

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'SMC' NEW DELHI**

BEFORE SHRI SATBEER SINGH GODARA, JUDICIAL MEMBER

ITA No. 811/Del/2024	(A.Y. 2004-05)	U/s 147/144
ITA No. 812/Del/2024	(A.Y. 2004-05)	U/s 271(1)(c)
ITA No. 813/Del/2024	(A.Y. 2005-06)	U/s 143(3)
ITA No. 814/Del/2024	(A.Y. 2005-06)	U/s 271(1)(c)
ITA No. 815/Del/2024	(A.Y. 2006-07)	U/s 143(3)
ITA No. 816/Del/2024	(A.Y. 2006-07)	U/s 271(1)(c)
ITA No. 817/Del/2024	(A.Y. 2010-11)	U/s 143(3)
ITA No. 818/Del/2024	(A.Y. 2010-11)	U/s 271(1)(c)

Rishi Prakash, 768/46, Lekhu Nagar, Tri Nagar, New Delhi-110035.	<u>Vs</u>	Income-tax Officer, Ward-43(1), New Delhi
PAN: AGVPP 6251 B		
APPELLANT		RESPONDENT
Assessee represented by		Shri Rajiv Saxena, Adv.; Shri Dishant Sethi; Adv.; & Ms. Sumangla Saxena, Adv.
Department represented by		Shri Siddharth B.S. Meena, Sr. DR
Date of hearing		19.12.2024
Date of pronouncement		19.12.2024

ORDER

PER SATBEER SINGH GODARA, JM:

The instant batch of eight cases pertains to a single assessee herein, namely, Shri Rishi Prakash. All other relevant details stand tabulated as under:

Sr. No.	Asstt. Yr.	ITA no.	Order appealed against	Proceedings U/s
1	2004-05	ITA No. 811/Del/2024	CIT(A)-14, New Delhi – dt. 23.07.2018 – case no. 12/17-18/IT/DEL/2018-19	144/147 of the I.T. Act, 1961.
2	2004-05	ITA No. 812/Del/2024	CIT(A)-14, New Delhi – dt. 23.07.2018 – case no. 13/17-18/ IT/DEL/2018-19	271(1)(c) of the I.T. Act, 1961.
3	2005-06	ITA No. 813/Del/2024	CIT(A)-14, New Delhi – dt. 23.07.2018 – case no. 14/17-18/ IT/DEL/2018-19	143(3) of the I.T. Act, 1961.
4	2005-06	ITA No. 814/Del/2024	CIT(A)-14, New Delhi – dt. 23.07.2018 – case no. 15/17-18/ IT/DEL/2018-19	271(1)(c) of the I.T. Act, 1961.
5	2006-07	ITA No. 815/Del/2024	CIT(A)-14, New Delhi – dt. 23.07.2018 – case no. 16/17-18/2018-19	143(3) of the I.T. Act, 1961.
6	2006-07	ITA No. 816/Del/2024	CIT(A)-14, New Delhi – dt. 23.07.2018 – case no. 17/17-18/ IT/DEL/2018-19	271(1)(c) of the I.T. Act, 1961.
7	2010-11	ITA No. 817/Del/2024	CIT(A)-14, New Delhi – dt. 23.07.2018 – case no. 18/17-18/ IT/DEL/2018-19	143(3) of the I.T. Act, 1961.
8	2010-11	ITA No. 818/Del/2024	CIT(A)-14, New Delhi – dt. 23.07.2018 – case no. 19/17-18/ IT/DEL/2018-19	271(1)(c) of the I.T. Act, 1961.

Heard both the parties at length. Case files perused. For the sake of convenience all these appeals are heard together and being disposed of by a common order.

2. It emerges during the course of hearing that both the learned lower authorities have added Rs. 5,50,000/- on account of alleged unexplained investments followed by estimated commission(s) of Rs. 45,000/-, Rs. 3,93,350/- and 38,52,375/-; assessment year wise, respectively in assessee's heads.

3. It is in this factual background that I take up assessee's first and foremost assessment year 2004-05, wherein the learned departmental authorities had carried out a survey in his case wherein it came across twin agreements dated 10.05.2003 and 12.11.2003 indicating advance payments on his behalf amounting to Rs. 5,00,000/- and Rs. 50,000/- respectively. Such impugned documents during the course of survey indeed carried presumption of correctness u/s 292C of the Act.

The assessee, undisputedly, had not filed any return nor explained source of the said investments before lower authorities. He has now filed an additional ground application that the department be directed to produce the relevant records. I am of the considered view that such a course of action is not available to an applicant seeking admission of additional ground in the tribunal as per NTPC Co. Ltd. v. CIT (1998) 229 ITR 383 (St.) as it is a precondition that all the relevant facts must form part of return. There is no other explanation disputing the impugned investment appears to have been made in the lower proceedings. It is in these peculiar facts that I invoke section 292C presumption to uphold the impugned addition of Rs. 5,50,000/- in the first and foremost assessment year 2004-05 in assessee's hands. His quantum appeal ITA no. 811/Del/2024 and consequential 271(1)(c) penalty appeal ITA no. 812/Del/2024 are dismissed in very terms. Ordered accordingly.

4. Coming to the assessee's latter three quantum appeals i.e. ITA nos. 813, 815 & 817/Del/2024 (supra), it is noticed that both the learned lower authorities went only by his alleged admission during the course of survey indicating estimated commissions for making the impugned additions. The CBDT's landmark circular dated 10.03.2023 holds that such admission or confession, as the case may be, in search or survey, do not carry any significance. There is no independent corroborative material relied by the learned lower authorities for the purpose of making the impugned identical additions in these three assessment years. I, therefore, accept the assessee's instant sole substantive ground for A.Y. 2005-06, 2006-07 and 2010-11 involving his quantum appeals ITA nos. 813, 815 & 817/Del/2024. The same shall stand allowed. So is the outcome of his corresponding penalty appeals ITA nos. 814, 816 & 818/Del/2024.

5. No other ground was argued or pressed during the course of hearing.

6. These assessee's twin appeals ITA nos. 811 & 812/Del/2024 are dismissed and remaining six appeals i.e. ITA nos. 813/Del/2024 to 818/Del/2024 for A.Y. 2005-06, 2007-08 & 2010-11 are allowed in above terms. A copy of this common order will be placed in respective case files.

Order pronounced in open court on 19.12.2024.

Sd/-
(SATBEER SINGH GODARA)
JUDICIAL MEMBER

MP

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI