

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

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER**

**I.T.A .No.-4598/Del/2016  
(ASSESSMENT YEAR-2006-07)**

Brij Mohan Gupta, Through Legal Heir Sh. Rajiv Gupta, 292, Tagore Park Extension, Model Town-1, Delhi-110009. PAN-AAGPG5542F <b>(APPELLANT)</b>	Vs	ITO, Ward-20(4), New Delhi.  <b>(RESPONDENT)</b>
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<b>Assessee by</b>	<b>Sh.B.L.Gupta, ITP</b>
<b>Revenue by</b>	<b>Sh.F.R.Meena, Sr.DR</b>
<b>Date of Hearing</b>	<b>03.11.2016</b>
<b>Date of Pronouncement</b>	<b>16.12.2016</b>

**ORDER**

The present appeal has been filed by the assessee assailing the correctness of the order dated 27.06.2016 of CIT(A)-12, New Delhi pertaining to 2006-07 AY on various grounds assailing the order wherein the penalty imposed by the AO u/s 271(1)(c) has been upheld. The Ld.AR inviting attention to the order dated 21.06.2016 of the ITAT passed in the case of the assessee in the quantum appeal in ITA No.3211/Del/2014 submitted that the issue in the quantum appeal has been set aside back to the file of the CIT(A) as the appeal by the CIT(A) had been dismissed in limine. Accordingly, it was his prayer that since the penalty is dependent on the quantum order which has been set aside the present appeal may also be set aside to the file of the CIT(A). The said prayer was not objected to by the Ld. Sr. DR.

2. Having heard the rival submissions and perused the material available on record, it is seen that the CIT(A) before passing of the order gives various opportunities to the assessee. However, since ultimately the assessee did not appear, the appeal was dismissed. Reliance was placed upon the decision in the case of Commissioner of Income-Tax vs. Multi Plan India (P) Ltd.; 38 ITD 320 (Del). The said procedure for deciding the appeal is not as per the statutory mandate as set out in sub-section (6) of Section 250 of Income Tax Act, 1961.

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Considering the fact that the quantum appeal has been set aside to the file of the CIT(A) which also had been dismissed in limine by the CIT(A), in these circumstances, considering the prayer of the Ld.AR, the impugned order is set aside and the issue is restored to the file of the CIT(A) with a direction to pass a speaking order in accordance with law after giving the assessee a reasonable opportunity of being heard and taking into consideration the fate of the appeal in the quantum proceedings.

3. In the result, the appeal of the assessee is allowed for statistical purposes.

**The order is pronounced in the open court on 16<sup>th</sup> of December, 2016.**

**Sd/-**

**(DIVA SINGH)  
JUDICIAL MEMBER**

*\*Amit Kumar\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI