

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE Shri C.M. Garg, Judicial Member  
AND  
Shri M. Balaganesh, Accountant Member**

ITA No. 1466/Del/2020  
(Assessment Year: 2008-09)

Gopal Kumar Goyal, Flat No. 4, RR Apartments, 3-4, Mangalpuri, Mehrauli, New Delhi (Appellant) <b>PAN: AEFPG8370J</b>	Vs. DCIT, Central Circle-14, New Delhi (Respondent)
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Assessee by :	Ms. Monika Aggarwal, Adv
Revenue by:	Ms. Maimum Alam, Sr. DR

Date of Hearing	27/04/2023
Date of pronouncement	14/07/2023

**ORDER**

**PER C. M. GARG, J. M.:**

1. This appeal has been filed against the order of the Id CIT(A)-26, New Delhi dated 30.01.2020 for AY 2008-09 by which the Id CIT(A) confirmed the penalty of Rs. 74 lakhs imposed by the AO against the assessee u/s 271AAA of the Income Tax Act, 1961 (for short the Act).
2. The Id counsel of assessee submitted that for the same assessment year 2008-09 the AO made addition and the assessee carried the matter before the Id CIT(A) in the first appeal. She further pointed out that the Id CIT(A) allowed the appeal of assessee and deleted the addition. She further submitted that against the said first appellate order revenue preferred appeal in ITA NO. 1552/Del/2018 which was dismissed by the coordinate bench of the Tribunal by order dated 08.02.2023 passed in the group of 111 cases including said departmental appeal by holding that the approval

granted by the Additional CIT u/s 153D of the Act is mechanical and without application of mind therefore, all assessment orders including assessment order passed against the assessee u/s 143(3) read with section 153A of the Act for AY 2008-09 was held as bad in law and the same was annulled. The Id counsel submitted that in view of the order of Tribunal dated 08.02.2023 (supra) in the group cases including the assessee then the penalty imposed by the AO u/s 271AAA of the Act cannot be held as sustainable and therefore, grounds of appeal may kindly be allowed and penalty imposed by the AO and upheld by the Id CIT(A) u/s 271AAA of the Act may kindly be deleted.

3. Replying to the above, the Id Sr. DR strongly supported the orders of the authorities below and submitted that under the facts and circumstances of the case the AO was right in imposing penalty u/s 271AAA of the Act however, the Id DR did not controvert or dispute the fact that the base assessment order passed by the AO for AY 2008-09 has been annulled by the Tribunal by allowing legal ground of assessee.

4. We have carefully perused the orders of the authorities below. We find force in the contention of the Id counsel of the assessee as the coordinate bench while deciding the bunch of 111 appeals has also considered and adjudicated cross appeals against the assessee listed at Sl No. 36 and 37 of the cause title of said tribunal order dated 08.02.2023 (supra). The coordinate bench while deciding the bunch of 111 appeals including the cross appeals pertaining to present assessee for AY 2008-09 in its order held as follows:-

*"38. From the above chart, it can be seen that investment of the share applicants/subscribers have been accepted in their respective assessment orders by same Assessing Officer who has sent proposal to the Additional CIT for making addition in the hands of the assessee. This clearly shows that the Additional CIT did not even care to ask the officer when he has accepted the investment in the hands of the subscribers, then why he is proposing addition in the hands of the assesseees.*

*Since, as mentioned elsewhere, approval was completely devoid of any application of mind, these facts got completely ignored by the approving authority.*

*39. Considering the facts from all possible angles, we have no hesitation to hold that the approval granted by the Addl. CIT is mechanical and without application of mind and the assessment order so framed pursuant to such approval u/s 143(3) r.w.s 153A of the Act is bad in law and deserves to be annulled."*

5. Since foundation has been removed by the coordinate bench of the Tribunal by annulling the relevant assessment order therefore, the super structure including the penalty order u/s 271AAA of the Act has to fall. Accordingly, grounds of assessee are allowed and AO is directed to delete the impugned penalty.

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

Order pronounced in the open court on 14/07/2023.

**-Sd/-**  
**(M. BALAGANESH)**  
**ACCOUNTANT MEMBER**

**-Sd/-**  
**(C. M. GARG)**  
**JUDICIAL MEMBER**

Dated: 14/07/2023  
A K Keot

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR  
ITAT, New Delhi