

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “E”: NEW DELHI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, ACCOUNTANT MEMBER
AND
SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No. 1583/DEL/2018
[Assessment Year: 2012-13]**

Mothers Pride Educational Personna Pvt. Ltd., 11/77, West Punjabi Bagh, New Delhi-110026. PAN- AADCM9347C	<u>Vs</u>	ACIT, Central Circle-9. New Delhi.
APPELLANT		RESPONDENT
Assessee represented by	None	
Department represented by	Ms. Sarita Kumar, Sr. DR	
Date of hearing	01.11.2022	
Date of pronouncement	18.11.2022	

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals)-XXV, New Delhi, dated 09.01.2018, pertaining to the assessment year 2012-13. The assessee has raised following grounds of appeal:

“1. That on the facts and the circumstances of the case and in law, section 271 AAA of Income Tax Act, 1961 can be invoked where assessee is found to be in possession of any money, bullion, jewelry etc in the course of a search under section 132 of the Income Tax Act, 1961. Hence order passed u/s 271 AAA is against the provisions of law.

2. That on the facts and circumstances of the case and in law the Ld CIT (Appeal) and ld. assessing officer erred in understanding the meaning of undisclosed income as defined in explanation under section 271 AAA of Income

Tax Act, 1961. It is a matter on record that there is no undisclosed and no evidence in any form was found during the course of search. Hence order passed under section 271AAA is bad.

3. Without prejudice to our main contention that penalty u/s 271 AAA cannot be imposed, the appellant has fulfilled the conditions of sub section 2 of section 271 AAA and hence entitled for immunity from penalty.

4. That the appellant craves leave to add, alter or modify any of the grounds of appeal at the time of hearing.”

2. At the time of hearing no one attended the hearing on behalf of the assessee. It is seen that on the earlier occasion also no one attended the proceedings. Therefore, the appeal was taken up for hearing in the absence of the assessee and is being decided on the basis of material available on record.

3. Facts giving rise to the present appeal are that in this case a search operation was carried out u/s 132 of the Income-tax Act, 1961 (in short “the Act”) on 17.8.2011. The income of the assessee was assessed at Rs.1,41,87,720/- vide order dated 30.03.2014 u/s 143(3) of the Act. In pursuance to the disclosure in the search proceedings penalty proceedings u/s 271AAA of the Act was initiated. A show cause notice dated 30.03.2014 was issued. In response to the show cause notice the assessee filed its submissions. However, submissions of the assessee were not found acceptable by the AO. He, therefore, imposed penalty of Rs. 16,00,000/-. The assessee carried the matter before the learned CIT(Appeals) who after considering the submissions sustained the penalty. Now the assessee is in appeal before this Tribunal.

4. The learned DR supported the orders of the authorities below and submitted that there is no infirmity into the orders of the authorities below. He submitted that the orders of the authorities below may be affirmed.

5. We have heard learned DR and perused the material available on record. We find that the learned CIT(Appeals) has decided the issue by observing as under:

“i. I have considered the facts of the case, the basis of the disallowance made by the Assessing Officer and the arguments of Ld. AR during appellate proceeding. The issue is in respect of levy of penalty u/s 271 AAA. The comprehensive findings are as under-

ii. Action u/s 132 of Income Tax Act 1961 was taken on 17/08/2011 in respect of the assessee appellant. In this case. Notice u/s 143(2) was issued on 26.09.2013. During the assessment proceeding u/s 143(3) of the Income Tax Act, 1961 the assessee explained that a sum of Rs 1,60,00,000/- was offered for taxation vide letter dated 1.12.2011 which represents receipts from providing the Hobby and other recreational classes conducted at various branches during the academic year 2011-12 as additional income of the company. The same was added in the financial statement of the company and the Income tax return was duly filed declaring the same. The Income tax Return for A.Y. 2012-13 was filed on 4.03.2013 declaring income of Rs 1.41.87.720/- the same was accepted vide assessment order u/s 143(3) dated 30.03.2014. Section 271 AAA reads as under

“Insertion of new section 271-AAA.

"In the Income-tax Act, after section 271AA, the following section shall be inserted, namely:—

'271AAA. Penalty where search has been initiated.—(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 June, 2007, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year.

(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.

(3) No penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in subsection (I).

(4) The provisions of sections 274 and 275 shall, so far as may be, apply in relation to the penalty referred to in this section.

Explanation. —For the purposes of this section,—

(a) “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 Chief Commissioner or Commissioner before the date of the 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 riot been conducted:

(b) "specified previous year " means the previous year-

(i) Which has ended before the date of search, but the date of filing the return of income under sub-section (1) of section 139 for which such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the said date; or

(ii) in which search was conducted.

iii. *The language of the section makes it a clearly mechanically applicable provision depending on the shade the undisclosed assets/incomes, detected during search u/s 132, take. The section makes it a mandatory action in case the income of the appellant falls within definition of undisclosed income. A heavy onus is cast on the taxpayer to meet the rigours of the law in this regard. The appellant made*

the disclosure during the post search inquiry proceedings. It would be pertinent to refer to the definition of undisclosed income per the section-

Explanation. —For the purposes of this section, —

(a) "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 Chief Commissioner or Commissioner before the date of the 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: "

iv. The appellant did not make the disclosure u/s 132(4) and the disclosure is fundamentally a consequence of the search whereby certain irregularities were detected by the investigations Wing and the appellant made the disclosure to cover hitherto undisclosed earnings. It was submitted by the appellant –

“The appellant humble submission is that there is no evidence in any form was found during the course of search. No transaction or documentary evidence was found during the course of search. It was voluntarily disclosure of additional income by the appellant during post search period. As per explanation for the purpose of section 271AAA ii is clearly mentioned that undisclosed income means any income of the specified previous year represented ----- found in the course of search under section 132. In the case of appellant no material document, books of account, transaction etc was found in search.

Therefore, penalty cannot be levied us 271 AAA of the Income Tax Act, 1961”

v. The submissions are not in tune with the facts of the case as the appellant made the disclosure only pursuant to action u/s 132 and there can be no scope for any element of voluntary action on part of the appellant in this scenario. There is no element of voluntary disclosure per se. However, it is also a fact that the appellant did declare, the income so disclosed, in its return of income. But, the appellant doesn't get the automated shade in form of sub-section 2 of section 271

AAA as the disclosure is not u/s 132 (4) nor is it conferred a shroud of voluntary action of disclosure. In this conduct, there is a clear and unmitigated failure on part of the appellant assessee on account of having failed to comply with the relevant provisions. The AO has correctly concluded the levy of penalty, as it becomes mandatory and accordingly a burden is cast on the appellant.

vi. In the result the appeal is dismissed.”

6. Before the learned CIT(Appeals) it was stated that under the facts and circumstances of the present case, the penalty u/s 271AAA of the Act can be imposed against the assessee where the assessee has accepted the additional/undisclosed income during the statement recorded u/s 132(4) of the Act. It was also stated that the Finance Act, 2012 introduced section 271-AAB(b), whereby for imposing penalty in those cases where assessee does not admit undisclosed income in a statement u/s 132(4) but admit before the specified date i.e. due date of furnishing of return of income u/s 139(1), in such cases penalty cannot be levied u/s 271AAA, as in this case declaration was not made u/s 132(4) of the Act. Furthermore, it was stated that the assessee had fulfilled the conditions of Sub-section (2) of Section 271AAA and hence entitled for immunity from penalty. For the sake of clarity, Section 271AAB(b) and sub-section (2) of Section 271AAA are reproduced here-in-below:

Penalty where search has been initiated.

271AAA. (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 June, 2007 but before the 1st day of July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the undisclosed income of the specified previous year.

- (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.
-

“Penalty where search has been initiated.

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 but before the date on which the Taxation Laws (Second Amendment) Bill, 2016 receives the assent of the President, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,—

- (a)
- (b) a sum computed at the rate of twenty per cent of the income of 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; and
 - (B) pays the tax, together with interest, if any, in respect of the undisclosed income;”

7. However, the assessee failed to support its claim and no material is placed before us to rebut the finding of learned CIT(Appeals). We, therefore, do not see any reason to

interfere into the finding of learned CIT(Appeals) and the same is hereby affirmed. The grounds raised in this appeal are dismissed.

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

Order pronounced in open court on 18th Nov. 2022.

Sd/-
(NARENDRA KUMAR BILLAIYA)
ACCOUNTANT MEMBER
MP

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI