cancelled.”

4.1 The above finding of the CIT(A) has not been dispelled by the Revenue by placing any contradictory material before us. Hence, we uphold the order of the CIT(A) as correct and in accordance with law. It is ordered accordingly.

5. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced on this 03rd day of November, 2017.

Sd/-
(A.K.Garodia)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Bangalore ; Dated : 03rd November, 2017.
Devdas*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT, Bengaluru.
4. CIT(A)-15, Bengaluru
5. DR, ITAT, Bangalore
6. Guard file.

True copy
BY ORDER,

(Asstt. Registrar)
ITAT, Bangalore