

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B': NEW DELHI**

**BEFORE MS. MADHUMITA ROY, JUDICIAL MEMBER
AND
SHRI AVDHESH KUMAR MISHRA, ACCOUNTANT MEMBER**

**ITA No.2576 & 2577/Del/2023
A.Y. 2012-13 & 2016-17**

M/s. Sh. Gurvinder Singh Duggal G-9, Masjid Moth, Greater Kailash New Delhi PAN: AAKPD0287E	Vs.	DCIT, Central Circle-08, Delhi
(Appellant)		(Respondent)

Appellant by	Ms. Neha Gupta, Advocate
Respondent by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of Hearing	16/07/2024
Date of Pronouncement	06/08/2024

ORDER

PER AVDHESH KUMAR MISHRA, AM:

Since the issue involved in these two appeals is identical; hence, these are being heard together and are being disposed off by way of common order for the sake of brevity.

2. These appeals filed by the assessee for the Assessment Years (In short, the 'AY') 2012-13 and 2016-17 are directed against the orders dated 29.08.2023 passed by the Commissioner of Income Tax (Appeals)-24, New Delhi [In Short 'the CIT(A)'].

3. Following grounds have been raised by the appellant/assessee :-

ITA No. 2576/Del/2023, A.Y. 2012-13

“1. That On the facts and circumstances of the case, the order passed by the learned CIT(A) under section 250 of the Act is bad both in the eyes of law and on facts.

2. That the Ld. CIT(A) has erred on facts and in law in not appreciating the fact that the initiation of penalty proceeding is illegal and bad in law.

3. That the Ld. CIT(A) has erred on facts and in law in not appreciating the fact that the imposition of penalty proceeding is illegal and bad in law.

4. That the impugned CIT(A) order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

5. That the Ld. CIT(A) has erred on facts and in law in sustaining the penalty imposed of Rs 41,51,717/- u/s 271(1)(C) which is illegal and bad in law.

6. The appellant craves leave to add, amend or alter any of the grounds of appeal before/at the time of hearing.”

ITA No. 2577/Del/2023, A.Y. 2016-17

“1. That on the facts and circumstances of the case, the order passed by the learned CIT(A) under section 250 of the Act is bad both in the eyes of law and on facts.

2. That the Ld. CIT(A) has erred on facts and in law in not appreciating the fact that the initiation of penalty proceeding is illegal and bad in law.

3. That the ld. CIT(A) has erred on facts and in law in not appreciating the fact that the imposition of penalty proceeding is illegal and bad in law.

4. That the impugned CIT(A) order is arbitrary, illegal, bad in law and in violation of rudimentary principles of contemporary jurisprudence.

5. That the Ld. CIT(A) has erred on facts and in law in sustaining the penalty imposed of Rs 51,01,899/- u/s 271(1)(C) which is illegal and bad in law.

6. The appellant craves leave to add, amend or alter any of the grounds of appeal before/at the time of hearing.”

4. The facts of these two appeals are that the appellant/assessee was searched under section 132 of the Income Tax Act, 1961 (In

short, the 'Act' on 03.01.2018. Various incriminating material/documents were seized. The search assessments of the relevant years; i.e. 2012-13 and 2016-17 were completed under section 153A of the Act as per details given hereunder:-

<i>AY</i>	<i>Order passed u/s</i>	<i>Order dated</i>	<i>Additions made</i>	<i>Assessed income</i>
2012-13	153A	31.12.2019	18,22,000/-	35,52,550/-
2016-17	153A	31.12.2019	2,23,59,360/-	2,39,75,790/-

3.1 Later on, the search assessment orders were revised/rectified vide orders passed under section 154 of the Act as under :-

<i>AY</i>	<i>Order passed u/s</i>	<i>Order dated</i>	<i>Additions made</i>	<i>Assessed income</i>
2012-13	154	23.12.2020	1,40,36,524/-	1,57,67,074/-
2016-17	154	17.07.2020	2,17,45,000/-	2,34,61,430/-

3.2 The quantum appeals for these years were partly allowed by the CIT(A) vide orders dated 25.06.2021, 29.06.2021 & 30.06.2021. The appellant/assessee challenged these appellate orders (quantum appeals) dated 25.06.2021, 29.06.2021 & 30.06.2021 of the CIT(A) for AYs 2012-13, 2016-17, 2017-18 & 2018-19 before the Tribunal and succeeded.

3.3 Meanwhile, on incomes sustained by the CIT(A), the AO levied concealment penalties of Rs.41,51,717/- and Rs.51,01,899/- vide orders dated 23.03.2023 passed under section 271(1)(c) of the Act in AYs 2012-13 and 2016-17 respectively. Aggrieved, the appellant/assessee filed appeals, against the penalty orders, before the

CIT(A), which were dismissed. Hence, these appeals are before the Tribunal.

4. At the outset, the Ld. Counsel submitted that the assessment orders had been held illegal and bad in law. The quantum appeals (the above-mentioned appellate orders against assessment orders) of these years were decided by the Coordinate Bench of the Tribunal, in ITA No. 860 and 861/Del/2021, vide consolidated order dated 06/06/2024 for four years in ITA No. 860 to 863/Del/2021 as under:-

“20. In view of the aforesaid observations and respectfully following the judicial precedent relied upon hereinabove, we have no hesitation in holding that the approval u/s 153D of the Act has been granted by the ld. JCIT in the instant case before us in a mechanical manner without due application of mind, thereby making the approval proceedings by a high-ranking authority, an empty ritual. Such an approval has neither been mandated by the provisions of the Act nor endorsed by the decisions of the Hon'ble Orissa High Court; Hon'ble Allahabad High Court and Hon'ble Jurisdictional High Court (Delhi High Court) referred to supra. Hence, we find lot of force in the arguments advanced by the Ld. AR in support of the additional grounds raised for all assessment years under consideration before us. Accordingly, the Additional Grounds raised by the assessee for all the assessment years under consideration are hereby allowed.

21. Since, pursuant to the allowing of the additional grounds, the entire search assessment framed in the hands of the assessee is to be declared illegal and bad in law, the other legal grounds and grounds on merits raised by the assessee for various assessment years need not be gone into as adjudication of the same would be merely academic in nature and, hence, they are left open.”

5. In view the above-mentioned order of the Coordinate Bench, the Ld. Counsel prayed for setting aside the impugned order of the CIT(A) and deletion of penalties. To which the Ld. AR appeared in agreement.

6. We have heard both the parties and perused the records. We find force in the argument of the Ld. Counsel that when the quantum additions are deleted the concealment penalties levied under section 271(1)(c) of the Act for the said quantum cannot survive. Therefore, in view of the above, we hereby cancel the penalties of both years and set aside the order of the CIT(A). Accordingly, both appeals of the assessee stand allowed.

Order pronounced in open Court on 06 August, 2024.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-

(AVDHESH KUMAR MISHRA)
ACCOUNTANT MEMBER

Dated:06/08/2024
Binita Rukhaiyar, Sr. Ps.

Copy forwarded to:

1. Appellant
2. Respondent
3. PCIT
4. CIT(Appeals)
5. CIT(DR)

ASSISTANT REGISTRAR
ITAT, NEW DELHI