

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "F" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.5723 & 5724/DEL/2019  
Assessment Years 2014-15 & 2015-16

Ratna Talwar, C/o Kapil Goel, Adv, F-26/124 Sector 7 Rohini, Delhi.	Vs.	ACIT, Central Circle-4, New Delhi.
TAN/PAN: ACGPT9955M		
(Appellant)		(Respondent)

I.T.As. No. 5725, 5726 & 5727/DEL/2019  
Assessment Years 2010-11, 2011-12, 2012-13

Rajnish Talwar, C/o Kapil Goel, Adv, F-26/124 Sector 7 Rohini, Delhi.	Vs.	ACIT, Central Circle-4, New Delhi.
TAN/PAN: AAZPT8964F		
(Appellant)		(Respondent)

Appellant by:	Shri Kapil Goel, Adv.		
Respondent by:	Shri T. Kipgen, CIT-DR		
Date of hearing:	09	06	2022
Date of pronouncement:	27	06	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

The captioned appeals have been filed by the Assessee against the consolidated order of the Commissioner of Income Tax (Appeals)-XXIII, New Delhi ('CIT(A)' in short) dated 07.06.2019 in relation to penalty proceedings initiated under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AYs

2010-11, 2011-12, 2012-13, 2013-14 and 2014-15.

2. As per its grounds of appeal, the assessee has challenged the imposition of penalty under Section 271(1)(c) amounting to Rs.20,08,153/- in Assessment Year 2014-15 and varied amounts in other captioned appeals for different assessment years.

3. When the matter was called for hearing, the ld. counsel referred to the decision rendered by the Co-ordinate Bench in bunch of group cases including the captioned assessees passed in quantum proceedings vide order dated 19.01.2021. The reference made to the quantum proceedings disposed of are tabulated herein:

<i>ITA No.</i>	<i>A.Y.</i>	<i>Name of the Assessee</i>	<i>Name of the respondent</i>
<i>1625/Del/2019</i>	<i>2014-15</i>	<i>Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi.</i>	<i>ACIT, Central Circle-4, New Delhi.</i>
<i>1626/Del/2019</i>	<i>2015-16</i>	<i>Ratna Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi.</i>	<i>ACIT, Central Circle-4, New Delhi.</i>
<i>1611/Del/2019</i>	<i>2010-11</i>	<i>Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi.</i>	<i>ACIT, Central Circle-4, New Delhi.</i>
<i>1612/Del/2019</i>	<i>2011-12</i>	<i>Rajnish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi.</i>	<i>ACIT, Central Circle-4, New Delhi.</i>
<i>1613/Del/2019</i>	<i>2012-13</i>	<i>Ranish Talwar, C/o Kapil Goel, Adv., F-26/124, Sector-7, Rohini, Delhi.</i>	<i>ACIT, Central Circle-4, New Delhi.</i>

4. The Id. counsel pointed out that the penalty has been imposed by the CIT(A) in exercise of powers vested under Section 250(6) r.w. Section 271(1)(c) of the Act on enhancements made by CIT(A) by way of deemed dividend under Section 2(22)(e) of the Act. In this context, it was pointed out that the enhancements lacks valid and lawful basis and such enhancement action is without any authority of law. It was thereupon pointed out that the assessment itself has been quashed and rendered *non-est* by the ITAT and therefore enhancements made on the *non-est* assessment has lost its very foundation and therefore no addition by way of enhancement can be deemed to exist in the quantum proceedings. It was thus contended that when the assessment itself has been quashed as a *non-est* on the grounds of invalid approval granted under Section 153D of the Act, the CIT(A) is incapacitated in law to make enhancement of any sort on such *non-est* assessment. The Id. counsel thus submitted that the penalty imposed on enhancements carried out by the impugned first appellate order deserves to be quashed.

5. The Id. DR for the Revenue did not rebut any of the observations made on behalf of the assessee.

6. On consideration of rival submissions and on perusal of the case records, we notice that the quantum appeals in relation to the captioned appeals have been adjudicated in favour of the assessee and the assessment orders itself have been quashed. This being so, the penalty imposed in the enhancement proceedings on the basis of *non-est* quantum proceedings would automatically cease to exist owing to lack of foundation. The penalty imposed in the enhancement proceedings in these peculiar facts is thus rendered unsustainable in law.

7. In the result, all the appeals of the assesseees are allowed.

**Order pronounced in the open Court on 27/06/2022.**

Sd/-  
**[KUL BHARAT]**  
**JUDICIAL MEMBER**

DATED: **27/06/2022**

*Prabhat*

Sd/-  
**[PRADIP KUMAR KEDIA]**  
**ACCOUNTANT MEMBER**