



**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI. SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND SHRI NIKHIL CHOUDHARY, ACCOUNTANT MEMBER**

ITA No.233/LKW/2022
Assessment Year: 2019-20

The ACIT Central Circle – 2 Kanpur	v.	Tabrez Alam 16B/4E, Sultan Tanners Compound Jajmau, Kanpur
		TAN/PAN:AARPA0261A
(Appellant)		(Respondent)

C.O. No.06/LKW/2023
[In ITA No.233/LKW/2022]
Assessment Year: 2019-20

Tabrez Alam 16B/4E, Sultan Tanners Compound Jajmau, Kanpur	v.	The ACIT Central Circle – 2 Kanpur
TAN/PAN: AARPA0261A		
(Cross Objector)		(Respondent)

ITA No.234/LKW/2022
Assessment Year: 2019-20

The ACIT Central Circle – 2 Kanpur	v.	Mehtab Alam 16B/4E, Sultan Tanners Compound Jajmau, Kanpur
		TAN/PAN:AARPA0259L
(Appellant)		(Respondent)

C.O. No.07/LKW/2023
[In ITA No.234/LKW/2022]
Assessment Year: 2019-20

Mehtab Alam 16B/4E, Sultan Tanners Compound Jajmau, Kanpur	v.	The ACIT Central Circle – 2 Kanpur
TAN/PAN: BEZPS4971J		

(Cross Objector)		(Respondent)
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ITA No.235/LKW/2022
Assessment Year: 2019-20

The ACIT Central Circle – 2 Kanpur	v.	Shaheen Rabia 16B/4E, Sultan Tanners Compound Jajmau, Kanpur
		TAN/PAN:ABQPR3416A
(Appellant)		(Respondent)

C.O. No.08/LKW/2023
[In ITA No.235/LKW/2022]
Assessment Year: 2019-20

Shaheen Rabia 16B/4E, Sultan Tanners Compound Jajmau, Kanpur	v.	The ACIT Central Circle – 2 Kanpur
TAN/PAN: ABQPR3416A		
(Cross Objector)		(Respondent)

ITA No.236/LKW/2022
Assessment Year: 2019-20

The ACIT Central Circle – 2 Kanpur	v.	Zaina Fatima Ahmed 16B/4E, Sultan Tanners Compound Jajmau, Kanpur
		TAN/PAN:BBKPA2362K
(Appellant)		(Respondent)

C.O. No.09/LKW/2023
[In ITA No.236/LKW/2022]
Assessment Year: 2019-20

Zaina Fatima Ahmed 16B/4E, Sultan Tanners Compound Jajmau, Kanpur	v.	The ACIT Central Circle – 2 Kanpur
TAN/PAN: BBKPA2362K		
(Cross Objector)		(Respondent)

ITA No.237/LKW/2022
Assessment Year: 2019-20

The ACIT Central Circle – 2 Kanpur	v.	Zain Alam 16B/4E, Sultan Tanners Compound Jajmau, Kanpur
		TAN/PAN:AJEPA5445L
(Appellant)		(Respondent)

C.O. No.10/LKW/2023
[In ITA No.237/LKW/2022]
Assessment Year: 2019-20

Zain Alam 16B/4E, Sultan Tanners Compound Jajmau, Kanpur	v.	The ACIT Central Circle – 2 Kanpur
TAN/PAN: AJEPA5445L		
(Cross Objector)		(Respondent)

Assessee by:	Shri Ashish Jaiswal, Advocate		
Department by:	Shri Sanjeev Krishna Sharma, D.R.		
Date of hearing:	05	09	2024
Date of pronouncement:	29	10	2024

ORDER

PER BENCH:

These five appeals have been preferred by the Revenue against respective orders, all dated 04.10.2022 of the Id. Commissioner of Income Tax (Appeals)-e, Kanpur [herein referred to as 'CIT(A)] passed in the cases of five different assesseees for Assessment Year 2019-20.

2. All the assessees have preferred cross-objections.
3. Since the issue involved in all the five appeals preferred by the Revenue are common, the facts are being taken from ITA No.233/LKW/2022 in the case of ACIT, Central Circle-2, Kanpur vs. Tabrez Alam, Kanpur.
4. The brief facts of the case are that a search and seizure operation under section 132 of the Income Tax Act, 1961 (hereinafter called "the Act") was conducted on 09.05.2018 alongwith Model /Sultan Group of Cases. The case of the assessee was centralized vide order dated 09.04.2019 of the PCIT-1, Kanpur under section 127 of the Act. The assessee had filed return of income on 15.09.2020, declaring a total income of Rs.2,34,24,710/-. During the course of search operation, a register marked as BK-07 was found and seized, in which, there was mention of income earned from the trading of goat and bovine animals. One Shri Zeeshan Alam, key person of this group, admitted in his statement on oath that profit was earned from trading of goat and bovine animals. In the affidavit filed before the Investigation Wing, Kanpur on 04.06.2018, the assessee had also admitted that she had carried out trading of goat/bovine/sheep and had earned profit from the same,

amounting to Rs.2,28,66,000/- and that this income from trading of goat and bovine animals was part of income of current year and hence due tax will be paid on the same. The assessment in this case was completed under section 143(3) of the Act on 24.05.2021 at a total income of Rs.2,53,84,710/- by making an addition of Rs.20,60,000/- under section 69 of the Act.

5. Aggrieved, the assessee preferred an appeal before the ld. First Appellate Authority, and ld. CIT(A), vide order dated 18.04.2022 deleted the addition of Rs.20,60,000/- with an observation that there was no proof of initial investment/margin money, for which such addition should be made purely on presumption. However, the Assessing Officer (AO) initiated penalty proceedings under section 271AAB of the Act in respect of income from trading of goat and bovine animals to the tune of Rs.2,28,66,000/- and vide order dated 23.03.2022 levied a penalty under section 271AAB of the Act on the amount of Rs.2,28,66,000/- with an observation that this was surrendered amount and hence penalty under section under section 271AAB(1A) of the Act needs to be levied @30%. Accordingly, he levied penalty under section 271AAB(1A) of the Act on amount of

Rs.2,28,66,000/- @30% which came to Rs.68,59,800/-. This penalty, on appeal, was subsequently deleted by the ld. CIT(A).

6. Similarly, in other four appeals also, the penalty levied by the AO under section 271AAB(1A) has been deleted by the ld. CIT(A). The details of the same are as under:

Sl. No	ITA	Assessee's Name	Amount of penalty (Rs.)
1	234/LKW/2022	Mehtab Alam	68,70,900.00
2	235/LKW/2022	Shaheen Rabi	60,38,400.00
3	236/LKW/2022	Zaina Fatima Ahmed	59,38,500.00
4	237/LKW/2022	Zain Alam	59,38,500.00

7. Now, the Department has approached this Tribunal challenging the orders passed by ld. CIT(A) by raising the following common grounds of appeal:

1. Whether on facts and circumstances of the case and in law, Ld. CIT (A)-IV, Kanpur has erred in accepting the submission of the assessee that the business activity mentioned in the seized register BK-7 was different from the activity of the group and, therefore, its accounting was done in a separate register.

2. Whether on facts and circumstances of the case and in law, Ld. CIT (A)-IV, Kanpur has erred in ignoring the fact that as per entries of BK-7, the

assessee made the whole transaction in cash only which has no trace and if the diary was not found during the course of search, there were no way to track the profit made by the assessee.

3. Whether on facts and circumstances of the case and in law, Ld. CIT (A)-IV, Kanpur has erred in law and on facts in ignoring that the requirement of the section 271AAB(1)(a) squarely completed in the case of the assessee.

4. That the above grounds are without prejudice to each other and appellant craves leave to add or amend or any other more grounds of appeal as stated above as and when needs for doing so may earliest.

