

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A', NEW DELHI**

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA JUDICIAL MEMBER**

ITA No.1082 to 1085/Del/2023
Assessment Year: 2013-14 to 2016-17

Ashok Kumar Gupta C/o Anil Jain DD & Co. 611, Surya Kiran Building, 19K G Marg, New Delhi-110001 PAN No.AAAPG2240G (APPELLANT)	Vs	DCIT Central Circle-8, New Delhi (RESPONDENT)
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Appellant by	Sh. Raghav Sharma, CA Sh. Avinash, CA
Respondent by	Sh. Kanv Bali, Sr DR

Date of hearing:	14/09/2023
Date of Pronouncement:	18/09/2023

ORDER

PER N. K. BILLAIYA, AM:

ITA No.1082/Del/2023 to 1085/Del/2023 are four separate appeals by the assessee preferred against the four separate orders of the CIT(A)-24, New Delhi dated 22.02.2023 pertaining to A.Y. 2013-14 to 2016-17.

2. The common grievance in all these appeals relates to the levy of penalty u/s. 271 (1)(c) of the Act though the quantum of penalty may differ in each year.

3. Since under lying facts are identical in all the appeals, therefore, they were heard together and are disposed of by this common order for the sake of convenience and brevity.

4. The common facts in all the appeals relates to the nature of business of the assessee which is providing of accommodation entries to the beneficiaries.

5. In his return of income the assessee has returned the commission received on providing the accommodation entries and has claimed expenditure from the gross receipts. While scrutinizing return of income the AO accepted the commission received on providing accommodation entries but disallowed 25% of the expenses claimed by the assessee for want of evidences.

6. Penalty proceedings were separately initiated for concealing particulars of income and penalty was accordingly levied being 100% of the tax on the income sought to be evaded by furnishing inaccurate particulars of income.

7. We have given a thoughtful consideration to the assessment order and also the order levying the penalty read with order of the first appellate authority to confirm the levy.

8. We are of the considered view that initially the AO has initiated the penalty proceedings for concealment of income and

while levying the penalty the AO has levied it for furnishing the inaccurate particulars of income. This shows that the AO was not certain under which limb of section 271 (1)(c) of the Act the penalty was levied.

9. Secondly if the AO was of the opinion that the assessee is engaged in a clandestine business then he ought not to have allowed 75% of the expenses and instead should have disallowed the entire expenditure. The action of the AO shows that he was satisfied with the genuineness of 75% of the expenses and levied the penalty on the balance amount disallowed.

10. Considering the facts of the case in totality we are of the considered view that the captioned cases are not fit for levy of penalty u/s. 271 (1)(c) of the Act, therefore, the AO is directed to delete the impugned penalty.

11. In the result, the captioned appeals of the assessee are allowed.

Order pronounced in the open court on 18.09.2023.

Sd/-

[ANUBHAV SHARMA]
JUDICIAL MEMBER

Dated: .09.2023

Neha

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Copy forwarded to:

1. Appellant
2. Respondent
3. CITi
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi