

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

**BEFORE SHRI K.N. CHARY, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA Nos:- 2531, 2533 and 2535/Del/2016  
(Assessment Years: 2009-10, 2010-11 and 2011-12)**

Vishnu Bhagwan, 118, Sukhi Mal, Dasna Gate, Ghaziabad.	Vs.	Dy. Commissioner of Income Tax, Central Circle, Ghaziabad.
<b>PAN No:</b> AKEPB0169K		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA Nos:- 2538, 2540/Del/2016  
(Assessment Years: 2010-11 and 2011-12)**

Pankaj Sharma, B-74, Gagan Enclave, Ghaziabad.	Vs.	Dy. Commissioner of Income Tax, Central Circle, Ghaziabad.
<b>PAN No:</b> AWYPS9585Q		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**ITA Nos:- 2542/Del/2016 to 2548 /Del/2016  
(Assessment Years: 2005-06 to 2011-12)**

Manoj Kumar Jain, R-8/11, Flate No. 700, Raj Nagar, Ghaziabad.	Vs.	Dy. Commissioner of Income Tax, Central Circle, Ghaziabad.
<b>PAN No:</b> ACLPJ4982H		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Revenue by** : Smt. Naina Soin Kapil, Sr. DR  
**Assessee by** : Shri Kapil Goel, Adv.

## **CONSOLIDATED ORDER**

### **PER BENCH**

(A) In all these cases, the assessees have filed appeals against orders dated 07.03.2016 and 08.03.2016 of Learned Commissioner of Income Tax (Appeals)-IV, Kanpur, ("Ld. CIT(A)", in short) pertaining to different Assessment Years. In the aforesaid orders, the Ld. CIT(A) dismissed the assessee's appeals in limine for non-prosecution of the appeals by the respective assessees. For the sake of convenience these appeals are hereby disposed off through this Consolidated Order. The grounds of all these appeals are as under:

### **ITA No. -2531/Del/2016**

- "1. *That the Ld. CIT(A)-IV, Kanpur has erred in law and on facts in dismissing the appeal of the appellant in limine for non attendance by the appellant.*
2. *That the Ld. CIT(A)-IV Kanpur had no power to dismiss the appeal is limine for non attendance by the appellant in the facts of circumstances of the case.*
3. *Various observations made by the Ld. CIT(A)-IV Kanpur in the appellate order either incorrect or are legally untenable.*
4. *That Ld. CIT(A)-IV Kanpur was duty bound to adjudicate the following grounds as specifically raised before him:-*
  - a. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 71,990/- u/s 271B of the Income-tax Act, 1961 and therefore, penalty order deserves to be annulled.*
  - b. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 71,990/- u/s 271B of the Act and*

*failed to observe that assessee was not required to maintain books of account and in case of non maintenance of books of accounts assessee cannot be penalized for failure to get accounts audited and therefore penalty deserves to be cancelled.*

- c. That Ld. Assessing Officer has erred in law as well as on facts on the case by imposing the penalty of Rs. 71,990/- u/s 271B of the Act by wrongly holding that entries recorded in the bank accounts also partake the character of books of accounts and therefore penalty order deserves to be cancelled.*
- 5. That it was not a fit case for levy of penalty of Rs. 71,990/- under section 271B which deserves to be deleted.*
- 6. That the Appellant reserves his right to add, amend/modify the grounds of appeal."*

#### **ITA No. -2533/Del/2016**

- "1. That the Ld. CIT(A)-IV, Kanpur has erred in law and on facts in dismissing the appeal of the appellant in limine for non attendance by the appellant.*
- 2. That the Ld. CIT(A)-IV Kanpur had no power to dismiss the appeal is limine for non attendance by the appellant in the facts of circumstances of the case.*
- 3. Various observations made by the Ld. CIT(A)-IV Kanpur in the appellate order either incorrect or are legally untenable.*
- 4. That Ld. CIT(A)-IV Kanpur was duty bound to adjudicate the following grounds as specifically raised before him:-*
  - a. That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,36,680/- u/s 271B of the Income-tax Act, 1961 and therefore, penalty order deserves to be annulled.*
  - b. That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,36,680/- u/s 271B of the Act and failed to observe that assessee was not required to maintain books of account and in case of non maintenance of books of accounts assessee cannot be penalized for failure to get accounts audited and therefore penalty deserves to be cancelled.*
  - c. That Ld. Assessing Officer has erred in law as well as on facts on the case by imposing the penalty of Rs. 1,36,680/- u/s 271B of the Act by wrongly holding that entries recorded in the bank accounts also*

