

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER
and
SHRI A.T. VARKEY, JUDICIAL MEMBER**

**ITA No.1257/Del./2015
(ASSESSMENT YEAR : 2011-12)**

DCIT, Central Circle 13,
New Delhi.

vs. M/s. Sam India Abhimanyu Housing,
Jaipuria Plaza, Sector 26,
Noida Extension,
Uttar Pradesh-201 301.

(PAN : ABUFS6733R)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri C.S. Anand, CA
REVENUE BY : Smt. Anima Barnwal, Senior DR

ORDER

PER A.T. VARKEY, JUDICIAL MEMBER :

This appeal, at the instance of the revenue, is filed against the order of CIT (Appeals)-25, New Delhi dated 14.01.2015 for the assessment year 2011.

2. The only effective ground taken by the revenue is against the deletion of penalty levied amounting to Rs.12,50,000/- on account of undisclosed income.

3. The assessee firm was developing a housing project in Noida Extension. During the course of search and seizure operation carried out on Sam India Builtwell Private Limited & Others on 15.06.2011, few

documents/loose papers (containing some notings mostly relating to cash expenditure) pertaining to the assessee were also found. Since the management was finding it difficult to correlate each of such cash notings appearing on such documents/loose papers with the entries appearing in the books of account, it had taken a conscious decision, with a view to buy peace of mind and to avoid litigation, to offer lump-sum amount of Rs.1,25,00,000/- as its income for the year under consideration. In response to the notice issued u/s 153C of the Income-tax Act, 1961 (hereinafter 'the Act'), the assessee had filed its return of income declaring total income of Rs.1,25,00,000/- for the year under consideration. The AO also completed the assessment vide order dated 26.03.2014 u/s 143(3) r.w.s. 153C on an income of Rs.1,25,00,000/-.

4. In compliance to show cause notice dated 01.09.2014 issued with reference to penalty proceedings u/s 271AAA, the assessee had filed its reply dated 09.09.2014 through which the assessee had requested the AO to drop the penalty proceedings initiated u/s 271AAA. However, the AO imposed the penalty u/s 271AAA at Rs.12,50,000/- on the basis that the case of the assessee is covered under the provisions of section 271AAA and also that the assessee had failed to satisfy the conditions made in the provision of section 271AAA.

5. Being aggrieved, the assessee filed an appeal before the first appellate authority and the Id. CIT (A) deleted the penalty by observing as under :-

“ I have gone through the submission of the appellant and finding of the AO in the penalty order. The penalty has been levied u/s 271AAA of the I.T. Act. In this regard, Ld. AR of the appellant has agitated the action of AO by producing the details of the order u/s 133 A (3) (ia) of the I.T. Act as per which there is one impounding order in pursuance to survey conducted u/s 133 A of the I.T. Act dated 15th June, 2011. In this regard, he has further relied on the provision of section 271AAA as per which this penalty is levied in the case wherein there is search has been conducted u/s 132 of the I.T. Act. I have gone through the provision of section 271 AAA which reads as under:-

“The AO may, notwithstanding anything contained in any other provisions of this Act, direct that in a case where search has been initiated under section 132 on or after the 1st Day of June, 2007 [but before the 1st day of July, 2012], the assessee shall pay by way of penalty, in addition to tax, if any, payable by him, a sum computed at the rate of ten per cent of the undisclosed income of the specified previous year.”

From the reading of the above section, it is apparent that provision of section 271 AAA can be attracted wherein search action has been conducted u/s 132 of the I.T. Act. In the instant case, there was survey u/s 133A of the I.T. Act as is evident from order u/s 133A (3)(ia) of the I.T. Act dated 15th June, 2011. In view of the above discussion, my findings are as under:-

(i) I found force in this argument of the Ld AR of appellant. It is not the case of the AO that in the case of appellant, search u/s 132 was ever initiated.

(ii) It is a trite law that the provisions of section 271 AAA are applicable only where search u/s 132 was conducted.

(iii) The case laws relied upon by the AO have no applicability in the instant case because the same were regarding penalty u/s 271 (1) (c).

(iv) I am of the considered opinion that the penalty levied by the AO cannot be confirmed. I, therefore, delete the penalty of Rs. 12,50,000/- levied u/s 271 AAA.

In view of the above discussion, ground 1, 2 & 3 of the appeal deserves to be allowed.

In the result, appeal is allowed.”

6. Ld. DR, relying on the order of the AO , pleaded that the order of the Id. CIT (A) be set aside and that of the AO be restored.

7. On the other hand, the Id. AR for the assessee reiterated the submissions made before the Id. CIT (A) and submitted that in the case of assessee, there was no search u/s 132 of the Act, however, the penalty proceedings was initiated u/s 271AAA of the Act and the AO levied penalty of Rs.12,50,000/-. In this regard, Id AR submitted that such levy of penalty is unsustainable in law in view of the provisions of section 271AAA of the Act. Further, Id AR brought our attention to the language of the said section 271AAA of the Act and read out that "*the Assessing Officer may.....direct that; in a case **where search** has been initiated under section 132 on or after the 1st day of June, 2007 [but before the 1st day of July, 2012].....*". He, therefore, prayed that the order of the Id. CIT (A) be upheld.

8. We have heard both the parties and perused the material on record as well as the provision of section 271AAA of the Act. There is no dispute on the fact that the assessee offered the disclosed income and paid taxes. That issue on quantum reached the finality. When comes to the penalty proceedings, we find that the AO initiated the penalty proceedings u/s 271AAA of the Act when the present assessee is not covered u/s 132 i.e. search conducted on the Assessee. The assessee is covered only by survey u/s 133A of the Act as such initiation of penalty proceeding u/s 271AAA is not

legally tenable so AO erred initiating action under section 271AAA of the Act. Further, on perusal of the order of the CIT (A), we find that the finding of the Id. CIT (A) in this regard is legally right and so upheld. Therefore, the impugned order does not call for any interference and so upheld. Accordingly, grounds raised by the Revenue are dismissed.

6. In the result, the appeal of the Revenue is dismissed.

Order pronounced in open court on this 5th day of February, 2016.

**Sd/-
(N.K. SAINI)
ACCOUNTANT MEMBER**

**sd/-
(A.T. VARKEY)
JUDICIAL MEMBER**

**Dated the 5th day of February, 2016
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-25, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**