

**IN THE INCOME TAX APPELLATE TRIBUNAL (VIRTUAL COURT),
'B' BENCH MUMBAI**

BEFORE SHRI M.BALAGANESH, AM

&

SHRI PAVAN KUMAR GADALE, JM

**ITA No.753/Mum/2014
(Assessment Year :2008-09)**

Bharat R. Ruia (HUF) Prop. B.R. International Phoenix Mills Premises 462, Senapati Bapat Marg Lower Parel, Mumbai – 13	Vs.	Deputy Commissioner of Income Tax, Central Circle 47, Aayakar Bhavan Churchgate, Mumbai
PAN/GIR No.AACHB3596E		
(Appellant)	..	(Respondent)

Assessee by	Shri Anuj Kisnadwala
Revenue by	Shri Oommen Tharian
Date of Hearing	04/01/2021
Date of Pronouncement	13/01/2021

आदेश / ORDER

PER M. BALAGANESH (A.M.):

This appeal in ITA No.753/Mum/2014 for A.Y.2008-09 arises out of the order by the Id. Commissioner of Income Tax (Appeals)-38, in appeal No.CIT(A)-38/IT-170/2011-12 dated 29/11/2013 (Id. CIT(A) in short) in the matter of imposition of penalty u/s.271(1)(c) of the Income Tax Act, 1961.

2. The Id. AO at the outset stated that additional grounds raised vide ground Nos. 6 & 7 are not pressed. The same is reckoned as a statement made from the Bar and accordingly, the same are hereby dismissed as not pressed.

3. Though the assessee has raised several ground Nos. 1-5 of the original grounds of appeal, we find that the effective issue to be decided in the instant case is whether the penalty u/s.271(1)(c) of the Act could be levied in the year of search instead of section 271AAA of the Act.

3.1. We have heard rival submissions and perused the materials available on record. We find that a search and seizure operation was carried out u/s.132 of the Act in the case of the Phoenix Group on 20/02/2008. Phoenix Mills Ltd. is a flagship company of the group engaged in the business of manufacturing and distribution of cotton textiles and in the business of real estate development. The Phoenix Group is controlled and managed by Ruia family. Accordingly, the business concerns and residences of Ruia family were also covered u/s.132 / 133A of the Act. The assessee is one such family member. Accordingly, the case was centralised and notice u/s.153A of the Act was issued on 05/02/2009 which was duly served on the assessee. The assessment was framed u/s.153A r.w.s.143(3) of the Act on 29/12/2010 for the A.Y.2008-09 determining total business loss of the assessee at Rs 106,62,59,460/- and allowing the same to be carried forward. In the said assessment, a sum of Rs.51,63,987/- was added towards unexplained cash deposits for which penalty proceedings were initiated u/s.271(1)(c) of the Act for concealment of particulars of income. This fact is clearly mentioned in the quantum assessment order in para 13.10. At the outset, we find that A.Y.2008-09 is the year of search in view of

the fact that search action u/s 132 of the Act carried out on 20/02/2008. We find that the provisions of Section 271AAA of the Act should have been initiated in the instant case for the year under consideration in view of specific provisions contained in Section 271AAA(1) of the Act. For the sake of convenience, the provisions of Section 271AAA are reproduced hereunder:-

*“(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 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** . (emphasis supplied by us)*

(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).

(4) The provisions of sections 274 and 275 shall, so far as may be, apply in relation to the penalty referred to in this section.

Explanation.—For the purposes of this section,—

(a) "undisclosed income" means—

(i) any income of the specified previous year represented, either wholly or partly, by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search under section 132, which has—

(A) not been recorded on or before the date of search in the books of account or other documents maintained in the normal course relating to such previous year; or

(B) otherwise not been disclosed to the [Principal Chief Commissioner or] Chief Commissioner or [Principal Commissioner or] Commissioner before the date of search; or

(ii) any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous

year which is found to be false and would not have been found to be so had the search not been conducted;

(b) "specified previous year" means the previous year—

(i) which has ended before the date of search, but the date of filing the return of income under sub-section (1) of section 139 for such year has not expired before the date of search and the assessee has not furnished the return of income for the previous year before the said date; or

(ii) in which search was conducted.]”

(emphasis supplied by us)

3.2. From the above provisions, it could be seen that expression “specified previous year” has been duly defined in Section 271AAA of the Act itself which includes year of search. There is absolutely no dispute that penalty in the instant case has been levied by the Id. AO only u/s.271(1)(c) of the Act for the A.Y.2008-09, being the year of search. We also find that the provisions of Section 271AAA of the Act specifies that penalty shall be levied @10% of undisclosed income of the ‘specified previous year’. These words are apparently not available in the provisions of Section 271(1)(c) of the Act. Moreover, the provisions of Section 271AAA(3) specifically state that no penalty u/s.271(1)(c) of the Act shall be imposed in respect of undisclosed income referred to in Sub-section(1). Hence, it could be seen that the provisions of Section 271AAA of the Act are very clear and unambiguous to drive home the point that for the ‘specified previous year’ which includes year of search, any undisclosed income shall be liable for penalty @10% of undisclosed income only u/s.271AAA of the Act. It is not in dispute that unexplained cash deposits of Rs.51,63,987/- has been treated as undisclosed income by the Id. AO for the A.Y.2008-09. Hence, the said addition shall not be eligible for levy of penalty u/s.271(1)(c) of the Act in view of specific provisions contained in Section 271AAA(3) of the Act. Moreover, we also find that penalty in the instant case u/s.271(1)(c) of the Act has been levied by the Id. AO @200% of the tax sought to be evaded on the undisclosed income of Rs. 51,63,987/-. We find that the rate of penalty @

200% is contemplated only u/s.271(1)(c) of the Act and not u/s.271AAA of the Act. It is elementary that the provisions of Section 271AAA and Explanation 5A to Section 271(1)(c) of the Act are distinct and separate and totally operate on two independent fields for different assessment years containing different provisions altogether. Hence, we hold that the lower authorities grossly erred in levying and confirming the penalty u/s.271(1)(c) of the Act in the facts and circumstances of the case for the A.Y. 2008-09 , being the year of search. Hence, we have no hesitation in directing the Id. AO to delete the said penalty for the A.Y.2008-09. Accordingly, the ground Nos. 1-5 raised by the assessee are allowed.

4. In the result, appeal of the assessee is partly allowed.

Order pronounced on 13/01/2021 by way of proper mentioning in the notice board.

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Sd/-
(M.BALAGANESH)
ACCOUNTANT MEMBER

Mumbai; Dated 13/01/2021

KARUNA, *sr.ps*

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai