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

+ **INCOME TAX APPEAL No. 973/2018**

Date of decision: 13th September, 2018

THE PR. COMMISSIONER OF INCOME TAX -CENTRAL-3

..... Appellant

Through Mr. Ruchir Bhatia, Advocate.

versus

BHAVI CHAND JINDAL

..... Respondent

Through Mr. Rohit Jain & Mr. Aniket D. Agrawal,
Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

This appeal by the Revenue under Section 260A of the Income Tax Act, 1961 (Act, for short) impugns the order dated 17th April, 2018 passed by the Income Tax Appellate Tribunal (Tribunal, for short) in the case of Bhavi Chand Jindal (respondent-assessee, for short). The impugned order affirms the order passed by the Commissioner of Income Tax (Appeals) deleting penalty of Rs.3 crores imposed by the Assessing Officer under Section 271AAA of the Act. The appeal relates to Assessment Year 2012-13.

2. Having heard learned counsel for the appellant-Revenue, we are not inclined to interfere with the impugned order for several reasons.

3. The assessment order records that the respondent-assessee is an individual, who was subjected to search and seizure operations at his premises at Kolkata on 14th November, 2011. Later on, this case was centralised with Central Circle-14, New Delhi alongwith Jindal Group of cases, which were also covered by the said search. The relevant portion of the assessment order reads as under:-

“ The assessee was confronted on the documents found and seized from his residence premises 20C, Belvedre Alipore, Kolkata, from factory premises of M/s Jindal India Ltd, Jindal Photo Ltd at 2/1, Ahmed Mamuj Street Liluah, Howrah, and Annexure JJ/1 & JJ/7 impounded from factory premises of Jindal India Ltd Anjul, Howrah. These documents contains details of cash payments made to various parties for acquisition of land. These document when confronted, the assessee has offered has the amount for which the source could not be explained for taxation and filed the return disclosing Rs.30,00,00,000/- on account of these discrepancies.

The case is assessed u/s 143(3) of the Income Tax Act, 1961 at returned income of Rs.30,28,31,563/-.

Penalty proceedings u/s 271AAA is being initiated separately as although the assessee has admitted the undisclosed income however he has not substantiated the manner in which the income has been derived.”

A reading of the aforesaid order would indicate that the penalty proceedings under Section 271AAA had been initiated on the limited ground that the respondent-assessee had not substantiated the manner in which the undisclosed income of Rs.30 crores had been derived. The respondent-assessee in the return of income had included this amount of Rs.30 crores. No addition to the returned income was made by the Assessing Officer.

4. The penalty order passed under Section 271AAA of the Act is equally brief. It refers to assessment order, reproduces submission made by the respondent-assessee, quotes Sub-sections (i) and (ii) to Section 271AAA(2) and thereafter the following findings are recorded:-

“ However, in order to escape from the penalty under Section 271AAA the assessee is required to fulfill all these conditions laid down under the Act and as reproduced above. In the present case, the assessee has not been able to substantiate the manner in which the undisclosed income was derived hence conditions laid down in the Act have not been fulfilled. Although the tax has been paid yet the assessee has not been able to present the manner to derive this income. The penalty proceedings are getting barred by limitation on 30.09.2014, hence the penalty is decided on the basis of material on record.

Considering the facts and circumstances of the case, I am of the opinion that it is fit case for imposition of penalty under Section 271AAA. The quantum of penalty is computed @ 10% of the amount of

disclosure at Rs. 30,00,00,000. Hence penalty is levied at Rs.3 Crore.

Penalty imposed u/s 271AAA: Rs.3,00,00,000/-”

5. It is clear that there is hardly any discussion in the penalty order. It is a brief and cryptic order.

6. We are concerned for we notice that surrender of Rs.30 crores was made by Mr. Punit Jatia, one of the directors of M/s Jindal (India) Limited in his statement recorded on oath under Section 132(4) of the Act on 15th November, 2011 on the basis of seized documents. The surrender was made by the respondent-assessee by way of letter dated 25th March, 2014. This has been treated as valid surrender and statement under Section 132(4) of the Act. Nature and manner of surrender and whether it would satisfy requirement of sub-section (2) to Section 271AAA is not examined either in the assessment order or in the penalty order under Section 271AAA. It is also apparent that this contention was not raised by the Revenue in the appeal preferred by them before the Tribunal against the order passed by the Commissioner of Income Tax (Appeals) deleting the penalty under the said Section. Even in the grounds of appeal raised before us, this contention is not raised.

