

## **No sec. 271AAA penalty if assessee substantiated manner of earning undisclosed income & paid tax thereon**

**Summary – The Mumbai ITAT in a recent case of Akshar Developers, (the Assessee) held that where Assessing Officer levied penalty under section 271AAA for default of not substantiating manner in which undisclosed income was earned, in view of fact that assessee had made statement that undisclosed income was earned from sale of several commercial & residential units and, moreover, assessee had paid due tax on said income, impugned penalty was unjustified**

### **Facts**

- A search and seizure action under section 132 was conducted by department in 'P' Group of Cases in which assessee was also covered. The assessee was a builder, developer and contractor. Subsequent to the search, the assessee filed its return of income declaring undisclosed income of Rs. 5.94 crores.
- The Assessing Officer came to a finding that the assessee failed to substantiate the manner in which the undisclosed income was derived. Therefore, he imposed penalty under section 271AAA.
- On appeal, the Commissioner (Appeals) observed that BP, the partner of the assessee firm in his statement recorded under section 132(4) had clearly explained entries recorded in seized material and stated that such entries pertained to 'on money' received on sale of commercial units and sale of residential units. The assessee also quantified total amount of 'on money' received from sale of shops and residential units. The assessee disclosed above income in return of income and paid taxes and interest thereon. The Assessing Officer had also accepted nature of income disclosed while passing assessment order. Thus, he deleted the penalty imposed upon assessee.
- On revenue's appeal to the Tribunal:

### **Held**

- The Commissioner (Appeals) has referred to the facts narrated by the Assessing Officer in the assessment order and the penalty order. It is quite evident from a reading of the above that the assessee has substantiated the manner in which the undisclosed income was derived. Both the Assessing Officer and the Commissioner (Appeals) have mentioned that thereafter the assessee had paid tax and interest on the declared amount.
- In view of the obtaining factual matrix and the legal principles, the order of the Commissioner (Appeals) is upheld.