

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

ITA No. 842/DEL/2014 (A.Y 2009-10)

Ashok Kumar Arora Unit No. 134, 1 st Floor, Rectangle 1, Saket District Centre, Saket New Delhi AEPPK9937B (APPELLANT)	Vs	ACIT Central Circle-19 New Delhi (RESPONDENT)
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Appellant by	Mr. Ananya Kapoor & Sh. Sumit Manchandani, Adv
Respondent by	Sh. R. C. Dandey, Sr.DR

Date of Hearing	28.09.2017
Date of Pronouncement	07.11.2017

ORDER

PER SUCHITRA KAMBLE

This appeal is filed against the order dated 10/10/2013 passed by CIT(A)-XXXIII, New Delhi.

2. The grounds of appeal are as under:-

1. *That the CIT(A) has , in view of the facts and circumstances of the case, erred on facts and in law in upholding the penalty order passed by the AO. The penalty order is illegal, bad in law and without jurisdiction.*
2. *That the CIT(A) has, in view of the facts and circumstances of the case, erred on facts and in law in upholding the penalty of Rs 1,83,357/- levied by the AO u/s 271AAA .*

3. *That the CIT(A) has , in view of the facts and circumstances of the case, erred on facts and in law in observing that the case of the appellant does not fit into the scope of Sec 271 AAA .*
4. *That the CIT(A) has , in view of the facts and circumstances of the case, grossly erred on facts and in law in observing that the surrender made by the assessee is not in course of the statement recorded u/s 132(4) and hence Sec 271 AAA benefit cannot be granted to the appellant .*
5. *That the CIT(A) has erred on facts and in law in dismissing the appeal of the assessee and the CIT(A) has failed to adjudicate the matter in a judicious manner .*
6. *That the evidence and submissions filed and materials available on record have not been properly construed and judiciously interpreted, hence the penalty levied is uncalled for.*
7. *That the various observations made by the CIT(A) in the impugned order are illegal , bad in law, contrary to the facts on record and based on surmises and conjectures .*
8. *That in any case the penalty is highly excessive and should be reduced.*

3. The assessee declared income of Rs. 21,56,750/- in the return of income which consisted of income from salary at Rs.18,00,000/-, share from partnership firm M/s R.S.Rice & Gen. Mills at Rs.7,702/-, interest from bank/Dawat Foods and NSCs at Rs.2,42,681/- and income from trading business under the head “other income” at Rs.5,31,076/- and deductions to the extent of Rs.4,24,709/- were claimed. Besides this, an amount of Rs. 13,02,500/- was added back as undisclosed income of the assessee which was offered by the assessee as additional income during assessment proceedings. During the assessment proceedings the assessee was asked to file the details of income from trading business which was shown under the head “other income” to the

extent of Rs.5,31,076/- in the computation of income filed with his return of income and he was also asked to specify the nature of business carried out by him, the basis of computing such income and to identify the parties with whom such business was conducted.

4. A search u/s 132 of the Income Tax Act, 1961 was carried out in Dawat Group of cases including the assessee on 10/02/2009. During the course of assessment u/s 143(3) of the Income Tax Act, 1961, the assessee offered additional income of Rs.13,02,500/-. The assessment u/s 143(3) was completed vide order dated 31/12/2010 by making addition of Rs.34,59,250/- as regards additional income offered by the assessee during assessment proceedings. At the time of assessment order the Assessing Officer held that as regards immunity from imposition of penalty u/s 271 AAA is concerned that cannot be granted to the assessee for the reason that the assessee has not fulfilled the conditions laid in Sub Section 2 of Section 271AAA of the Act and accordingly penalty proceedings u/s 271AAA was initiated. Penalty of Rs.1,83,357/- was imposed u/s 271AAA of the Act by Assessing Officer vide order dated 28/6/2011 stating therein that the default of the assessee was deliberate.

5. Being aggrieved the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

6. The Ld. AR submitted that since the surrender was accepted by the Department then it's not a case for levy of any penalty. The

Ld. AR further relied upon the order of the ITAT, New Delhi in case of the assessee's brother when in similar issue has been allowed in favour of the brother of the assessee relating to imposition of penalty u/s 271AAA. The Ld. AR further submitted that surrender was made with reference to the seized documents and the same was accepted by the Assessing Officer while completing the assessment as the income assessed and the income returned/surrendered was the same. The assessee has also paid the taxes on the said assessed income. In-fact manner of earning the surrendered income was also disclosed by the assessee. The Ld. AR further submitted that the ITAT has already decided this issue in favour of the Assessee's brother in ITA No. 6615/Del/2013 Assessment Year 2009-10 dated 16th August, 2017.

7. The Ld. DR relied upon the order of the Assessing Officer and the CIT(A).

8. We have heard both the parties and perused the material available on record. The issue before us is identical in nature to that of brother of the assessee's case wherein the ITAT has allowed the appeal of the assessee therein. The ITAT, New Delhi in ITA No. 6615/Del/2013 Assessment Year 2009-10 dated 16th August, 2017 held as under:-

“10. We have heard the rival contentions and perused the facts of the case. The search was initiated on 10.02.2009 on the Dawat group of cases. The search was conducted at various places including the factory premises, registered

offices, residences, lockers etc. Different panachnamas were made at different premises on different dates. Admittedly the last panchnamas of the group were made on 23.03.2009, 25.03.2009 and 27.03.2009. The letter dated 17.03.2009 surrendering the amount of Rs 17 crores was also filed in respect of Dawat group and it covered all the group companies, directors and individual family members of the group. Hence we are of the view that the letter dated 17.03.2009 cannot be said that it was not filed during the course of search.

11. *The assessee had filed letters dated 21.01.2010 and 28.12.2010 in continuation and in reference to letter dated 17.03.2009 declaring the exact income belonging to him based on the seized documents. According to the assessee he modified the surrender made in respect of income belonging to him based on the seized documents. There is no dispute about the fact that the AO assessed the same income as declared or surrendered by the assessee. The AO has not assessed the income of Rs 17 crores but has assessed the income at the same amount declared or surrendered by the assessee on the basis of the seized documents.*

12. *It is not the case of the revenue that the income belonging to the assessee was more than what is surrendered by him. The assessee has modified the surrender made during the*

course of search on 17.03.2009 and as such it cannot be that it is a case of retraction because the income declared by the assessee which is assessed by the AO. The letter dated 17.03.2009 was filed before the Director of Income Tax (Investigations) I New Delhi who was the in charge of the search and it is also stated in the said letter this surrender is for the whole group and the taxes shall be paid in respective hands/ persons after going through the seized material. It is clear that when this letter was filed the seized material was not with the assessee. The subsequent letters modifying the surrendered amount are based on the income belonging to the assessee on seized material.

13. *The Ld. DR has pointed out that the manner of earning of the surrendered income has not been disclosed by the assessee income has not been disclosed by the assessee whereas the assessee by letter dated 21.01.2010 has disclosed the manner of earning the said income by way of trading in commodities and real estate and also stated this fact is substantiated from the seized material. Moreover this factual position is not denied by the AO and this is not the basis for imposing the penalty. In that view of the matter and in view of such facts and circumstances of the case, the CIT(A) is not justified in confirming the action of the AO and accordingly, we direct the AO to delete the penalty imposed under section 271AAA of the Act. Accordingly, the appeal of the assessee is allowed.*

14. In the result, the appeal of the assessee is allowed.”

Thus, the issue is squarely covered in favour of the assessee. Therefore, the order of the CIT(A) is set aside and the appeal of the assessee is allowed.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the Open Court on 07th November, 2017.

Sd/-

(R. K. PANDA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 07/11/2017

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI

		Date	
1.	Draft dictated on	11/10/2017	PS
2.	Draft placed before author	11/10/2017	PS
3.	Draft proposed & placed before the second member	.2017	JM/AM
4.	Draft discussed/approved by		JM/AM

	Second Member.		
5.	Approved Draft comes to the Sr.PS/PS	7.10.2017	PS/PS
6.	Kept for pronouncement on		PS
7.	File sent to the Bench Clerk	7.10.2017	PS
8.	Date on which file goes to the AR		
9.	Date on which file goes to the Head Clerk.		
10.	Date of dispatch of Order.		