

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCH 'B', CHANDIGARH

श्री संजय गर्ग, न्यायिक सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य  
BEFORE: SHRI SANJAY GARG, JUDICIAL MEMBER  
AND SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ ITA No.1585/Chd/2018

निर्धारण वर्ष / Assessment Year : 2016-17

M/s Royal Lifestyle Jewellers  
Pvt. Ltd., Bathinda.

बनाम

The D.C.I.T.,  
Central Circle-1,  
Ludhiana.

स्थायी लेखा सं./PAN NO: AABCA0185A

निर्धारिती की ओर से/Assessee by: Shri Sudhir Sehgal, Adv.  
राजस्व की ओर से/ Revenue by : Sh Manjit Singh, CIT DR

सुनवाई की तारीख/Date of Hearing : 09.05.2019

उद्घोषणा की तारीख/Date of Pronouncement: 21.06.2019

**आदेश/ORDER**

**Per Annapurna Gupta, Accountant Member**

The present appeal has been filed by the assessee against the order of the Commissioner of Income Tax (Appeals)-5, Ludhiana [(in short 'CIT(A)'] dated 22.10.2018, upholding the levy of penalty u/s 271AAB of the Income Tax Act, 1961 (hereinafter referred to as 'Act').

2. Briefly stated a search u/s 132 was carried out at the premises of the assessee on 11.02.2016, during the course of which the assessee had admitted and surrendered undisclosed income of Rs. 2,83,00,000/- in the statement recorded on oath u/s 132(4) of the Act. The Assessing Officer(A.O) initiated penalty proceedings on the said income u/s 271AAB of the Act . In reply to the show-cause notice issued by the AO, the assessee admitted that disclosure was made as per statement recorded u/s 132(4) of the Act, and contended that the nature and source of such disclosure was explained at the time of search as well as during the assessment proceedings. It was also submitted that the impugned income had been returned to tax disclosing the same in the return filed before the specified date and that due taxes along with interest had been paid before filing of the return. It was further contended that the surrender had been made subject to no penalty. Therefore it was contended that the penalty proceedings initiated be dropped. The reply of the assessee was considered but not found tenable by the AO. The AO

observed that the assessee had surrendered income during the search and admitted that this amount of Rs.2,83,00,000/- was being offered as business income to cover any discrepancies found in the seized documents during the course of search and also to cover any kind of discrepancies in the regular books of account . The AO held that the income so surrendered was yet to be recorded in the books of account and therefore was in the nature of “undisclosed income” as defined u/s 271AAB of the Act thus qualifying for levy of penalty under the said section. Further on noting that the undisclosed income had been declared by the assessee in the return filed and tax along with interest had been paid thereon ,the AO held that penalty @ 10% of the undisclosed income was leviable on the same as per the provisions of sub clause (a) of sub section (1) to section 271AAB of the Act. Accordingly, the AO levied penalty of Rs.28,30,000/- u/s 271AAB on the surrendered amount of Rs. 2,83,00,000/-. The Ld.CIT(A) upheld the same.

3. Before us, the learned counsel for the assessee reiterated the arguments made before the lower authorities that the surrendered income was declared by the assessee in

his return, taxes paid thereon, the manner of earning the same specified and, therefore, no penalty was leviable and that even otherwise penalty was not automatic. He, therefore, contended that no penalty was leviable in the present case.

4. The Ld.DR, on the other hand, heavily relied on the order of the Ld.CIT(A) and pointed out that the surrender was on account of discrepancy in stock as well as purchase/sale/issue/receipt/approval and other discrepancies as per various annexures prepared during the search. The income surrendered, therefore, represented undisclosed income as defined in the explanation to sub-clause(c) below section 271AAB(3) of the Act, and, therefore, the Ld.CIT(A) had rightly confirmed the penalty levied. The Ld.DR drew our attention at page 5 of CIT(A)'s order as under:

