

**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. 389/Asr/2019
Assessment Year: 2013-14

Sh. Darshan Pal Singh **Vs.** D.C.I.T., Central Circle-II,
Garewal, 50 Raja Garden, Jalandhar
Barewal, Near Mangat
Resort, Ferozepur Road,
Ludhiana

[PAN: AISPG 9530B]
(Appellant)

(Respondent)

Appellant by : None (Written submission)

Respondent by: Smt. Ratinder Kaur, Sr. DR

Date of Hearing: 12.07.2023

Date of Pronouncement: 18.07.2023

ORDER

Per Dr. M. L. Meena, AM:

This appeal has been filed by the assessee against the order of the
Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana dated 10.04.2019

in respect of Assessment Year 2013-14 challenging therein the confirmation of consequential penalty confirmed u/s 271AAB of the I.T. Act.

2. The assessee has raised the following grounds of appeal:

- “1. *That the order passed by the Hon'ble CIT(A) dated 10.04.2019 is against the law and facts of the case.*
2. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order u/s 271AAB and without complying with the mandatory conditions u/s 271 as envisaged under the Income Tax Act. 1961.*
3. *That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in passing the impugned assessment order u/s 271AAB without considering the submissions of the assessee and without observing the principles of natural justice.*
4. *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.”*

3. None attended for the appellant, however a written submission is filed by the assessee on record stating therein that the appellant assessee has been granted relief in the quantum appeal in ITA No. 266/Asr/2017 by the ITAT Amritsar Bench vide its order dated 21.06.2023.

4. From the written submission filed by the assessee on record, it is evident that in the quantum appeal the appeal in ITA No. 266/Asr/2017, the

ITAT Amritsar Bench vide its order dated 21.06.2023 granted relief the assessee. Accordingly, he requested that the impugned order confirming the penalty may kindly be quashed.

5. Per contra, the Id. DR stands by the impugned order but he failed to rebut the contention of the assessee.

6. We have heard the Ld. DR at length, perused the written submission of the appellant, the material on record and the impugned order. A search u/s 132 of the Act, in the case of Sh. Darshan Pal Grewal (the appellant assessee) was carried upon on 05.12.2012. Thereafter notice u/s 153A of the Act was issued to the assessee and finally the assessment was completed u/s 153A/143(3) on 27.03.2015 with an addition of Rs. 27,72,800/-. Penalty u/s 271AAB of the Act was also initiated and imposed of Rs.8,31.840/- by the Ld. AO.

7. The Hon'ble ITAT Amritsar Bench in the case of appellant's quantum appeal in the case of Sh. Darshan Pal Singh Garewal v. Dy. CIT in ITA No. 266/Asr/2017 vide order dated 21.06.2023 granted relief vide para 10, 11 & 13 which reads as under:

"10. In the instant cases, the AO has submitted the draft assessment order on 20/03/2015 before the Approving Authority who had approved on same day i.e.

20/03/2015. In our view, it was humanly impossible to peruse records of all 5 cases in one day to apply independent mind to appraise material records. Further, the approving authority has not mentioned any indication that the approving authority has examined the draft orders and finds that it meets the requirement of the law. Even the approving authority has not written or repeated the words of the statute, in granting the approval u/s 153D of the Act. We are therefore of the considered view that mere endorsing a list of cases by signature with "rubber stamping" of the letter without mentioning even the words like 'seen' or 'approved' will not satisfy the requirement of the law for approval or sanction u/s 153D of the Act. Therefore, we hold that in the present case, the prior approval of the Additional CIT before passing the order of assessment in pursuant to a search operation being a mandatory requirement of section 153D of the Act was not as per law because such approval is not meant to be given mechanically. Without application of mind by the Additional CIT which resulted in vitiating the assessment orders themselves.

11. In the above view, we hold that mandatory approval was being granted mechanically without application of mind by Additional Commissioner of Income Tax, Central- Range, Jalandhar, and therefore, this mechanical exercise of power has vitiated entire assessment proceedings and consequently, the said assessment orders are rendered void ab initio. Consequently, the impugned order is held to be infirm, illegal and bad in law and same is as such quashed.

13. The facts on the legal issue I.T.A. No. 266/Asr/2017 are exactly similar to the facts in I.T.A. No. 87/Asr/2017 except the variation of the date. The proposal was send on 27/03/2015 and the Addl. CIT granted Approval u/s 153D of the Act on the same date i.e. 27/03/2015 in respect of 7 Assessment Years. Therefore, our observation and findings given in I.T.A. No. 87/Asr/2017 shall be applicable to the I.T.A. No. 266/Asr/2017 in mutatis mutandis."

8. Since, the Coordinate Bench has granted relief the appellant in the quantum appeal by holding mechanical exercise of power by the Addl. CIT, in granting Approval u/s 153D of the Act on the same date of multiple assessments, resultantly vitiated entire assessment proceedings and consequently, the said assessment orders were

rendered void ab initio. Consequently, the impugned order was held to be infirm, illegal and bad in law and same was as such quashed. In view of that matter, since, the assessment order itself is quashed, hence, the consequential penalty u/s 271 AAB would not be maintainable.

9. Accordingly, we accept the grievance as genuine and as such, quash the penalty of Rs.8,31,840/- levied u/s 271 AAB of the Act.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 18.07.2023

Sd/-
(Anikesh Banerjee)
Judicial Member

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

GP/Sr.PS

Copy of the order forwarded to:

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

True Copy
By Order