

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

Before Sh. C. M. Garg, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 1818/Del/2021 : Asstt. Year : 2012-13

ITA No. 1819/Del/2021 : Asstt. Year : 2013-14

ITA No. 1820/Del/2021 : Asstt. Year : 2014-15

ITA No. 1821/Del/2021 : Asstt. Year : 2015-16

ITA No. 1822/Del/2021 : Asstt. Year : 2016-17

ITA No. 1823/Del/2021 : Asstt. Year : 2017-18

ITA No. 1824/Del/2021 : Asstt. Year : 2018-19

OPG Securities Pvt. Ltd., 1 st Floor, 4/10, Asaf Ali Road, New Delhi-110002 (APPELLANT)	Vs	DCIT, Central Circle-8, New Delhi-110055 (RESPONDENT)
PAN No. AAACO1081C		

ITA No. 1204/Del/2022 : Asstt. Year : 2012-13

ITA No. 1205/Del/2022 : Asstt. Year : 2013-14

ITA No. 1206/Del/2022 : Asstt. Year : 2014-15

OPG Securities Pvt. Ltd., E-24, Preet Vihar, New Delhi-110092 (APPELLANT)	Vs	DCIT, Central Circle-8, New Delhi-110055 (RESPONDENT)
PAN No. AAACO1081C		

ITA No. 57/Del/2022 : Asstt. Year : 2016-17

ITA No. 58/Del/2022 : Asstt. Year : 2017-18

ITA No. 59/Del/2022 : Asstt. Year : 2018-19

DCIT, Central Circle-8, New Delhi-110055 (APPELLANT)	Vs	OPG Securities Pvt. Ltd., 1 st Floor, 4/10, Asaf Ali Road, New Delhi-110002 (RESPONDENT)
PAN No. AAACO1081C		

Assessee by : Sh. Akshat Jain, CA &

Sh. Rajat Jain, CA

Revenue by : Sh. Subhra J. Chakraborty, CIT-DR

CORRIGENDUM

ITA No. 1204/Del/2022 : Asstt. Year : 2012-13
ITA No. 1205/Del/2022 : Asstt. Year : 2013-14
ITA No. 1206/Del/2022 : Asstt. Year : 2014-15

In respect of above said appeals filed by the appellant in respect of penalty levied by the Id. CIT(A) on additions enhanced by CIT(A), there is an omission in Para 50 on Page 48 of the Order dated 17.10.2023 passed by this bench for which this corrigendum is hereby issued.

2. Para 50 of the order reads as under:

"50. Owing to the decision of allowability of expenses, the penalty initiated and levied u/s 271(1)(c) by the Id. CIT(A) contested by the assessee in ITAT Nos 1204 to 1206/Del/2022 is liable to be obliterated."

3. Para 50 of order shall read as under:

50. The Id. CIT(A) has applied the theory of peak credit and made peak credit amount taxable of Rs 19,86,12,311/- in the hands of appellant by considering all the receipt and payment entries mentioned in excel sheets retrieved from the laptop of Saurabh Gupta categorized by assessing officer in 48 heads which has been affirmed by us in Para 32 of the order. Further, the Id. CIT(A) has also made addition of certain expenditures of Rs 11,50,12,654/- for which relief has been granted by us in Para 37 of order. Due to application of peak credit by Id. CIT(A) and addition of expenditure as stated above, there is enhancement of income by the Id. CIT(A) in Assessment Year 2012-13, 2013- 14 and 2014-15 for which penalty has been levied by the Id. CIT(A) vide order dated 29.03.2022.

