

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No. 400/ASR/2019
(Assessment Year: 2005-06)**

Sh. Srijal Gupta, 5-A Patel Nagar Pathankot-145001 PAN: AOLPG 6303F (Appellant)	Vs.	Income Tax Officer of Income Tax Ward 6(3), Pathankot (Respondent)
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Appellant by	None (written submissions)
Respondent by	Sh S.M. Surendranath, Sr. DR

Date of Hearing	05.07.2022
Date of Pronouncement	12.07.2022

ORDER

Per: Anikesh Banerjee, JM:

The instant appeal is directed against the order of Ld. Commissioner of Income Tax (Appeal)-2, Amritsar, {in brevity CIT(A)} bearing appeal No. CIT(A)-2/10059/2015-16 dated of order 18.03.2019, order passed u/s. 250(6) of the Income Tax

Act, 1961 (in brevity of the Act) for the Assessment year 2005-06. The impugned order was originated from the order of Income Tax Officer, Ward 6(3), Pathankot (in brevity A.O) order passed u/s.271(1)(c) of the Act order dated 27.01.2016 .

2. The brief fact of the case is that the assessee was assessed u/s. 143(3)/147 of the Act and tax was demanded to Rs.13,28,820/- against the addition of amount to Rs. 20,60,542/-. The assessee filed an appeal against the order u/s. 143(3)/147. The Id. CIT(A) adjudicated in favour of the Revenue. Aggrieved the assessee filed an appeal before the ITAT, Amritsar Bench. The ITAT Amritsar Bench had adjudicated the assessee's appeal bearing ITA no. 130/ASR/2015 dated of pronouncement 16.08.2019. The said bench passed the order with the finding as extracted below:

The said Bench passed the order with the findings as extracted below:

"So, however, taking a broad view in the matter, cash is regarded as available with the family to some extent, which was utilized for investment in the name of the assessee (routed through the firm , RE). Cash gift, as a source of cash introduction in the firm RE is, accordingly, accepted at Rs.2.50 lac, i.e. as per the gift deed dated 10.01.2004, the earliest in time, also furnished before the AO.

There is no question of the cash availability with the assessee being regarded at a higher amount. Strictly speaking, even this should, in fact, be preceded by the verification (by the AO) of the cash withdrawals by as well as the same, apart from being liable to be consumed for household purposes by the family (from fey.2001-02 to 2004-05), could have been also utilized in investment/s in his name of in the name of any other family member/s. The same is however dispenses with, considering the matter being old, as well as the tedium involved, to give a quietus to the matter. The impugned addition, accordingly, gets confirm at Rs.10,80,145/- (i.e. Rs.13,30,145 Rs.2.50 lacs)”

Accordingly, the penalty order should be modified after the order of ITAT, Amritsar Bench for the assessment year.

3. The counsel of the assessee was unable to appear but filed written submissions before the Bench and prayed for adjudication the issue on the basis of written submissions. The prayer of the counsel was that the appeal order was passed hastily. The Id. AO did not keep in abeyance the proceedings till the disposal of ITAT. After order of the ITAT, the demand should be modified. Accordingly, calculation of penalty amount will be modified.

4. The Id. DR also accepted the fact and did not sought for any objection.

5. We considered the submissions of assessee. After the thoughtful observations of the fact and for the sake of natural justice, the assessee should get effect of ITAT order,

mentioned above. The assessment order should be modified accordingly by giving effect of the order of the Bench. The penalty u/s. 271(1)(c) is always depending on tax levied as per assessment order. The modification of assessment & penalty orders is required for calculating the correct tax payable of assessee. Here, we are setting aside the penalty order passed u/s. 271(1)(c) of the Act to the Id. AO for further deciding the quantum of penalty. The assessee should get reasonable opportunity as per section 274 of the Act.

6. In result, appeal of the assessee ITA No. 400/Asr/2019 is allowed for statistical purposes.

Order pronounced in the open court on 12.07.2022

Sd/-
(Dr. M. L. Meena)
Accountant Member

Sd/-
(Anikesh Banerjee)
Judicial Member

Copy of the order forwarded to:

- (1) The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy

By Order