

**आयकर अपीलिय अधिकरण, चण्डीगढ न्यायपीठ "ए", चण्डीगढ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH**  
**HEARING THROUGH: PHYSICAL MODE**  
**श्री संजय गर्ग, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य**  
**BEFORE: SHRI. SANJAY GARG, JM & SHRI. VIKRAM SINGH YADAV, AM**

आयकर अपील सं. / ITA NO. 1612/Chd/ 2019  
निर्धारण वर्ष / Assessment Year : 2011-12

|   |      |   |
|---|------|---|
| Ajay Kumar Sood Engineers And Contractors<br>K N Kandla & Co.<br>Chartered Accountants<br>169, Block No. 6 SDA Complex,<br>Shimla (HP)-171009 | बनाम | The DCIT<br>Central Circle-II<br>Chandigarh |
| स्थायी लेखा सं. / PAN NO: AAKFA4648J  |      |   |
| अपीलार्थी / Appellant   |      | प्रत्यर्थी / Respondent                     |

निर्धारित की ओर से / Assessee by : Shri Sudhir Sehgal, Advocate  
राजस्व की ओर से / Revenue by : Shri Anil Kumar Sharma, Sr. DR

सुनवाई की तारीख / Date of Hearing : 03/04/2024  
उद्घोषणा की तारीख / Date of Pronouncement : 28/06/2024

**आदेश / Order**

**PER VIKRAM SINGH YADAV, A.M. :**

This is an appeal filed by the Assessee against the order of the Ld. CIT(A) -3, Gurgaon dt. 27/09/2019 for the Assessment Year 2011-12.

2. In the present appeal, the assessee has raised the following amended grounds of appeal:

"1. That the Ld. CIT(A)-3, Gurgaon has erred in confirming the action of the Ld. Assessing Officer in levying penalty amounting to Rs.17,50,000/- U/s 271AAA of the Income Tax Act, 1961.

2. That the penalty amounting to Rs.17,50,000/- levied by the Assessing Officer has been confirmed by the Ld. CIT(A)-3, Gurgaon against the facts and circumstances of the case.

3. That the submissions filed during the course of hearing before the Ld. Assessing Officer and also before the CIT(A)-3, Gurgaon has not been considered properly.

4. *That the appellant craves leave to add or amend the ground of appeal before the appeal is finally heard or disposed off."*

3. Briefly the facts of the case are that a search and seizure operation under section 132(1) was carried out on 08/10/2010 in Sood Group of cases wherein one of the partner of the assessee firm, Shri Sanjay Kumar Sood surrendered a sum of Rs. 2.50 Crores on behalf of the assessee firm in terms of his statement recorded under section 132(4) of the Act which include an amount of Rs. 75 Lacs for A.Y 2010-11 and Rs. 1.75 crores for A.Y 2011-12. Thereafter, in his subsequent statement recorded on 14/10/2010, he has reiterated the surrender so made at the time of search. Similarly, another partner of the assessee firm, Shri Ajay Kumar Sood in his statement recorded under section 132(4) has confirmed the additional income so surrendered on behalf of the assessee firm. Thereafter, in the return filed in response to notice under section 142(1), the assessee firm has shown surrendered income of Rs. 1.75 crores and paid due taxes and interest thereon.

3.1 As per the AO, since the assessee has failed to specify the manner in which it had derived the additional undisclosed income which is mandatory requirement as per the provisions of Section 271AAA of the Act, penalty proceedings under section 271AAA were initiated against the assessee firm. The surrendered income of Rs. 1.75 Crores was however accepted and thereafter making certain other addition, the assessed income was determined at Rs. 4,30,65,183/-.

3.2 The assessee carried the matter in appeal before the Ld. CIT(A) who dismissed the appeal of the assessee in the quantum proceedings vide order dt. 07/02/2014. Thereafter during the course of penalty proceedings, fresh show cause was issued to the assessee and in response, the assessee filed its submission which were considered but not found acceptable to the AO. It was held by the AO that the onus was on the assessee to prove the manner in which it had derived the additional undisclosed income and which has to be corroborated with the documentary evidence. It was further held by the AO that the books of account of the assessee were not complete at the time

of search and mere passing of entries in the books of account is not sufficient to explain the source of cash found as the assessee has to explain all the deposits and withdrawals alongwith the documentary evidence and basis the same, it was held that it was a fit case for imposition of penalty under section 271AAA of the Act. Thereafter, the AO levied penalty of Rs. 17,50,000/- being 10% of the undisclosed income in terms of Section 271AAA of the Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who vide order dt. 03/11/2017 dismissed the appeal of the assessee on account of inordinate delay. Thereafter, the assessee carried the matter in appeal before the Coordinate Bench and vide its order dt. 06/05/2019 in ITA No. 83/Chd/2018, it condoned the delay and the matter was set aside to the file of the Ld. CIT(A) to decide on merits of the case as per the provisions of the Act. Thereafter, the proceedings were again taken up by the Ld. CIT(A) and during the second round of appellate proceedings, the assessee firm was asked to explain how the undisclosed income as admitted during the year is represented by specific definition as defined in the Explanation to Section 271AAA of the Act and substantiate the manner in which the undisclosed income was derived. The assessee filed the necessary submission and relied on various judicial pronouncements with regard to substantiating the manner in which the undisclosed income was derived. The submissions so filed were considered by the Ld. CIT(A) but not found acceptable and the penalty under section 271AAA so imposed by the AO was sustained and appeal of the assessee was dismissed.

5. Against the findings and directions of the Ld. CIT(A) in sustaining the penalty so levied, the assessee has again come in appeal before us.

6. During the course of hearing, the Id AR drawn our reference to the statement of Shri Sanjay Kumar Sood, one of the partners of the assessee firm wherein, in his statement recorded under section 132(4), he has stated that he, on behalf of the Firm, makes a voluntary disclosure of additional income

of Rs. 75 lacs for F.Y. 2009-10 relevant to A.Y 2010-11 and Rs. 175 lakhs for the F.Y 2010-11 relevant to A.Y 2011-12 over and above regular income of the firm subject to no penal action or prosecution as per the provisions of the Act. It was further stated by him in the said statement that the voluntary disclosure is made to cover any discrepancy in the documents and books seized during the course of search, work in progress and stock and the additional income declared is out of their source of business income. Further, our reference was drawn to the statement of Shri Ajay Kumar Sood, another partner of the assessee firm, who in his statement under section 132(4), has submitted that the additional income declared is over and above their regular income and out of business income earned. It was submitted by the Id AR that in the Statements so recorded of both the partners of the assessee firm, the additional income has been declared on account of discrepancy in the documents and books seized during the course of search, work in progress and stock.

6.1 It was further submitted that for the purpose of levy of penalty under section 271AAA, there is a specific definition of "undisclosed income" and the undisclosed income even though surrendered during the course of search and has been offered to tax, at the same time, it has to fall within the definition of "undisclosed income" as so defined in the explanation to Section 271AAA and the onus is on Revenue to substantiate the same. It was submitted that even the Id. CIT(A) in his finding has clearly stated that in absence of any discrepancy pointed out, the appellant admission of undisclosed income does not fall within the definition of undisclosed income. It was submitted that inspite of the fact that the surrendered income doesn't fall in the definition of undisclosed income as so held by the Id CIT(A), he has gone ahead and confirmed the levy of penalty under section 271AAA of the Act which clearly cannot be sustained and deserved to be set-aside.

