

No penalty on declaration of income pursuant to search if source of income was substantiated and tax was paid thereon

Summary – The Delhi ITAT in a recent case of Ashok Nagrath, (the Assessee) held that where assessee agreed for a declaration on account of excess stock-in-trade and paid tax together with interest, no penalty would be levied

Facts

- The assessee, a proprietary concern, was engaged in the business of export of handicrafts items. They dealt with hundreds of articles (raw-material).
- During the course of search, it was found that the assessee was not maintaining any stock register and stock inventory had been prepared every year on estimate basis without taking the actual physical inventory. Consequently, the assessee agreed for a declaration on account of excess stock-in-trade.
- The Assessing Officer opined that since the assessee had failed to specify as well as substantiate the manner in which the undisclosed income was derived, penalty under section 271AAA was attracted.
- The Commissioner (Appeals) had however, deleted the penalty.
- On appeal:

Held

- Penalty under section 271AAA is levied where search has been initiated under section 132 on or after 1-6-2007 but before 1-7-2012 at the rate of 10 per cent of the undisclosed income of the specified previous year. As per sub-section (2) to section 271AAA the penalty is not leviable where in the course of the search, in a statement under sub-section (4) of section 132, the assessee admits the undisclosed income and specifies the manner in which such income has been derived, substantiates the manner in which the undisclosed income was derived; and pays the tax, together with interest, if any, in respect of the undisclosed income.
- In the present case, the assessee had agreed to the addition and clearly stated that stock records were not maintained and stock was considered on estimate basis. Non-maintenance of stock records with stock being valued on estimate basis is a fact accepted by the department. The assessee has also paid the tax together with interest in respect of undisclosed income. Thus all the above three ingredients have been fulfilled by the assessee. The assessee had not only admitted the undisclosed income and specified the manner in which such income had been derived in its statement recorded during the course of search but had also substantiated the manner in which the undisclosed income was derived. Under these circumstances, the Commissioner (Appeals) has rightly deleted the penalty.