

Penalty u/s 271AAA justified if assessee failed to pay tax on undisclosed income declared during search

Summary – The Pune ITAT in a recent case of Shailesh Gopal Mhaske, (the Assessee) held that where assessee made statement that investment made in land/plots and movable and immovable properties represented its undisclosed income, however, he had not explained sources from where he made said investments and taxes due on said income were also not paid, penalty imposed under section 271AAA was justified

Facts

- Search action under section 132 was conducted in the 'P' Group of cases. Search warrant was also issued in the case of assessee. During the course of search action, certain documents pertaining to investment made by assessee in land/plots and movable and immovable properties were seized. Consequently, the assessee had offered for taxation certain amounts of undisclosed income in statement recorded under section 132(4).
- The Assessing Officer took note of the conditions laid down in section 271AAA and noted that the assessee had not filed the return of income till the date of search. The assessee had disclosed income but taxes on the undisclosed income were not paid. Thus, the assessee was held to have not fulfilled the conditions of section 271AAA(2)(ii). Thus, the penalty was levied.
- On appeal, the Commissioner (Appeals) noted that the only basis for initiating penalty proceedings and levying the same was that the assessee had disclosed / offered additional income as a consequence of search. He having regard to the definition of undisclosed income in relation to section 271AAA held that the additional income based on which penalty had been imposed by the Assessing Officer not being income represented by any asset found or any entry in either seized books or regular books, does not fall within the meaning of undisclosed income under section 271AAA. Accordingly, it was held that the question whether the assessee was entitled to the immunity under sub-section (2) of section 271AAA or not, did not arise, as threshold limits from bringing the case under section 271AAA were not met with.
- On revenue's appeal to the Tribunal:

Held

- In order to adjudicate the issue, first *Explanation* under section 271AAA shall be referred, which defines 'undisclosed income'. Undisclosed income means any income of specified previous year represented either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of search under section 132. The Commissioner (Appeals) while deciding the issue has referred to part of definition of 'undisclosed income' though in the first part of the appellate order, he refers that in the assessment order as well as penalty order, there is no whisper either of about any money, bullion, jewelry or other value article or thing or any entry in the books of account or other

documents or transactions found in the course of search or books of account maintained in the normal course but in the later part he restricts the definition of 'undisclosed money' to income represented by any asset found or any entry in either seized books or regular books. He has lost sight of the transactions found as one of the conditions *i.e.* entry in the books of account or other documents and also transactions found in the course of search. As pointed out in the paras hereinabove, during the course of search, diary was found in which there was mention of transactions in white and black, other documents of expenditure were found and also the list of investments and investments in various assets both movable and immovable were declared by the assessee during search and in view of the said position, the assessee made a declaration of income which admittedly, falls within the definition of 'undisclosed income' and hence, there is no merit in the observations of Commissioner (Appeals) in this regard and the same are reversed.

- Now, coming to the main provisions of section 271AAA. The first grievance of assessee is that penalty proceedings have been initiated for furnishing of inaccurate particulars of income and concealment of income and hence, the satisfaction is incorrect. In case the assessment order and observations of the Assessing Officer are read, then he is only talking about additional income offered by the assessee. He also while concluding states that the additional / total income was offered for taxation only as a result of search action and since it was so offered, penalty proceedings under section 271AAA were initiated. Though, he mentions concealment of income and furnishing of inaccurate particulars of income but that limb does not decide the action undertaken by the Assessing Officer under section 271AAA and at best it is superfluous.
- Coming to the order levying penalty under section 271AAA, it is clearly mentioned that where the assessee had disclosed the income in the statement recorded under section 132(4) but taxes on the undisclosed income were not paid, that the assessee had not fulfilled the conditions of clause (iii) of sub-section (2) of section 271AAA, hence, the Assessing Officer was justified in levying penalty under section 271AAA. Hence, the order levying penalty merits to be upheld in case the assessee has not fulfilled the conditions laid down in sub-section (2) of said section. In the facts of the present case and order of Assessing Officer while recording satisfaction, wherein he talks about the income unearthed during the course of search and order levying penalty under section 271AAA, which specifically talks about undisclosed income.
- The assessee claims that it has fulfilled all the conditions of said sub-section (2) of section 271AAA and hence, there is no merit in the levy of penalty. Admittedly, yes, the assessee in the course of search while statement under section 132(4) was recorded, had admitted the undisclosed income, however, he failed to specify the manner in which the income was derived. He was specifically asked to explain the investments made in land / plots and movable & immovable assets, considering the non-filing the income tax returns. In reply, he does not give any explanation about the said investments and the sources from where he has made the said investments but he voluntarily declared sum towards his capital in Home Corporation, investment in movable and immovable assets, unexplained expenditure, drawings, etc. He also admitted that he would file yearwise

breakup in due course, which he consequently, filed. In the absence of assessee having satisfied the manner in which the income was derived and also specifying the manner, clause (i)(part) and clause (ii) under sub-section (2) of section 271AAA were not fulfilled.