

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एकल सदस्यीय", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH  
BENCH 'SMC' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य  
BEFORE: SMT. DIVA SINGH, JM

आयकर अपील सं./ITA No. 171/CHD/2017  
निर्धारण वर्ष / Assessment Year : 2001-02

Shri Nirmal Bajaj, 70A, Shastri Nagar, Ludhiana.	बनाम VS	The DCIT, Circle 6 Ludhiana.
स्थायी लेखा सं./PAN No. :ABJPB4766G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

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आयकर अपील सं./ITA No. 172/CHD/2017  
निर्धारण वर्ष / Assessment Year : 2001-02

Ms. Preeti Bajaj, 2746/1, Gurdev Nagar, Ludhiana.	बनाम VS	The DCIT, Circle 6 Ludhiana.
स्थायी लेखा सं./PAN No. :AFVPB6764N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri Saarbjit Garg, CA  
राजस्व की ओर से/ Revenue by : Shri Manjit Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 15.01.2019  
उद्घोषणा की तारीख/Date of Pronouncement :25.01. 2019

**आदेश/ORDER**

By the present appeals filed by the assessee, the correctness of the separate orders dated 07.10.2016 of CIT(A)-4 Ludhiana pertaining to 2001-02 assessment year in the penalty proceedings is assailed.

2. The separate orders dated 31.10.2017 and 28.09.2017 passed in the present appeals have been recalled in M.A. 83/CHD/2018 and M.A./90/CHD/2018 moved by the assessee. The assessee in the said Miscellaneous Applications u/s 254(2) of the Income Tax Act,1961 had argued that non-representation before the ITAT on 08.08.2017 which led to the disposal of the appeals for non-representation was on account of the bonafide belief that the

appeals in the penalty proceedings would automatically be taken up for hearing only after the hearing in the quantum appeal is concluded. The said appeals too initially stood dismissed by the ITAT for non-representation and thereafter had been recalled by way of Miscellaneous Applications moved by the assessee. The ld. AR in the arguments advanced in M.A.83/CHD/2018 and M.A.90/CHD/2018 had filed copy of the consolidated order passed by the Co-ordinate Bench dated 09.07.2018 in ITA 1242/CHD/2010 and ITA 1243/CHD/2010 and had submitted that in the case of the present assessee, the assessment stood quashed, accordingly, it was his prayer that the penalty proceedings cannot survive and thus the appeals may also be taken up for hearing as he is coming from out station.

3. Considering the request and the consolidated order passed by the Co-ordinate Bench in the quantum proceedings, the Miscellaneous Applications moved by the assessee stood allowed and in terms of the prayer of the parties, a pass over was given. The said pronouncement stood made at 10.40 AM as on the said date, the SMC Bench first convened. After the concluding of the hearings in the Division Bench, the present appeals were taken up for hearing at about 12.40 PM. In the light of the prayer of the parties, it was ascertained from both the parties especially the Department whether still time was required to go through the order passed by the Co-ordinate Bench in the quantum proceedings. The ld. Sr.DR stated that he has no objection to argue the appeal.

4. The ld. AR on the other hand, reiterated the submissions namely that once in the quantum proceedings, the assessments in the case of both the assessee have been quashed, the occasion to levy penalty does not arise. For ready reference, we extract the order of the Co-ordinate Bench :

*“The present appeals have been preferred by the different assessee against the separate orders dated 16.08.2010 of Commissioner of Income Tax (Appeals)-II, Ludhiana [hereinafter referred to as ‘CIT(A)’].*

*2. Since the facts and the issues involved in these appeals are identical, hence, these were heard together and are being disposed of by this common order. ITA No. 1242/Chd/2010 is taken as a lead case for narration of facts.*

**ITA No. 1242/Chd/2010 :**

3. *The assessee in this appeal apart from challenging the reopening of the assessment u/s 147 of the Income-tax Act, 1961 (in short 'the Act') on legal ground has also agitated the additions made by the Assessing officer on merits in the re-assessment order passed u/s 147 of the Act.*

4. *The brief facts of the case are that the assessment was reopened by the Assessing officer observing that as per the information received from the D.I., New Delhi, the assessee had received bogus accommodation entries for a total sum of Rs. 19,03,800/- on 13.5.2000 from Shri Mukesh Gupta from Account No.2334 of Vijay Bank, Ram Nagar, New Delhi. Further, that the assessee had not filed the return of income for assessment year 2001-02, therefore, he observed that he had reason to believe that the amount of Rs. 19,03,800/- introduced by the assessee in her books of account through accommodation entries was undisclosed income of the assessee, which had escaped assessment.*

