

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH : KOLKATA

[Before Hon’ble Shri M.Balaganesh, AM & Shri S.S.Viswanethra Ravi, JM]

I.T.A No. 1399/Kol/2015

Assessment Year : 2010-11

DCIT, Circle-2, Siliguri
(Appellant)

-vs-
Shri Suresh Karmakar
[PAN: ALIPK 6761 D]
(Respondent)

For the Appellant : Shri Avinash Mishra, CIT

For the Respondent : Shri S.M. Surana, Advocate

Date of Hearing : 04.10.2017

Date of Pronouncement : 01.11.2017

ORDER

Per M.Balaganesh, AM

1. This appeal by the Revenue arises out of the order of the Learned Commissioner of Income Tax(Appeals)-20, Kolkata [in short the Ld CIT(A)] in Appeal No247/CIT(A)-20/CC-2(2)/13-14 dated 28.08.2015 against the order passed by the DCIT, Central Circle-XXVIII, Kolkata [in short the Ld AO] under section 143(3) of the Income Tax Act, 1961 (in short “the Act”) dated 27.12.2011 for the Assessment Year 2010-11.
2. The only issue to be decided in this appeal is as to whether the Ld. CIT(A) was justified in deleting the penalty imposed u/s 271AAA of the Act in the facts and circumstances of the case.
3. The brief facts of this issue is that the assessee was subjected to search & seizure operation on 08.01.2010. The assessee belongs to Bidhan Jewellers group of cases. The assessee is a proprietor of M/s Bidhan Jewelleries. At the time of search, the assessee

gave a statement u/s 132(4) wherein he admitted a sum of Rs. 3 crores as an undisclosed income. The assessee also explained vide reply to question no. 4 of the statement recorded on the date of search that he had derived this undisclosed income of Rs. 3 crores out of unaccounted sale of jewellery made through estimate slip that were issued to the customers and the assessee had also stated the application of undisclosed income in certain properties, unaccounted stock and cash balance. In other words, the assessee duly substantiated the manner of deriving the undisclosed income together with application thereon in the statement recorded under 132(4) of the Act on the date of search itself. The assessee however, did not come forward to offer the same in the original return of income filed for the assessment year 2010-11 on 30.08.2011. This return was also followed by revised return. Even in this revised return, the assessee did not offer this undisclosed income of Rs. 3 crores. However, the assessee later on filed second revised return on 01.11.2011 wherein he duly offered additional income Rs. 2,90,74,000/- for assessment year 2010-11 and Rs. 9,26,000/- for assessment year 2008-09. The assessee also filed revised return for assessment year 2008-09 including the additional income of Rs. 9,26,000/. The assessee paid the taxes together with interest on this additional income of Rs. 3 crores for the respective assessment years before the date of filing the second revised return of income on 01.11.2011. The assessee filed a written submission vide letter dated 14.11.2011 giving details of undisclosed income pertaining to various financial years, among other details before the Ld. AO. The assessment was completed based on the second revised return filed by the assessee on 01.11.2011. Penalty proceedings u/s 271AAA of the Act was initiated by the Ld. AO. In the course of penalty proceedings, the assessee explained that the assessee had satisfied all the three conditions contemplated in 271AAA(2) of the Act and hence, is entitled for immunity from levy of penalty thereon. The Ld. AO however observed that since the assessee had retracted from his 132(4) disclosure statement by not offering the income of Rs. 3 crores in the original return of income, the assessee had not complied with the condition of 271AAA(2) of the Act. The Ld. AO also observed that the taxes were paid

by the assessee belatedly i.e. after the date of filing of original return of income hence, he held that the assessee is not entitled for immunity provided in 271AAA(2) of the Act. Based on these findings, he levied a penalty of Rs. 30,36,743/- for the assessment year 2010-11.

4. The Ld. CIT(A) observed that the assessee had satisfied all three conditions provided u/s 271AAA(2) of the Act. The Ld. CIT(A) also placed reliance on the decision of Hon'ble Supreme Court in the case of ACIT vs. Gebilal Kanhaiyalal HUF, reported in 348 ITR 561 (SC) wherein it was held that there was no time limit prescribed in the Statute for payment of tax and interest on the undisclosed income offered u/s 132(4) of the Act in the context of explanation 5 to Section 271(1)(c) of the Act. The Hon'ble Supreme Court accordingly held that the assessee is indeed for immunity provided in Clause 2 of Explanation 5 to Section 271(1)(c) of the Act. Aggrieved the Revenue is in appeal before us on the following grounds :

- 1. Whether on the facts and circumstances of the case the Ld. CIT(A) was justified in law, while deleting the penalty imposed u/s 271AAA of the Income Tax Act, 1961 on the ground that the assessee cannot be charged with filing inaccurate particulars of its income.*
- 2. That on the facts and circumstances of the case the Ld. CIT(A) has erred in fact facts in observing that the assessee has fulfilled the condition prescribed for non-levy of penalty u/s 271AAA of the Act.*
- 3. Reliance is placed on the ratio of judgment in case of MAK Data Pvt. Ltd. vs. CIT 358 ITR 593 (SC).*
- 4. That the appellant craves leave to add, amend or alter the grounds of appeal, if any.*

5. The Ld. DR vehemently relied on the order of the Ld. AO. In response to this, the Ld. AR stated that there is no requirement in law provided in Section 271AAA(2) of the Act that the assessee should offer the undisclosed income declared under 132(4) of the Act in the return of income. It only says that the assessee should admit the undisclosed

income at the time of search; substantiate the manner in which such undisclosed income was derived by the assessee; and pay the tax together with interest on such undisclosed income. If these cumulative conditions are satisfied, the assessee is entitled for immunity from levy of penalty u/s 271AAA(2) of the Act. In the instant case, all the three conditions are satisfied by the assessee.

6. We have heard the rival submissions. We find that the assessee had satisfied all the three conditions prescribed in 271AAA(2) of the Act. The assessee had even though retracted the 132(4) statement by not offering the undisclosed income in the original return of income and in the first revised return of income, but had voluntarily offered the undisclosed income in the second revised return of income filed on 01.11.2011 (which is within the time limit prescribed u/s 139(5) of the Act). It is not in dispute that the Ld. AO had taken due cognizance of the second revised return of income filed by the assessee, while completing the assessment for the assessment year 2010-11. While this is so, it cannot be said that the assessee had not offered the undisclosed income in the return filed before the Ld. AO. This cannot be treated as a retraction by the assessee from his disclosure statement. Moreover, we find that Section 271AAA(2) nowhere mandates requirement of offering the undisclosed income in the return of income to be filed by the assessee. For the sake of convenience the provision of 271AAA(2) are reproduced hereunder. :

“(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.”*

We also find wherever the legislature in its wisdom had mandated offer of undisclosed income in the return of income filed by the assessee, the same has been specifically provided in the Act itself as is provided in Section 271AAB of the Act. Hence, we find

that the assessee had duly complied with all the three cumulative conditions supported in Section 271AAA(2) of the Act in the instant case and accordingly, we hold that the assessee is indeed entitled for immunity from levy of penalty u/s 271AAA of the Act. Hence, we do not find any infirmity in the order of the Ld. CIT(A) in this regard. Accordingly, the grounds raised by the Revenue are dismissed.

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

Order pronounced in the Court on 01.11.2017

Sd/-
[S.S. Viswanethra Ravi]
Judicial Member

Sd/-
[M.Balaganesh]
Accountant Member

Dated : 01.11.2017
SB, Sr. PS

Copy of the order forwarded to:

1. DCIT, Circle-2, Siliguri, 'Aayakar Bhawan', B-wing, Ground Floor, Paribahan Nagar, Matigara, Siliguri-734010.
2. Shri Suresh Karmakar, C/o Bidhan Jewellers, Hill Cart Road, Siliguri-734001
- 3..C.I.T.- 4. C.I.T.- Kolkata.
5. CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Senior Private Secretary
Head of Office/D.D.O., ITAT, Kolkata Benches