

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**GUWAHATI BENCH, GUWAHATI**  
**(VIRTUAL HEARING AT KOLKATA)**

**SHRI MANOMOHAN DAS, JUDICIAL MEMBER**  
**SHRI SANJAY AWASTHI, ACCOUNTANT MEMBER**

**I.T.A. No. 204/GTY/2018**  
**Assessment Year 2014-15**

**I.T.A. No. 227/GTY/2024**  
**Assessment Year 2013-14**

**&**

**I.T.A. No. 228/GTY/2024**  
**Assessment Year 2014-15**

**Vivek Agarwal,**

H.No.C-1087, Sushant Lok-1,  
Block-C, Gurgaon - 122002  
[PAN: AFJPA6179A]

.....**Appellant**

**vs.**

**The Income Tax Officer,**  
**Ward-2, Tinsukia**

..... **Respondent**

**Appearances by:**

Assessee represented by : Bhupenderjit Kumar, AR  
Department represented by : Kausik Ray, JCIT

Date of concluding the hearing : 09.06.2025  
Date of pronouncing the order : 25.06.2025

**ORDER**

**PER SANJAY AWASTHI, ACCOUNTANT MEMBER:**

1. This is a batch of three appeals pertaining to the same assessee. Since, the issues are inter-connected, hence, they are disposed of through a single order.

1.1 ITA No. 204/Gty/2018 pertains to A.Y. 2014-15 and emanates from order dated 07.02.2018, passed by the Ld. Commissioner of Income Tax (Appeals), Dibrugarh (hereafter "the Ld. CIT(A)". Appeal ITA No. 227/Gty/2024 arises from order dated 19.03.2020, passed by the Ld.

CIT(A), National Faceless Appeal Centre, Delhi. The ITA No. 228/Gty/2024 pertains to an order passed by Ld. CIT(A), NFAC under Section 250 of the Income Tax Act, 1961 (hereafter "the Act"), vide order dated 19.03.2020. It may be mentioned that appeals 204 & 228/Gty/2024 pertain to A.Y. 2014-15, whereas, ITA No. 204/Gty/2018 pertains to the quantum and ITA No. 228/Gty/2024 pertains to penalty under Section 271(1)(c) of the Act. ITA No. 227/Gty/2024 pertains to A.Y. 2013-14 and is on a penalty levied under Section 271(1)(c) of the Act.

2. In this case, A.Y. 2014-15 concerns the Long-Term Capital Gains (LTCG) claimed on account of certain penny stocks which were under adverse notice by the Investigation Wing of the Income Tax Department. The LTCG claimed was disallowed by treating it as bogus and thereafter penalty under Section 271(1)(c) of the Act was also levied. Regarding the A.Y. 2013-14 (ITA No. 227/Gty/2024) also, the LTCG claimed has been held to be bogus and on this the penalty under Section 271(1)(c) of the Act has been levied. On a query from the Bench, it was informed by the Ld. AR, at the Bar, that the quantum matter was pending before the Ld. CIT(A). Needless to say, the assessee is aggrieved by the action of the Ld. Assessing Officer in all the three matters and has challenged the imposition of penalty in ITA No. 227 & 228/Gty/2024. He has also challenged the treatment of LTCG as bogus in the case of ITA No. 204/Gty/2018. For the A.Y. 2014-15 (ITA No. 204/Gty/2018) the assessee has filed revised grounds of appeal which deserve to be extracted for reference:

*"1. That on the facts and circumstances of the case, the Learned Commissioner of Income-tax (Appeals), Dibrugarh [hereinafter referred to as "Ld. CIT(A)"] erred in passing the impugned order dated 07.02.2018 in Appeal No. CIT(A), Dibrugarh/10104/2016-17 in the case of Shri Vivek Agarwal [hereinafter referred to as the "Appellant"] for the Assessment Year [hereinafter referred to as "A.Y."] 2014-15 dismissing the appeal filed by the Appellant and confirming the addition of 49,10,958 made by the Income-tax Officer, Ward-2, Tinsukia [hereinafter referred to as "ITO, Tinsukia"] in the assessment order dated 30.12.2016 passed by the ITO, Tinsukia under section 143(3) of the Income-tax Act, 1961 [hereinafter referred to as the "Act"] in the case of the Appellant for A.Y. 2014-15.*

2. That on the facts and circumstances of the case, the Ld. CIT(A) erred in passing the impugned order dated 07.02.2018 confirming the addition of ₹49,10,958 made by the ITO, Tinsukia in the case of the Appellant for A.Y. 2014-15 because the ITO, Tinsukia who passed the assessment order was not having jurisdiction over the case of the Appellant.

3. That on the facts and circumstances of the case, the Ld. CIT(A) erred in passing the impugned order dated 07.02.2018 confirming the addition of 249,10,958 made by the ITO, Tinsukia in the case of the Appellant for A.Y. 2014-15, merely on the basis of the findings and conclusions made by the ITO, Tinsukia in the assessment order and without considering the replies filed by the Appellant.

4. That on the facts and circumstances of the case, the Ld. CIT(A) erred in passing the impugned order dated 07.02.2018 confirming the addition of 249,10,958 made by the ITO, Tinsukia in the case of the Appellant for A.Y. 2014-15, because the addition made by the Ld. ITO is not sustainable on merits.

5. That on the facts and circumstances of the case, the Ld. CIT(A) erred in passing the impugned order dated 07.02.2018 confirming the addition of \*49,10,958 made by the ITO, Tinsukia in the case of the Appellant for A.Y. 2014-15, because the show cause notice was issued by the Ld. ITO under section 69A whereas the addition has been made by the Ld. ITO under section 68 of the Act.”

2.1 Regarding the remaining two appeals, where the penalty under Section 271(1)(c) of the Act has been levied, the assessee has challenged the same.

3. Before us, the Ld. AR averred that the Ld. AO merely went by information received from the Investigation Wing and disregarded the documents in possession of the assessee regarding the impugned transactions. The Ld. AR also mentioned that since the assessee had relocated to Gurgaon hence, he could not attend promptly to the notices issued fixing the dates for hearing by the Ld. CIT(A) in all the three cases. It was averred that the assessee has adequate evidence and material available with him to prove the genuineness of the transaction and hence he deserves an opportunity to do so.

3.1 The Ld. DR relied on the orders of authorities below.

4. We have considered the arguments of the Ld. AR/DR and have also gone through the records before us. It is seen that in the quantum matter for A.Y. 2014-15 there is a recording by the Ld. CIT(A) in para 2 at page 2

of the impugned order that the assessee did not make a presentation of facts before him in spite of several opportunities. We find that even in the other two appeals there has been little or no compliance before the Ld. CIT(A). Accordingly, in the interest of substantive justice, we deem it fit to order as under:

(a) ITA 204/Gty/2018

We set aside the impugned order and remand the matter back to the file of Ld. CIT(A) for considering the arguments of the assessee. The assessee would be at liberty to file necessary documents before the Ld. CIT(A) for proving the transactions and in case it is so required then the Ld. CIT(A) would admit new evidence as per extant Rules and ask for a remand report from the Ld. Assessing Officer.

(b) ITA 227/Gty/2024

In this case, the quantum matter is pending with the Ld. CIT(A) and hence we deem it fit to set aside the impugned order and remand this matter back to the file of Ld. CIT(A) for adjudicating the quantum matter first and thereafter adjudicating on the penalty, if at all any addition survives in quantum.

(c) ITA 228/Gty/2024

In this case, the quantum matter has already been adjudicated (ITA No. 204/Gty 2018) and the same has been remanded back to the file of Ld. CIT(A). Considering this, we set aside the impugned order and remand the same back to the file of Ld. CIT(A) for adjudicating it along with quantum matter.

4. With these remarks, these three appeals of the assessee are allowed for statistical purposes.

Order pronounced on 25.06.2025

Sd/-

**[Manomohan Das]**  
**Judicial Member**

Dated: 25.06.2025

AK, Sr. PS

Sd/-

**[Sanjay Awasthi]**  
**Accountant Member**

*Copy of the order forwarded to:*

1. Vivek Agarwal
2. The Income Tax Officer, Ward-2, Tinsukia
3. CIT(A)-
4. CIT-
5. CIT(DR)

//True copy//

By order

Assistant Registrar, Kolkata Benches

