

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
and
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCE)

**ITA Nos.6331 & 6333/Del./2018
(ASSESSMENT YEARS : 2005-06 & 2007-08)**

Shri Rakesh Gupta,
C – 3/28-29, Sector 15, Rohini,
New Delhi.

vs. DCIT, Central Circle 19,
New Delhi.

(PAN : AJAPK4533H)

**ITA No.6339/Del./2018
(ASSESSMENT YEAR : 2008-09)**

Shri Vishesh Gupta,
C – 3/28-29, Sector 15, Rohini,
New Delhi.

vs. DCIT, Central Circle 19,
New Delhi.

(PAN : AGJPG0058P)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Ms. Sangeeta Yadav, Senior DR

Date of Hearing : 02.03.2022

Date of Order : 02.03.2022

ORDER

PER AMIT SHUKLA, JM :

The aforesaid appeals have been filed by the assessee against the separate impugned orders of even dated 14.12.2016, passed by the ld.

CIT(A)-20, New Delhi in relation to the penalty proceedings under section 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') for the assessment years 2005-06 & 2007-08 in the case of Rakesh Gupta and AY 2008-09 in the case of Vishesh Gupta.

2. In all the appeals, the assessee has challenged levy of penalty u/s 271(1)(c) of the Act.

3. From the perusal of the impugned order, it is seen that the ld. CIT (A) has passed an ex-parte order without deciding the appeal on merits on the ground that none appeared on behalf of the appellant in all the aforementioned appeals.

3. Before us, grounds no.1 & 2 raised by the assessee in form no.36 apart from penalty on merits which read as under :-

“1. That the order passed by the Ld. CIT (Appeals) under section 250 of the Income-tax Act, 1961 is bad in law and not justified because Ld. CIT (A) has dismissed the appeal simply on account of non-prosecution of the appeal by the appellant without appreciating the judgment of Hon'ble Bombay High Court in case of CIT (Central) Nagpur vs. Premkumar Arjundas Luthra (HUF), (2016) 69 taxmann.com 407 (Bombay), where it has been held that law does not empower ld. CIT (A) to dismiss the appeal for non-prosecution.

2. That Ld. CIT (A) has erred both in law and in facts in upholding the impugned penalty order passed by Ld. AO ignoring the fact that the assessment order of the AO in the quantum proceedings was altered by the CIT(A) in a significant way and the Ld. CIT(A) has not initiated penalty proceedings on the additions made in substitution of the old addition. In absence of initiation of penalty proceedings during appeal, the penalty order based on finding of Ld. CIT(A) is bad in law and without jurisdiction.”

4. Even before us, none appeared on behalf of the assessee. However, the appeals of the assessee need to be decided on merits and, therefore, in the interest of justice, we set aside the orders of the ld. CIT (A) and remand the matter back to the file of the ld. CIT (A) to decide on merits after considering the entire material on record and also give sufficient and reasonable opportunity of being heard to the assessee to substantiate his case. The assessee is also directed to cooperate in the hearing of the appeal before the ld. CIT (A). Accordingly, all the appeals are allowed for statistical purposes.

Order was pronounced on 2nd day of March, 2022.

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

**sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER**

**Dated: 02.03.2022
TS**

Copy forwarded to:
1.Appellant
2.Respondent
3.CIT
4.CIT(A)-20, New Delhi.
5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.