

IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, CHANDIGARH

HYBRID HEARING

BEFORE HON’BLE SHRI RAJPAL YADAV, VICE PRESIDENT
AND
HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM

1. आयकर अपील सं./ ITA No.1128/CHANDI/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)
2. आयकर अपील सं./ ITA No.1129/CHANDI/2024
(निर्धारण वर्ष / Assessment Year: 2017-18)
3. आयकर अपील सं./ ITA No.1139/CHANDI/2024
(निर्धारण वर्ष / Assessment Year: 2016-17)

M/s Paradigm Business Ventures SCO 45 Hollywood Plaza VIP Road Zirakpur Mohali.	<u>बनाम/ Vs.</u>	DCIT-Circle 1 CR Building Chandigarh
स्थायीलेखासं./जीआइआरसं./PAN/GIR No. AAQFP-5590-G		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	Shri Parikshit Aggarwal(CA) – Ld. AR
प्रत्यर्थीकीओरसे/ Respondent by	:	Smt. Kusum Bansal (CIT, Virtual) – Ld. DR & Dr. Ranjit Kaur (Addl. CIT) – Ld. Sr. DR

सुनवाईकीतारीख/ Date of Hearing	:	15-07-2025
घोषणाकीतारीख / Date of Pronouncement	:	23-07-2025

आदेश / O R D E R

Manoj Kumar Aggarwal (Accountant Member)

1. These are quantum appeal as well as penalty appeals by the assessee. First, we take up quantum appeal ITA No.1128/Chandi/2024

for Assessment Year (AY) 2017-18 which arises out of an order of learned Commissioner of Income Tax (Appeals)-3, Gurgaon [CIT(A)] dated 27-09-2024 in the matter of an assessment framed by Ld. Assessing Officer [AO] u/s 143(3) r.w.s. 153B(1)(b) of the Act on 29-12-2018. The sole grievance of the assessee is confirmation of addition of Rs.7.66 Lacs which has been subjected to higher tax rate of 60% u/s 115BBE. Having heard rival submissions and upon perusal of case records, the appeal is disposed-off as under. This is second round of appeal since the assessment, in the first round, was restored back by Tribunal vide order dated 22-12-2021 to the file of Ld. CIT(A) for fresh adjudication.

2. Pursuant to search / survey action on assessee group on 13-07-2016, various incriminating documents were found from the assessee. The assessee also made cash deposits in the bank accounts for which the assessee could not furnish necessary evidences and voluntarily made disclosure vide letter dated 12-08-2016 (extracted at Page 3 of the assessment order). The assessee undertook to enhance its income disclosed in ITR for AY 2015-16 by an amount of Rs.4.375 Crores in aggregate which was to be spread over in AYs 2016-17 and 2017-18. The enhancement was to be made by Rs.1 Crores in AY 2016-17 and by Rs.3.375 Crores in AY 2017-18. This amount was stated to be inclusive of normal income emanating from regular transactions.

3. In this year (AY 2017-18), the assessee declared income of Rs.329.85 Lacs which was short by Rs.7.66 Lacs as undertaken by the assessee and accordingly, Ld. AO proceeded to enhance the income

of the assessee. The assessee stated that on 13-07-2016, the accounts for FY 2015-16 were not audited and return for AY 2016-17 was not filed by the assessee. The FY 2016-17 was still in progress. After finalizing the accounts, the assessee returned income of Rs.104.35 Lacs for AY 2016-17 and Rs.329.85 Lacs for AY 2017-18 and accordingly, honored the commitment made in the surrender letter. However, rejecting the explanation, Ld. AO enhanced the income by Rs.7.66 Lacs which was to be taxed at special rate of 60% u/s 115BBE. The matter reached up-to Tribunal wherein, vide order dated 22-12-2021, the appeal was restored back to the file of Ld. CIT(A) for fresh adjudication. Pursuant to said directions, another order has been passed by Ld. CIT(A) on 27-09-2024 wherein Ld. CIT(A) has confirmed the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us.

4. From the facts, it clearly emerges that the surrender has been made by the assessee vide letter dated 12-08-2016. On that date, the return of income for AY 2016-17 was not filed by the assessee. Further, FY 2016-17 was still in progress and barely 5 months had progressed for that year. To make up for the incriminating material, the assessee undertook to enhance its income disclosed in ITR for AY 2015-16 by an amount of Rs.4.375 Crores in aggregate which was to be spread over in AYs 2016-17 and 2017-18. The enhancement was to be made by Rs.1 Crores in AY 2016-17 and by Rs.3.375 Crores in AY 2017-18. This amount was stated to be inclusive of normal income emanating from regular transactions. The assessee finally returned income of

Rs.104.35 Lacs for AY 2016-17 and Rs.329.85 Lacs for AY 2017-18 and substantially honored its commitment. The regular income for AY 2016-17 was Rs.59.87 Lacs and the assessee has credited additional Rs.42 Lacs so as to fulfil its commitment. Quite clearly, the surrender made by the assessee at least for AY 2017-18 was merely on projections and therefore, there is no basis to make further addition of Rs.7.66 Lacs by Ld. AO. Therefore, we delete the same and allow the appeal of the assessee.

5. In ITA No.1129/Chandi/2024 for AY 2017-18, the assessee is aggrieved by levy of consequential penalty of 60% of Rs.7.66 Lacs u/s 271AAB. Since quantum addition has been deleted by us, this penalty would not survive. We order so.

6. In ITA No.1139/Chandi/2024 for AY 2016-17, the assessee is aggrieved by levy of penalty of 20% on additional income of Rs.42 Lacs u/s 271AAB(1). For this year, the assessee agreed to disclose income of Rs.1 Crores. The regular books reflected income of Rs.59.87 Lacs. To honor the commitment, the assessee credited additional income of Rs.42 Lacs to its Profit & Loss Account and returned income of Rs.104.35 Lacs which was accepted by Ld. AO. However, Ld. AO has levied penalty of 20% against Rs.42 Lacs on the allegation that the said amount was not part of regular income earned by the assessee during the business. The Ld. CIT(A) confirmed the same primarily on the ground that there was no plausible explanation regarding nature and source of cash deposit. Aggrieved, the assessee is in further appeal before us.

7. It could be seen that the assessee has computed regular income of Rs.59.87 Lacs and to honor its commitment, it has credited additional income of Rs.42 Lacs to its profit & loss account. The sole basis of the same is surrender letter dated 12-08-2016 and the same is not based on unearthing of any undisclosed asset etc. which could be added u/s 68 to 69D. The addition is purely on the basis of undertaking given by the assessee. In our opinion, existence of undisclosed income is sine qua non to invoke the impugned penalty provisions. The undisclosed income is to be represented by any money, bullion, jewellery or other valuable article or thing or any entry in the books of account or other documents or transactions found in the course of a search u/s 132 which is not recorded in the regular books or the same should be in the form of any income of the specified previous year represented, either wholly or partly, by any entry in respect of an expense recorded in the books of account or other documents maintained in the normal course relating to the specified previous year which is found to be false and would not have been found to be so had the search not been conducted. We find that these ingredients are missing in the facts of the present case before us. Therefore, the impugned penalty is liable to be deleted. We order so.

Conclusion

8. All the appeals stand allowed in terms of our above order.

Order pronounced on 23-07-2025.

Sd/-

**(RAJPAL YADAV)
VICE PRESIDENT**

Sd/-

**(MANOJ KUMAR AGGARWAL)
ACCOUNTANT MEMBER**

Dated: 23-07-2025.

आदेश की प्रतिलिपि अग्रेषित /Copy of the Order forwarded to :

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकरआयुक्त/CIT
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF

ASSISTANT REGISTRAR

ITAT CHANDIGARH