

\$~

\*

**IN THE HIGH COURT OF DELHI AT NEW DELHI**

1

+

**ITA 400/2017**

PRINCIPAL COMMISSIONER OF INCOME

TAX (CENTRAL)- 1

..... Appellant

Through: Mr Puneet Rai, Junior Standing Counsel  
with Mr Gaurav Khetrapal, Advocates

versus

M/S EMIRATES TECHNOLOGIES PVT. LTD.

..... Respondent

Through: Mr Pranjal Srivastava, Advocate

**CORAM:**

**JUSTICE S.MURALIDHAR**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

%

**18.07.2017**

1.The Revenue is in appeal against the order dated 28<sup>th</sup> October, 2016 passed by the Income Tax Appellate Tribunal in ITA NO.476/Del./2014 for Assessment Year ('AY') 2010-2011.

2.The question sought to be urged by the Revenue is whether the ITAT erred in law in confirming the order of the Commissioner of Income Tax (Appeal) ['CIT(A)] deleting the penalty imposed upon the Respondent Assessee under Section 271AAA of the Income Tax Act, 1961.

3. The CIT(A) in para 4.7 of the order dated 4<sup>th</sup> November, 2013 noted that no specific query had been put to the Assessee by drawing his attention to

*ITA 400/2017*

*Page 1 of 2*

Section 271 AAA of the Act asking him to specify the manner in which the undisclosed income, surrendered during the course of search, had been derived. The CIT (A), therefore, relying on the decisions of this Court held that the jurisdictional requirement of Section 271AAA was not met.

4. The above view has been concurred with by the ITAT.

5. In the facts and circumstances of the case, the Court is of the view that the concurrent decision of the CIT(A) and the ITAT represent a plausible view which cannot be said to be perverse.

6. No substantial question of law arises for consideration.

7. The appeal is accordingly dismissed.

**S.MURALIDHAR, J**

**PRATHIBA M. SINGH, J**

**JULY 18, 2017**

*rd*

2002

21

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

**BEFORE SHRI G.D. AGRAWAL, VICE PRESIDENT  
&  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 476/Del/2014  
(Assessment Year: 2010-11)**

ACIT Central Circle 25, New Delhi.	vs	Emirates Technologies Pvt. Ltd. 626, Tower-A, DLF Corporate Towers, Jasola, New Delhi. AABCE5002E
--	----	--

<b>Assessee by</b>	<b>Sh. N.K. Bansal, Sr. Dr</b>
<b>Revenue by</b>	<b>Sh. Ved Jain, CA Sh. Rohan Pandey, CA</b>

<b>Date of Hearing</b>	<b>04.08.2016</b>
<b>Date of Pronouncement</b>	<b>28.10.2016</b>

**ORDER**

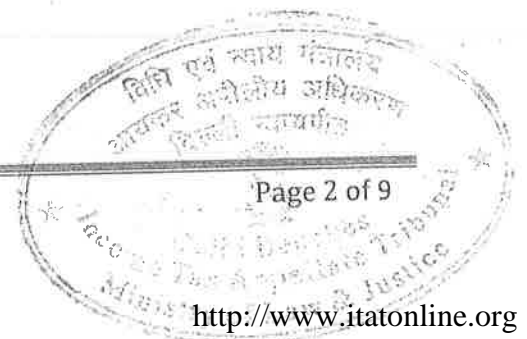
**PER SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER:**

The present appeal has been preferred by the Department against the order dated 04/11/2013 passed by the Ld. CIT (A)-1, New Delhi for AY 2010-11, wherein the Ld. CIT (A) has deleted the penalty of Rs. 64,50,000/- imposed

u/s 271AAA of the Income Tax Act, 1961.



2. The return of income was filed declaring an income of Rs. 4,92,80,660/- and the assessment was completed u/s 143(3) at Rs. 5,13,27,140/-. Penalty proceedings u/s 271AAA were initiated against surrender of unexplained/undisclosed income of Rs. 6,45,00,000/- found during the search conducted u/s 132 of the Income Tax Act, 1961. In response to the show cause notice, it was the assessee's contention that no penalty u/s 271AAA was imposable, if the assessee - (1) admits the undisclosed income in its statement at the time of search, (2) substantiates the manner in which the undisclosed income has been derived and (3) pays tax along with interest on the undisclosed income. It was the assessee's claim that the assessee had satisfied all the three conditions and hence, was immune from the penalty u/s 271AAA. However, the AO was of the opinion that although the assessee had paid the tax due against the undisclosed income, he had neither divulged nor substantiated the manner in which the undisclosed income was derived.



2.1 Aggrieved the assessee preferred an appeal before the Ld. First Appellate Authority who deleted the entire penalty.

2.2 Now the Department has filed the instant appeal before the ITAT and has raised the following grounds of appeal:

1. *"The order of the Ld. CIT (A) is not correct in law and facts.*
2. *On the facts and the circumstances of the case the Ld. CIT (A) has erred in law in deleting the penalty u/s 271AAA amounting to rs. 64,50,000/- imposed by on account of undisclosed income of Rs. 6,45,00,000/-.*
3. *The appellant craves leave to add, amend, any/all the grounds of appeal before or during the course of hearing of the appeal."*

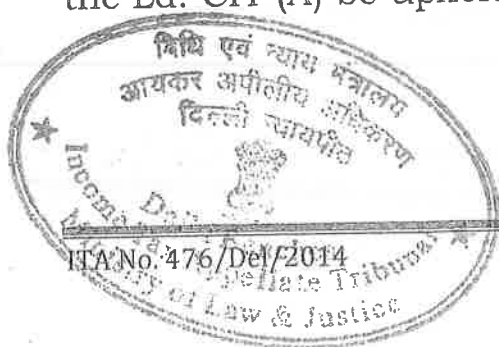
3. The Ld. DR relied on the order of the AO and vehemently argued that the imposition of penalty was patently legal and appropriate on the facts and circumstances of the case and submitted that the penalty deleted by the Ld. CIT (A) ought to be restored.



4. The Ld. AR submitted that the assessee had offered additional income during the course of search and this income was accepted by the AO in the assessment order. It was further submitted that the AO had not disputed the quantum nor the manner in which the assessee had disclosed this income in the return filed. He submitted that since the AO had accepted the income offered by the assessee, it cannot be said that the assessee had failed to substantiate the income offered by it. It was further submitted that neither during the course of the search at the time of recording the statement nor during the course of assessment was the assessee questioned about the source or the nature of income. However, the AO has merely stated that the assessee has not specified the manner in which the income had been derived and the penalty was levied on the ground that the assessee had failed to substantiate the manner in which the income was derived. He drew our attention to copy of the statement recorded and placed at pages 26 to 32 of the Paper book and pointed out that the relevant question was question no. 4, wherein **Shri Sameer**



Gupta, Director has admitted that there were expenses/investments which were not accounted for and which were earned in real estate transactions. The Ld. AR added that Shri Sameer Gupta was never questioned by directing his attention towards the provisions contained in Section 271AAA during the course of search or during the course of assessment proceedings. He relied on the decision of ITAT Delhi in the case of Mothers Pride Education Personna Pvt. Ltd. vs. DCIT in ITA No. 3372/Del/2011 in which it has been held that mere non-statement of manner in which undisclosed income was derived would not make the immunity under Explanation 5 to Section 271(1)(c) inapplicable and that in absence of specific query/question penalty could not be imposed. He also relied on the decision of ITAT Delhi in ACIT vs. Sushil Kumar Gupta and Anil Kumar Gupta in ITA Nos. 3856, 3857/Del/2013 for the same proposition. The Ld. AR pleaded that the findings of the Ld. CIT (A) be upheld.



5. We have heard the rival submissions and have perused the material on record. It is seen that the Ld. CIT (A) has discussed the entire issue and recorded a finding in Paras 4.6, 4.7 and 4.8 of the impugned order. These paragraphs are being reproduced for a ready reference as under:

*"4.6 In the present case, the director of the appellant company, Sh. Sameer Gupta, was confronted with questions - regarding cash (Q-1), jewellery (Q-2) and seized documents (Q-3 & 4) - during the course of search. Regarding jewellery he replied that it had been declared in the respective wealth tax returns. Regarding documents he stated that these were expenses/investments not accounted for, earned in real estate transactions and admitted the transactions as undisclosed income. Regarding cash he stated that he did not have any documentary evidence and, therefore, he was offering it as undisclosed income. He also gave an undertaking to furnish the details after examining the records and books. Consequently, the amounts of Rs. 96,28,150/- and Rs. 5,16,00,000/- each were*



admitted as undisclosed income of the appellant and his brother Shri Sundeep Gupta, and an amount of Rs. 6,45,00,000/- was admitted as undisclosed income of the appellant company, in the income tax returns filed and tax due thereon was fully paid.

4.7 The only questions to be decided are whether the manner of earning the undisclosed income was substantiated and for this purpose whether any specific question or query was put to the appellant. I find from the statement of the director of the appellant company that he was never questioned by drawing his attention to the provisions contained in Section 271(1)(c) or 271AAA. He tried to give appropriate answers to the best of his ability and knowledge to the questions put to him. Had he been expressly made aware of the provision of Section 271AAA he could have perhaps tried to furnish some more evidence or proper explanation. However, no such attempt seems to have been made during the search or even during assessment proceedings. That being the case, and in view of admission of the undisclosed income in the returns filed and

payment of full tax with penal interest thereon,



ITA No. 476/Del/2014

*the ratio of judgments in CIT vs. Radha Kishan Goyal (supra), Hon'ble Gujarat High Court in CIT vs. Mahendra C Shah (supra) and Mothers Pride Education Personna Pvt. Ltd. vs. DCIT (supra) will come into play.*

4.8 *In the above facts and circumstances, and legal position of the matter, the penalty imposed cannot be legally sustained and is cancelled."*

5.1 In view of the facts of the present case and the findings recorded by the Ld. CIT (A) which could not be negated by the Ld. DR, it is evident that the Department had not raised any specific query regarding the manner in which the undisclosed income had been derived. In absence of query about the manner in which the undisclosed income was derived and about its substantiation, it is our considered view that the AO was not justified in imposing penalty u/s 271AAA specially, when the offered undisclosed income was accepted by the AO and the tax due thereon had been paid by the assessee. We draw our strength from the decision of the ITAT Delhi Bench in the case of Neeraj Singal vs. ACIT in ITA No. 337/Del/2013 reported in 2015(3)-TMI-

680-ITAT Delhi, which is identical to the present case.

Accordingly, we uphold the order of the Ld. CIT (A).

6. In the final result, the appeal filed by the Department is dismissed.

Order is pronounced in the open court on 28-10-2016.

(G.D. AGRAWAL)  
VICE PRESIDENT

Dated: 28-10-2016  
\*Kavita Arora

(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT NEW DELHI



सहायक रजिस्ट्रार,  
Assistant Registrar,  
आयकर अपीलिय अधिकरण  
Income-tax Appellate Tribunal  
दिल्ली बेंच, नई दिल्ली  
Delhi Benches, New Delhi

10/10/10