Enhancement of income by the CIT(A) in AY 2012-13, 2013-14 and 2014-15 is as follows:

Particulars	AY 2012-13	AY 2013-14	AY 2014-15
Unexplained net cash received u/s 69A	90,66,389	63,50,507	9,20,911
Estimated Commission @ 2%	0	4,20,400	0
Total Additions made by AO (A)	90,66,389	67,70,907	9,20,911
Additions modified by CIT(A)			
Peak Credit	91,30,339	2,75,56,842	4,51,648
Estimated Commission @ 2% (Sustained)	0	4,20,400	0
Unexplained Expenditure	3,34,850	38,49,980	1,08,89,548
Total Additions made / sustained by CIT(A) (B)	94,65,189	3,18,27,222	113,41,196
Total Enhancement of income made by CIT(A) (A)-(B)	3,98,800	2,50,56,315	1,04,20,285

4. From the above table, it is evident that total enhancement of income made by Id. CIT(A) consist of two aspect one is enhancement of income due to peak credit and other is addition of expenditure. Year wise bifurcation of enhancement of income due to peak credit of and expenditure is as follows:

Particulars	AY 2012-13	AY 2013-14	AY 2014-15
Peak Credit	63,950	2,12,06,335	(4,69,263)
Unexplained expenditure	3,34,850	38,49,980	1,08,89,548
Total	3,98,800	2,50,56,315	1,04,20,285

5. Since, we have already given relief in respect of addition made by the Id. CIT(A) in respect of unexplained expenditure in Para 37 of Page 44 of the penalty initiated and levied u/s 271(1)(c) by the Id. CIT(A) in respect of unexplained expenditure contested by the assessee in ITAT Nos. 1204 to 1206/Del/2022 is liable to be obliterated.

6. Further in respect of penalty levied on enhancement of income made by CIT(A) applying theory of peak credit the learned AR of the assessee has submitted that CIT(A) has imposed penalty by invoking Explanation 5A of section 271(1)(c) which is not applicable in the case of assessee and pleaded that penalty order is bad in law and liable to be quashed on this ground alone.

7. The Id. CIT(A) invoked and relied upon explanation 5A to Section 271(1)(c) of the Income Tax Act, 1961 while levying the penalty.

8. The said provisions read as under:

Explanation 5A.- Where, in the course of a search initiated under section 132 on or after the 1st day of June, 2007, the assessee is found to be the owner of-

(i) any money, bullion, jewellery or other valuable article or thing (hereafter in this Explanation referred to as assets) and the assessee claims that such assets have been acquired by him by utilising (wholly or in part) his income for any previous year; or

(ii) any income based on any entry in any books of account or other documents or transactions and he claims that such entry in the books of account or other documents or transactions represents his income (wholly or in part) for any previous year,

which has ended before the date of search and,-

(a) where the return of income for such previous year has been furnished before the said date but such income has not been declared therein; or

(b) the due date for filing the return of income for such previous year has expired but the assessee has not filed the return,

then, notwithstanding that such income is declared by him in any return of income furnished on or after the date of search, he shall, for the purposes of imposition of a penalty under clause (c) of sub-section (1) of this section, be deemed to have concealed the particulars of his income or furnished inaccurate particulars of such income."

9. Having gone through the facts and law, arguments of both the parties, we find that Explanation 5A of section 271(1)(c) is not applicable in the case of assessee as the said explanation is invoked only in cases where the assessee is found to be the owner of any income based on documents or transactions and assessee claims that such documents or transactions represents his income for any previous year which has ended before the date of search and where the return of income for such previous year has been furnished before the said date but such income has not been declared therein and assessee declares such income in return of income furnished on or after the date of search, then he will be deemed to have concealed the particulars of income or furnished inaccurate particulars of income.

10. Detail of returned income declared in 139 and 153A by the assessee are as under:

Assessment Year	Returned income as per Section 139	Returned income as per Section 153A
2012-13	95,09,350	95,09,350
2013-14	1,35,22,400	1,35,22,400
2014-15	10,88,01,290	10,88,01,290

11. From the perusal of above table, it is evident that the assessee has not declared any additional income in return of income filed u/s 153A i.e. after the date of search in comparison to return of income filed u/s 139. Therefore, Explanation 5A to section 271(1)(c) is not applicable in the case of assessee and therefore penalty order passed by the Id. CIT(A) by invoking wrong section is bad in law and penalty order is liable to be quashed.

Sd/-

(C. M. Garg)
Judicial Member

Dated: 18/10/2023

Subodh Kumar, Sr. PS

Copy forwarded to:

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

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member