*“As admitted by the AR also, the income of Rs.2,83,00,000/- was surrendered during the search. As per the submissions of the assessee the surrender of Rs.2,83,00,000/- has been made to cover up the discrepancies in stock as well as the purchase /sale/issue/receipt/approval and other discrepancies etc. as per various annexure prepared at the time of search. In this regard a general entry has been passed by crediting a disclosure of Rs. 2,83,00,000/- to the profit and loss account and debited to the reserve account on*

*account of stock, receivable and other discrepancies as required." The AO has rightly mentioned that in this case, the income of Rs. 2,83,00,000/- represents 'undisclosed income' within the meaning of Explanation sub-clause (c) below section 271AAB(3) and the year under consideration falls within the definition of 'specified previous year' within the meaning of Explanation sub-clause (b). The assessee has surrendered this amount under section 132(4), therefore, provisions of section 271AAB(l)(a) are applicable. The language of the Section is very clear and unambiguous that in a case where the assessee admits the undisclosed income under Section 132(4), pays the tax together with the interest on the undisclosed income before the specified date and also specifies the manner in which the undisclosed income was derived and furnishes the return of income for the specified previous year declaring such undisclosed income therein, then the assessee shall pay penalty equal to 10% of the undisclosed income. The AO had mentioned that all these conditions are fulfilled in the case of the assessee in respect of the undisclosed income of Rs.2,83,00,000/- surrendered as a result of search. The AR has not been able to rebut the findings of the AO during the appellate proceedings. Therefore, under the facts and the circumstances of the case and in view of the clear provisions of law, the penalty of Rs. 28,30,000/- imposed by the AO u/s 271AAB in this case @ 10% of undisclosed income as per provisions of Section 271AAB(l)(a) is found sustainable as per law and hence confirmed".*

5. The Ld.DR further stated that identical issue has been adjudicated by the ITAT in its order passed in the case of M/s SEL Textiles Limited Vs. DCIT in ITA No.695/Chd/2018 dated 18.4.2019 wherein identical surrender made on account of discrepancy in stock was held to represent

undisclosed income of the assessee and it was held that the penalty had, therefore, rightly been levied u/s 271AAB of the Act. Our attention was drawn to the findings of the ITAT at para 14 of the order as under:

*“14. However, so far as the surrendered amount of Rs.39.99 lacs is concerned, same was offered on account of profits on stock found short during the search action. Admittedly, the stock was found short during the search action. In fact, the Assessing officer apart from the above surrender of Rs.39.99 lacs has made further addition of Rs.2.58 cores on this issue. It is apparent that the aforesaid profit on short stock were not accounted for by the assessee but was only detected during the search action. However, the assessee has substantiated the manner of earning of the said income which include the surrender income of Rs.39.99 lacs, hence, penalty @ 10% is leviable on the aforesaid amount as per the provisions of section 271AAB (l)(a) of the I.T. Act.*

*14. In view of this, the penalty in this case is restricted to 10% of the surrendered income of Rs.39,99,158/- on account of stock found short as per the provisions of section 271AAB (l)(a) of the Act. However, the remaining part of the penalty is ordered to be deleted.”*

6. The Ld.DR, therefore, contended that the Ld.CIT(A) had rightly upheld the penalty levied in the present case.

7. We have heard the rival contentions, perused the orders of the authorities below and also gone through the decision of the ITAT, Chandigarh Bench referred to before us. The issue before us relates to levy of penalty u/s 271AAB of the Act, which deals with levy

of penalty in cases where search has been initiated u/s 132 of the Act, on or after the 1<sup>st</sup> day of July, 2010. As per the said section, the assessee is liable to pay penalty on the "undisclosed income" relating to the year in which search is conducted or the year in relation to which the date of furnishing of return has not expired before the date of search and no return has been furnished by the assessee, meaning thereby that as on the date of search the assessee still has time for furnishing the return of income for the year.

8. The undisclosed income has been defined in Explanation(c) below sub-section (3) of the section 271AAB as under:

“(c) “undisclosed income” means--

*(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under [section 132](#), which has--*

*(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or (B) otherwise not been disclosed to the 54[Principal Chief Commissioner or] Chief Commissioner or 54[Principal Commissioner or] Commissioner before the date of search; or*

*(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense*

*recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted.] "*

9. It is evident from a plain reading of the above, that undisclosed income is any income represented by way of any asset or any document or transaction or any entry found not recorded before the date of search in the books of account.

10. The quantum of penalty varies from 10% to 60% depending upon the fulfillment/compliance with various conditions as specified in sub clause (a) to (c) of sub section (1) to the section as under:

**271AAB.** (1) *The Assessing Officer may, notwithstanding anything contained in any other provisions of this Act, direct that, in a case where search has been initiated under section 132 on or after the 1st day of July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—*

*(a) a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year, if such 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) on or before the specified date—*



*(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and*

*(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein;*

*b) a sum computed at the rate of twenty per cent of the undisclosed income of the specified previous year, if such assessee---*

*(i) in the course of the search, in a statement under sub-section (4) of section 132, does not admit the undisclosed income; and*

*(ii) on or before the specified date----*

*(A) Declares such income in the return of income furnished for the specified previous year;*

*(B) Pays the tax, together with interest, if any, in respect of the undisclosed income;*

*(c) a sum [computed at the rate of sixty percent] of the undisclosed income of the specified previous year, if it is not covered by the provisions of clauses (a) and (b)."*

11. In the facts of the case before us, the surrender of Rs.2.83 crores was made on account of discrepancy in stock. This is evident from the fact so disclosed in the assessment order in the impugned year passed u/s 143(3) of the Act as under:

*"2. The assessee is a company. It is maintaining books of account. The books of account were produced and examined on test check basis. In the year under consideration, the assessee has voluntarily declared an income of Rs.2,83,00,000/- being the amount of undisclosed income in the course of search operation under the head "Income from other sources" as on account of discrepancy in the stock. After discussion, the income of the assessee is assessed at*

*Rs.3,06,72,760/-. As the income returned includes an amount of Rs.2,83,00,000/- being the undisclosed income within the meaning of section 132(4) of the I.T. Act, penalty proceedings u/s 271AAB is being initiated on this account.”*

12. Further this fact has remained uncontroverted through out. Also The AO has levied penalty @10% of the surrendered/undisclosed income thus accepting that the assessee's case qualified for penalty as per clause(a) of section 271AAB of the Act as per which the assessee fulfilled the conditions of admitting to the undisclosed income in the statement recorded u/s 132(4) of the Act, specified the manner in which the income was derived, substantiated the same also and paid all taxes alongwith the interest on the same. The sole reason for levy of penalty therefore is that the surrendered income was in the nature of “undisclosed income” as defined in the section.

13. We are in agreement with the same. Admittedly, the surrender had been made on account of discrepancy/shortage in stock. Clearly, this short stock had not been accounted for by the assessee. The same therefore, we hold, has been rightly held to qualify as “undisclosed income” as per the definition of the same in section 271AAB of the Act. Moreover

the issue is squarely covered by the order of the ITAT in the case of M/s SEL Textiles Limited (supra), wherein identical surrender made on account of the discrepancy in stock was held by the ITAT to qualify as undisclosed income liable to penalty u/s 271AAB of the Act.

14. In view of the same, we uphold the order of the Ld.CIT(A) confirming the levy of penalty u/s 271AAB of the Act amounting to Rs.28,30,000/-.

15. In the result, the appeal of the assessee is dismissed.

Order pronounced in the Open Court.

Sd/-

**संजय गर्ग**

**(SANJAY GARG)**

**न्यायिक सदस्य/Judicial Member**

Sd/-

**अन्नपूर्णा गुप्ता**

**(ANNAPURNA GUPTA)**

**लेखा सदस्य/Accountant Member**

**दिनांक /Dated: 21<sup>st</sup> June, 2019**

**\*रती\***

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar