

**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. Nos. 137 to 141 & 143/Asr/2022  
Assessment Years: 2007-08 to 11-12 & 2013-14**

<b>Rajan Batra, 46-Chotti Baradari Part-1, Jalandhar. [PAN: AEVPB4152K] (Appellant)</b>	<b>Vs.</b>	<b>Dy. Commissioner of Income Tax, Central Circle-II, Jalandhar. (Respondent)</b>
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**I.T.A. Nos. 81 to 83 & 85/Asr/2022  
Assessment Years: 2009-10 to 2013-14**

<b>Rajesh Tiwari, 119-B, Punjab Avenue, Ladhewali, Jalandhar. [PAN: AAFPT4090C] (Appellant)</b>	<b>Vs.</b>	<b>Dy. Commissioner of Income Tax, Central Circle-II, Jalandhar. (Respondent)</b>
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**I.T.A. Nos. 111 & 113/Asr/2022  
Assessment Years: 2011-12 & 2013-14**

<b>Asstt. Commissioner of Income Tax, Central Circle-I, Jalandhar. (Appellant)</b>	<b>Vs.</b>	<b>Rajan Batra, 46-Chotti Baradari Part-1, Jalandhar. [PAN: AEVPB4152K] (Respondent)</b>
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<b>Appellant by</b>	<b>Sh. Ashray Sarna, CA.</b>
<b>Respondent by</b>	<b>Sh. Girish Bali, CIT. DR</b>

<b>Date of Hearing</b>	<b>21.03.2023</b>
<b>Date of Pronouncement</b>	<b>24.05.2023</b>

**ORDER**

**Per: Bench:**

Batch of appeals were filed by both the assesseees and the revenue against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana,[in brevity the ‘CIT (A)’] order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act] related to A.Ys. 2007- 08 to 11-12 &2013-14.The impugned order was emanated from the order of the Id. Dy. Commissioner of Income Tax, Central Circle-II, Jalandhar (in brevity the AO) order passed u/s 153A/144 of the Act.

2. At the outset all the appeals of the assesseees and revenue are under a common issue and have the same factual ground. The revenue has also filed appeal for AY 2011-12 &2013-14. All the appeals are taken together, heard together and adjudicated together. For the sake of convenience, we take ITA No. 137/Asr/2022 is a lead case and have a same legal issue in relation to ITA Nos. 138 to 141& 143/Asr/2022.

**ITA No. 137/Asr/2022Assessee’s appeal for AY07-08**

**Ground of Assessee**

3. The assessee has taken the following grounds which are extracted as below:

*“1. That the order passed by the Hon’ble CIT (A) dated 30.03.2022 is against the law and facts of the case.*

*2. That having regard to the facts and circumstances of the case, Hon’ble CIT (A) has erred in law and on facts in confirming the action of Ld. AO in assuming jurisdiction and*

*framing the impugned assessment order u/s 153A of the Act which is bad in law and against the facts and circumstances of the case and is not sustainable on various legal and factual grounds.*

3. *That having regard to the facts and circumstances of the case, Hon'ble CIT(A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 153A of the Act and without complying with the mandatory conditions u/s 153B and 153D as envisaged under the Income Tax Act, 1961.*

4. *That in any case and without prejudice to the above grounds, additions made in the impugned order are beyond jurisdiction and illegal also for the reason that these could not have been made since no incriminating material has been found as a result of search warranting impugned addition.*

5. *That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in making an addition of Rs. 90,000/- on account of cash credits in bank account, without considering the facts of the case and without observing the principles of natural justice.*

6. *That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the action of Ld. Assessing Officer disallowed the deduction claimed u/s 80-C of Rs.90,741/-, without considering the facts of the case and without observing the principles of natural justice.*

7. *That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the action of Ld. Assessing Officer disallowed of Rs. 48,083/-, loss claimed on house property, without considering the facts of the case and without observing the principles of natural justice.*

s. *That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in making an addition of Rs. 17,88,806/-, without considering the facts of the case and without observing the principles of natural justice.*

9. *That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the action of Ld. Assessing Officer disallowed of Rs. 70,821/-, on account of interest debited in P&L account, without considering the facts of the case and without observing the principles of natural justice.*

10. *That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in making an addition of Rs. 7,636/-, without considering the facts of the case and without observing the principles of natural justice*

11. *That having regard to the facts and circumstances of the case, Hon'ble CIT (A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in making an addition of Rs. 7,25,000/- u/s 69 of the Act, without considering*

