

**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.23 to 28/Asr/2022
Assessment Years: 2008-09 to 2013-14**

Assistant Commissioner of Income Tax, Central Circle-1, Jalandhar. (Appellant)	Vs.	Sh. Madan Lal, H. No.24, Model Town, Shahkot, Punjab [PAN: -ABFPL4650B] (Respondent)
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Appellant by	Sh. Rajiv Wadhwa Sr. DR & Sh. S.R. Kaushik, CIT DR
Respondent by	None

Date of Hearing	25.07.2023
Date of Pronouncement	27.07.2023

ORDER

Per: Bench:

A batch of six appeals of the revenue was filed 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’] for

A.Ys. 2008-09 to 2013-14. The impugned orders were emanated from the order of the Id. Asstt. Commissioner of Income Tax-Central Circle-I, Jalandhar(in brevity the AO) order passed u/s 271(1)(c) of the Act.

2. In the outset, all the appeals arise out from the same nature of fact and under common issue related to challenging the penalty passed u/s 271(1)(c) of the Act. All the appeals are taken together, heard together and disposed of together. **ITA-23/Asr/2022** is taken as the lead case.

ITA-23/Asr/2022

2. The revenue has taken the following grounds:

“1. Whether on the facts & circumstances of the case and in law, the Ld.CIT(A) has erred in deleting penalty u/s 271(l)(c) of the Income Tax Act, 1961, on the basis of Hon’ble ITAT’s order setting aside the assessment order and the subsequent order passed by the Ld.CIT(A) and coming to the conclusion that the order was passed before receipt of approval u/s 153D in dak.

2. Whether on the facts & circumstances of the case and in law, the Ld.CIT(A) has erred in deleting penalty u/s 271 (l)(c) of the Income Tax Act, 1961, on the basis of Hon’ble ITAT’s order setting aside the assessment order and the subsequent order

passed by the Ld.CIT(A) without appreciating the fact that the AO in the last para of the assessment order has recorded the number and date of approval granted by the Addl. CIT u/s 153D.

3. 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.”

3. When the appeals are called for hearing, none was present on behalf of the assessee. On perusal of the record, we find that assessee has filed adjournment petition for all the cases and prayed for the adjournment. The medical certificate is duly enclosed. We peruse that the reason of adjournment and adjournment is on medical emergency. The copy of the medical certificate dated 18.07.2023 issued by the Doctor Amanpreet Singh, B.A.M.S is enclosed. In the certificate there is not any disease or medical reason is mentioned. The evidence, medical certificate, issued by said doctor has no evidential value. Accordingly, the petition for adjournment of the Id. AR is duly rejected. We proceed to dispose of the appeals *ex parte* qua for assessee after hearing the Id. DR.

4. Brief fact of the case is that the assessment was completed with demand of tax. The penalty proceeding was initiated u/s 271(1)(c) and accordingly the penalty

was levied amount to Rs.27,90,078/-. The assessee filed the appeal before the Id. CIT(A) related to quantum appeal and finally being unsuccessful, the quantum appeal was filed before the ITAT, Amritsar Bench. The ITAT quashed the assessment order for violation of provision section 153D of the Act. The penalty order U/s 271(1)(c) was framed by the Id AO. The penalty order was challenged before the Id. CIT(A). The Id. CIT(A) dismissed the order of the penalty by persuading the quantum order of ITAT-Amritsar Bench. The Id. CIT(A) had accepted the dismissal of quantum appeal and allowed the appeal of assessee related penalty. Being aggrieved revenue filed an appeal before us.

