

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER  
[Through Video Conferencing]**

ITA No.2518/Del/2018  
Assessment Year: 2012-13

|  |            |   |
|--|------------|---|
| Sh. Shailendra Kumar<br>Gautam,<br>RZ-36A/1, First Floor,<br>Bank of Baroda Gali,<br>Mahavir Enclave,<br>New Delhi | <b>Vs.</b> | ACIT,<br>Central Circle-8,<br>New Delhi |
| <b>PAN :ADCPG0128L</b>   |            |   |
| <b>(Appellant)</b>   |            | <b>(Respondent)</b>                     |

|               |                          |
|---------------|--------------------------|
| Appellant by  | Ms. Sangeeta Singh, CA   |
| Respondent by | Sh. Mahesh Thakur, Sr.DR |

|                       |            |
|-----------------------|------------|
| Date of hearing       | 14.07.2021 |
| Date of pronouncement | 27.07.2021 |

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the assessee is directed against order dated 31/01/2018 passed by the Ld. Commissioner of Income Tax (Appeals)-24, New Delhi [in short 'learned CIT(A)'] in relation to penalty levied under section 271AAA of Income-tax Act, 1961 (in short 'the Act') for assessment year 2012-13. The grounds raised by the assessee are reproduced as under:

1. *That on the facts and circumstances of the case and law on the point, the penalty order u/s 271AAA of the Income Tax Act, 1961 for the A.Y. 2012-13 dated 29.03.2017 passed by the Ld. ACIT, Central Circle-8, New Delhi creating a demand of Rs. 21,91,130 is bad in law and against the facts of case and Ld. CIT(A) has erred in confirming the same vide his order dated 31.01.2018.*
2. *That on the facts and circumstances of the case and law on the point, the order of the Ld. AO which is confirmed by Ld. CTT(A) is wrong, perverse, illegal and against the provisions of law and liable to be quashed.*
3. *That on the facts and circumstances of the case and law on the point, the Ld. AO has erred in initiating and levying the penalty u/s 271 AAA of the Income Tax Act, 1961 on 29.03.2017 amounting to Rs. 21,91,130/- when no finding was recorded by him, in that regard during assessment proceedings and Ld. CIT(A) has erred in confirming the same.*
4. *That on the facts and circumstances of the case and law on the point, the Ld. CIT(A), has erred in confirming the penalty order passed by Ld. ACIT, when the quantum appeal in respect of the appellant case were pending before the Hon'ble Income Tax Appellate Tribunal Delhi.*
5. *The appellant craves leave to add to, alter, modify, substantiate, delete and /or to rescind all or any of the grounds of appeal on or before the final hearing, if necessity so arises.*

**2.** At the outset, the learned Counsel of the assessee submitted that the quantum addition in respect of which the penalty under section 271AAA of the Act has been levied, has already been deleted by the Tribunal and, therefore, the penalty cannot survive and, accordingly, should be deleted. The Learned Counsel of the assessee filed a copy of the decision of the Tribunal in ITA No. 5804/Del/2015 & ITA No. 5897/Del/2015 for assessment year 2012-13 in quantum proceedings.

**3.** The Learned DR, on the other hand, relied on the order of the lower authorities, however, could not controvert the fact that quantum addition has already been deleted by the Tribunal.

**4.** We have heard rival submission of the parties on the issue in dispute. In the case of the assessee, a search and seizure operation under section 132 of the Act was carried out and during which, evidence related to transfer of ancestral property by the assessee along with two other co-owners and receipt of part payment from transferee, were found and seized. According to the Assessing Officer there was a contract to sale the property to transferee and part possession of the property was also given to the buyer. The Assessing Officer held that the assessee received Rs. 79.50 lakhs as a share of total cash received and one third share of balance consideration of ₹ 1.17 crore which works out to be 35.10 lakhs, must have been received by the assessee. Accordingly, he made addition of ₹ 35.10 lakhs. In view of the undisclosed income assessed in the specified assessment year, the Assessing Officer levied penalty under section 271AAA of the Act at the rate of 10% of the undisclosed income, which was worked out to Rs. 21,91,130/-. The Learned CIT(A) dismissed the appeal of the assessee. We find that the Tribunal in ITA No.5804/Del/2015 & ITA NO. 5891/Del/2015 for assessment year 2012-13 deleted the quantum addition for undisclosed income observing as under:

*“16. On the given facts of the case in hand, we are of the opinion that the transferee was not willing to perform his obligations in the FY itself though the litigation took place in the succeeding year. Moreover, the Hon'ble Supreme Court in the case of CIT Vs. Balbir Singh Maini C.S Atwal [supra] has clearly laid down the principle that no contract in the eyes of law is enforced u/s 53A of the Transfer of Property Act after 2001 unless the said contract is registered and undisputed fact is that the agreement relied upon by the Revenue authorities is an unregistered agreement. Respectfully following the ratio laid down by the Hon'ble Supreme Court [supra]*

*we set aside the finding of the ld. CIT(A) and direct to delete the impugned additions.”*

**4.1** In our opinion, when the undisclosed income assessed by the Assessing Officer itself, has been deleted by the Tribunal, the penalty levied by the Assessing Officer and upheld by the Learned CIT(A) on said undisclosed income, cannot survive. Accordingly, we delete the penalty levied by the Assessing Officer, which was confirmed by the Learned CIT(A). The grounds of the appeal of the assessee are accordingly allowed.

**5.** In the result, the appeal of the assessee is allowed.

***Order pronounced in the open court on 27<sup>th</sup> July, 2021.***

***Sd/-***  
**(KUL BHARAT)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 27<sup>th</sup> July, 2021.

RK/-(DTDC)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar, ITAT, New Delhi