*partake the character of books of accounts and therefore penalty order deserves to be cancelled.*

- d. *That without prejudice to above, it is well settled law that penalty law is prospective law and in the year under appeal amount of maximum penalty imposable was Rs. 1 Lac and amendment in section 271B of the Act revising the penalty amount from Rs. 1 Lac to Rs. 1.50 Lac came into effect from A.Y. 2011-12, hence penalty imposed at Rs. 1.50 Lac in the year under appeal is contrary to the provision of income-tax act and therefore, penalty order deserves to be cancelled.*
5. *That it was not a fit case for levy of penalty of Rs. 1,36,680/- under section 271B which deserves to be deleted.*
6. *That the Appellant reserves his right to add, amend/modify the grounds of appeal."*

#### **ITA No. -2535/Del/2016**

- "1. *That the Ld. CIT(A)-IV, Kanpur has erred in law and on facts in dismissing the appeal of the appellant in limine for non attendance by the appellant.*
2. *That the Ld. CIT(A)-IV Kanpur had no power to dismiss the appeal in limine for non attendance by the appellant in the facts of circumstances of the case.*
3. *Various observations made by the Ld. CIT(A)-IV Kanpur in the appellate order either incorrect or are legally untenable.*
4. *That Ld. CIT(A)-IV Kanpur was duty bound to adjudicate the following grounds as specifically raised before him:-*
  - a. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,09,800/- u/s 271B of the Income-tax Act, 1961 and therefore, penalty order deserves to be annulled.*
  - b. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,09,800/- u/s 271B of the Act and failed to observe that assessee was not required to maintain books of account and in case of non maintenance of books of accounts assessee cannot be penalized for failure to get accounts audited and therefore penalty deserves to be cancelled.*
  - c. *That Ld. Assessing Officer has erred in law as well as on facts on the case by imposing the penalty of Rs. 1,09,800/- u/s 271B of the Act by wrongly holding that entries recorded in the bank accounts also*

*partake the character of books of accounts and therefore penalty order deserves to be cancelled.*

- d. *That without prejudice to above, it is well settled law that penalty law is prospective law and in the year under appeal amount of maximum penalty imposable was Rs. 1 Lac and amendment in section 271B of the Act revising the penalty amount from Rs. 1 Lac to Rs. 1.50 Lac came into effect from A.Y. 2011-12, hence penalty imposed at Rs. 1.50 Lac in the year under appeal is contrary to the provision of income-tax act and therefore, penalty order deserves to be cancelled.*
5. *That it was not a fit case for levy of penalty of Rs. 1,09,800/- under section 271B which deserves to be deleted.*
6. *That the Appellant reserves his right to add, amend/modify the grounds of appeal."*

### **ITA No. -2538/Del/2016**

- "1. *That the Ld. CIT(A)-IV, Kanpur has erred in law and on facts in dismissing the appeal of the appellant in limine for non attendance by the appellant.*
2. *That the Ld. CIT(A)-IV Kanpur had no power to dismiss the appeal is limine for non attendance by the appellant in the facts of circumstances of the case.*
3. *Various observations made by the Ld. CIT(A)-IV Kanpur in the appellate order either incorrect or are legally untenable.*
4. *That Ld. CIT(A)-IV Kanpur was duty bound to adjudicate the following grounds as specifically raised before him:-*
  - a. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the Income-tax Act, 1961 and therefore, penalty order deserves to be annulled.*
  - b. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the Act and failed to observe that assessee was not required to maintain books of account and in case of non maintenance of books of accounts assessee cannot be penalized for failure to get accounts audited and therefore penalty deserves to be cancelled.*
  - c. *That Ld. Assessing Officer has erred in law as well as on facts on the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the Act by wrongly holding that entries recorded in the bank accounts also partake the character of books of accounts and therefore penalty order deserves to be cancelled.*

- d. *That without prejudice to above, it is well settled law that penalty law is prospective law and in the year under appeal amount of maximum penalty imposable was Rs. 1 Lac and amendment in section 271B of the Act revising the penalty amount from Rs. 1 Lac to Rs. 1.50 Lac came into effect from A.Y. 2011-12, hence penalty imposed at Rs. 1.50 Lac in the year under appeal is contrary to the provision of income-tax act and therefore, penalty order deserves to be cancelled.*
5. *That it was not a fit case for levy of penalty of Rs. 1,50,000/- under section 271B which deserves to be deleted.*
6. *That the Appellant reserves his right to add, amend/modify the grounds of appeal."*

**ITA No. -2540/Del/2016**

- "1. *That the Ld. CIT(A)-IV, Kanpur has erred in law and on facts in dismissing the appeal of the appellant in limine for non attendance by the appellant.*
2. *That the Ld. CIT(A)-IV Kanpur had no power to dismiss the appeal is limine for non attendance by the appellant in the facts of circumstances of the case.*
3. *Various observations made by the Ld. CIT(A)-IV Kanpur in the appellate order either incorrect or are legally untenable.*
4. *That Ld. CIT(A)-IV Kanpur was duty bound to adjudicate the following grounds as specifically raised before him:-*
- a. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the Income-tax Act, 1961 and therefore, penalty order deserves to be annulled.*
- b. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the Act and failed to observe that assessee was not required to maintain books of account and in case of non maintenance of books of accounts assessee cannot be penalized for failure to get accounts audited and therefore penalty deserves to be cancelled.*
- c. *That Ld. Assessing Officer has erred in law as well as on facts on the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the Act by wrongly holding that entries recorded in the bank accounts also partake the character of books of accounts and therefore penalty order deserves to be cancelled.*
5. *That it was not a fit case for levy of penalty of Rs. 1,50,000/- under section 271B which deserves to be deleted.*

6. *That the Appellant reserves his right to add, amend/modify the grounds of appeal."*

**ITA No. -2542/Del/2016**

- "1. *That the Ld. CIT(A)-IV, Kanpur has erred in law and on facts in dismissing the appeal of the appellant in limine for non attendance by the appellant.*
2. *That the Ld. CIT(A)-IV Kanpur had no power to dismiss the appeal in limine for non attendance by the appellant in the facts of circumstances of the case.*
3. *Various observations made by the Ld. CIT(A)-IV Kanpur in the appellate order either incorrect or are legally untenable.*
4. *That Ld. CIT(A)-IV Kanpur was duty bound to adjudicate the following grounds as specifically raised before him:-*
  - a. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the Income-tax Act, 1961 and therefore, penalty order deserves to be annulled.*
  - b. *That Ld. Assessing Officer was clearly wrong in imposing a penalty on the assessee u/s 271B of the Act as the appellant duly complied with the provision of section 44AB of the Income-tax and without appreciating the facts in proper manner the Ld. Assessing Officer passed penalty order u/s 271B of the Act and, therefore, penalty order deserves to be cancelled.*
  - c. *That without prejudice to above, it is well settled law that penalty law is prospective law and in the year under appeal amount of maximum penalty imposable was Rs. 1 Lac and amendment in section 271B of the Act revising the penalty amount from Rs. 1 Lac to Rs. 1.50 Lac came into effect from A.Y. 2011-12, hence penalty imposed at Rs. 1.50 Lac in the year under appeal is contrary to the provision of income-tax act and therefore, penalty order deserves to be cancelled.*
5. *That it was not a fit case for levy of penalty of Rs. 1,50,000/- under section 271B which deserves to be deleted.*
6. *That the Appellant reserves his right to add, amend/modify the grounds of appeal."*

