

Declaring an income admitted during search saves assessee from section 271AAA penalty: ITAT

Summary – The Mumbai ITAT in a recent case of Ravi Kiran Aggarwal, (the Assessee) held that where notice was issued under section 153A and assessee filed return, penalty under section 271AAA could not be levied on amount which assessee had already admitted in statement recorded under section 132(4) during search but was leviable on income which was not admitted in above statement

Facts

- A search under section 132 was conducted at the residence and business premises of the assessee. During course of search, assessee offered income of Rs. 12,48,85,000 in his statement, recorded under section 132(4).
- The Assessing Officer issued notice under section 153A to the assessee, in response to which a return of income was filed by the assessee declaring total income of Rs. 22,70,21,590 which included a sum of Rs. 22,00,00,000 declared as undisclosed income.
- The Assessing Officer completed the assessment under section 143(3) by accepting the return of income and levied penalty of 10 per cent on additional income of Rs. 22,00,00,000 on the ground that the assessee had concealed income of Rs. 22,00,00,000.
- On appeal, the Commissioner upheld the order of the Assessing Officer.
- On further appeal before the Tribunal:

Held

- The assessee has admitted undisclosed income of Rs. 12,48,85,000 in his statement recorded under section 132(4) on 12-2-2010. A perusal of the statement extracted indicates that the assessee has specified and substantiated the manner in which the above income was derived.
- On a scrutiny of the factual score, it is noticeable that the assessee filed his return of income for the impugned assessment year on 31-7-2010 and offered Rs. 22,00,00,000 over and above his income pursuant to the search dated 11-2-2010. The dispute then boils down to Rs. 9,51,15,000 (Rs. 22,00,00,000 minus Rs. 12,48,85,000).
- In *STC v. Modi Sugar Mills Ltd.* AIR 1961 SC 1047, his Lordship Shah, J. has said thus: 'In interpreting a taxing statute, equitable considerations are entirely out of place. Nor can taxing statutes be interpreted on any presumptions or assumptions. The Court must look squarely at the words of the statute and interpret them. It must interpret a taxing statute in the light of what is clearly expressed; it cannot imply anything which is not expressed; it cannot import provisions in the statute so as to supply any assumed deficiency'.
- The assessee mentioned that penalty under section 271AAA is not leviable if an assessee, in his statement recorded during the search under section 132, admits the undisclosed income, specifies

and substantiates the manner in which it has been derived and pays the taxes due thereon, together with interest. The search took place on 11-2-2010. The assessee offered income of Rs. 12,48,85,000 in his statement recorded under section 132(4) during the course of search on 12-2-2010. The assessee filed his original return of income for the assessment year 2010-11 on 31-7-2010 offering income of Rs. 22,00,00,000 for taxation.

- In the upshot, as the assessee admitted the undisclosed income of Rs. 12,48,85,000 during the course of search on 12-2-2010, he is liable to penalty under section 271AAA at the rate of 10 per cent on the balance amount of Rs. 9,51,15,000 only (Rs. 22,00,00,000 minus Rs. 12,48,85,000). The Assessing Officer is directed to impose penalty under section 271AAA at the rate of 10 per cent on the balance amount of Rs. 9,51,15,000 in place of Rs. 2,20,00,000 computed by him.
- In the result, the appeal is partly allowed.