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

\+ ITA 943/2016

PRINCIPAL COMMISSIONER OF INCOME TAX-2, AGRA ..... Appellant

Through Mr. Balbir Singh, Sr. Adv. with Mr. Prakash Kumar, Ms. Rubal Maini and Ms. Rashmi Singh, Advs.

versus

M/S D.D. RESORTS PVT. LTD. ..... Respondent

Through Mr. Sanjay Jain, ASG with Mr. Dileep Shivpuri, Sr. Standing Counsel and Mr. Vikrant A. Maheshwari, Adv.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

O R D E R

% 21.03.2017

1. The revenue is aggrieved by an order of the Income Tax Appellate Tribunal (ITAT) whereby the penalty imposed under Section 271-AAA of the Income Tax Act, 1961 (‘the Act’, for short) was deleted.

2. The brief facts of the case are that the assessee was subjected to Block Assessment under Section 153C of the Act on account of a search conducted on Rajdarbar Group of cases and in the course of which the statement of one Shri Rakesh Kumar Garg was recorded under Section 132(4) of the Act. Shri Rakesh Kumar Garg made a statement to the effect that ₹5.00 crore belonged to the assessee. This statement formed the basis for issuance of a notice under Section

153C of the Act. In response to the said notice, the assessee filed a revised return. After completion of the assessment, the Assessing Officer (A.O.) issued a notice under Section 271-AAA of the Act and imposed ₹50.00 lakhs as penalty, being 10% of the undisclosed income specified for that year. The assessee appealed to the CIT (A) but did not succeed. The ITAT granted relief based on the textual interpretation of the provision i.e. Section 271-AAA of the Act. The ITAT relied upon the decisions of the Ahmadabad and Mumbai Benches in *Mukesh S. Shah* (ITA Number:1942/Ahd/2012), *Mr Pravin S. Jain* (ITA 4005/M/2014), etc. The ITAT thereafter, has held as follows:

> *"16. We have heard both the sides and perused the material on record. We find that in this case, search u/s 132 of the Act was not carried out in the case of the assessee company whereas a survey was carried out u/s 133A of the Act at the project site of the assessee company; and additions were made on the basis of statement recorded by Rakesh Kumar Garg of M/s. Raj Darbar Group u/s 132(4) of the Act on the assessee company. The AO initiated penalty u/s 271AAA of the Act and levied a penalty of Rs.50 lakhs on the assessee company. The ld. CIT(A) has upheld the order of the AO. The assessee is aggrieved by the order of the ld. CIT(A) and has now preferred an appeal before us. The short question, that is being canvassed before us, is whether penalty u/s 271AAA can be initiated against the assessee or not. The penalty u/s 271AAA can be initiated against the assessee or not. The penalty u/s 271AAA can be triggered only if search has been initiated against the assessee*

u/s 132 of the Act on or after 01.06.2007 and within 01st day of July, 2012. Now, the thrust of the argument is that no search u/s 132 has been carried out against the assessee company, so penalty u/s 271AAA cannot be initiated against the assessee company. In order to buttress, this argument of his, he has also taken our attentionto the fact that pursuant to the search u/s 132 of the Act in the case of M/s. Raj Darbar Group, section 153C proceedings were initiated against the assessee company. It was pointed out by the ld. AR that if the search had been initiated u/s 132 of the assessee company then, proceedings u/s 153A of the Act should have been initiated against the assessee company. We find that on a perusal of the assessment order, pursuant to the search carried out at M/s. Rajdarbar Group, the proceedings were initiated u/s 153C against the assessee company; and the case was transferred to the Central Circle 5, New Delhi u/s 127 of the Act by the orders of CIT, Central – 1, New Delhi vide order dated 25.03.2010. Thus, we find force in the submission of the ld. AR that no search u/s 132 was initiated against the assessee company and only survey operation u/s 133(4) was initiated against the assessee company. In the factual scenario, we have to see whether an AO can initiate 271AAA penalty provisions against the assessee company. A bare reading of section 271AAA shows that, "the AO... ... direct that, in a case where search has been initiated u/s 132....." which clearly spells out that section 271AAA provisions get attracted only if search has been initiated u/s 132 of the Act. Here, in this case, we find that no search has been carried out against the assessee company. So, section

> *271AAA cannot be initiated against the assessee company. Therefore, we allow the claim of the assessee and delete the penalty levied against the assessee u/s 271AAA of the Act."*

3. The revenue argues that the ITAT's decision flouts the law since there is no reference to Section 153A or Section 153C, but rather to Section 271-AAA of the Act which contemplates imposition of lower rate of penalty, upon completion of a Block Assessment wherever a search yields undisclosed income. Thus, regardless of who the searched party is or where Section 153C of the Act is invoked, penalty under that provision is justified and warranted.

4. In the present case, the notice under Section 153C was issued to the assessee premised upon the statement made by a third party. Whilst the issuance of notice is undisputed in the sense that the amount – not only under AO's opinion *prima facie* "belonged" to the assessee, as a result of the statement, rather it was affirmed by the assessee upon its filing a return including the said amount in the Block Assessment filed by it. Arguen do, even if, it is taken that the revenue is correct in contending that Section 271-AAA of the Act *per se* is not excluded, nevertheless, the assessee would, in the circumstances of this case, not be deprived of the benefit under section 271AAA(2) of the Act. Even accepting the revenue's submission that the assessee stands in the same position as that of a searched party, the benefit that arises for a searched party, who not only surrenders the amount in the course of the search proceedings but also mentions it in the revised returns, cannot be denied on parity

of reasoning.

5. In view of the foregoing reasons, the Court is of the opinion that no substantial question arises. The appeal is dismissed.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 21, 2017/acm