5. The Id. DR vehemently argued and fully relied on the order of the revenue authorities.

6. The Id. AR for the assessee has submitted the written submission which is kept in the record. The Id. AR for the assessee relied on catena of judgments which are reproduce as below: -

RBJ Infratech Pvt. Ltd. vs. ITO, Ward-20(3) in ITA No. 9530/Del/2019, order dated **30.03.2021 (Del-Trib.)**. The relevant paragraph is duly extracted as below:

“(B.1) After hearing both sides, we are of the view that penalty U/s 271(1)(c) of I.T Act levied by AO has no legs to stand at present, when

the corresponding additions made by the AO have already been deleted by ITAT vide its aforesaid order dated 22.12.2020 when the aforesaid quantum addition does not survive, the penalty levied U/s 271(1)(C) of I.T. Act on the corresponding quantum addition also cannot survive. We take support from judicial precedent in the case of K.C. Builders vs. ACIT 135 Taxman 461 (SC), in which the Hon'ble Apex Court held that where the additions made in the Assessment Order, on the basis of which penalty for concealment was levied, are deleted, by ITAT or otherwise, the penalty cannot stand by itself and is liable to be cancelled. In such a situation, there is no basis at all at present for sustaining the penalty U/s 271(1)(c) of I.T. Act, and therefore, in such a case, such penalty cannot survive presently. In view of the foregoing, the penalty levied U/s 271(1)(c) of I.T. Act (in respect of quantum addition already deleted by ITAT in aforesaid order dated. 22.12.2020 in ITA No.- 3152/Del/2018) is hereby cancelled. Accordingly, appeal filed by the assessee is allowed.”

Hon'ble **High Court of Delhi at New Delhi** in the case of **PCIT- Delhi-III, vs. Fortune Technocomps (P) Ltd., ITA No.313/2016** date of order **13.05.2016** the relevant paragraphs 6 & 7 are duly extracted as below:

“6. Despite the basis for issuance of the penalty notice under Section 271 (1) (c) having disappeared with the deletion by the

CIT (A) of the addition made by the AO, the latter continued with the penalty proceedings and imposed the penalty as noted above. This was set aside by the CIT (A). The Revenue then went in appeal before the ITAT which by the impugned order affirmed the order of the CIT (A). Relying on the decision of the Calcutta High Court in CIT v. Ananda Bazar Patrika Pvt. Ltd. (1979) 116 ITR 416 (Cat'), the altered or modified by the first appellate authority, the Assessing Officer has v no jurisdiction thereafter to proceed on the basis of the findings of the first appellate authority.

7. *Having examined the impugned order of the ITAT and having considered the submissions of the learned counsel for the Revenue, the Court is unable to discern any legal infirmity in the analysis or conclusion reached by the ITAT. Once the assessment order of the AO in the quantum proceedings was altered by the CIT (A) in a significant way, the very basis of initiation of the penalty proceedings was rendered non-existent. The AO could not have thereafter continued the penalty proceedings on the basis of the same notice. Also, the Court concurs with the CIT (A) and the ITAT that once the finding of the AO on bogus purchases was set aside, it could not be said that there was any concealment of facts or furnishing of*

inaccurate particulars by the assessee that warranted the imposition of penalty under section 271(1)(c) of the Act.”

7. We heard the rival submission, considered the documents available in the record and relied on the order of revenue authorities. The quantum appeal was already decided in favour of the assessee related to impugned assessment years. The assessee's grounds are duly allowed, and the assessment order was quashed for violating the section 153D of the Act. Accordingly, the quantum appeal is not sustained as per the order of the **ITAT, Amritsar Bench bearing ITA No. 112 to 118/Asr/2018 date of pronouncement 16.08.2021**. So, the notice initiated by the ld. AO was duly deviated from the fact which is not at all sustained after the order of the ITAT, Amritsar Bench. So, the entire penalty was duly quashed and *non est*. We respectfully relied on the **RBJ Infratech Pvt. Ltd.** supra and **Fortune Technocomps (P) Ltd**, supra. The ld. DR was not able to submit any contrary judgment against the submission of the assessee. Accordingly, the order passed by the ld. AO u/s 271(1)(c) is dismissed and penalty amount Rs. 27,90,078/- is quashed.

8. The bench has noticed that the issue raised by the revenue in the above appeals are equally similar on set of facts; therefore, it is not imperative to repeat the facts. Hence, the bench feels that the decision taken by us in **ITA No. 23/Asr/2022** shall apply *mutatis mutandis* in the above listed appeals.

9. In the result, the appeals of the revenue bearing **ITA Nos. 23 to 28/Asr/2022** are dismissed.

Order pronounced in the open court on 27.07.2023

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