

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT BENCH, VARANASI**

**BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

ITA No. 75/Vns/2019
Assessment Year: 2011-12

Sub-Registrar, Gola Bazar, 1 st Floor, Tehsil Compound, Gola Bazar, District Gorakhpur, Uttar Pradesh-273408	v.	The Director of Income Tax (I & CI), DTRTI , VibhutiKhand, Gomti Nagar, Lucknow-226010, U.P.
PAN: ALDSO4313B		
(Appellant)		(Respondent)
Appellant by:	ShriDheerendra Prasad	
Respondent by:	Shri A.K. Singh, Sr. DR	

ITA No. 76/Vns/2019
Assessment Year: 2015-16

Sub-Registrar, Gola Bazar, 1 st Floor, Tehsil Compound, Gola Bazar, District Gorakhpur, Uttar Pradesh-273408	v.	The Director of Income Tax (I & CI), Pragya,VibhutiKhand, Gomti Nagar, Lucknow-226010, U.P.
PAN: ALDSO4313B		
(Appellant)		(Respondent)
Appellant by:	ShriDheerendra Prasad	
Respondent by:	Shri A.K. Singh, Sr. DR	

ITA No. 77/Vns/2019
Assessment Year: 2011-12

Sub-Registrar, Sahjanwa 1 st Floor, Tehsil Compound, Shajanwa District Gorakhpur, Uttar Pradesh-273157	v.	The Director of Income Tax (I & CI), DTRTI Building, VibhutiKhand, Gomti Nagar, Lucknow-226010, U.P.
---	----	---

PAN: ALDSO4480A		
(Appellant)		(Respondent)
Appellant by:	None	
Respondent by:	Shri A.K. Singh, Sr. DR	

ITA No. 78/Vns/2019Assessment Year: 2011-12

Sub-Registrar, Campier Ganj, 1 st Floor, Tehsil Compound, District Gorakhpur, Uttar Pradesh-273158	v.	The Director of Income Tax (I & CI), DTRTI, Vibhuti Khand, Gomti Nagar, Lucknow-226010, U.P.
PAN: ALDSO4519E		
(Appellant)		(Respondent)
Appellant by:	None	
Respondent by:	Shri A.K. Singh, Sr. DR	

ITA No. 96/Vns/2019Assessment Year: 2011-12

Sub-Registrar, Pharenda , Tehsil Compound , District Mahrajanj Uttar Pradesh-273155	v.	The Director of Income Tax (I & CI), DTRTI, Vibhuti Khand, Gomti Nagar, Lucknow-226010, U.P.
PAN: ALDSO5154C		
(Appellant)		(Respondent)
Appellant by:	None	
Respondent by:	Shri A.K. Singh, Sr. DR	

ITA No. 97/Vns/2019Assessment Year: 2011-12

Sub-Registrar, Nichlaul, 2 nd Floor, Tehsil Bhawan District Mahrajanj, Uttar Pradesh-273304	v.	The Director of Income Tax (I & CI), DTRTI, Vibhuti Khand, Gomti Nagar, Lucknow-226010, U.P.
PAN: ALDSO5174B		

(Appellant)	(Respondent)
Appellant by:	Shri Rakesh Kumar
Respondent by:	Shri A.K. Singh, Sr. DR

ITA No. 98/Vns/2019

Assessment Year: 2011-12

Sub-Registrar, Nautanwa 1 st Floor, Tehsil Bhawan, Nautanwa, District Maharajganj, Uttar Pradesh-273164	v.	The Director of Income Tax (I & CI), DTRTI, Vibhuti Khand, Gomti Nagar, Lucknow-226010, U.P.
PAN: ALDO00491B		
(Appellant)		(Respondent)
Appellant by:	Shri Surya Mani Mishra, Sub-Registrar	
Respondent by:	Shri A.K. Singh, Sr. DR	
Date of hearing:	24.03.2022	
Date of pronouncement:	24.03.2022	

ORDER

PER Bench:

These seven appeals all filed by different assessee's raises common issue and hence were heard together and are disposed off by this common order. First, we will take up assessee's appeal in ITA no. 75/Vns/2019 for assessment year (ay) 2011-12. This appeal, filed by assessee, being ITA No. 75/Vns/2019, is directed against an appellate order dated 03.01.2019 in Appeal No. A.No.7/201/DIT/GKP/2018-19 passed by learned Commissioner of Income Tax (Appeal)-Gorakhpur, Moti Chambers, Lucknow, U.P. (hereinafter called "the CIT(A)"), for assessment year (ay): 2011-12, the appellate proceedings had arisen before learned CIT(A) from penalty order dated 26.03.2012 passed by learned

Director of Income Tax (I & CI), Lucknow, U.P. (hereinafter called the “AO”), u/s. 271FA of the Income-tax Act, 1961 (hereinafter called "the Act") foray: 2011-12, levying penalty of Rs. 57,200/- against the assessee u/s 271FA of the 1961 Act. We have heard both the parties in Open Court through physical hearing mode.

2. The brief facts of the case are that penalty order dated 26.03.2012 u/s. 271FA of the 1961 Act was passed by ld. Assessing Officer , imposing penalty of Rs.57,200/- against the assessee, for non-compliance of provisions of Section 285BA(1) of the 1961 Act. This penalty order was challenged by assessee by filing first appeal before ld. CIT(A) , who was pleased to dismiss the appeal filed by the assessee, vide appellate order dated 03.01.2019. While dismissing the appeal of the assessee, the ld. CIT(A) observed that the appeal against penalty order passed by AO u/s 271FA is not appealable before ld. CIT(A) , keeping in view provisions of Section 246 and 246A of the 1961 Act. Thus, on this short ground, the appeal of the assessee stood dismissed by ld. CIT(A) as in the opinion of ld. CIT(A), the appeal is not maintainable with him and hence the said appeal was dismissed by ld. CIT(A) as infructuous , with directions to the assessee to file appeal before the appropriate authority designated for adjudicating such appeals.

3. Aggrieved by the aforesaid appellate order passed by ld. CIT(A), the assessee has now come in appeal before the Income Tax Appellate Tribunal, Varanasi Bench, Varanasi (hereinafter called “ the tribunal”).

4 We have heard both the rival parties and perused the material on record. We have observed that penalty order dated 26.03.2012 was passed by ld. AO u/s. 271FA of the 1961 Act , levying penalty of Rs.57,200/- against the assessee, for default in complying with the provisions of Section 285BA(1) of the 1961 Act.

The said penalty order was challenged by assessee by filing first appeal before Id. CIT(A), who dismissed the appeal of the assessee on the grounds that the appeal against penalty order passed u/s 271FA for infringement of Section 285BA(1) of the 1961 Act, is not subject to challenge before Id. CIT(A) , keeping in view provisions of Section 246 and 246A of the 1961 Act, and hence the appeal was dismissed by Id. CIT(A) as infructuous being not maintainable with Id. CIT(A) and directions were issued to the assessee to file its appeal with appropriate authority designated for adjudicating such appeals. We are afraid that this finding of Id. CIT(A) is erroneous in the teeth of provisions of Section 246A(1)(q) of the 1961 Act, and infact Id. CIT(A) is the appropriate authority designated for adjudicating first appeal against an penalty order passed by AO u/s 271FA of the 1961 Act. The provisions of Section 246A(1)(q) of 1961 Act is a residuary provisions which stipulate that first appeal against an order imposing penalty under Chapter XXI shall lie with CIT(A). Undoubtedly, provisions of Section 271FA falls under Chapter XXI of the 1961 Act. Reference is also drawn to Co-ordinate Benches decision of tribunal in the following case, where the similar view was taken, as under:

- a. Chandigarh-tribunal order in **Sub-Registrar , Fategarh Sahib, v. DIT (CIB), Chandigarh**, in ITA no. 1184, 1185, 1186 & 1189/Chd./2010 , vide common order dated 22.02.2011 , wherein tribunal held as under:

“ 5. We have heard the parties and considered the facts and materials on record. First of all, we have to decide whether the appellant can file an appeal before the Tribunal directly without filing of appeal before the CIT(Appeals). In this connection, learned counsel for the assessee brought to our notice that now the **CBDT has clarified in F.No.279/M-31/2010-**

SO(ITJ) on this point. He also filed on record a copy of page No. 5 & 6 of the said Notification. **We find that in the above Notification, the CBDT has clarified that u/s 246A(1)(q), of the income-tax Act, the CIT(Appeals) has powers to dispose of any penalty levied u/s 271FA and that there is no legal bar on CIT(Appeals) passing an appeal order against penalty order passed by the DIT (CIB), who is equivalent to the rank of CIT(Appeals). It has also been mentioned in the above Circular that whether CIT(Appeals) and DIT(CIB) are equivalent in rank or not is an administrative issue and it has nothing to do with the fact that the CIT(Appeals) can hear an appeal filed against an order passed u/s 271FA of the Income Tax Act by Director of Income Tax(CIB). Further it is clarified in the said Circular that u/s 246A(1)(q) of Income Tax Act, CIT(Appeals) has powers to hear an appeal filed against an order passed under Chapter XXI of the Income Tax Act, 1961.**

6. In view of the above clarification given by the CBDT, in our considered opinion, the appellant should have filed an appeal before the CIT(Appeals) before filing an appeal directly before this Tribunal. In view of this position, we are dismissing all the four appeals filed by the appellant.”

- b. Chennai-tribunal decision in the case of **Sub-Registrar , Salem v. The DIT(CIB)(I/C), Chennai** in ITA no. 2009, 2013, 2015 and 2016/Mds/2010, vide common order dated 02.06.2011, wherein the tribunal has taken a similar view that an appeal against penalty order passed u/s 271FA shall lie with Id.CIT(A) keeping in view provision of Section 246A(1)(q) of the 1961 Act.

Thus, under these circumstances as narrated above , we are setting aside appellate order passed by Id. CIT(A) as not sustainable in the eyes of the law and restore the

matter back to the file of Id. CIT(A) for fresh adjudication of all the grievances/grounds of appeal raised by the assessee in its appeal before Id. CIT(A), by holding that Id. CIT(A) is the correct designated appellate authority to adjudicate first appeal arising from an penalty order passed by AO u/s 271FA of the 1961 Act. Needless to say that Id. CIT(A) will give proper and adequate opportunity of hearing to the assessee in set aside remand proceeding while adjudicating first appeal filed by the assessee, in accordance with the principle of natural justice and in accordance with law. The Id. CIT(A) is directed to pass reasoned and speaking order on all the issues raised by the assessee in its appeal filed with Id. CIT(A), while adjudicating denovo the appeal of the assessee. The evidences /explanations submitted by the assessee shall be admitted by Id. CIT(A) in accordance with law and be adjudicated on merits in accordance with law. Thus, in nut-shell appeal filed by the assessee in ITA no. 75/Vns/2019 for ay: 2011-12 is allowed for statistical purposes. We order accordingly.

5. In the result, appeal of the assessee in ITA No. 75/Vns/2019 for ay: 2011-12 is allowed for statistical purposes.

6. Since common issues are involved in the appeal(s) in ITA no. 76/Vns/2019 for ay: 2015-16, appeal in ITA no.77/Vns/2019 for ay: 2011-12, appeal in ITA No. 78/Vns/2019 for ay: 2011-12, appeal in ITA no.96/Vns/2019 for ay: 2011-12, appeal in ITA no.97/Vns/2019 for ay: 2011-12 and appeal in ITA no. 98/Vns/2019 for ay: 2011-12 , as were prevalent in ITA no. 75/Vns/2019 for ay: 2011-12, our appellate order in ITA No. 75/Vns/2019 for ay: 2011-12 as detailed hereinabove in this order shall apply mutatis mutandis to the appeals in ITA no. 76/Vns/2019 for ay: 2015-16, appeal in ITA no.77/Vns/2019 for ay: 2011-12, appeal in ITA No. 78/Vns/2019 for ay: 2011-12, appeal in ITA no.96/Vns/2019 for ay: 2011-12,

appeal in ITA no.97/Vns/2019 for ay: 2011-12 and appeal in ITA no. 98/Vns/2019 for ay: 2011-12, which appeals now stood allowed for statistical purposes and restored to the file of Id.CIT(A) for denovo adjudication with the similar/same directions as are contained in our appellate order in ITA no. 75/Vns./2019 for ay: 2011-12, as detailed above in this order. We order accordingly.

7. In the result, all the seven appeal(s) filed by different assessee(s) in ITA No. 75/Vns/2019 for ay: 2011-12 , appeal in ITA no. 76/Vns/2019 for ay: 2015-16, appeal in ITA no.77/Vns/2019 for ay: 2011-12, appeal in ITA No. 78/Vns/2019 for ay: 2011-12, appeal in ITA no.96/Vns/2019 for ay: 2011-12, appeal in ITA no.97/Vns/2019 for ay: 2011-12 and appeal in ITA no. 98/Vns/2019 for ay: 2011-12 , are allowed for statistical purposes. We order accordingly.

Order pronounced in Open Courton 24/03/2022 at Varanasi, U.P. after the conclusion of hearing.

Sd/-

[VIJAY PAL RAO]
JUDICIAL MEMBER

Sd/-

[RAMIT KOCHAR]
ACCOUNTANT MEMBER

DATED: 24/03/2022

Copy forwarded to:

1. Appellant – Sub-Registrar, Gola Bazar, Gorakhpur, U.P.
Sub-Registrar , Sahjanwa, Gorakhpur, U.P.
Sub-Registrar, Campier Ganj, Gorakhpur, U.P.

Sub-Registrar, Pharenda, Maharajganj, U.P.

Sub-Registrar, Nichlaul, Maharajganj, U.P.

Sub-Registrar, Nautanwa, Maharajganj, U.P.

2. Respondent –The Director of Income Tax(I&CI), DTRTI Building,
VibhutiKhand, Lucknow, U.P.

3. CIT(A) –Gorakhpur, Lucknow, U.P.

4.CIT-Gorakhpur, U.P.

5. Sr. DR , ITAT, Varanasi, U.P.

By order

Assistant Registrar

		Date	Initials	
	Original dictation pad is enclosed at the end of file			
1.	Draft dictated on:	24.03.2022		Sr. PS/PS
2.	Draft placed before author:	24.03.2022		Sr. PS/PS
3.	Draft proposed & placed before the second member:	.03.2022		JM/AM
4.	Draft discussed/approved by Second Member:			JM/AM
5.	Approved Draft comes to the Sr. PS/PS:	24.03.2022		Sr. PS/PS
6.	Order pronounced on:	24.03.2022		Sr. PS/PS
7.	File sent to the Bench Clerk:	24.03.2022		
8.	Date on which file goes to the Head Clerk:			Sr. PS/PS
9.	Date on which file goes to AR			
10.	Date of dispatch of Order:			