*the facts of the case and without observing the principles of natural justice*

*12. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

### **ITA No. 111/Asr/2022 Revenue’s appeal for AY. 2011-12**

Ground of Revenue is reproduced as under:

*“1. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 11,32,867/- on account of non-allowability of Security Transaction Tax(STT) when the assessee has failed to furnish any evidence in support of his claim in the return.*

*2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.5,86,336/- on account of disallowance of depreciation in the absence of any plausible explanation by the assessee.*

*3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs.24,95,894/- on account of disallowance of unsubstantiated expenses in P&L A/c, in the absence of any evidence in support of Profit & Loss A/c.*

*4. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the substantive addition of Rs.71,99,911/- on account of unaccounted income from MCX trading of his employee Sh.*

*Rajesh Tiwari from the hand of the assessee when Sh. Rajesh Tiwari himself stated that the assessee is the real beneficiary of income from MCX trading.*

5. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the substantive addition of Rs.2,35,80,854/- on account of cash deposit in the bank account of his employee Sh. Rajesh Tiwari, from the hand of the assessee when Sh. Rajesh Tiwari himself stated that the assessee is the real beneficiary of these bank accounts.*

6. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the substantive addition of Rs.7,400/- on account of interest income from the bank account of his employee Sh. Rajesh Tiwari, from the hand of the assessee when Sh. Rajesh Tiwari himself stated that the assessee is the real beneficiary of these bank accounts.*

7. *Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the protective addition of Rs.24,10,000/- on account of cash deposited in the bank accounts of certain parties whose creditworthiness has not been proven and funds were transferred to the assessee's concerns from these accounts, particularly when signed/unsigned cheques of these concerns were found from the premises of assessee.*

8. *The appellant craves leave to add, amend, modify, vary, omit or substitute any of the aforesaid grounds of appeal at any time before or at the time of hearing of the appeal.”*

4. Brief fact of the case is that the assessment was completed u/s 153A/144 of the Act. A search was conducted on 05.12.2012 in the premises of the assessee u/s 132(1) of the Act. The notice was issued u/s 153A and served upon the assessee. Special audit was conducted on assessee u/s 142(2A) of the Act. For nature and complexity of the accounts, doubts about the correctness of the account and in interest of revenue special audit of the books of account of the assessee was contemplated u/s 142 (2A) of the Act. The assessee has challenged the limitation for completion of the assessment after taken care of the special audit report by the revenue. The assessee also challenged the other legal ground related to incriminating material for completion of assessment u/s 153A. The assessment was completed, and the demand was raised addition on multiple heads. Aggrieved assessee filed an appeal before the Id. CIT(A). After considering the submission of the assessee the Id. CIT(A) partly allow the appeal of the assessee but dismissed the legal ground in relation to the limitation and jurisdiction of the assessment order. Aggrieved assessee and the revenue are filed appeal before us.

**Ground No.-3**

5. The ld. counsel for the assessee during assessment first argued about the limitation related to the passing of assessment order. The assessment order was passed on 05.11.2015. The ld. counsel placed that the assessment order is barred by limitation and assessee was not informed properly about the special audit so, the extension of the special audit is not accepted, and entire order is barred by limitation. The issue was agitated before the ld. CIT(A). The relevant paragraphs 4 to 4.1 of the ld. CIT(A) order is extracted as below:

*“4. The assessment record has been called from the Assessing Officer and perused. In the light of the submission filed by the appellant, the report submitted by the AO during the appellate proceedings and the facts on the assessment record, the various grounds of appeal are adjudicated as below:*

*4.1 Grounds of Appeal Nos. 1 to 8 relate to legal issues regarding assumption of jurisdiction and framing assessment in the hands of the assessee and reference u/s 142(2A) of the Income Tax Act, 1961 for Special Audit etc. The assessment order and the submission filed by the appellant have been perused along with the report filed by the AO during the appellate proceedings. A perusal of the assessment order shows that these issues were raised by the assessee before the AO also including the reference of the case for Special Audit u/s 142(2A) of the Act. The AO has duly discussed the issues raised by the appellant on these points in the assessment order and in*

*the light of the facts mentioned by the AO, no infirmity is found with respect to assumption of jurisdiction and passing the assessment order which was well within the time limit allowed as per law. Further, the issue regarding reference u/s 142(2A) is not appealable before the CIT (Appeal) as per the provisions of section 246A of the Act. The appellant has to approach the appropriate- Court for the same. Hence, the ground relating to P Special Audit does not require any adjudication by this office.”*

6. The Id. CIT DR vehemently argued and submitted a written submission before the bench. The written submission of the revenue is reproduced as below:

**“Written Submission:**

*The matter of extension of time in the special audit conducted under section 142(2A) in the subject cases has been examined. Kindly find attached proof of service of the letters dated 02.09.2015 with respect to extension of time limit of special audit u/s 142(2A) in the subject cases. The said letters have been serviced on one “Mr. Jagan”.It is also a matter of record that the earlier communications sent to said assesseees have also been serviced on same person and the assesseees have very well responded to the said communications. The said fact is confirmed from the response of AO to RTI application filed by the assessee(copy attached). Therein, the then Assessing Officer has clearly mentioned that earlier communications have been serviced on same person. The AO has confirmed the fact that earlier communications were also served on same person, hence the*

*contention of AR that the letters dated 02.09.2015 were not served properly is without basis.*

*Without prejudice to the above it is further submitted that the assessee has never cooperated during the assessment proceedings or during the conduct of Special Audit.*

*The jurisdictional High Court of Punjab & Haryana in the case of **Jagatjit Sugar Mills Co. Ltd vs. CIT(Supra)(210 ITR 468)(P&H)** has held as under: -*

*“that the assessee did not co-operate with the chartered accountant who was appointed as special auditor under section 142(2A), the period for submission of the audit report had to be extended even in the absence of an application from the assessee”.*

*Also the Hon’ble Supreme Court in case of **Rajiv Gandhi Proudyogikivs Union of India**{SLP(civil) No. 1904 of 2022} has very clearly held that*

*“order directing special audit under section 142(2A) of Income Tax Act, 1961 is required to be communicated to the appellant-assessee, so as to know the reasons, and, if required, **the assessee can choose to exercise the option to challenge the order.**”*

*The Hon’ble Supreme Court has held in the above case that communication to assessee is essential in the cases where the orders are challengeable. In the present case the communication of time*

*extension is not a challengeable order. Even if it had not been serviced on assessee that would not have made any material difference to the case of the assessee.*

*Also, the Hon'ble High Court of Punjab and Haryana in case quoted supra has clearly held that in case the assessee does not cooperate during conduct of Special Audit; the time limit to do the same can be extended at the end of Department.*

*Without prejudice to the above discussion the facts mentioned the earlier paragraphs clearly highlight that all the time extension letters have been serviced on the assessee, hence no cognizance can be taken of the plea of the AR on this ground.”*

7. We heard the rival submission and relied on the documents available in the record. In our considered view, that the revenue has rightly completed the assessment which is not barred by limitation. Regularly, the Id. AO extended the time of special audit by issuance of notice, we find no infirmity in the order of the Id. CIT(A).

Accordingly, **the assessee's ground no. 3 is dismissed.**

**Ground No. 2**

8. The ld. counsel during hearing placed that the assessment was completed u/s 153A but there is no such incriminating material during passing the order by the assessing authority. The assessee fully relied on the order of the Hon'ble Delhi High Court in the case of **Commissioner of Income-tax (Central)-IIIv.KabulChawla [2015] 61 taxmann.com 412 (Delhi)**. The ld. Counsel respectfully relied on the order of the ITAT Amritsar Bench in the case of **Pinku Batra vs DCIT, Jalandhar ITANo. 320 & 326/Asr/2017 order dated 11/08/2022** which is favour of the assessee.

9. The ld. Sr. DR fully relied on the order of the revenue authorities and was not able to produce any contrary judgment against the submission of the ld. Counsel

10. We heard the rival submission relied on the documents available in the record. The issue was already settled by the bench in the case of Pinku Batra (supra). Mrs Pinku Batra and Mr. Rajan Batra both are related in same search conducted by revenue. In factual matrix the issue is squarely covered by the assessee. In the assessment order the ld. AO has not recognise any incriminating material related to assessment. The Section 153A is bound by the incriminating material found during search. The issue was agitated by assessee before the 1<sup>st</sup> appeal. But the issue was not adjudicated by the ld. CIT(A). The ld. DR has not made any strong objection against the finding of assessee. We fully relied on the

order of ITAT Amritsar bench in case of **Mrs Pinku Batra**, *supra*. The addition made U/s 153A is accordingly quashed.

Accordingly, **the ground no. 2 of the assessee is allowed.**

11. Ground No. 1 is general in nature. Ground No.2 is in favour of the assessee and ground no. 3 is in favour of the revenue. Only the Ground Nos. 4 to 11 are remained for academic purpose. Ground No.12 is general in nature. Accordingly, the appeal of the assessee bearing ITA No. 137/Asr/2022 is allowed.

The bench has noticed that the issues raised by the assessee in the above appeals are equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by the assessee. Hence, the bench feels that the decision taken by us in ITA No. 137/Asr/2022 for the Assessment Year 2007-08 shall apply mutatis mutandis in the above listed appeals ITA Nos. 138 to 141& 143/Asr/2022 and follows accordingly.

### **Revenue's Appeal**

11.1. As the legal issue is adjudicated in favour of assessee. Hence, the order of assessment is infructuous. The appeal filed by the revenue is dismissed.

12. In the result, the appeals of the assessee bearing **ITA No. 138 to 141/Asr/2022&143/Asr/2022**are allowed& appeals of revenue from ITA No. **111 & 113/Asr/2022**are dismissed.

### **Adjudication I.T.A. Nos. 81 to 83 and 85/Asr/2022**

13. In this batch of appeals the assessee filed appeal against the order of the Id. Commissioner of Income Tax (Appeals)-5, Ludhiana,[in brevity the 'CIT (A)'] order passed u/s 250(6) of the Income Tax Act 1961, [in brevity the Act] related to A.Ys. 2009- 10 to 2011-12 and AY 2013-14. All the cases are heard together and disposed together as there is a common factual ground and issues are the same. ITA No. 81/Asr/2022 is taken as lead case.

14. The assessee has taken the following ground:

*“1. That the order passed by the Hon’ble CIT (A) dated 31.03.2022 is against the law and facts of the case.*

*2. That having regard to the facts and circumstances of the case, Hon’ble CIT (A) has erred in law and on facts in confirming the action of Ld. AO in framing the impugned assessment order u/s 143(3)/153C of the Act and without complying with the mandatory conditions u/s 153C/153D/153 as envisaged under the Income Tax Act, 1961.*

*3. That in any case and without prejudice to the above grounds, additions made in the impugned order are beyond jurisdiction and illegal also for the reason that these could not have been made since no incriminating material has been found as a result of search warranting impugned addition.*

*4. That having regard to the facts and circumstances of the case, Hon’ble CIT (A) has erred in law and on facts in confirming the action of Ld. Assessing Officer in making an addition of Rs. 24,72,166/- u/s 69C of the Act, without*

*considering the facts of the case and without observing the principles of natural justice.*

*5. That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other.”*

15. Brief fact of the case is that the assessment was completed on protective basis related to the assessment which is framed in the case of Sh. Rajan Batra The assessee's addition amount of Rs.24,72,166/- on protective basis. Aggrieved the assessee filed an appeal before the ld. CIT(A). The ld. CIT(A) upheld the order of the ld. AO. Being aggrieved against the appeal order, the assessee filed appeal before us.

16. The ld. counsel for the assessee first invited our attention in assessment order para 5.5 which is extracted as below:

*“5.5 In order to compute the same, it is seen that one of the group members Smt. Sonali Batra who is also trading through the same member i.e. M/s Bear Bull Global Commodities Prop. Sh. Rajan Batra has submitted in her reply that the expenses on the total of buy values and sell values include charges by the stock exchange/broker like transactions charges, clearing charges, brokerage and service tax, which comes out to more than Rs. 500 per crore (i.e. 0.005%) of the total of buy value and sell value. These expenses have also been*

*incurred the assessee. The total unexplained expenditure is computed as under:*

<i>i. Net loss as per MTM</i>	<i>Rs. 17,97,815/-</i>
<i>ii. Total buy value + sell value</i>	<i>Rs. 13,48,70,15,765/-</i>
<i>iii. 0.005% of ii</i>	<i>Rs. 6,74,351/-</i>
<i>iv. Total unexplained expenditure</i>	<i>Rs. 1797815/-+ 674351/- = 24,72,166/-</i>

*Therefore, the unexplained expenditure incurred is Rs. 24,72,166/-.”*

17. The Id. DR fully relied on the order of the revenue authorities.

18. We heard the rival submission and relied on the documents available in the record. The assessment was completed in the hands of Mr. Rajan Batra on substantive basis. As per the order of the ITAT-Amritsar Bench the assessment orders of substantive assessment are quashed, in reference of above discussion. Accordingly, the protective assessment was made in case of assessee is duly quashed.

19. In the result, the **ITA No. 81 to 83/Asr/2022 & 85/Asr/2022** are allowed.

**Order pronounced in the open court on 24.05.2023**

**Sd/-**

**(Dr. M. L. Meena)**  
**Accountant Member**

**Sd/-**

**(ANIKESH BANERJEE)**  
**Judicial Member**

**AKV**

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