6.2 It was further submitted that whatever questions were asked by the search party, the same have been responded to by the partners of the

assessee firm during the course of search proceedings and the assessee cannot be expected to know the technicalities of law and much less the mode and manner of earning the income in response to which no specific question have been asked by the search party and in any case, in the statement so recorded of both the partners of the assessee firm, they have clearly stated that the additional income so surrendered is over and above the regular business income earned by the assessee. In other words, it is out of same nature of business income as declared as per the books of accounts and thus, the mode and manner of earning the additional income is the same as done in earning the regular business income and it is just that the same is not disclosed and recorded in the books of accounts prior to date of search. It was accordingly submitted that the assessee has satisfied the necessary conditions for seeking immunity from levy of penalty as the assessee has made a disclosure of undisclosed income in the statement recorded under section 132(4) of the Act and has paid taxes alongwith interest on such undisclosed income. It was accordingly submitted that there is no basis for levy of penalty under section 271AAA of the Act.

6.3 Further reliance was placed on the following Coordinate Benches decisions such as DCIT Vs. Shri Sanjee Goyal in ITA No. 109/Chd/2015 & Others (Chd Trib), Shri Manoj Sahni Vs. DCIT in ITA No. 1372/Chd/2017 & Others (Chd Trib), DCIT Vs. Shri Pardeep Aggarwal in ITA No. 1100/Del/2015 (Del Trib), Sunil Kumar Bansal Vs. DCIT 70 SQT 137 (Chd Trib), ACIT Vs. Munish Kumar Goyal 152 ITD 453 (Chd Trib), Neerat Singal Vs. ACIT 161 TTJ (Del Trib), Pramod Kr. Jain Vs. DCIT(2012) 77 DTR (CTK. Trib) 244, Ashok Kr. Sharma Vs. DCIT (2012) 77 DTR (CTK. Trib) 241 and decisions of Hon'ble Courts in case of CIT Vs. Sudhir Jain 41 Taxmann.com 234 (Del HC), Pr. CIT Vs. Shahion Silk Mills Pvt. Ltd. vide ITA No. 823 of 2017 dt. 05/02/2018 (Gujarat), CIT Vs. Mahendra C. Shah reported in 299 ITR 305.

7. In his submissions, the Id DR submitted that the income of Rs. 1.75 crores, being the undisclosed income has been accepted by the partners of the

assessee firm, Sh. Sanjay Kumar Sood and Sh. Ajay Kumar Sood in their statements recorded on oath u/s 132(4) of the Income Tax Act, 1961. It was further submitted that one of the partners of the assessee firm, Sh. Sanjay Kumar Sood in his statement recorded on oath u/s 132(4) of the Act has stated that the said disclosure of undisclosed income is made to cover any discrepancies in documents/books seized during the course of search, work in progress and stock and that due taxes on the same shall be paid. Thus, it become absolutely clear that such surrendered income was not recorded on or before the date of search in the books of accounts or other documents maintained in the normal course of business relating to such previous year and therefore, it is well within the definition of undisclosed income as stipulated in explanation to section 271AAA of the Act.

7.1 It was further submitted that the fact of the admission of the undisclosed income by the partners of the assessee firm has been duly mentioned by the AO in both the penalty order as well as assessment order. Thus, it was submitted that it has been accepted already by the assessee while making the surrender of the said income that it is undisclosed income and the AO has also reproduced these facts in the assessment order and penalty order as well.

7.2 It was further submitted that the Ld. CIT(A) has in principle accepted that the surrendered amount is undisclosed income and therefore has upheld the penalty order passed by the A.O. There seems to be a typographical error in the observation by the Ld. CIT(A) in para 5(vii)(d) of his order as in principle the Ld. CIT(A) has taken the surrendered amount as "undisclosed income" and upheld the penalty. If that was not the case, the penalty would have been deleted by the Ld. CIT(A).

7.3 It was accordingly submitted that the penalty so levied u/s 271AAA be sustained and the appeal of the assessee be dismissed.

8. We have heard the rival contentions and perused the material available on record. It is a settled legal proposition that the penalty provisions have to be strictly construed and in the instant case, the provisions of Section 271AAA have been invoked by the AO and it thus needs to be seen whether the conditions specified therein have been fulfilled before the levy of penalty is fastened on the assessee firm. The said provisions provides that the Assessing officer may direct that where the search has been initiated on or after June 1, 2007, the assessee shall pay by way of penalty at the rate of 10% of the undisclosed income of the specified previous year. Therefore, the essential condition which needs to be satisfied before levy of penalty is that there is an undisclosed income of the specified previous year as found during the course of search. The term "undisclosed income" has been specifically defined in the explanation to section 271AAA to mean any income of the specified previous year represented either wholly or partly by any money, bullion, jewellery or other article or thing found during the course of search which has 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. Therefore, the fact that surrender of some undisclosed income has been made during the course of search, or the fact that the surrender is voluntary and emerging out of the statements so recorded during the course of search or the fact that the undisclosed income is not recorded in the books of account prior to date of search is not sufficient to fasten the levy of penalty. The undisclosed income so surrendered and admitted during the course of search has to fall within the four corners of the definition of the undisclosed income and only in situation where it satisfy the said definition, the levy of penalty can be said to be justified and not otherwise. It is for the Assessing officer to record a specific finding that undisclosed income as so defined has been found based on tangible verifiable material found during the course of search and the onus is thus on the Assessing officer to satisfy the conditions before the charge for levy of penalty is fastened on the assessee.

9. In the instant case, the Id CIT(A) has returned a finding that the surrender made by the appellant as apparent from the statement of appellant firm's partner Sh. Sanjay Kumar Sood recorded u/s 132(4) of the Act was made to cover any discrepancy in the documents and books seized during the course of search, work in progress and stock. The Id CIT(A) further held that in absence of any discrepancy pointed out, the appellant's admission of undisclosed income does not fall in the definition of "undisclosed income" which is the very basis of giving immunity from penalty u/s 271AAA of the Act, as all the sub-clauses of section 271AAA of the Act are related to "undisclosed income". The Id CIT(A) has therefore rightly held that no specific discrepancy has been pointed out and merely the fact that surrender has been made by the assessee to cover any potential discrepancy, the same doesn't fall in the definition of undisclosed income as so defined. We are in total agreement with the said reasoning of the Id CIT(A) and fully endorse the same as we have held earlier that the essential condition which needs to be satisfied before penalty is levied is that there is an undisclosed income of the specified previous year as found during the course of search. In spite of the same, we find that the Id CIT(A) has gone ahead and confirmed the penalty and it is here that we do not agree with him. It is also not a case of any typographical error as so pointed out by Id DR. It seems to us that the Id CIT(A) was swayed by the contention of the assessee in seeking immunity from levy of penalty u/s 271AAA(2) of the Act and in that context, he apparently held that it is for the assessee to demonstrate that income so surrendered falls in the definition of undisclosed income as so defined. As we have held earlier, it is for the Assessing officer to record a specific finding that undisclosed income as so defined has been found based on tangible verifiable material found during the course of search and the onus is thus on the Assessing officer (and not on the assessee) to satisfy the conditions before the charge for levy of penalty is fastened on the assessee. The assessee might be seeking immunity under section 271AAA(2) but before that the charge for levy of penalty has to be satisfied by the AO and for that, it is for the



AO to record a specific finding as to the fulfillment of conditions specified therein and which apparently has not been fulfilled in the instant case. In light of aforesaid discussion and in the entirety of facts and circumstances of the case, we are of the considered view that there is no justifiable and legal basis for levy of penalty u/s 271AAA and the same is hereby directed to be deleted.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 28/06/2024.

**Sd/-**

**संजय गर्ग  
(SANJAY GARG)  
न्यायिक सदस्य / JUDICIAL MEMBER**

**Sd/-**

**विक्रम सिंह यादव  
(VIKRAM SINGH YADAV)  
लेखा सदस्य/ ACCOUNTANT MEMBER**

**AG**

**Date: 28/06/2024**

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