

**IN THE INCOME TAX APPELLATE TRIBUNAL,
'A' BENCH, KOLKATA**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Shri Girish Agrawal, Accountant Member**

**I.T.A. No. 2335/KOL/2019
Assessment Year: 2015-2016**

***Assistant Commissioner of Income Tax,..... Appellant
Central Circle-3(2), Kolkata,
Aayakar Bhawan Poorva, 5th Floor,
110, Shanti Pally, Kolkata-700107
-Vs.-***

***M/s. Clean Coal Enterprises Pvt. Limited,.....Respondent
Rama House, House No. P-18, SBI Colony,
Kranti Nagar, Srikant Verma Marg,
Bilarpur-495001
[PAN: ACTPJ4441K]***

Appearances by:

*Shri Biswanath Das, Sr. D.R., appeared on behalf of the Revenue
Shri Amit Agarwal, A.R., appeared on behalf of the assessee*

Date of concluding the hearing : August 03, 2022

Date of pronouncing the order: August 4, 2022

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The Revenue is in appeal before the Tribunal against the order of Id. Commissioner of Income Tax (Appeals)-21, Kolkata dated 08.08.2019 passed for the assessment year 2015-16.

2. The solitary grievance of the Revenue is that the Id. CIT(Appeals) has erred in deleting the penalty levied under section 271AAB of the Income Tax Act, 1961.

3. Brief facts of the case as emerging out from the assessment order are that the assessee belongs to "THE HIND ENERGY GROUP OF COMPANIES", where a search was conducted under section 132(1) of the

Income Tax Act on 27.03.2015. Incriminating material belonging to the assessee was found and, therefore, notice under section 153C of the Income Tax Act was issued and served upon the assessee. In response to the notice, the assessee has filed its return of income under section 153C on 26.12.2016 declaring total income at Rs.1,25,82,290/-. An assessment order was passed on 31.12.2016 accepting the returned income declared by the assessee.

4. The ld. Assessing Officer has initiated the penalty proceedings under section 271AAB of the Income Tax Act, 1961. The assessee pleaded that Section 271AAB is not applicable as no search was initiated in its case, but the ld. Assessing Officer rejected the contention of the assessee and imposed a penalty of Rs.1,98,31,170/-. The ld. Assessing Officer was of the view that in the Group Company, a disclosure under section 132(4) amounting to Rs.6,61,03,900/- was made and, therefore, penalty is to be imposed on such disclosure.

5. Dissatisfied with the penalty order, the assessee carried the matter in appeal. The ld. CIT(Appeals) has decided appeals of four assesseees, namely Kalawati Devi Agarwal, Arjun Lal Agarwal, Savitri Devi Agarwal and that of assessee. The ld. 1st Appellate Authority has deleted the penalty by holding that penalty under section 271AAB can only be imposed if search has been conducted on the premises of the assessee. The assessments were not framed under section 153A, rather these were framed under section 153C of the Income Tax Act.

6. Before us, in response to the notice of hearing, an adjournment application has been filed by Sanjay Modi & Company under the signature of Shri Amit Agarwal, CA, appeared before us and sought an adjournment. We have perused the record. We find that the assessee has been taking adjournment time and again without any reason. Therefore, we refuse the adjournment and heard the appeal with the assistance of ld. D.R.

7. On due consideration of the facts and circumstances, we do not find any merit in this appeal because the opening line of section 271AAB contemplates that there should be a search for invoking this provision. For the facility of reference, we take note the relevant provision, which reads as under:-

“271AAB: (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 July, 2012, the assessee shall pay by way of penalty, in addition to tax, if any, payable by him,-

(a) a sum computed at the rate of ten percent of the undisclosed income of the specified previous year, if such 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) on or before the specified date-

(A) pays the tax, together with interest, if any, in respect of the undisclosed income; and

(B) furnishes the return of income for the specified previous year declaring such undisclosed income therein.

8. A perusal of the above clause would reveal that it is applicable where search has been initiated under section 132 of the Income Tax Act.

It is pertinent to observe that in the Scheme of Income Tax Act, if a search is being conducted upon the assessee and incriminating material was found, then notice under section 153A of the Income tax Act would be served inviting the assessee to file return of his income. However, during the course of search, if any incriminating material belonging to some other person than the searched person was found, then Id. Assessing Officer of the searched person would record his satisfaction demonstrating the fact that material belonging to other person was found and it exhibits the escapement of some income from taxation. This satisfaction note is to be transmitted to the Id. Assessing Officer, who is having jurisdiction on such other person and the Id. Assessing Officer of other person would issue notice under section 153C. Therefore, sections 153A and 153C deal with two different categories of assesseees. The penalty leviable under section 271AAB is with respect to those assesseees where search has been conducted. The case of the present assessee falls under second category. The assessment was made under section 153C of the Income Tax Act. We fail to understand from where the Id. Assessing Officer has brought this statement of disclosure. Statement under section 132(4) is to be recorded during the course of search to find out, whether any declaration is to be made by an assessee or not. The next fatuous attempt at the end of Id. Assessing Officer is that taxable income determined by him in the assessment order is of Rs.1,25,82,290/-, which is almost equivalent to the returned income disclosed by the assessee. The penalty is to be computed by taking cognizance of the assessed income. Here the Id. Assessing Officer has imposed a penalty of Rs.1.98 crores without making any reference to the income determined in the hands of assessee, rather taking cognizance of the statement of searched person, who might have disclosed Rs.6.6 crores. It is totally against the law and the Id. 1st Appellate Authority has rightly appreciated the facts and circumstances by deleting the penalty. We do not find any merit in the appeal. Hence it is dismissed.

9. In the result, the appeal of the Revenue is dismissed.

Order pronounced in the open Court on August 4th, 2022.

Sd/-

(Girish Agrawal)
Accountant Member

Kolkata, the 4th day of August, 2022

Sd/-

(Rajpal Yadav)
Vice-President (KZ)

- Copies to :*
- (1) ***Assistant Commissioner of Income Tax,
Central Circle-3(2), Kolkata,
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110, Shanti Pally, Kolkata-700107***
 - (2) ***M/s. Clean Coal Enterprises Pvt. Limited,
Rama House, House No. P-18, SBI Colony,
Kranti Nagar, Srikant Verma Marg, Bilarpur-495001***
 - (3) *Commissioner of Income Tax(Appeals)-21, Kolkata*
 - (4) *The Departmental Representative*
 - (5) *Guard File*

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By order

*Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata*

Laha/Sr. P.S.