**ITA No. -2543/Del/2016**

- "1. *That the Ld. CIT(A)-IV, Kanpur has erred in law and on facts in dismissing the appeal of the appellant in limine for non attendance by the appellant.*
2. *That the Ld. CIT(A)-IV Kanpur had no power to dismiss the appeal is limine for non attendance by the appellant in the facts of circumstances of the case.*
3. *Various observations made by the Ld. CIT(A)-IV Kanpur in the appellate order either incorrect or are legally untenable.*
4. *That Ld. CIT(A)-IV Kanpur was duty bound to adjudicate the following grounds as specifically raised before him:-*
  - a. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the Income-tax Act, 1961 and therefore, penalty order deserves to be annulled.*
  - b. *That Ld. Assessing Officer was clearly wrong in imposing a penalty on the assessee u/s 271B of the Act as the appellant duly complied with the provision of section 44AB of the Income-tax and without appreciating the facts in proper manner the Ld. Assessing Officer passed penalty order u/s 271B of the Act and, therefore, penalty order deserves to be cancelled.*
  - c. *That without prejudice to above, it is well settled law that penalty law is prospective law and in the year under appeal amount of maximum penalty imposable was Rs. 1 Lac and amendment in section 271B of the Act revising the penalty amount from Rs. 1 Lac to Rs. 1.50 Lac came into effect from A.Y. 2011-12, hence penalty imposed at Rs. 1.50 Lac in the year under appeal is contrary to the provision of income-tax act and therefore, penalty order deserves to be cancelled.*
5. *That it was not a fit case for levy of penalty of Rs. 1,50,000/- under section 271B which deserves to be deleted.*
6. *That the Appellant reserves his right to add, amend/modify the grounds of appeal."*

**ITA No. -2544/Del/2016**

- "1. *That the Ld. CIT(A)-IV, Kanpur has erred in law and on facts in dismissing the appeal of the appellant in limine for non attendance by the appellant.*
2. *That the Ld. CIT(A)-IV Kanpur had no power to dismiss the appeal is limine for non attendance by the appellant in the facts of circumstances of the case.*

3. *Various observations made by the Ld. CIT(A)-IV Kanpur in the appellate order either incorrect or are legally untenable.*
4. *That Ld. CIT(A)-IV Kanpur was duty bound to adjudicate the following grounds as specifically raised before him:-*
  - a. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the Income-tax Act, 1961 and therefore, penalty order deserves to be annulled.*
  - b. *That Ld. Assessing Officer was clearly wrong in imposing a penalty on the assessee u/s 271B of the Act as the appellant duly complied with the provision of section 44AB of the Income-tax and without appreciating the facts in proper manner the Ld. Assessing Officer passed penalty order u/s 271B of the Act and, therefore, penalty order deserves to be cancelled.*
  - c. *That without prejudice to above, it is well settled law that penalty law is prospective law and in the year under appeal amount of maximum penalty imposable was Rs. 1 Lac and amendment in section 271B of the Act revising the penalty amount from Rs. 1 Lac to Rs. 1.50 Lac came into effect from A.Y. 2011-12, hence penalty imposed at Rs. 1.50 Lac in the year under appeal is contrary to the provision of income-tax act and therefore, penalty order deserves to be cancelled.*
5. *That it was not a fit case for levy of penalty of Rs. 1,50,000/- under section 271B which deserves to be deleted.*
6. *That the Appellant reserves his right to add, amend/modify the grounds of appeal."*

### **ITA No. -2545/Del/2016**

- "1. *That the Ld. CIT(A)-IV, Kanpur has erred in law and on facts in dismissing the appeal of the appellant in limine for non attendance by the appellant.*
2. *That the Ld. CIT(A)-IV Kanpur had no power to dismiss the appeal is limine for non attendance by the appellant in the facts of circumstances of the case.*
3. *Various observations made by the Ld. CIT(A)-IV Kanpur in the appellate order either incorrect or are legally untenable.*
4. *That Ld. CIT(A)-IV Kanpur was duty bound to adjudicate the following grounds as specifically raised before him:-*
  - a. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the*

*Income-tax Act, 1961 and therefore, penalty order deserves to be annulled.*

- b. That Ld. Assessing Officer was clearly wrong in imposing a penalty on the assessee u/s 271B of the Act as the appellant duly complied with the provision of section 44AB of the Income-tax and without appreciating the facts in proper manner the Ld. Assessing Officer passed penalty order u/s 271B of the Act and, therefore, penalty order deserves to be cancelled.*
- c. That without prejudice to above, it is well settled law that penalty law is prospective law and in the year under appeal amount of maximum penalty imposable was Rs. 1 Lac and amendment in section 271B of the Act revising the penalty amount from Rs. 1 Lac to Rs. 1.50 Lac came into effect from A.Y. 2011-12, hence penalty imposed at Rs. 1.50 Lac in the year under appeal is contrary to the provision of income-tax act and therefore, penalty order deserves to be cancelled.*
- 5. That it was not a fit case for levy of penalty of Rs. 1,50,000/- under section 271B which deserves to be deleted.*
- 6. That the Appellant reserves his right to add, amend/modify the grounds of appeal."*

### **ITA No. -2546/Del/2016**

- "1. That the Ld. CIT(A)-IV, Kanpur has erred in law and on facts in dismissing the appeal of the appellant in limine for non attendance by the appellant.*
- 2. That the Ld. CIT(A)-IV Kanpur had no power to dismiss the appeal is limine for non attendance by the appellant in the facts of circumstances of the case.*
- 3. Various observations made by the Ld. CIT(A)-IV Kanpur in the appellate order either incorrect or are legally untenable.*
- 4. That Ld. CIT(A)-IV Kanpur was duty bound to adjudicate the following grounds as specifically raised before him:-*
  - a. That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the Income-tax Act, 1961 and therefore, penalty order deserves to be annulled.*
  - b. That Ld. Assessing Officer was clearly wrong in imposing a penalty on the assessee u/s 271B of the Act as the appellant duly complied with the provision of section 44AB of the Income-tax and without appreciating the facts in proper manner the Ld. Assessing Officer*

*passed penalty order u/s 271B of the Act and, therefore, penalty order deserves to be cancelled.*

- c. *That without prejudice to above, it is well settled law that penalty law is prospective law and in the year under appeal amount of maximum penalty imposable was Rs. 1 Lac and amendment in section 271B of the Act revising the penalty amount from Rs. 1 Lac to Rs. 1.50 Lac came into effect from A.Y. 2011-12, hence penalty imposed at Rs. 1.50 Lac in the year under appeal is contrary to the provision of income-tax act and therefore, penalty order deserves to be cancelled.*
5. *That it was not a fit case for levy of penalty of Rs. 1,50,000/- under section 271B which deserves to be deleted.*
6. *That the Appellant reserves his right to add, amend/modify the grounds of appeal."*

#### **ITA No. -2547/Del/2016**

- "1. *That the Ld. CIT(A)-IV, Kanpur has erred in law and on facts in dismissing the appeal of the appellant in limine for non attendance by the appellant.*
2. *That the Ld. CIT(A)-IV Kanpur had no power to dismiss the appeal is limine for non attendance by the appellant in the facts of circumstances of the case.*
3. *Various observations made by the Ld. CIT(A)-IV Kanpur in the appellate order either incorrect or are legally untenable.*
4. *That Ld. CIT(A)-IV Kanpur was duty bound to adjudicate the following grounds as specifically raised before him:-*
  - a. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the Income-tax Act, 1961 and therefore, penalty order deserves to be annulled.*
  - b. *That Ld. Assessing Officer was clearly wrong in imposing a penalty on the assessee u/s 271B of the Act as the appellant duly complied with the provision of section 44AB of the Income-tax and without appreciating the facts in proper manner the Ld. Assessing Officer passed penalty order u/s 271B of the Act and, therefore, penalty order deserves to be cancelled.*
  - c. *That without prejudice to above, it is well settled law that penalty law is prospective law and in the year under appeal amount of maximum penalty imposable was Rs. 1 Lac and amendment in section 271B of the Act revising the penalty amount from Rs. 1 Lac to Rs. 1.50 Lac*

*came into effect from A.Y. 2011-12, hence penalty imposed at Rs. 1.50 Lac in the year under appeal is contrary to the provision of income-tax act and therefore, penalty order deserves to be cancelled.*

5. *That it was not a fit case for levy of penalty of Rs. 1,50,000/- under section 271B which deserves to be deleted.*
6. *That the Appellant reserves his right to add, amend/modify the grounds of appeal."*

### **ITA No. -2548/Del/2016**

- "1. *That the Ld. CIT(A)-IV, Kanpur has erred in law and on facts in dismissing the appeal of the appellant in limine for non attendance by the appellant.*
2. *That the Ld. CIT(A)-IV Kanpur had no power to dismiss the appeal in limine for non attendance by the appellant in the facts of circumstances of the case.*
3. *Various observations made by the Ld. CIT(A)-IV Kanpur in the appellate order either incorrect or are legally untenable.*
4. *That Ld. CIT(A)-IV Kanpur was duty bound to adjudicate the following grounds as specifically raised before him:-*
  - a. *That Ld. Assessing Officer has erred in law as well as on facts of the case by imposing the penalty of Rs. 1,50,000/- u/s 271B of the Income-tax Act, 1961 and therefore, penalty order deserves to be annulled.*
  - b. *That Ld. Assessing Officer was clearly wrong in imposing a penalty on the assessee u/s 271B of the Act as the appellant duly complied with the provision of section 44AB of the Income-tax and without appreciating the facts in proper manner the Ld. Assessing Officer passed penalty order u/s 271B of the Act and, therefore, penalty order deserves to be cancelled.*
5. *That it was not a fit case for levy of penalty of Rs. 1,50,000/- under section 271B which deserves to be deleted.*
6. *That the Appellant reserves his right to add, amend/modify the grounds of appeal."*

(B) At the time of hearing before us, the Ld. Counsel for assessee submitted that the Ld. CIT(A) did not decide assessee's appeals on merits. He further submitted that the

Assessment Orders have been quashed by separate order dated 31.03.2015, in the case of Shri Manoj Kumar Jain passed by Ld. CIT(A), Gaziabad. He also submitted that the Assessment Orders have been quashed by Income Tax Appellate Tribunal ("ITAT" for short) vide order dated 08.02.2019 in the case of Shri Pankaj Sharma. The Ld. Counsel for assessee also referred to the order of Hon'ble Supreme Court of India, in the case of Commissioner of Income Tax vs. Jai Laxmi Rice Mills reported at (2015) 379 ITR 0521 (SC). The Ld. Counsel for assessee filed a copy of order of Co-ordinate Bench of ITAT, Delhi, in the case of Shri Ajay Sharma vs. DCIT order dated 27.04.2018 for the proposition that, the Ld. CIT(A) should have disposed off the appeals on merit. One of us (Ld. Judicial Member) is a party to the aforesaid order dated 27.04.2018 in the case of Shri Ajay Sharma. The Ld. Counsel for assessee also filed a copy of consolidated order dated 01/06/2018 of Co-ordinate Bench of ITAT, Delhi, in the cases of Vishnu Bhagwan vs. DCIT and Pankaj Sharma vs. DCIT, for the proposition that, the Ld. CIT(A) is required to pass orders on merits giving reasons for his decision in the appellate order. On the other hand, the Ld. Departmental Representative ("DR", for short) submitted that adverse view should be taken against the assesseees because the assesseees did not appear before the Ld. CIT(A).

(C) We have heard both sides attentively and we have also perused the materials available on record carefully. We have also considered judicial precedents brought to our notice or referred to in the records of the ITAT. We are aware of the decision in the case of Ms. Swati Pawa vs. DCIT (2019) 175 ITD 0622 (Delhi-Trib.) / (2019) 55

CCH 0512 DelTrib / [2019] 103 taxmann.com 300 (Delhi–Trib.) in which, on the similar issue, it was held as under:

