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

\+ ITA 1479/2018

SSA INTERNATIONAL LTD ..... Appellant

Through: Mr.Sumit Lalchandani, Mr.Salil Kapoor, Mr.Shivam Yadva and Mr.Utkarsh Kumar Gupta, Adv.

versus

THE ASSISTANT COMMISSIONER OF INCOME TAX & ANR. ..... Respondents

Through: Mr. Aseem Chawla, Sr.SC with Ms.Monica Benjamin, Jr.SC, Ms. Pratishtha Chaudhary and Ms.Nivedita, Advs.

CORAM:
HON'BLE MR. JUSTICE YASHWANT VARMA
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

O R D E R

% **09.05.2024**

1. The assessee impugns the order of the Income Tax Appellate Tribunal [**"ITAT"**] dated 30 May 2018 and proposes the following questions for our consideration:-

> "(I) Whether the ITAT proceeding on an erroneous and untenable interpretation of section 271AAA, failed to appreciate that in order to escape the levy of penalty in terms of sub-section (2) thereof, the requirement of "substantiating the manner in which undisclosed was derived" by the Assessee Company, was not required to, be fulfilled during the course of statement recorded under section 132(4) of the Act, and could be fulfilled during the ensuing assessment proceedings, as done by the Appellant in the present case?
> (II) Whether the impugned order is grossly perverse and unsustainable in law inasmuch as the ITAT failed to appreciate that

the Assessee Company fulfilled other conditions under the said sub-section, viz., clauses (i) and (iii) therein, was never the case of Assessing Officer?
(III) Whether the High Court failed to appreciate that where, during the course of search, a specific query was not raised by the officer requiring the Assessee Company to substantiate the manner in which the undisclosed income was derived', penalty under section 271AAA of the Act could not, in any case, be levied on the Petitioner on account of such failure?
(IV) Whether on the facts and in the circumstances of the case, the order passed by AO under section 271AAA of the Act is without jurisdiction particularly when the penalty initiated is without recording any satisfaction in the assessment order and further without mentioning of specific limb of section 271AAA of the Act."

2. The issue itself pertains to the levy of penalty under Section 271AAA of the Act. Although the Assessing Officer ['**AO**'] had held against the appellant, the Commissioner of Income Tax (Appeals) [**'CIT(A)'**] allowed the appeal which had been preferred principally on the ground that the assessee had not been queried with respect to the issue of specification and substantiation of the income which was rendered.

3. While dealing with the aforesaid view as taken, the ITAT has held as follows:-

> "**5.** Undisputedly, during the search and seizure operation conducted at the business and residential premises of the assessee u/s 132(1) on 11.12.2009, assessee surrendered additional income of Rs.21 crores. It is also not in dispute that in the return filed by the assessee for A Y 2010-11, assessee declared undisclosed income of Rs.21 crores which includes Rs.9.25 crores on account of excess stock and RS.l1.75 crores as income from other sources in the computation of income annexed with the tax return. It is also not in dispute that the assessee has expressed his inability to explain certain seized documents rather stated that those may be included to form part of the amounts surrendered during search and seizure operation. It is also not in dispute that assessee has already paid tax together with interest on the surrendered income of Rs.21 crores.
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> **10**. The Id. CIT (A) deleted the penalty on the premise that if no specific question was put to assessee uls 132(4), it cannot be concluded that the assessee has failed to reply or specifyl

substantiate the manner of concealment. It is settled principle of law that assessee has to specify the manner in which income has been derived and substantiated the manner in which the undisclosed income was derived at the time of search in its statement recorded uls 132(4) and not thereafter.

11. However, answer to the question no.43 reproduced above categorically goes to prove that the assessee has shown his inability to reconcile the discrepancy in the stock found and failed to substantiate the manner in which income has been deriveq by the search team during the course of search, however has made the disclosure only in order to buy peace of mind and to avoid litigation. So, we are of the considered view that the assessee has failed to satisfy the conditions laid down in section 271AAA (2) so as to get the general amnesty uls 271AAA(2) because the assessee has neither specify the manner nor substantiate the manner in which the undisclosed income was derived."

4. As we read Section 271AAA(2) of the Act, it becomes manifest that an escape from the imposition of a penalty is dependent not only on a disclosure of income having been made in the course of a statement recorded under Section 132(4) of the Act but the assessee also standing obligated to specify the manner in which that income had been derived and thereafter substantiate the said disclosures.

5. As we read the order of the ITAT it is manifest that the assessee / appellant failed to meet the aforesaid requirements. We consequently find no merit in the instant appeal. It shall stand dismissed.

YASHWANT VARMA, J.

PURUSHAINDRA KUMAR KAURAV, J.

MAY 09, 2024/MJ