

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER**  
**AND HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.93/Ind/2019**

**Assessment Year 2011-12**

Shri Nitesh Munje, 61/1, Pooja Vila Lal Bagh, Kesar Bagh Road, Bunglow No.8, Indore	Vs.	Asstt. Commissioner of Income Tax-3(1), Indore
(Appellant)		(Respondent )
PAN No.ACVPM4534A		

Revenue by	Shri R.S. Ambedkar, Sr.DR
Assessee by	Shri Venus Rawka, CA
Date of Hearing	05.02.2020
Date of Pronouncement	07.02.2020

**ORDER**

**PER MANISH BORAD, AM**

The above captioned appeal filed at the instance of the assessee pertaining to Assessment Year 2011-12 is directed against the orders of Ld. Commissioner of Income Tax (Appeals)-I (in short 'Ld.CIT(A)'), Indore dated 11.12.2018 which is arising out of the order u/s 271AAA of the Income Tax Act 1961(In short the 'Act') dated 09.03.2016 framed by ACIT-3(1), Indore.

**2.** The assessee has raised following grounds of appeal;

- 1. That, the learned CIT(A) erred in law and facts of the case and confirmed the penalty levied by Ld. A.O u/s 271AAA of I.T. Act, 1961 without considering the full facts and reasons of the case.*
- 2. That, the appellant craves to leave, add, alter or amend any of the f grounds at or before hearing.*

**3.** The sole grievance of the assessee relates to the levy of penalty of 1,51,178/- confirmed by the Ld. CIT(A).

**4.** Brief facts relating to this issue are that the assessee is engaged in the business of commodity trading. Return of income filed on 02.08.2011 declaring income of Rs.5,01,357/-. A search was conducted at the residence of the assessee on 25.11.2010. Notices u/s 143(2) and 142(1) was served upon the assessee along with questionnaire. Assessment completed u/s 143(3) of the Act on 20.3.2013 making various additions and initiated penalty proceedings u/s 271AAA. Aggrieved assessee preferred appeal before Ld. CIT(A) against the penalty proceedings u/s 271AAA but could not succeed.

**5.** Now the assessee is in appeal before the Tribunal.

**6.** Ld. Counsel for the assessee referred to the written submissions. He also placed on record the Tribunal's order No.615/Ind/2015 dated 29.09.2016 in assessee's own case in support of the fact the some of the additions sustained by Ld. CIT(A) were deleted by the Hon'ble Tribunal. He accordingly prayed for deletion of the penalty levied u/s 271AAA of the Act.

**7.** Per contra Ld. Departmental Representative vehemently argued supported the orders of both the lower authorities.

**8.** We have heard rival contentions and perused the records placed before us. The sole grievance of the assessee is against the finding of Ld. CIT(A) confirming the penalty levied u/s 271AAA of the Act at Rs.1,51,178/-. The penalty in question was levied on the following additions made by the Ld. A.O and confirmed by Ld. CIT(A).

1.	Unexplained investment in jewellery u/s 69A	Rs.2,00,000/-
2.	Unexplained cash found during the Course of search	Rs. 59,116/-
3.	Unexplained income offered during the Course of search	<u>Rs.12,52,670/-</u>
	Total	Rs.15,11,786/-

**9.** Ld. A.O computed the penalty @10% u/s 271AAA of the Act at Rs.1,51,178/- which has been confirmed by the Ld. CIT(A). Out of the above referred additions, one relating to unexplained investment u/s 69 of the Act for unexplained gold jewellery at Rs.2,00,000/- stands deleted by the Co-ordinate Bench vide its order dated 29.09.2016. Now the only dispute remains to the undisclosed income offered by the assessee during the course of assessment proceedings at Rs. 12,52,670/- and unexplained cash found during the course of search at Rs.59,116/-.

**10.** The assessee may get immunity from levy of penalty under Section 271AAA of the Act @10% of undisclosed income if following three conditions provided in Sub Section(2) of Section 271AAA are fulfilled.

*(2) Nothing contained in sub-section (1) shall apply if the assessee, -*

*(i) in the course of 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.*

**11.** We observe that undisclosed income of Rs. 12,52,670/- was neither offered to tax during the course of search nor it was included in the Income Tax Return filed by the assessee. The addition was made while finalizing the assessment order. Thus assessee has not fulfilled any of the conditions enumerated above in Section 271AAA(2) of the Act.

**12.** As regards addition for unexplained cash of Rs. 59,116/- which was found during the course of search at the assessee's residence on 25.11.10, assessee could not give any plausible reply to satisfy the search team as well as the Ld. A.O during the course of assessment proceedings. Assessee has also not challenged this addition before the Tribunal. So as far as unexplained cash of Rs.59,116/- is concerned assessee failed to fall in Section 271AAA(2) of the Act.

**13.** We therefore in the given facts and circumstances of the case are of the considered view that the assessee is liable to pay penalty u/s 271AAA of the Act @10% on the undisclosed income of Rs.12,52,670/- and unexplained cash of Rs.59,116/- which totals to Rs. 13,11,786/- on which the penalty is sustained @10% at Rs.

1,31,179/-. The sole ground raised by the assessee is partly allowed.

**14.** In the result appeal of the assessee is partly allowed.

The order pronounced in the open Court on 07.02.2020.

Sd/-

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

दिनांक /Dated : 07 February , 2020

Sd/-

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

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Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,  
Asstt.Registrar, I.T.A.T., Indore