**"(4.1) A perusal of the above provisions of law shows that U/s 250(6) of I.T. Act the Ld. CIT(A) was obliged to dispose of the appeal in writing after stating the points for determination and to then pass an order on each of the points which arose for consideration; and the Ld. CIT(A) was further obliged to state the reasons for her decision on each such points which arose for determination. The Ld. CIT(A) is duty bound to dispose of the appeal through a speaking order on merits, on all the points which arose for determination in the appellate proceedings, including on all the grounds of appeal. Moreover, the perusal of Section 251(1)(a) and (b) of I.T. Act and the further perusal of Explanation of Section 251(2) of I.T. Act shows that the Ld. CIT(A) is required to apply her mind to all the issues which arise from the impugned order before her, whether or not these issues have been raised by the Assessee before her. If the order of Ld. CIT(A) on merits is a summary order; as we have held in foregoing paragraph (3) of this order; it amounts to non-application of mind. This non-application of mind is a contravention of statutory role of Ld. CIT(A) U/s 251(2) of I.T. Act. Also, Section 251(1)(a) of I.T. Act provides that while disposing of an appeal against Assessment Order, Commissioner (Appeals) shall have the power to confirm, reduce, enhance or annul the assessment. Similarly, the section 251(1)(b) provides that in disposing of an appeal against an order imposing a penalty, Commissioner (Appeals) may confirm or cancel such orders or vary it so as to either to enhance or to reduce the penalty. If the order of the Ld. CIT(A) on merits is a summary order; as we have held in the foregoing paragraph (3) of this order; it amounts to non-application of mind to the possibilities of reducing / enhancing / annulling the assessment, or cancelling / varying the penalty, as the case may be. This non-applications of mind is a contravention of statutory role of Ld. CIT(A) U/s 251(1)(a) or 251(1)(b) of I.T. Act, as the case may be. On cumulative consideration of the provisions U/s 250(6) read with sections 250(4), 250(5), 251(1)(a), 251(1)(b) and Explanation of Section 251(2) of I.T. Act , we come to the conclusion that the Ld. CIT(A) is not empowered to dismiss the appeal for non-prosecution of appeal and is obliged to dispose of the appeal on merits.**

**(4.2) Once the Assessee files an appeal U/s 246A of I.T. Act, the Assessee sets in motion the machinery designed for disposal of the appeal under Sections 250 and 251 of I.T. Act. If the appeal filed by the assessee fulfils the requirements of maintainability and admissibility prescribed under Sections 246, 246A, 248 and 249 of I.T. Act; neither the Assessee can stop the further working of that**

***machinery as a matter of right, by withdrawing the appeal, or by not pressing the appeal, or by non-prosecution of the appeal; nor the first appellate authority, CIT(A) in this case, can halt this machinery by ignoring either the procedure in appeal prescribed U/s 250 of I.T. Act or powers of Commissioner (Appeals) prescribed U/s 251 of I.T Act. CIT(A). The first appellate authority cannot dismiss assessee's appeal on merits, in a summary manner, without deciding the appeal on merits through an order in writing, stating the points of determination in the appeal, the decision thereon and the reason for the decision. It is well-settled that powers of Ld. CIT(A) are co-terminus with powers of the Assessing Officer. Useful reference may be made to order of Apex Court decision in **CIT vs. Kanpur Coal Syndicate 53 ITR 225 (SC)** in which it was held that AAC has plenary powers in disposing off an appeal; that the scope of his power is co-terminus with that of the ITO, that he can do what the ITO can do and also direct him to do what he failed to do. In this context, useful reference may also be made to Apex Court's decisions in the cases of **CIT vs. Rai Bahadur Hardutroy Motilal Chamaria 66 ITR 443** and **CIT vs. B.N. Bhattachargee 118 ITR 461 (SC)** for the proposition that an assessee having once filed an appeal, cannot withdraw it and even if the assessee refuses to appear at the hearing, the first appellate authority can proceed with the enquiry and if he finds that there has been an under-assessment, he can enhance the assessment. Just as, once the assessment proceedings are set in motion, it is not open to the Assessing Officer to not complete the Assessment Proceedings by allowing the Assessee to withdraw Return of Income; it is similarly, by analogy, not open for Ld. CIT(A) to not pass order on merits on account of non-prosecution of appeal by the Assessee or if the Assessee seeks to withdraw the appeal or if the assessee does not press the appeal. When the Commissioner (Appeals) dismisses the appeal of assessee for non-prosecution of appeal by the assessee; in effect, indirectly it leads to same results as withdrawal of appeal by assessee. When the assessee is not permitted to withdraw the appeal filed before the first appellate authority, the first appellate authority is duty bound to not allow a situation to arise, through dismissal of appeal in a summary manner; in which, in effect, indirectly the same results are obtained as arise from withdrawal of appeal by the assessee. What cannot be permitted in law to be done directly, cannot be permitted to be done indirectly either. In view of the foregoing discussion; and on careful perusal of Section 250(6) r.w.s. 250(4), 250(5), 251(1)(a), 251(1)(b) and Explanation to Section 251(2) of I.T. Act; it is amply clear that Ld. CIT(A) has no power to dismiss appeal in limine for non-prosecution of appeal by the assessee. We draw support from order of Hon'ble Bombay High Court in the case of **CIT vs. Premkumar Arjundas Luthra (HUF) [2016] 240 taxman 133** for the propositions that Ld. CIT(A) is required to apply his mind to all issues which arise from impugned order before him whether or not same had been raised by***

*appellant before him; and that CIT(A) is obliged to dispose of the appeal on merits. In this case, it was held as under:*

*"8..... it is very clear once an appeal is preferred before the CIT(A), then in disposing of the appeal, he is obliged to make such further inquiry that he thinks fit or direct the Assessing Officer to make further inquiry and report the result of the same to him as found in Section 250(4) of the Act. Further Section 250(6) of the Act obliges the CIT(A) to dispose of an appeal in writing after stating the points for determination and then render a decision on each of the points which arise for consideration with reasons in support. Section 251(1)(a) and (b) of the Act provide that while disposing of appeal the CIT(A) would have the power to confirm, reduce, enhance or annul an assessment and/or penalty. Besides Explanation to sub-section (2) of Section 251 of the Act also makes it clear that while considering the appeal, the CIT(A) would be entitled to consider and decide any issue arising in the proceedings before him in appeal filed for its consideration, even if the issue is not raised by the appellant in its appeal before the CIT(A). Thus once an assessee files an appeal under Section 246A of the Act, it is not open to him as of right to withdraw or not press the appeal. In fact the CIT(A) is obliged to dispose of the appeal on merits. In fact with effect from 1st June, 2001 the power of the CIT(A) to set aside the order of the Assessing Officer and restore it to the Assessing Officer for passing a fresh order stands withdrawn. Therefore, it would be noticed that the powers of the CIT(A) is co-terminus with that of the Assessing Officer i.e. he can do all that Assessing Officer could do. Therefore just as it is not open to the Assessing Officer to not complete the assessment by allowing the assessee to withdraw its return of income, it is not open to the assessee in appeal to withdraw and/or the CIT(A) to dismiss the appeal on account of non-prosecution of the appeal by the assessee. This is amply clear from the Section 251(1)(a) and (b) and Explanation to Section 251(2) of the Act which requires the CIT(A) to apply his mind to all the issues which arise from the impugned order before him whether or not the same has been raised by the appellant before him. Accordingly, the law does not empower the CIT(A) to dismiss the appeal for non-prosecution as is evident from the provisions of the Act."*

***(5) Whether the assessee attended the appellate proceedings before the Ld. CIT(A), or not; whether the assessee complied with the notices of the Ld. CIT(A) or not; whether the assessee participated in the appellate proceedings before the Ld. CIT(A) or not; whether the assessee complied with the directions of the Ld. CIT(A) or not; provisions of Section 250(6) and Section 251 of I.T. Act continue to have application; and the Ld. CIT(A) cannot disregard her statutory role under these provisions. Thus, the discussion in the foregoing paragraphs (4), (4.1) and (4.2) of this order have relevance even in a case, like the case before us, in which the assessee neither attended the hearings before the Ld. CIT(A) nor filed written submissions before the Ld. CIT(A) and showed indifferent approach, leading the Ld. CIT(A) to pass ex-parte order on the ground of non-appearance of the appellant."***

(C.1) Following the aforesaid precedents in the cases of Shri Ajay Sharma (Supra), Shri Vishnu Bhagwan (Supra), Shri Pankaj Sharma (Supra) and Ms. Swati Pawa (Supra); we set aside the orders of the Ld. CIT(A) and remand the issues in dispute to the Ld. CIT(A) for fresh orders on merits. The Ld. CIT(A) is directed to consider aforesaid order dated 08.02.2019 in the case of Pankaj Sharma and order dated 31.03.2015 in the case of Manoj Kumar Jain and in the case of CIT vs. Jai Laxmi Rice Mills (Supra). The Ld. CIT(A) is also directed to provide opportunity of being heard to the assessee and to also, opportunity make submissions, before he passes the fresh orders.

(D) For statistical purposes all the appeals are treated as partly allowed. The order was already pronounced orally in the open court on 04.06.2019 after conclusion of the hearing.

**Sd/-**  
**(K.N. CHARY)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 04.06.2019  
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
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	