8. Similarly, the assessees have filed cross objections in the above appeals only supporting the orders of the ld. CIT(A). The common grounds of appeal raised by the assessees are as under:

1. That the ld. AO has erred in levying penalty u/s 271AAB of the I.T Act, 1961 without application of mind as there has been no independent finding of the ld. AO in the penalty order as to how the alleged income would come within the definition of undisclosed income for levy of penalty u/s 271AAB of the Act. Whereas the assessee has neither surrendered any income in the statement recorded u/s

132(4) of the Act or in the affidavit which could said to be undisclosed income u/s 271AAB of the I.T. Act, 1961.

2. That the ld. CIT(A) has correctly deleted the penalty levied by the ld. AO u/s 271AAB of the I.T. Act, 1961.

3. That the ld. AO has erred in levy penalty u/s 271AAB of the Act without jurisdiction making the penalty order bad in law and void ab inito as the notice issued u/s 274 r.w.s 271AAB of the I.T. Act, 1961 is defective being without specific limb whether penalty to be levied under clause A or B of section 271AAB(1A) of the I.T. Act, 1961.

4. The cross objector craves leave to introduce, amend or withdraw any cross objection with your honours kind permission.

9. The Ld. Authorized Representative for the assessee has submitted that an identical issue on identical facts has been considered by this Bench of the Tribunal in the case of ACIT vs. Marghoob Alam (ITA No.232/LKW/2022) and four other assessees. He prayed that the view taken by this Bench of the Tribunal in those cases be taken in the cases of present assessees also.

10. The ld. CIT(D) has no objection to the prayer made by the assessee.

11. We have heard both the parties and have considered the materials on record. We find that the issue involved, facts and

circumstances of the cases and the grounds raised by both the parties in the present appeals are identical to the case of ACIT vs. Marghoob Alam in ITA No.232/LKW/2022, wherein we have held as under:

“11.2 In all the appeals, the ld. CIT(A) has deleted the penalty by observing as under (paragraph 6.14 in the case of Marghoob Alam):

*“6.14. I have carefully perused the observation of AO in the penalty order in which AO has simply stated that **Shri Zeeshan Alam admitted the profit from trading activities of** goat and bovine animals and also that the appellant in his affidavit dt. 04.06.2018 the appellant stated that she has carried out trading of goat and bovine animals and has earned profit amounting to Rs. 2,27,92,000/- and that the income surrendered has been included in the total income and due tax has been paid on the same before filing of return of income. The AO observes that 'surrendered amount of Rs. 2,27,92,000/- has not been disputed before CIT Appeals therefore the AO observed that this income is hit by provisions of section 271AAB(1A) of IT Act. But I found force in the submission of the appellant that there is no doubt that there was profit derived from trading of goat, bovine and bones though certain agents, which has been found mentioned in the seized material BK-07. But this profit of Rs. 2,27,92,000/- was relating to the period contained in current year i.e. from 01.04.2018 to the*

date of search. This profit has been taxed as 'regular business income' in the assessment order and has been taxed as per normal taxation provisions. The statement given on oath by Sh. Zeeshan Alam during search proceedings and affidavit given by the appellant dt. 04.06.2018 do not support the conclusion of the AO that this profit of current year was 'undisclosed income'. From the nature of the entries of the profit found to be mentioned in seized register BK-07 as profit derived from trading of goat, bovine and bones through certain agents, it cannot be said that the same tantamount to 'undisclosed income' since the same is earned from the beginning of year to the date of search and there is no incidence of earning of such profit before this period. There is force in the submission of the AR that this register BK-07 can be considered as a kind of book of account for limited purpose of recording the entries of business of trading of goat, bovine and bones through certain agents and there was no other record based on the comparison with which, it can be concluded that there was an attempt to keep some income as undisclosed and not to offer the same for taxation. The AO while framing assessment order / passing penalty order could not establish that income / details contained in register BK-07 are in the nature of 'undisclosed income'. Therefore penalty of Rs. 68,37,600/- levied u/s 271AAB(1A) cannot be sustained. Hence the same is deleted and relief is allowed to the appellant."

11.3 During the course of proceedings before us, although the ld. CIT(D.R.) has argued vehemently against the relief given by the ld. CIT(A). However, he could not bring on record any evidence which would suggest that the impugned transactions did not belong to the year of search. On going through the records and the penalty order as well as the order of the ld. CIT(A), we are of the considered view that a plain reading of section 271AAB of the Act would make it clear that penalty under section 271AAB(1A) of the Act cannot be imposed unless the offered income would fall within the definition of 'undisclosed income' as defined under Explanation to section 271AAB of the Act. The ld. CIT(A) has given a categorical finding that, although, undoubtedly, there was profit derived from trading of goat and bovine animals through certain agents, which has been found mentioned in Annexure BK-07, but the profit was relating to the period of the current assessment year, i.e. from 01.04.2018 to the date of search. This profit has been taxed as regular business income in the assessment order and has been taxed as per normal taxation provisions. Even the statement given on oath by Shri Zeeshan Alam during the course of search proceedings as well as Affidavit filed by the appellant-assessee on 04.06.2018 do not support the contentions of the Department that this profit of the current year was the undisclosed income of the assessee. Undisputedly, the profit has been earned from the beginning of the year to the date of search and there is no iota of evidence which would suggest

that the profit was earned before the current year. Even the AO, while passing the assessment order or the penalty order, could not establish with cogent evidence that the details contained in Annexure BK-07 were in the nature of undisclosed income. There are plethora of judgments on the issue in hand, which are enumerated as under:

- 1. ACIT vs. Marvel Associates (ITAT Vishakhapatnam)*
- 2. Smt. Aparna Agrawal vs. DCIT, 105 taxmann.com 233 (Jaipur – Trib.).*
- 3. DCIT vs. Subhas Chandra Agarwala & (HUF), 91 taxmann.com 442 (Kolkata – Trib.).*
- 4. CIT VS. Manish Agarwala, 92 taxmann.com 81 (Kolkata – Trib.)*
- 5. Shiv Bhagwan Gupta vs. ACIT, 125 taxmann.com 306 (Patna – Trib.).*

11.4 Therefore, keeping in mind the above judicial precedents, on which the ld. CIT(A) has also placed his reliance, we are unable to deviate from the view taken by the ld. CIT(A) and we accordingly uphold the orders of the ld. CIT(A) deleting the penalty imposed under section 271AAB(1A) of the Act

12. Accordingly, Departmental appeal in ITA No.232/LKW/2022 in the case of Marghoob Alam stands dismissed. Whereas corresponding Cross Objection No.01/LKW/2023 stands allowed.”

12 The facts in ITA Nos. 233/LKW/2022, 234/LKW/2022, 235/LKW/2022, 236/LKW/2022 and 237/LKW/2022, filed by

the Revenue for Assessment Year 2019-20, are, as stated in para No.11 above, mutatis mutandis, exactly similar to those attending ITA Nos.232/LKW/2022, 238/LKW/2022, 239/LKW/2022, 240/LKW/2022 and 241/LKW/2022 (supra). Therefore, our above observations and findings with regard to ITA Nos.232/LKW/2022, 238/LKW/2022, 239/LKW/2022, 240/LKW/2022 and 241/LKW/2022 shall apply equally to ITA Nos. 233/LKW/2022, 234/LKW/2022, 235/LKW/2022, 236/LKW/2022 and 237/LKW/2022. Since the five Cos are only supportive of the orders of the ld. CIT(A), they are treated as allowed.

13 In the final result, the five appeals of the Department stand dismissed, whereas the five Cross Objections filed by the assessee stand allowed.

Order pronounced on 29/10/2024.

Sd/-
[NIKHIL CHOUDHARY]
ACCOUNTANT MEMBER

Sd/-
[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

DATED:29/10/2024

JJ:

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR