

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH: 'B' NEW DELHI**

**BEFORE SMT DIVA SINGH, JUDICIAL MEMBER  
AND  
SHRI L. P. SAHU, ACCOUNTANT MEMBER**

**I.T.A .No.- 1289/Del/2016  
(ASSESSMENT YEAR-2003-04)**

Gopal Dixit K- 68, Kirti Nagar New Delhi AAKPD7319K <b>(APPELLANT)</b>	vs	ACIT Circle-12(1) New Delhi <b>(RESPONDENT)</b>
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<b>Appellant by</b>	<b>None</b>
<b>Respondent by</b>	<b>Sh. Manoj K. Chopra, Sr. DR</b>

<b>Date of Hearing</b>	<b>05.05.2016</b>
<b>Date of Pronouncement</b>	<b>10.06.2016</b>

**ORDER**

**PER DIVA SINGH, JM**

This appeal has been filed by the assessee assailing the correctness of the order dated 4/1/2014 passed by CIT (A)-4, New Delhi, pertaining to 2003-04 Assessment Year on various grounds. No one was present at the time of hearing. However, considering the material available on record it was considered appropriate to proceed with the present appeal ex-parte qua the assessee-appellant after hearing the Ld. Sr. DR.

2. A perusal of the record shows that aggrieved by the penalty order u/s 271(1)(c) dated 30<sup>th</sup> March 2012 imposing penalty Rs. 3,75,000/-, the assessee came in appeal before the CIT(A). The CIT(A) rejected the appeal holding that the erstwhile CIT(A) had already provided various opportunities. He also held that his endeavours also met the same fate as after seeking adjournments a few times none

appeared on 9/11/2015 also. In the circumstances, the appeal of the assessee was dismissed holding as under:

*“None appeared even on 9/11/2015 and it is very clear that the appellant is not interested in pursuing its case. One Mr. Subhash Jha has appeared so many times but only with the adjournment applications. I dismiss the appeal because of the continued non-compliance by the appellant.”*

3. On a consideration of the above finding, we find that the decision making process and the conclusion arrived at by the CIT(A) does not meet the statutory mandate as set out in sub-section (6) of section 250. The same is reproduced hereunder for ready reference:-

**250.** “(1) .....  
 (2) .....  
 (3) .....  
 (4) .....  
 (5) .....  
 (6) *The order of the Commissioner (Appeals) disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.*  
 (6A).....”

3.1. The specific provision requires the First Appellate Authority to set out points for determination and the decision thereon supported by reasons for arriving at a conclusion. The said mandatory exercise is found to be not fulfilled in the peculiar facts of the present case. Accordingly holding the impugned order violative of the statutory mandate it is set aside back to the file of the CIT(A) to make good the statutory deficit. Needless to say that before passing the order, a reasonable opportunity shall be provided to the assessee. While so directing it is hoped that the opportunity so provided is not abused by the assessee and is

utilized in good faith as failing which the Ld. CIT(A) would be at liberty to pass a speaking order in accordance with law on the basis of material available on record.

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

**The order is pronounced in the open court on 10<sup>th</sup> of June 2016.**

**Sd/-**

**(L. P. SAHU)  
ACCOUNTANT MEMBER**

**Sd/-**

**(DIVA SINGH)  
JUDICIAL MEMBER**

*\*R. Naheed / Amit Kumar\**  
Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI