

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

**BEFORE SHRI N.K. SAINI, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.844/Del./2014  
(ASSESSMENT YEAR : 2008-09)**

Shri Ashwani Kumar Arora, vs. ACIT,  
Unit No.134, Ist Floor, Central Circle 19,  
Rectangle 1, Saket District Centre, New Delhi.  
Saket,  
New Delhi – 110 017.

**(PAN : AEIPA8562R)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Salil Kapoor, Sanat Kapoor &  
Sumit Lalchandani, Advocates  
REVENUE BY : Shri Ravi Jain, CIT DR

Date of Hearing : 21.04.2016  
Date of Order : 19.05.2016

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, Shri Ashwani Kumar Arora (hereinafter referred to as 'the assessee'), by filing the present appeal sought to set aside the impugned order dated 10.10.2013 passed by the Commissioner of Income-tax (Appeals)-XXXIII, New Delhi qua the assessment year 2008-09 on the grounds inter alia that :-

“1. That the CIT(A) has, in view of the facts and circumstances of the case, erred on facts and in law in upholding the penalty order

passed by the AO. The penalty order is illegal, bad in law and without jurisdiction.

2. That the CIT(A) has, in view of the facts and circumstances of the case, erred on facts and in law in upholding the penalty of Rs.12,24,600/- levied by the AO u/s 271(1)(c) of the Income Tax Act, 1961.

3. That the CIT(A) has, in view of the facts and circumstances of the case, erred on facts and in law in upholding the penalty of Rs.12,24,600/- when the returned income and the assessed income are the same and no additions have been made by the AO in the assessment order.

4. That the CIT(A) has, in view of the facts and circumstances of the case, erred on facts and in law in upholding the invocation of Explanation 5A to Sec 271 (1)( c) of the Income Tax Act, 1961.

5. That the CIT(A) has erred on facts and in law in dismissing the appeal of the assessee and the CIT(A) has failed to adjudicate the matter in a judicious manner.

6. That the evidence and submissions filed and materials available on record have not been properly construed and judiciously interpreted, hence the penalty levied is uncalled for.

7. That the various observations made by the CIT(A) in the impugned order are illegal, bad in law, contrary to the facts on record and based on surmises and conjectures.

8. That in any case the penalty is highly excessive and should be reduced.

9. That the appellant reserves the right to alter, amend and add the grounds of appeal anytime during pendency of the appeal.”

2. Briefly stated the facts of the case are : assessee has filed its original return of income declaring its total income at Rs.22,77,695/- on 23.12.2008. On the basis of search carried out on 10.02.2009 in Dawat Group of cases including the assessee, the assessee was called upon to file its return of income under section 153A of the Income-tax Act, 1961 (hereinafter ‘the Act’) which it

has filed on 08.12.2009 declaring income at Rs.59,80,520/-, inclusive of additional income from trading business amounting to Rs.36,02,828/-. The assessment of the assessee u/s 153A of the Act was completed on 31.12.2010 at Rs.59,80,520/- and the penalty proceedings u/s 271(1)(c) read with Explanation 5A were ordered to be initiated.

3. Assessee, in response to the notice issued u/s 271(1)(c) read with section 274 of the Act, filed reply dated 31.01.2011 which was examined by the AO in the light of the Explanation 5A of section 271(1)(c) effective from 1.6.2007. Assessee found to have not declared income from the trading business amounting to Rs.36,02,828/- in original return of income which he has declared in response to the notice u/s 153A of the Act on the basis of seized documents in which numerous unaccounted cash transactions were found. Assessee chose to file the income and expenditure account of such transactions describing the total income from trading business quantifying the share of each individual. So, had the search not been conducted, additional income shown by the assessee in respect of trading business could not have been disclosed. No condition mooted out by the assessee for non-levy of the assessee has been accepted during the assessment proceedings. So, the AO came to the conclusion that the assessee

has made concealment of particulars of income and consequently, a penalty to the tune of Rs.12,24,600/- which is 100% of the tax evaded by the assessee has been levied u/s 271(1)(c) of the Act.

4. Assessee carried the matter before the Id. CIT (A) who has affirmed the penalty order by dismissing the appeal. Feeling aggrieved, the assessee came up in appeal before the Tribunal by way of filing the present appeal.

5. During the appellate proceedings before the Tribunal, the assessee by moving an application sought to incorporate following additional grounds of appeal, hereinafter mentioned, on the ground that these are the legal grounds going to the root of the issue involved in the case :-

“10. That the notice issued and the penalty order passed u/s 271(1)(c) are illegal, bad in law and without jurisdiction as search has taken place after 01.06.2007 and as per provision of Section 271AAA sub-section 3 no penalty u/s 271(1)(c) can be imposed in respect of the alleged undisclosed income.

11. That no satisfaction has been recorded while completing the assessment, hence notice issued u/s 274 and the order passed u/s 271(1)(c) of the Act are illegal, bad in law and without jurisdiction.

12. That the penalty has been initiated vide notice u/s 274 dated 31.12.2010 without any specific charge, hence, the notice and the order passed u/s 271(1)(c) are illegal, bad in law and without jurisdiction.”

6. Keeping in view the settled principle of law that additional evidence if necessary for complete adjudication of the controversy in hand cannot be disallowed on hyper technical ground and since

the additional grounds raised by the assessee are legal in nature and necessary for complete adjudication of the controversy at hand, present application is allowed and assessee is allowed to incorporate additional grounds.

7. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

8. Ld. AR for the assessee challenging the impugned order contended inter alia that the penalty levied by the AO u/s 271(1)(c) of the act is not sustainable in view of the amended provisions contained under sub-section (1) of section 271AAA of the Act effective from 1.6.2007; that the AO has wrongly invoked the Explanation 5A to section 271 of the Act to impose the penalty in this case. However, on the other hand, the Id. DR relied upon the penalty order as well as the impugned order passed by the Id. CIT (A).

9. Before proceeding further, we would like to decide the legal issue first, **“as to whether penalty imposed upon the assessee u/s 271(1)(c) of the Act vide order dated 28.06.2011, affirmed by the Id. CIT (A) vide impugned order, is legally not sustainable**

**in view of the amended provisions contained under sub-section of section 271AAA of the Act?.**

10. For facility of reference, provisions contained under sub-section (2) of section 271AAA are reproduced as under :-

“271AAA. (1) The Assessing Officer 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 1<sup>st</sup> 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.

(2) Nothing contained in sub-section (1) shall apply if the assessee,—

- (i) in the course of the search, in a statement under sub-section (4) of section 132, admits the undisclosed income and specifies the manner in which such income has been derived;
- (ii) substantiates the manner in which the undisclosed income was derived; and
- (iii) pays the tax, together with interest, if any, in respect of the undisclosed income.

(3) No penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1).”

11. Undisputedly, assessee has filed original return of income, declaring his total income at Rs.22,77,695/- on 23.12.2008 but thereafter consequent upon the search conducted in Dawat Group of cases including the assessee u/s 132 of the Act on 10.02.2009, the assessee filed revised return of his income u/s 153A of the Act on 08.12.2009 declaring his total income at Rs.59,80,520/- which

includes income from trading business amounting to Rs.36,02,828/-, which he has not disclosed earlier. It is also not in dispute between the parties to the appeal that the penalty proceedings were initiated u/s 271(1)(c) read with Explanation 5A.

12. It is also not in dispute that the assessee during the search and seizure proceedings categorically admitted that the undisclosed income of Rs.36,02,828/- has been accrued to him along with his three brothers in their individual capacity by way of trading in various commodities and real estates and all these facts got duly corroborated from the seized material.

13. When aforesaid undisputed facts are examined in the light of the amended provisions contained under sub-section (2) and (3) of section 271AAA, the penalty in this case, if at all leviable, it should have been levied under section 271AAA (1) and not u/s 271(1)(c) as has categorically been provided in sub-section (3) of section 271AAA. Intention of the legislature in incorporating the provisions contained u/s 271AA effective during the period 1<sup>st</sup> June, 2007 to 1<sup>st</sup> July, 2012 is to provide general amnesty in search and seizure cases, and the case of the assessee undisputedly falls u/s 271AAA and cannot be dealt with u/s 271(1)(c) by any stretch of imagination even.

14. So, we are of the considered view that the very initiation of the penalty proceedings against the assessee u/s 271(1)(c) are vitiated in view of the amended provisions of law applicable effective from 1.6.2007 till 1.7.2012, as the additional income to the tune of Rs.36,80,520/- was disclosed by the assessee on the basis of search operation conducted on 10.02.2009. So, without going into the merits of the case, we are of the considered view that initiation of penalty proceedings as well as penalty orders and impugned order passed by the Id. CIT (A) are not sustainable in the eyes of law. Hence, present appeal is allowed and penalty imposed in this case to the tune of Rs.12,24,600/- is hereby deleted.

**Order pronounced in open court on this 19<sup>th</sup> day of May, 2016.**

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

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 19<sup>th</sup> day of May, 2016  
TS**

Copy forwarded to:

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

**AR, ITAT  
NEW DELHI.**