

Penalty u/s 271AAB not to be imposed in case income surrendered during search didn't result in undisclosed income

Summary – The Jaipur ITAT in a recent case of Smt. Aparna Agrawal, (the Assessee) held that Penalty u/s 271AAB is not to be imposed in case income surrendered during search didn't result in undisclosed income

Facts

- In course of search proceedings, statement of assessee was recorded under section 132(4) wherein he surrendered long-term capital gain arising from sale of shares to tax.
- The Assessing Officer while completing assessment, added said amount to assessee's taxable income. He also passed a penalty order under section 271 AAB.
- The Commissioner (Appeal) reduced levy of penalty from 30 per cent to 10 per cent of undisclosed income.
- The assessee filed instant appeal contending that when the surrender was not falling under the category of undisclosed income as prescribed under section 271 AAB because assessee had already recorded share transactions in the books of account, impugned penalty order was not sustainable.

Held

- The Assessing Officer has levied the penalty under section 271 AAB in respect of the income surrendered by the assessee on account of LTCG from purchase and sale of equity shares. The Important question is whether the surrender made by the assessee can be regarded as undisclosed income. The term "undisclosed income" has been defined in the *Explanation* to section 271AAB and, therefore, the penalty under the said provision has to be levied only when the income surrendered by the assessee falls in the ambit of undisclosed income as defined under this section.
- The assessee duly recorded the transaction of purchase and sale of equity shares of the listed companies in his books of account.
- Therefore, the primary condition of undisclosed income i.e. the income is not recorded in the books of account on the date of search is not satisfied.
- Hence the penalty levied by the Assessing Officer and sustained by the Commissioner (Appeals) on LTCG is deleted.
- In the result, appeal of the assessee is allowed.