5. *At the outset, Ld. Counsel for the assessee has invited our attention to the impugned order of the Assessing officer to show that neither the assessee was confronted with any such evidence of any accommodation entry from Shri Mukesh Gupta during the assessment proceedings, nor any addition has been made on that account. Even there is no whisper of any evidence in the assessment order regarding the alleged accommodation entry from Sh. Mukesh Gupta. The Assessing officer has made the impugned additions u/s 68 of the Act on the basis of peak credit relating to the deposits found in her bank account, however, neither there is any specific allegation about the deposits / receipt from Shri Mukesh Gupta nor any deposit has been linked by the Assessing officer to any entry received through Shri Mukesh Gupta. It is apparent on the record that the additions in this case have not been made on the grounds on which re-assessment were initiated. The case of the assessee is squarely covered by the decision the Jurisdictional High Court in the case of 'CIT Vs. Atlas Cycles Industries' (1989) 46 Taxman 315 (P&H), the relevant part of the order of the Hon'ble High Court is reproduced as under;-*

“9. *Adverting to the question referred regarding the reassessment proceedings, we are of the view that the Tribunal was right in cancelling the reassessment as both the grounds on which reassessment notice was issued were not found to exist, and the moment such is the position, the Income-tax Officer does not get the jurisdiction to make a reassessment. This view of ours finds support from the Supreme Court decisions in CIT v. A. Raman and Co. [1968] 67 ITR 11 and Bankipur Club Ltd. v. CIT [1971] 82 ITR 831. Similar view has been taken by the Rajasthan High Court in Addl. CIT v. Ganeshilal Lal Chand [1985] 154 ITR 274. On behalf of the Revenue, CIT v. Ahmedabad Manufacturing and Calico Printing Co. Ltd. [1977] 106 ITR 159, a decision of the Gujarat High Court was cited. On a consideration of the matter, we are of the view that in view of the aforesaid Supreme Court decisions, the view taken by the Rajasthan High Court is correct and the view taken by the Gujarat High*

*Court is not, correct. Accordingly, we dissent from the view taken by the Gujarat High Court and in view of the decisions of the Supreme Court and Rajasthan High Court, we hold that the Income-tax Officer did not have the jurisdiction to proceed with the reassessment, the moment he found the two grounds mentioned in the reassessment notice incorrect or non-existent. Accordingly, we answer the referred question in favour of the assessee, in the affirmative, that the Tribunal was right in cancelling the reassessment.”*

6. *Identical view has also been taken by the Hon'ble Bombay High Court in the case of CIT Vs. Jet Airways (I) Ltd (2011) 331 ITR 236 (Bom.) holding that where the Assessing officer does not assess income for which reasons were recorded u/s 147 of the Act, he cannot assess other income u/s 147 of the Act.*

7. *In this case, though the Assessing officer in the reasons for reopening of the assessment recorded that the assessee had received bogus accommodation entries for a total sum of Rs. 19,03,800/-, however, in the assessment order, neither any evidence nor any discussion has been made in this respect. In view of this, the reopening of the assessee in this case cannot be held to be justified, the same is, therefore, quashed and consequential additions made by the Assessing officer are hereby ordered to be deleted.*

**ITA No.1243/Chd/2010 :**

7. *The facts and issue involved in this case are identical except the figure of the amount of alleged accommodation entry received by the assessee from Shri Mukesh Gupta. In this case also, neither there is any discussion nor any material relied upon by the Assessing officer regarding any accommodation entry allegedly received by the assessee from Shri Mukesh Gupta.*

8. *In view of our discussion made above, the re-assessment in this case is also held bad-in-law and the same is accordingly quashed and the consequential additions made, if any, are ordered to be deleted.*

*In the result, both the captioned appeals of the assesseees are hereby allowed.*

5. The ld. Sr.DR considering the consolidated order passed stated that in the face of the order in the quantum proceedings, he has nothing further to state.

6. I have heard the rival submissions and perused the material on record. The penalty orders u/s 271(1)(c) of the Act in the facts of the present case have been imposed on the basis of the additions made in the quantum proceedings. Once the assessments stand quashed, the penalty proceedings in the absence of additions made cannot survive. In the circumstances, the prayer of the assessee that the penalty orders do not survive is found to be correct. The

position of law in this was not disputed by the Revenue and position of facts stands addressed by the Co-ordinate Bench. The impugned orders, accordingly, are set aside and the penalty orders are dismissed as infructuous. Said order was pronounced in the Open Court at the time of hearing itself.

7. In the result, appeals of the assessee are allowed.

Order pronounced in the Open Court on 25.01. 2019.

Sd/-

(दिवा सिंह )

**(DIVA SINGH)**

**न्यायिक सदस्य/Judicial Member**

“पूनम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant -
2. प्रत्यर्थी/ The Respondent -
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,  
सहायक पंजीकार/ Assistant Registrar