

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH: 'H': NEW DELHI)**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER**

**ITA Nos:- 1659, 1660 & 1661/Del/2021
(Assessment Years: 2012-13, 2013-14 & 2014-15)**

Deepak Agarwal, Delhi.	Vs.	CIT-Appeal-23, New Delhi.
PAN No: ADKPA0795K		
APPELLANT		RESPONDENT

Assessee by : None
Revenue by : Shri Amit Katoch, Sr. DR

Date of Hearing : 04.10.2023
Date of Pronouncement : 06.10.2023

ORDER

PER N.K. BILLAIYA, AM

ITA Nos. 1659, 1660, & 1661/Del/2021 are three separate appeals by the assessee preferred against three separate orders of the CIT(A)-23, dated 28.02.2020 pertaining to A.Y. 2012-13, 2013-14 & 2014-15. Since the grievance of the assessee is common in these three appeals, all the appeals were heard together and are disposed of by this common order for the sake of convenience and brevity.

2. The common grievance in all the appeals relates to the levy of penalty U/s 271(1)(c) of the Act, though the quantum may differ.
3. The roots for the levy of penalty lies in the assessment order framed U/s 153A read with Section 145(3) / 143(3) of the Act, wherein it was categorically held that the assessee was providing accommodation entries in the garb of loans and advances and therefore commission @ 2% was charged for providing the said entries.
4. The action of the AO was confirmed by the CIT(A). The AO initiated penalty proceedings U/s 271(1)(c) of the Act on such income of the assessee and levied penalty accordingly.
5. None appeared on behalf of the assessee inspite of several notices from 13.09.2022 till date, therefore, we decided to proceed ex-parte.
6. The DR brought to our notice that in the hands of the assessee substantive additions were made qua the appellate orders of the parties to whom assessee was providing accommodation entries. It is the say of the DR that the quantum of penalty may now be different if the appeal effect is given in respect of those parties who were the recipient of the accommodation entries.

7. We find force in the contention of the DR, therefore, in the interest of justice and fair play, we restore the impugned appeals to the files of the AO. The AO is directed to decide the levy of penalty afresh after considering all the appellate decision in the cases of recipients of the accommodation entries provided by the assessee. Needless to mention, the AO should give a reasonable and adequate opportunity of being heard to the assessee.

8. In the result, appeals are allowed for statistical purposes.

Order pronounced in the Open Court on 6.10.2023

Sd/-
(SAKTIJIT DEY)
VICE PRESIDENT

Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER

Dated: 6/10/2023.
Pooja/-

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI

ITA Nos.- 1659/Del/2021 and two other appeals.
Deepak Agarwal.

Date of dictation	04.10.2023
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	