

No sec. 271AAA penalty if income was declared during scrutiny assessment & not during search: Delhi ITAT

Summary – The Delhi ITAT in a recent case of Mahavir Prasad Jaipuria., (the Assessee) held that where during course of search and post search investigation assessee did not surrender any money but during course of scrutiny assessment, he surrendered an income which was claimed to be his wife's savings/pin money, same would not be considered as 'undisclosed income', thus, penalty under section 271AAA was not justified

Facts

- The assessee belonged to 'J' group of cases which was subjected to search and seizure action under section 132. The statement of the assessee was recorded under section 132(4) and the assessee's son AJ also offered a total amount of Rs. 5 crores as undisclosed income in the hands of various individuals and entities associated with the 'J' group. In the original return of income, the assessee had offered a income of lesser amount to tax. Subsequently, he filed a revised return of income disclosing total income of higher amount. During the course of search and post search investigation, the assessee did not surrender any income but during the course of assessment proceedings under section 143(3) the assessee surrendered an amount which was shown in the computation of income under the head 'other sources'.
- Assessment was completed under section 143(3) after making an addition on account of unexplained cash. Subsequently, the Assessing Officer imposed penalty under section 271AAA on the alleged undisclosed income of which was surrendered by the assessee during the course of assessment proceedings.
- On appeal, the Commissioner (Appeals) also upheld the order of the Assessing Officer.
- On second appeal:

Held

- The facts of the case reveal that the amount was found during the course of search which the assessee claimed to be his wife's savings/pin money. This amount was not surrendered at the time of search but was surrendered subsequently during the course of assessment proceedings by assessee surrendering the same in his own hands in the computation of income. Therefore, as per the specific provisions of section 271AAA, said amount did not specifically fall under the definition of undisclosed income found during the course of search. It was also noteworthy that the Assessing Officer accepted this surrender without any questions asked. Even if for the sake of argument, the same is accepted as to be cash found during the course of search. It was undisputed that the assessee had paid tax due thereon. The only question thereafter remaining is whether the same was substantiated by the assessee or not. The assessee had already explained the source that was savings/pin money of his wife and as far as the substantiation was concerned, it would be relevant

to mention here that given the fact that it is a search case, the question of specifying and substantiating the manner in which the undisclosed income has been derived can be somewhat general and omnibus and no precise calculations or computations can be done with reference thereto.

- In view of the above, the levy of penalty under section 271AAA in the instant case was not justified.