

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

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

ITA No. 1142/Del/2015 (A.Y 2009-10)

DCIT Central Circle-1 New CGO Complex, NH-IV Faridabad (APPELLANT)	Vs	Star Wire Ind. Ltd. 35, Link Road, 2 nd Floor, Lajpat Nagar-III New Delhi AAECS1124Q (RESPONDENT)
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C.O No. 270/Del/2015 (A.Y 2009-10)

Star Wire Ind. Ltd. 35, Link Road, 2 nd Floor, Lajpat Nagar-III New Delhi AAECS1124Q (APPELLANT)	Vs	DCIT Central Circle-1 New CGO Complex, NH-IV Faridabad (RESPONDENT)
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Appellant by	Sh. S. S. Rana, CIT DR
Respondent by	Sh. Ashwani Kumar, CA

Date of Hearing	12.09.2018
Date of Pronouncement	13.09.2018

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 31/12/2014 passed by CIT(A)-III, Gurgaon for Assessment Year 2009-10 and the Cross Objection is filed by the assessee.

2. The grounds of appeal are as under:- **ITA No. 1142/Del/2015**

- (i) *"Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the total penalty levied u/s 271AAA even when the assessee was given appropriate opportunity of being heard?."*
- (ii) *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was right in granting relief to the assessee when even the basic requirement of the section 271AAA is not fulfilled i.e. The assessee failed to elaborate the manner in which the undisclosed income was derived?."*

The grounds of appeal are as under:- **C.O No. 270/Del/2015**

"That in the present case penalty u/s 271 AAA in respect of the Assessment Year under reference was imposed on the Respondent Company as well as the two directors of the said Company on the same fact and same seized records. The penalty has been deleted by the Learned ITAT "F" Bench, New Delhi in appeal No.1835/DEL/2013 and appeal No.1836/DEL/2013 vide order dated 30-06-2014 in the case of both the directors viz Shri Sita Ram Gupta and Shri Mohinder Kumar Gupta.

That the Income Tax Department has not brought any fresh material and thus the order already passed by the Learned ITAT may kindly be upheld.

3. The assessee is deriving income from manufacturing of ingots of spring steel and sale purchase of land. A search and seizure operation u/s 132(1) of the Act was carried out at the business premises of the assessee on 29.01.2009. The group surrendered a total sum of Rs. 22 crores of which Rs.7 crores was in the hands of the assessee. While passing the assessment order, the Assessing Officer initiated penalty proceedings u/s 271AAA. Rejecting the explanation of the assessee, the Assessing Officer levied penalty of Rs. 70,00,000/-

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT (A). The CIT (A) allowed the appeal of the assessee.

5. The Ld. DR submitted that the assessee has not substantially brought any material or explained the manner regarding the undisclosed income. The Ld. DR submitted that as per requirement of Section 271AAA of the Act, the assessee has to explain the substantial manner of the income before the Assessing Officer. The Assessee failed to do so and, therefore, the Assessing Officer rightly levied penalty in respect of failure to substantiate the manner in which the undisclosed income was derived.

6. The Ld. AR submitted that the assessee during the assessment proceedings has explained the manner in which undisclosed income was derived. In fact, the Assessing Officer recorded the statement of one Mr. Mohinder Kumar Gupta, Director of the Company and as regards Question No. 3, the Director of the Company has explained the manner in which the income was derived. Thus, Section 271AAA of the Act will not be attracted in assessee's case. The Ld. AR further relied upon the decision of the Tribunal in the case of Directors of the assessee company (ITA No. 1835/del/2013 & ITA No. 1836/Del/2013, Sita Ram Gupta Vs. ACIT & Mohinder Kumar Gupta Vs. ACIT order dated 30th June, 2014 for Assessment Year 2009-10) wherein the penalty levied u/s 271AAA has been deleted by the Tribunal.

7. We have heard both the parties and perused all relevant material available on record. It is pertinent to note that the Assessing Officer himself has recorded the statement of Shri Mohinder Kumar Gupta in the assessment order, wherein the Director of the Company has elaborated the transaction which was also confirmed by Mr. Kailash Chandra Agarwal. The assessee Company through its reply has also explained the manner in which the income was derived. Thus, the assessee in our opinion has explained substantially the income which was surrendered during the assessment proceedings. Therefore, Section 271AAA of the Income Tax Act will not be applicable in the present case. The Tribunal in the case of Director of the assessee Company deleted the

penalty levied u/s 271AAA for the same Assessment Year on which the surrender took place. The Tribunal held as under:-

“19. Thus, evidently, penalty u/s 271AAA is not leviable if an assessee, in his statement recorded during the search u/s 132 of the Act, admits the undisclosed income, specifies and substantiates the manner in which it has been derived and pays the taxes due thereon, together with interest. Here, undisputedly, the assessee has paid due tax on the admitted undisclosed income. The question of specifying the manner in which the undisclosed ITA Nos.1835 & 1836/Del/2013 Stay No.433/Del/2013 income was derived, stood duly answered by the assessee before the authorities. The same was accepted by the AO, without variation, this fact itself evidencing the assessee having passed the test of Section 271AAA of the Act. Then, there is no specific format/procedure prescribed in the Act for specifying and substantiating an undisclosed income. The statement of the assessee, specifying the manner in which the undisclosed income was derived and substantiated, did not face any rebuttal or rejection at the hands of the AO. As per the statement recorded (which statement, though not of the assessee in ITA No.1835/Del/2013, was of his son, i.e., the assessee in ITA No.1836/Del/2013 and was ratified by him, as pointed out by the Ld. Counsel for the assessee before us), it had been admitted that the assessee had entered into various transactions of sale/purchase of land during the concerned period. The income arising out of the said transactions was declared. This included the undisclosed amount. Later, due taxes thereon were also paid.

20. Besides, in 'Mothers Pride Education Personna Pvt. Ltd.' (supra) (authored by one of us - the ld. AM) (CLPB 16-21), again, 'Radha Kishan Goel' (supra) and 'Mahendra C. Shah' (supra) have been followed to delete the penalty levied u/s 271AAA of the Act.

21. 'Radha Kishan Goel' (supra) and 'Mahendra C. Shah' (supra) have also been followed in 'Smt. Raj Rani Gupta' (CLPB 48-53), 'Concrete Developers' (supra) (CLPB 54-59) and 'Smt. Sulochanadevi A. Agarwal' (supra) (CLPB 23-29).

22. For the above discussion, we hold that the assessee has substantiated the manner in which the undisclosed income was derived and that being so, the condition laid down by Section 271AAA (2) (ii) has been duly met. We

hold that therefore, the ld. CIT (A) erred in deciding this issue against the assessee.

23. Consequently, the grievance of the assessee is found to be justified and is accepted as such.

24. As stated at the beginning of this order, the facts in ITA No.1836/Del/2013 are, mutatis mutandis, exactly similar to those in ITA No.1835/Del/2013. Hence, our discussion on the matter shall apply equally for ITA No.1836/Del/2013 also.

25. In the result, both the appeals filed by the assessee are allowed. The Stay Application No.433/Del/2013 in ITA No.1835/Del/2013 is dismissed as having become infructuous.”

Thus, the facts are identical in present case and the CIT(A) has rightly deleted the penalty levied u/s 271AAA of the Act. Therefore, the appeal of the Revenue is dismissed. The Cross Objection filed by the assessee is merely in support of the order of the CIT(A). Since the appeal of the Revenue is dismissed, the Cross objection becomes infructuous, hence dismissed.

8. In result, the appeal of the Revenue is dismissed and Cross Objection of the assessee is dismissed.

Order pronounced in the Open Court on 13th September, 2018.

Sd/-

**(R. K. PANDA)
ACCOUNTANT MEMBER**

Sd/-

**(SUCHITRA KAMBLE)
JUDICIAL MEMBER**

Dated: 13/09/2018
*R.N

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	12.09.2018
Date on which the typed draft is placed before the dictating Member	12.09.2018
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	13.09.2018
Date on which the final order is uploaded on the website of ITAT	13.09.2018
Date on which the file goes to the Bench Clerk	13.09.2018
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	