* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% Judgment Reserved on*: 06.11.2025*
Judgment delivered on*: 08.12.2025*
Judgment uploaded on*: As per Digital Signature~*

\+ **W.P.(C) 8191/2025 CM APPL. 35871/2025 CM APPL. 64534/2025**

SAUMYA CHAURASIA ..... PETITIONER

versus

UNION OF INDIA & OTHERS .... RESPONDENTS

Advocates who appeared in this case

For the Petitioner : Mr Balbir Singh, Sr. Advocate with Mr Anshul Rai & Mr Harshwardhan, Advocates

For the Respondent : Mr. Ruchir Bhatia, SSC and Mr Anant Mann, JSC for Revenue
Mr. Premtosh K. Mishra, CGSC, Mr. Sarthak Anand, Mr. Prarabdh Tiwari, Mr. Anurag Tiwari and Mr. Shrey Sharma, Advocates for UOI

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
HON'BLE MR. JUSTICE VINOD KUMAR

JUDGMENT

V. KAMESWAR RAO, J.

1. This petition has been filed with the following prayers:-

"a. Issue an appropriate writ, direction or order quashing the Impugned Sanction Notices dated 10.02.2025 and 19.02.2025 issued by Respondent No.3

under Section 279(1) of the Income Tax Act, 1961 authorizing Respondent No. 4 to initiate prosecution against the Petitioner under Section 276C and 278E of the Income Tax Act, 1961;

b. Declare that Impugned Circular No. 5/2020 bearing file No. F. No.285/08/2014-IT (Inv. V)/712 dated 23.01.2020 issued by Respondent No. 2, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance is contrary to Article 14 of the Constitution of India and as such unconstitutional and non-est;

c. Issue an appropriate Writ, Order or direction under Article 226 of the Constitution of India quashing the Impugned Circular No. 5/2020 bearing file No. F.No. 285/08/2014-IT (Inv. V)/712 dated 23.01.2020 issued by Respondent No. 2, Central Board of Direct Taxes, Department of Revenue, Ministry of Finance;

d. Pass any other order issuing any other appropriate writs, orders or directions as this Hon'ble Court deems fair and equitable in the present facts and circumstances."

2. This petition assails orders dated 10.02.2025, 11.02.2025, and 19.02.2025 (impugned sanction orders hereafter) passed by the PCIT, Central-1, Delhi (PCIT) under Section 279(1) of the Income Tax Act, 1961 (the Act) authorising the DCIT, Central Circle-8, i.e., the Assessing Officer (AO) for initiating the prosecution and instituting a criminal complaint against the petitioner under Section 276C and 278E of the Act for the Assessment Years (AYs) 2011-12, 2012-13, 2014-15, 2017-18, 2019-20, 2020-21, and 2022-23. It is through this petition, the petitioner seeks to challenge the validity of Circular No.5/2020 dated 23.01.2020 (impugned circular) issued by the Central Board of Direct Taxes (CBDT).

3. Before dealing with the merits of the petition, it is pertinent to give a

brief factual background surrounding the present controversy. According to the petitioner, in February 2020 a search and seizure operation was carried out at her residence in Bhillai, Chhattisgarh and consequently, the AO initiated assessment proceedings and issued notices under Section 153C of the Act. Thereafter, on 02.12.2022, the petitioner was arrested by the Enforcement Directorate (ED) and on 16.01.2024, Economic Offences Wing (EOW) Chhattisgarh registered an FIR No.2/2024 against the petitioner and on 17.01.2024, the EOW registered a second FIR No.3/2024 against her. It was thereafter that the AO had completed assessment pertaining to the case of the petitioner vide assessment orders dated 30.03.2024 for AY 2011-12 to 2016-17, 2019-20 to 2022-23 and order dated 28.03.2024 for AY 2017-18.

4. Being aggrieved by the assessment orders, the petitioner filed appeals before the Commissioner of Income Tax (Appeals) [CIT(A)]. On 02.07.2024, a third FIR No.22/2024 was registered against the petitioner and subsequently, she was granted interim bail by the Supreme Court in relation to Enforcement Case Information Report (ECIR) No.9 vide order dated 25.09.2024. She was also granted default bail in relation to the third FIR by Special Court Raipur vide order dated 08.01.2025. It was thereafter, that PCIT vide the impugned orders authorised the AO for initiation of prosecution under Section 276C of the Act for the AYs 2011-12, 2012-13, 2014-15, 2015-16, 2017-18, 2019-20, 2020-21, and 2022-23.

5. Pursuant to the impugned orders, the respondent no.4 filed complaints under Section 223 of the Bhartiya Nagarik Suraksha Sanhita, 2023 (BNSS) before the Additional Chief Judicial Magistrate (Special Acts), Central, Tis

Hazari Courts, Delhi (ACJM) seeking a trial and conviction of the petitioner under Section 276C of the Act. As per the case of the petitioner, she was granted bail by the Supreme Court in relation to the second FIR as well, although, she contends that she was arrested again by the EOW in relation to the offences committed, as per the first FIR. According to the petitioner, the ACJM vide order dated 22.09.2025, directed the petitioner to appear and make submissions before cognisance of the complaint filed by the respondents was taken. According to the petitioner, she is also in receipt of summons dated 25.09.2025 issued by the ACJM in the said matter.

6. Mr. Balbir Singh, learned Senior Counsel appearing for the petitioner would submit that the impugned orders are contrary to the 2019 Circular and the impugned circular issued by the CBDT. The details of the circulars according to the Mr Balbir Singh, are as follows:

Amount sought to be evaded or tax on under –reported income	Circular No.24 of 2019 dated 09.09.2019	Circular No.05 of 2020 dated 23.01.2020
Category I 25 Lacs or below	Prosecution be to initiated by Sanctioning Authority (Principal Commissioner or Commissioner or Commissioner Appeals) with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers. Prosecution to be launched only after confirmation of the order imposing penalty by the Income Tax Appellate Tribunal ("ITAT")	Prosecution be to initiated by Sanctioning Authority with the previous or administrative approval of the Collegium of two CCIT/DGIT rank officers
Category II Above 25 Lacs	Approving authority to initiate prosecution is Sanctioning Authority Prosecution to be launched only after confirmation of	Ordinarily should be launched after the order imposing penalty is confirmed. However, Prosecution launched at any stage, in deserving cases by Sanctioning Authority with the previous

	the order imposing penalty by the ITAT	administrative approval of the Collegium of two CCIT/DGIT rank officers.

7. It is the case of Mr. Singh that on the perusal of the above, it would become clear that where the amount of tax sought to be evaded is less than Rs.25 Lacs, then in such cases, the prosecution would be initiated by sanctioning authority which according to him would require administrative approval of two CCIT/DGIT rank officers, as per both the circulars. In cases, where the amount tax evaded is more than Rs.25 Lacs, as per the circular of 2019, prosecution would be initiated by the sanctioning authority only after imposition / confirmation of penalty by the ITAT.

8. Mr. Singh would urge that vide the 2020 circular it was further clarified that ordinarily prosecution should be launched after the order imposing penalty is confirmed. Although, prosecution can be launched at any stage in certain cases by the sanctioning authority with previous administrative approval of two CCIT/DGIT rank officers. He argues that in the facts of the present case, prosecution could have only been initiated by the sanctioning authority with prior administrative approval, which in this case, has not been taken.

9. It is his case that the impugned orders also do not contain any cogent reasons as to why the case of the petitioner falls in the category of deserving cases for initiation of prosecution despite the fact that the ITAT has not confirmed/imposed the penalty. Mr. Singh submits that in the impugned orders, sanction has been granted mechanically and without proper application of mind. He argues that the impugned orders are bereft of

reasons justifying the initiation of prosecution and in the absence of any order imposing penalty while the matter is pending before the CIT(A). According to him, these are cogent reasons for the impugned sanctioning order to be set aside. In support of his submissions, Mr. Singh has relied upon two judgments of the Calcutta High Court in the matters of ***Shri Miraj Digvijay Shah v. PCIT & Anr WPO/1345/2023*** dated 12.07.2023 and ***Banwari Lal Agarwal v. UOI & Anr WPO/1418/2023,*** dated 24.07.2023**.**

