

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD BENCH 'SMC', ALLAHABAD**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER
AND
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

I.T.A. No.64 & 65/Alld/2025
Assessment year:2009-10 & 2008-09

Shri Dinesh Kumar Pahuja, C-206, Lotus Apartment, 49/39, Tashkand Marg, Civil Lines, Allahabad. PAN: AESPP3596D (Appellant)	Vs.	A.C.I.T., Central Circle, Allahabad (Respondent)
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Appellant by	Shri S. K. Jaiswal, C.A.
Respondent by	Shri A. K. Singh, Sr. D.R.

ORDER

PER ANADEE NATH MISSHRA, A.M.

(A) These two appeals have been filed by the assessee pertaining to assessment years 2008-09 and 2009-10 against the respective impugned appellate orders each dated 12/03/2025 (DIN & Order No.ITBA/APL/S/250/2024-25/1073183286(1) and No.ITBA/APL/S/250/2024-25/1073179634(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

(B) The facts of the case, in brief, are that in these cases the assessments were completed u/s 153A read with section 144 of the I. T. Act, vide separate orders each dated 17/03/2016, for the two assessment years and additions were made under various heads. The Assessing Officer also initiated penalty proceedings under section 271(1)(c) of the Act. The Assessing Officer passed the separate penalty orders, each dated

17/09/2020 under section 271(1)(c) of the I.T. Act. Being aggrieved, the assessee filed appeals before the learned CIT(A) against the assessment order and also against the orders imposing penalty under section 271(1)(c) of the Act. The learned CIT(A) has decided the appeals against orders imposing penalty u/s 271(1)(c) of the Act and has dismissed the appeals of the assessee. Now the assessee is in appeal before the Income Tax Appellate Tribunal against the confirmation of penalty by learned CIT(A). However, as has been intimated by learned Authorised Representative for the assessee, at the time of hearing before us, the "quantum appeals" against the assessment order are yet to be decided by the learned CIT(A). At the time of hearing before us, the representatives of both sides – the learned Authorised Representative for the assessee as well as the learned Departmental Representative for Revenue were in agreement that impugned orders of the learned CIT(A) be set aside, and the learned CIT(A) be directed to pass de novo orders in accordance with law, after deciding "quantum appeals" against the assessment orders.

(C) We have heard both sides. We have perused the materials on record. Since the appeals of the assessee, filed before the learned CIT(A), against the assessment orders, wherein various additions made by the Assessing Officer, are yet to be decided by learned CIT(A); the quantum of additions to be considered for computation of "tax sought to be evaded" within the meaning of section 271(1)(c) of the I.T. Act is yet to be decided at the level of learned CIT(A). The quantum of additions made by the Assessing Officer can be sustained, reduced, deleted or enhanced by the learned CIT(A) depending on the view the learned CIT(A) takes on various additions u/s 271(1)(c) of the I.T. Act. Depending on what decision he takes on merits of additions, the computation of "tax sought to be evaded" within the meaning of section 271(1)(c) of the I.T. Act may vary. The amount of penalty which can be levied u/s 271(1)(c) of I.T. Act varies from "tax sought to be evaded"

to three times the "tax sought to be evaded". Since the decision of learned CIT(A) on merits of the various additions made in the assessment order is not available; the "tax sought to be evaded" can either increase or decrease or remain unchanged depending on whether the quantum of additions is enhanced, sustained or reduced/deleted. Therefore, unless and until decision of learned CIT(A) on merits of additions becomes available, it is premature for learned CIT(A) to decide appeals against orders imposing penalty u/s 271(1)(c) of the Act. Under these facts, we hold that the learned CIT(A) should first decide the "quantum appeals" of the assessee against the assessment orders; and depending upon the outcome, the learned CIT(A) should pass order on the issue of penalty u/s 271(1)(c) of the Act. Accordingly, the impugned orders of the learned CIT(A) are set aside with the direction to pass de novo orders in accordance with law after providing reasonable opportunity to the assessee and after deciding merits of the various additions made in the assessment order.

(D) In the result, the appeals of the assessee are partly allowed for statistical purposes.

(Order pronounced in the open court on 08/07/2025)

Sd/.
(SUBHASH MALGURIA)
Judicial Member

Sd/.
(ANADEE NATH MISSHRA)
Accountant Member

Dated:08/07/2025
*Singh

Copy of the order forwarded to :

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T., Allahabad