7. A perusal of the order passed by the Commissioner of Income Tax (Appeals) deleting penalty would indicate that the respondent-assessee during the course of the assessment proceedings had submitted several letters to substantiate the manner in which the undisclosed income of Rs.30 crores was derived. Reference in this regard can be made to the following submissions made before and relied by the Commissioner of Income Tax (Appeals):-

“1.1 A search and seizure operation under section 132 of the Income Tax Act, 1961 was carried out in the case of Jindal Group on 14/11/2011 and during the course of search and seizure operation certain documents were found and seized from the premises of M/s Jindal (India) Limited at 2/1, Ahmed Mamuji Street, Liluah, Howrah — 711204 and from residential premises of the appellant at 20C, Belvedere Alipore, Kolkata and from premises Anjul Howrah.

1.2 During the course of search and seizure operation Mr. Punit Jatia one of the directors of M/s Jindal (India) Limited has made to offer additional income of Rs 30,00,00,000/- in his statement recorded on oath under section 132(4) of the Income Tax Act, 1961 on 15/11/2011 on the basis of some seized documents. Later on, it is clarified that the said offer of income of Rs 30,00,00,000/- relatable to the appellant.

(Pages. 30 to 31 of the Paper book)

1.3 During the course of assessment proceedings, the learned assessing officer vide notice dated

05/03/2014 asked the appellant to specify the nature of undisclosed income, its bifurcation along with supporting evidences.

(Page 7 of the Paper book)

1.4 In response, the appellant vide replies dated 19/03/2014, 25/03/2014 and 26/03/2014 filed the nature of undisclosed income, bifurcation of undisclosed income of Rs 30,00,00,000/- along with relevant documentary evidence as required by the learned assessing officer. The appellant further submitted that the said undisclosed income has primarily been earned from transactions in land / properties and from other speculative activities.

(Pages 9 to 18 of the Paper book)

1.5 The learned assessing officer issued notices under section 271AAA of the Income tax Act, 1961 dated 31/03/2014 and 03/09/2014, to show cause as to why an order imposing a penalty should not be made under section 271AAA of the Income tax Act, 1961 as the appellant has not substantiated the manner in which undisclosed income admitted during search was derived.

(Pages 8 to 8A of the Paper book)

In response, the appellant vide replies dated 28/04/2014 and 08/09/2014 submitted that no specific query was raised by the authorized officer during the course of recording statement under section 132(4) of the Income tax Act, 1961 in relation to the manner in which the undisclosed income was derived by the appellant. The appellant further submitted that since during the course of search undisclosed income is admitted and the same was offered for tax, together with interest has been paid,

return showing said income has been filed and the same is also been accepted as it is in the assessment, merely because the appellant had not specified the manner in which the said undisclosed income was derived, could not be the basis for denying the benefit of immunity from penalty under sub section (2) of section 271AAA of the Income tax Act, 1961.

(Pages 19 to 28 of the Paper book)

- 1.7 The appellant also submitted that the said offer of additional income of Rs30,00,00,000/- was made merely to buy peace and to avoid litigation and was subject to there being no penalty and prosecution under the provisions of the Act.

(Pages 19 to 28 of the Paper book)

- 1.8 However, the learned assessing officer imposed penalty under section 271AAA of the Income tax Act, 1961 only on the basis that the appellant failed to substantiate the manner in which the undisclosed income was derived without appreciating the fact that no specific question was asked by the authorized officer during the course of recording statement under section 132(4) about the manner of deriving undisclosed income and also without appreciating the fact that the appellant has substantiated the manner in which undisclosed income was derived before the learned assessing officer during the course of assessment proceedings. The learned assessing officer alleged in the impugned order that:

"However, in order to escape from the penalty under section 271AAA the assessee is required to fulfill all these conditions laid down under the Act and as reproduced above. In the present case, the assessee has not been able to substantiate the manner in which the undisclosed income was derived; hence conditions laid down in the Act have not been

fulfilled. Although the tax has been paid yet the assessee has not been able to present the manner to derive this income. The Penalty proceedings are getting barred by limitation on 30.09.2014, hence the penalty is decided on the basis of material on record.

(Pages 1 to 2 of the Paper book)

1.9 On perusal of the impugned order, it is quite evident that the learned assessing officer has imposed penalty under section 271AAA of the Income tax Act, 1961 only on the basis that the appellant has not been able to substantiate the manner in which the undisclosed income was derived.

1.10 It is pertinent to note that a search and seizure operation under section 132 of the Income tax Act, 1961 was carried out in the case of Jindal Group on 14/11/2011. It is pertinent to note that during the course of search and seizure operation Mr. Punit Jatia, one of the directors of M/s Jindal (India) Limited has made to offer of income of Rs30,00,00,000/- in his statement recorded on oath under section 132(4) of the Income tax Act, 1961 on 15/11/2011 on the basis of certain seized documents. It is also pertinent to note that the appellant filed his return of income for the said assessment year on 31/08/2012 declaring income of Rs 30,28,31,563/-, which inter alia includes income of Rs 30,00,00,000/-, which was surrendered by Mr. Punit Jatia one of the directors of M/s Jindal (India) Limited in his statement recorded on oath under section 132(4) of the Income tax Act, 1961 on 15/11/2011, which was relatable to the appellant. It is also pertinent to note that the said disclosure was made to buy peace of mind, avoid litigation with the department and penal provisions under the Income tax Act, 1961.

(Pages 5 to 6 and Pages 29 to 31 of the Paper book)

1.11 It is pertinent to note that the learned assessing officer vide notice dated 05/03/2014 asked the appellant to specify the nature of income, bifurcation with the supporting evidences.

(Page 7 of the Paper book)

1.12 It is also pertinent to note that in response the appellant vide reply dated 19/03/2014 submitted that the income of Rs 30,00,00,000/- declared under the under the head of Income from other sources has been earned during the year relevant to the assessment year 2012-13, from transactions in land / properties and also from other speculation activities. It is also pertinent to note that the appellant vide reply dated 25/03/2014 and 26/03/2014 also furnished the break—up of Rs 30,00,00,000/- along with documentary evidence earned from transactions in land / properties / speculation activities. Thus, the appellant during the course of assessment proceedings has filed detail of nature and bifurcation of the undisclosed income of Rs 30,00,00,000/- as asked by the learned assessing officer.

(Pages 9 to 18 of the Paper book)

1.13 It is pertinent to note that the learned assessing officer alleged in the impugned order that the appellant has not fulfilled one of the condition of 271AAA (2) of the Income tax Act, 1961 i.e. "substantiate the manner in which the undisclosed income was derived", which is essential to be complied in order to get immunity from the imposition of penalty under section 271AAA of the Income tax Act, 1961.

(Pages 1 to 2 of the Paper book)

1.14 It is pertinent to note that the appellant has disclosed the manner by which the undisclosed income was earned vide his replies dated 19/03/2014, 25/03/2014 and 26/03/2014 submitted

before the learned assessing officer during the course of assessment proceedings in which he has stated that the income of Rs 30 Crores declared under the head of Income from other sources has been earned during the year relevant to the A. Y. 2012-13, from transactions in land/ properties and also from other speculation activities. The appellant has also furnished the documentary evidences in respect of transaction in properties.

(Pages 9 to 18 of the Paper book)

1.15 It is also pertinent to note that the appellant has voluntarily offered the amount of Rs 30,00,00,000/- for taxation with the understanding with the income tax department that no penalty/prosecution proceedings will be initiated. It is also pertinent to note that the learned assessing officer accepted the amount offered by the appellant for taxation in toto, without any variation in the amount offered by the appellant for taxation on this account, this fact substantiated that the appellant has passed the test of Section 271 AAA(2) of the Income tax Act, 1961. Therefore, penalty of Rs 3,00,00,000/- imposed under section 271AAA of the Income tax Act, 1961 is liable to be deleted.

1.16 It is also pertinent to note that the authorized officer during the course of recording statement under section 132(4) of the Income tax Act, 1961 has not asked the appellant / directors of M/s Jindal (India) Limited to specify or to substantiate the manner in which the undisclosed income of Rs 30,00,00,000/- was derived and thus the appellant / directors of M/s Jindal (India) Limited has not specified the manner in which the said undisclosed income of Rs 30,00,00,000/- was earned at the time of

recording statement under section 132(4) of the Income tax Act, 1961. However, during the course of assessment proceedings the appellant has specified and substantiated the manner in which the said undisclosed income of Rs 30,00,00,000/- was derived as required by the learned assessing officer.

(Pages 9 to 18 and Pages 29 to 31 of the Paper book)”

8. The aforesaid communications written by the respondent-assessee to the Assessing Officer during the course of the assessment proceedings have not been placed on record in the present appeal. The penalty order also does not mention and refer to the said communications and the documents enclosed. Communications written and documents furnished are not denied.

9. Plea and contention of the Revenue in the present appeal is to the effect that the statement made under Section 132(4) did not indicate and state the manner in which the undisclosed income was derived. This is different from the ground and reason given by the Assessing Officer to impose penalty of Rs.3 crores under Section 271AAA of the Act, which was that the respondent-assessee had not been able to substantiate the manner in which the undisclosed income of Rs.30 crores had been derived. The two aspects are different as is clear from clauses (i) and (ii) to sub-section (2) to Section 271AAA of the Act. The Assessing Officer had not relied upon or

claimed that there was violation of clause (i) to sub-section (2) to Section 271AAA, but had imposed penalty on account of the fact that there was violation and non-compliance of clause (ii) to sub-section (2) to Section 271AAA of the Act, i.e., assessee was not able to substantiate the manner in which the undisclosed income was derived.

10. In view of the aforesaid position, there is no merit in the present appeal and the same is dismissed, without any order as to costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

SEPTEMBER 13, 2018
VKR