10. On the issue of pendency of appeals before the CIT(A), it is the case of Mr. Singh that the petitioner ought not to be prosecuted during the pendency of appeals under Section 246A of the Act and this factum has also been acknowledged in the impugned orders. He argues that a perusal of the assessment orders makes it clear that in addition to the petitioner's income, the said orders rely on two grounds, *viz.* addition under Section 69A of the Act on the basis of which, entries made on loose papers including diaries seized in the searched premises and/or whatsapp chats, and addition under Section 69 of the Act on the basis of properties alleged to be *benami* held in the name of third party individuals and not the petitioner herself. Mr. Singh argues that the additions made by the AO to the income of the petition under Section 69A of the Act were on the basis of entries made on loose papers and diaries and as such the law in such circumstances is clear. He has referred to the judgment in the case of ***CIT v. Ravi Kumar, (2007) 294 ITR 78*** to state that the recovery of money, bullion, jewelry etc., would be *sine qua non* for addition under Section 69A of the Act. With respect to the addition made to the petitioner's/assessee's income under Section 69 of the Act, it is submitted by Mr. Singh that an addition under the said provision,

can only be made when the investment in question which has been made by the assessee himself and not by any third party or individual allegedly acting on his behalf. It is his case that the proceedings initiated under Section 153C of the Act are illegal and unsustainable in law since the assessment in the case of the petitioner should have been carried out under Section 153A of the Act and not under Section 153C of the Act. Additionally, Mr. Singh has relied upon the judgment of the Supreme Court in ***Vijay Krishnaswami alias Krishnaswami Vijaykumar v. The Deputy Director of Income Tax (Investigation), 2025 INSC 1048.***

11. Mr. Singh submits that the AO has also erred in passing the assessment orders as the same have been done *ex parte* and hence, in violation of principle of natural justice. He has also stated that the petitioner raised several objections in the appeals which strike at the very heart of the matter and assails the assessment orders as well as the jurisdiction of the AO to pass such orders. Consequently, the case of the petitioner is that the prosecution proceedings should not have been initiated during the pendency of appeals before the CIT(A).

12. Lastly, Mr. Singh buttresses his arguments on the fact that the impugned circular is manifestly arbitrary and contrary to the Article 14 of the Constitution of India. He argues that since the prosecution is in the form of a criminal proceeding, therefore, the offence has to be proved beyond reasonable doubt and to ensure the same CBDT has laid guidelines in the circular which according to Mr. Singh, have not been followed.

13. Mr. Singh states that the impugned circular vests the sanctioning

authority with unbridled and absolute discretion for determining when prosecution may be launched in cases where the tax amount sought to be evaded is more than Rs.25 Lacs, although no guidelines have been prescribed for exercise of such power. He argues that the clarification which has been introduced by the impugned circular states that *"...prosecution in other cases, including cases covered under Section 132/132A/133A may be launched at any stage of the proceedings before an Income-tax Authority, with the previous approval of the Collegium of two CCIT/DGIT rank officers as mentioned in paragraph 3 of the Circular"*. He argues that the circulars lack adequate determining principle or criteria for objectively assessing whether a particular case deserves to be prosecuted notwithstanding the pendency of assessment or reassessment proceedings. In this regard, he has relied upon a judgment of the Supreme Court in the case of ***Indian Express Newspapers (Bombay) (P) Limited v. Union of India, (1985) 1 SCC 641*** to argue that the impugned circulars being delegated legislation are liable to be quashed on the ground of being manifestly arbitrary.

14. Mr. Ruchir Bhatia, learned SSC appearing on behalf of the Revenue would argue that in February 2020, the Department conducted the search and seizure operations against the Bhatia, Tuteja and Dhand groups in Chhattisgarh in connection with unaccounted liquor sales and related financial irregularities. On 02.03.2020, a search was carried out at the residential premises of the petitioner at Bhilai, resulting in seizure of articles, documents, papers, and cash, and recording her statement. Pursuant to the transfer order dated 29.06.2021 under Section 127 of the Act the

petitioner's case was centralised with Central Circle-8, New Delhi. Notices under Section 153C of the Act were issued on 09.05.2022 and 23.06.2022, and after providing an opportunity to be heard, assessment orders were passed on 26.03.2024, 28.03.2024, 30.03.2024 for AYs 2011-12 to 2017-18, 2019-20, 2020-21 and 2022-23 with an aggregate demand raised exceeding Rs.348 Crores. Mr. Bhatia has argued that the petitioner did not discharge the outstanding demand and thereafter, demand notices issued under Section 226(3) of the Act were issued on 22.07.2024 for said recoveries from the petitioner's bank account. He argued that pursuant to the directions of this Court dated 02.05.2025 in ***Saumya Chaurasia v. Assistant Deputy Commissioner of Income Tax Central Circle 8 & Others W.P.(C) No.5783/2025*** the stay application which was decided by the respondent no.1 vide order dated 11.06.2025 under Section 220(6) of the Act wherein the stay of 80% of the demand was allowed, subject to deposit of 20% and issuance of fresh notices under Section 226(3) of the Act to the State Bank of India to remit amount in excess of Rs.2 Lacs to the Central Government. It was thereafter, that the Tax Recovery Officer on 30.07.2025 issued a certificate under Section 222/223 of the Act read with Rule 2 of the Second Schedule of the Income Tax Rules, 1962 (the Rules) for recovery of Rs.3,60,40,61,056/- including penalty and interest.

15. According to Mr. Bhatia the argument of the petitioner in cases involving tax evasion or under reported income of Rs.25 Lacs or less ought not to be prosecuted without a prior approval from a collegium of two CCIT/DGIT rank officers, is concerned, he contends that in the case of the petitioner, the department launched the prosecution only after obtaining

approval from the sanctioning authority i.e., the PCIT, since the tax amount exceeded Rs.25 Lacs. As per Mr. Bhatia, the assessee has failed to pay the tax even after being given ample opportunities and has filed the appeals before the first appellate authority for various AYs. The assessee has not paid 20% of the outstanding demands as per CBDT Instruction No.1914 dated 29.02.2016 (modification dated 29.02.2016 and 31.07.2017 vide F.No.404172139-ITCC) containing guidelines issued by the Board regarding procedure to be followed for stay of demand. He further argues that it is clear that sanctioning authority for offences under Chapter XXII is the PCIT and the mandate of approval of a collegium of two CCIT/DGIT rank officers is only required in cases where the threshold limit is Rs.25 Lacs. Since the case of the petitioner involves an amount exceeding the threshold limit, the sanctioning authority for such offences under Chapter XXII is the PCIT. The relevant portion of the circular is reproduced below:-

Section 276C(1): Wilful attempt to evaded tax, penalty or interest or under-reporting of income

Nature of default	*Approving Authority*
(a) Where tax which would have been evaded exceeds Rs. 25 Lakh	*Sanctioning Authority*
(b) In other case	*Sanctioning Authority with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers*

16. Mr. Bhatia states that it is clear from the above that the case of the petitioner does not require approval from a collegium of two CCIT/DGIT rank officers, but rather of the PCIT, who had already given his consent in the present case.

17. Mr. Bhatia has countered the arguments advanced by the petitioner stating that Section 275 of the Act does not bar any initiation of prosecution proceedings in cases where appeals are pending. Further, as per reading of Section 276C(1) of the Act there is no precondition for imposition of penalty which is a prerequisite for initiation of prosecution proceedings.

18. Mr. Bhatia has referred to Circular No.5/2020 issued vide F.No.285/08/2014-IT (Inv.V)/712 dated 23.01.2020 to state that prosecution before this Court ought to be launched ordinarily after the confirmation of imposition of penalty by the ITAT. Further, prosecution in other cases including cases under Section 132/132A/133A of the Act may be launched at any stage of the proceedings before the Income Tax Authority with the approval of the colleigum of two CCIT/DGIT rank officers as per paragraph 3 of the circular. Mr. Bhatia states that since the case of the petitioner involves the amount exceeding the threshold limit of Rs.25 Lacs, therefore, the approval of the PCIT should suffice in such a case as well, which has been clarified in the annexure to the Circular No.24/2019 dated 09.09.2019.

19. Mr. Bhatia on the issue of the constitutional validity of the impugned circulars has argued that the said circulars / guidelines have been issued by the CBDT within its power as per the procedures established by law and hence, this issue ought not to be considered by this Court.

20. In support of his arguments, Mr. Bhatia has relied upon the decisions in the case of ***P. Jayappan v. S K Perumal, First ITO, [1984] 149 ITR 696 (SC)***; ***Saumya Chaurasia v. Directorate of Enforcement, 2023 INSC 1073, Saumya Chaurasia v. Directorate of Enforcement, GOI, 2024 CGHC***

32738 and Raj Kumar Kedia v. Income Tax Office [2025] 176 taxman.com 857 (Delhi) to highlight the facts surrounding the case of the petitioner and to argue that there is no estoppel against initiation of criminal proceedings until the reassessment proceedings are complete.

21. Having heard the learned counsel for the parties and perused the record, the short issue which arises for consideration is whether the sanction notices dated 10.02.2025 and 19.02.2025 issued by the respondent no.3 authorising respondent no.4 to initiate prosecution against the petitioner under Sections 276C and 278E of the Act and also the circular no.5/20 dated 23.01.2020 are unconstitutional, *non-est* and liable to be quashed.

22. The submission of Mr. Balbir Singh is primarily that on a reading of the circulars dated 09.09.2019 and 23.01.2020, it is clear that where the amount of tax sought to be evaded, is more than Rs.25 lacs in such a case, prosecution could be initiated by the sanctioning authority only after imposition and confirmation of penalty by the ITAT.

23. At the outset, we may state that the circular dated 09.09.2019, more specifically in paragraphs no. 2 & 3 deals with offences under Section 276(C)(1) of the Act with which we are concerned herein. The circular dated 09.09.2019 refers to the fact when the amount sought to be evaded or taxed income is below the sum of Rs.25 lacs, such cases shall not be processed for prosecution except with the previous administrative approval of collegium of two CCIT/DGIT rank officers. There is no dispute that the amount sought to be evaded or taxed on under reported income is more than Rs.25 lacs. It may also be stated that the circular also contemplates that further

prosecution under the said sanction notices shall be launched only after confirmation of the order imposing penalty by the ITAT. The said circular also stipulates that the administrative approval of a collegium of two CCIT/DGIT rank officers shall be as per the process stipulated in paragraph no.3 of the said circular. It may also be stated in paragraph no.4 of the said circular refers to the list of prosecutable offences under the Act specifying the appropriate authority in the annexure to the said circular. For reference, we reproduce, the circular dated 09.09.2019 as under:-

> *"The Central Board of Direct Taxes has been issuing guidelines from time to time for streamlining the procedure of identifying and examining the cases for initiating prosecution for offences under Direct Tax Laws. With a view to achieve the objective behind enactment of Chapter XXII of the Income-tax Act, 1961 (the Act), and to remove any doubts on the intent to address serious cases effectively, this circular is issued.*
>
> *2. Prosecution is a criminal proceeding. Therefore, based upon evidence gathered, offence and crime as defined in the relevant provision of the Act, the offence has to be proved beyond reasonable doubt. To ensure that only deserving cases get prosecuted the Central Board of Direct Taxes in exercise of powers under section 119 of the Act lays down the following criteria for launching prosecution in respect of the following categories of offences.*
>
> *i. Offences u/s 276B: Failure to pay tax to the credit of Central Government under Chapter XII-D or XVII-B.*
>
> *Cases where non-payment of tax deducted at source is Rs. 25 Lakhs or below, and the delay in deposit is less than 60 days from the due date, shall not be processed for prosecution in normal circumstances. In case of exceptional cases like, habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with the previous administrative approval of the*

Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

*ii. Offences u/s 276BB**:** Failure to pay the tax collected at source.*

Same approach as in Para 2.i above.

iii. Offences u/s 276C(1): Wilful attempt to evade tax, etc.

Cases where the amount sought to be evaded or tax on under-reported income is Rs.25 Lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

Further, prosecution under this section shall be launched only after the confirmation of the order imposing penalty by the Income Tax Appellate Tribunal.

iv. Offences u/s 276CC: Failure to furnish returns of income.

Cases where the amount of tax, which would have been evaded if the failure had not been discovered, is Rs. 25 Lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

3. For the purposes of this Circular, the constitution of the Collegium of two CCIT/DGIT rank officers would mean the following-

As per section 279(1) of the Act, the sanctioning authority for offences under Chapter XXII is the Principal Commissioner or Commissioner or Commissioner (Appeals) or the appropriate authority. For proper examination of facts and circumstances of a case, and to ensure that only deserving cases below the threshold limit as prescribed in Annexure get selected for filing of prosecution complaint, such sanctioning authority shall seek the prior administrative approval of a collegium of two CCIT/DGIT rank officers, including the CCIT/DGIT in whose jurisdiction the case lies. The Principal CCIT(CCA) concerned may issue directions for pairing of CCsIT/DGIT for this purpose. In case of disagreement between the two

CCIT/DGIT rank officers of the collegium, the matter will be referred to the Principal CCIT(CCA) whose decision will be final. In the event that the Pr.CCIT(CCA) is one of the two officers of the collegium, in case of a disagreement the decision of the Pr.CCIT(CCA) will be final.

4. The list of prosecutable offences under the Act specifying the approving authority is annexed herewith.

5. This Circular shall come into effect immediately and shall apply to all the pending cases where complaint is yet to be filed."

24. In a case pertaining to Section 276(C)(1) of the Act, where the tax evaded exceeded Rs.25 lacs, the approving authority in such a case would be the sanctioning authority, i.e. PCIT. The circular no.5/2020 dated 23.01.2020 only clarifies the circular dated 09.09.2019 in the following manner.

"iii. Offences u/s 276C(l) : Wilful attempt to evade tax, etc.

Cases where the amount sought to be evaded or tax on under-reported income is Rs. 25 lakhs or below, shall not be processed for prosecution except with the previous administrative approval of the Collegium of two CCIT/DGIT rank officers as mentioned in Para 3.

Further, prosecution under this section shall be launched ordinarily after the confirmation of the order imposing penalty by the Income Tax Appellate Tribunal. Further, prosecution in other cases, including cases covered u/s 132/ 132A/ 133A, may be launched at any stage of the proceedings before an Income-tax Authority, with the previous approval of the Collegium of two CCIT/DGIT rank officers as mentioned in para 3 of the Circular.

3. Further, clarifications have also been requested regarding the applicability of the Circular to cases, where the prosecution has already been launched before the date of issue of the Circular. In this connection, it may be noted that in para 5 of the Circular, it is stated that the Circular shall

apply to all pending cases where complaint is yet to be filed. Therefore, the Circular is applicable to only those cases where the prosecution complaint is to be filed after the date of issuance of the Circular, i.e. 09.09.2019."

25. A perusal of the same would reveal that by this circular discretion has been given that prosecution can be launched at any stage of the proceedings before the Income Tax Authority. If the said amendment is read in context, it is in cases where the evaded amount is Rs.25 lacs or below, the prosecution shall be proceeded with after the administrative approval of the collegium of two CCIT/DGIT rank officers.

26. Further, it is also stated that the prosecution under Section 276 (C)(1) of the Act shall be launched ordinarily after confirmation of imposing penalty by the ITAT. It also stipulates that prosecution in other cases including cases covered under Sections 132, 132A and 133A of the Act may be launched at any stage of proceedings before the Income Tax Authority with the previous approval by the collegiums of two CCIT/DGIT rank officers. This amendment primarily relates to the offences where amount sought to be evaded is less than Rs.25 lacs. The said circular does not make any amendment to paragraph no.4 and the annexure thereof. The annexure thereto is very clear that where tax which would have been evaded is more than Rs. 25 lacs in such cases the approving authority is the sanctioning authority. No pre-conditions have been attached while taking action in cases where the evasion is more than Rs.25 lacs. The intent behind Circular No. 24/2019 dated 09.09.2019 as amended by Circular No. 5/2020 dated 23.01.2020, is that the CBDT was of the view to not launch prosecution in small cases. Therefore, the cases where the non-payment of tax is Rs. 25

lacs or below, in those exceptional cases like those of habitual defaulters, based on particular facts and circumstances of each case, prosecution may be initiated only with the previous administrative approval of a collegium of two CCIT/DGIT rank officers. However, the case at hand differs to the extent that the amount demanded is more than Rs.348 crores for which the approval of the sanctioning authority would be adequate as per the aforementioned circulars. In other words, the decision of the Sanctioning Authority granting approval would suffice the requirement, which in this case is PCIT.

27. It is precisely for this reason that an attempt has been made by the petitioner to challenge the very circular dated 23.01.2020 to say that it is contrary to Article 14 of the Constitution of India. Such a plea cannot be accepted as there is a clear demarcation contemplated in terms of circular dated 09.09.2019 as followed by circular dated 23.01.2020. The circular dated 23.01.2020 has to be considered as a clarification to be read as part of the circular dated 09.09.2019. In that regard the judgment in the case of ***Indian Express (supra)*** is of no succour to the petitioner. The reliance on the judgment in the case of ***State of Punjab v. Khan Chand (1974) 1 SCC 549*** by Mr. Singh to state the liberty of the individual is at risk due to unguided and unbridled power at the hands of the respondents. We do not accept this submission of Mr. Singh given the difference in the factual background of the case at hand as well as the magnitude of tax alleged to be evaded. Surely, this according to us is required to be investigated by the competent authorities.

28. This we say so because in the present case the alleged evasion being more than Rs.25 lacs, it is only in such an eventuality that the power to sanction has been given to sanctioning authority and it is the case of the respondent's that such sanctioning authority has given its approval. Infact, the petitioner has not contested the fact that the amount under investigation is above Rs.25 lacs or that the competent authority has not granted its approval.

29. Mr. Singh has placed reliance on the judgment in the case of ***Banwari Lal Agarwal (supra)*** and ***Miraj Digvijay Shah (supra)*** to state that the Calcutta High Court has in a similar case while granting interim relief to the petitioners therein held that the order which is in violation to the principles of natural justice, denying the petitioners therein the opportunity to be heard ought to be stayed. These judgments do not aid the case of the petitioner as the same are distinguishable on facts.

30. So far as the contention of Mr. Singh regarding the additions made by the AO with reference to Sections 69 and 69A of the Act in the income of the petitioner is concerned, the said additions find basis in loose papers. The same in our considered view is a question of fact and needs to be decided by the competent authority. Therefore, the reliance placed by Mr. Singh on the judgment in the case of ***Ravi Kumar (supra)*** would not aid the petitioner at this stage.

31. Even the reliance on the judgment in the case of ***Vijay Krishnaswani (supra)*** will not help the petitioner as the same is distinguishable on facts inasmuch as in that case the appellant therein sought quashing of

prosecution and the same was allowed on the ground that no attempt to evade payment of tax by the assessee therein was made and the procedure for filing a criminal prosecution was not followed. Hence, the judgment is dissimilar to the facts at hand.

32. Mr. Singh has also relied on the judgments of the Karnataka High Court in the cases of ***UCO Bank v. CIT (1999) 4 SCC 599***, ***BS Uday Shetty v. ACIT, W.P. No. 8589/2022*** dated 21.04.2022 and ***Anjanadari Feul Station v. ITO, W.P. No. 6164/2024*** dated 14.08.2024 to argue that as per Section 275 of the Act there is a clear embargo on proceedings to pass penalty order if the appeal against the assessment order is pending. The same can be distinguished on facts as in the case of ***BS Uday Shetty (supra)*** which was followed in the case of ***Anjanadari Feul Station (supra)*** wherein it was held that in proceedings under Section 274 read with Section 271AAB of the Act; the question was to ascertain whether a valid appeal in Form 35 had been filed or not. The impugned order therein had been passed since the Assessing Officer in that case could not find the appeal in an electronic or physical form hence warranting setting aside of the impugned order therein. Needless to state these cases do not support the case of the petitioner for the issue raised. Similarly the case of ***UCO Bank (supra)*** is patently distinguishable on facts as the question therein was to consider whether sticky loans would be considered income and the Supreme Court had held that as long as a circular is in force it would be binding on the authorities.

33. Mr. Singh also referred to the judgments in the cases of ***Kamlesh***

Kumar Jha v. PCIT (2024) 469 ITR 519 (Del) and ***CIT v. Brandix Mauritius Holdings Ltd. (2023) 456 ITR 34 (Del)*** to contend that the Order dated 29.06.2021 under Section 127 of the Act transferring the case of the petitioner to the Respondent No.4 is *non est* for the want of a DIN Number. The said issue is a question of fact and therefore ought not to be decided at this stage.

34. The contention of Mr. Bhatia needs to be accepted that the appropriate authority for initiating the prosecution proceedings would be the sanctioning authority i.e., the PCIT and not the collegium of two CCIT/DGIT rank officers since the tax to be evaded exceeds Rs. 25 lacs.

35. For the reasons stated above we do not find any merit in this petition and the same is dismissed. The pending applications are dismissed as infructuous.

V. KAMESWAR RAO, J

VINOD KUMAR, J

DECEMBER 08, 2025
m/rk