

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

ITA No.2120/Del/2019
Assessment Year: 2013-14

Sh. Vinod Jindal, H. No. 122, Sector-9, Faridabad	Vs.	DCIT, Central Circle-II, Faridabad
PAN :AENPJ1202Q		
(Appellant)		(Respondent)

Appellant by	Sh. Deepesh Garg, Advocate Sh. Somil Agarwal, Advocate
Respondent by	Ms. Maimun Alam, Sr. DR

Date of hearing	20.09.2022
Date of pronouncement	26.09.2022

ORDER

PER SAKTIJIT DEY, JM:

This is an appeal by the assessee against the order dated 29.12.2018 of learned Commissioner of Income Tax (Appeals)-3, Gurgaon, confirming penalty imposed under section 271AAA of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2013-14.

2. Briefly the facts are, the assessee is a resident individual. A search and seizure operation under section 132 of the Act was

carried out in case of M/s. SRS group on 09.05.2012. Based on information received in course of search and seizure operation, the Assessing Officer issued a notice under section 142(1) of the Act to the assessee calling upon him to furnish his return of income for the impugned assessment year. In response to such notice, assessee furnished his return of income on 07.07.2014 declaring income of Rs.9,25,050/-. The assessment in case of the assessee was completed under section 153B read with section 143(3) of the Act determining the total income at Rs.33,79,234/-. The enhancement in income was due to the following two additions:-

- (i) Addition on account of unexplained jewellery of Rs.23,54,184/-
- (ii) Addition on account of unexplained cash of Rs.1 lakh.

3. Though, the assessee contested the additions before learned Commissioner (Appeals), however, they were sustained. Based on such addition, the Assessing Officer initiated proceeding for imposition of penalty under section 271AAA of the Act and ultimately passed an order imposing penalty of Rs.2,45,418/- under the said provision. The penalty imposed, as aforesaid, was also confirmed by learned Commissioner (Appeals).

4. Before us, learned counsel appearing for the assessee submitted, while deciding the quantum appeal of the assessee, the Tribunal has deleted the addition of Rs. 1 lakh made on account of unexplained cash and restored the issue relating to addition of Rs.23,54,184/- made on account of unexplained jewellery to the Assessing Officer for fresh adjudication. Thus, he submitted, as on date, the additions based on which penalty under section 271AAA of the Act was imposed, do not survive. Hence, he submitted, the penalty imposed should be deleted.

5. Learned Departmental Representative could not controvert the factual position explained by learned counsel for the assessee.

6. Having heard rival submissions and perused the materials on record, we find, penalty under section 271AAA of the Act was imposed based on the additions made in the assessment order, aggregating to Rs.24,54,184/-. However, while deciding assessee's quantum appeal, the Tribunal in ITA No. 839/Del/2017, dated 30.06.2022 has deleted addition of Rs. 1 lakh made on account of unexplained cash. Whereas, the addition made of Rs.23,54,184/- on account of unexplained jewellery has been restored back to the Assessing Officer for fresh adjudication. Thus, additions based on which penalty under section 271AAA was imposed by the

Assessing Officer, as of now, do not survive. That being the factual position emerging on record, the penalty imposed under section 271AAA of the Act of the Act, at least for the present, cannot survive. Accordingly, we delete the penalty imposed under section 271AAA of the Act. However, it is open for the Assessing Officer to initiate proceeding under section 271AAA of the Act, if warranted, depending upon the decision to be taken relating to the addition made on account of unexplained jewellery in the fresh assessment to be made by him in pursuance to the direction of the Tribunal.

7. In the result, the appeal is allowed, as indicated above.

Order pronounced in the open court on 26th September, 2022

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

Dated: 26th September, 2022.

RK/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi