

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

**BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 6332, 6334 & 6335/Del/2018
Assessment Years: 2006-07, 2008-09 & 2009-10**

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

vs.

DCIT, Central Circle-19,
New Delhi.

PAN : AJAPK4533H
(Appellant)

(Respondent)

Appellant by : None

Respondent by: Shri Kanv Bali, Sr. DR

Date of hearing: 02.12.2021

Date of order : 08.12.2021

ORDER

PER K. NARASIMHA CHARY, J.M.

Aggrieved by the orders dated 14.12.2016 Passed by the learned Commissioner of Income-tax (Appeals)-27, New Delhi ["Id. CIT(A)"] in Appeal Nos. 175, 177 & 178/15-16, for the assessment years 2006-07, 2008-09 and 2009-10 respectively, Shri Rakesh Gupta ("the assessee") preferred these appeals.

2. Brief facts, common to all these appeals, are that the assessee is an individual and engaged in the trading business of metals and scrap. During the course of search and seizure operations carried out at the

premises of assessee on 26.04.2010, it was found that the assessee was engaged in providing accommodation entries against receipt of commission through fictitious proprietorship concerns in their own name and in the names of their employees and relatives. Assessee is stated to have admitted this fact in their statements and affidavit. Based on these facts, the Assessing Officer made addition of Rs.26,24,706/-, Rs. 1,55,07,517/- and Rs. 53,74,146/- respectively for the assessment years 2006-07, 2008-09 and 2009-10 respectively on account of commission income earned from the fictitious firms. Appeals filed by the assessee challenging the aforesaid additions stood partly allowed by the Id. CIT(A) reducing the quantum of additions to Rs.10,10,283/-, Rs.59,69,045/- and Rs.20,68,578/- respectively. The Assessing Officer, simultaneously initiated penalty proceedings u/s. 271(1)(c), which were kept in abeyance till the disposal of first appeals filed by the assessee and after disposal of first appeals, the Assessing Officer issued fresh show cause Notices u/s. 271(1)(c) of the Act on 31.01.2015, in response to which neither the assessee attended nor filed any reply. Learned AO, therefore, by orders dated 30.03.2015 imposed a penalty of Rs.3,21,828/-, Rs.19,78,741/-and Rs.6,57,984/- for the assessment years 2006-07, 2008-09 and 2009-10. Respectively. Assessee challenged these penalty orders in appeals before the Id. CIT(A), who by the impugned orders dismissed them, in limine for non-prosecution of appeals by the assessee.

3. Aggrieved by the impugned orders, the assessee preferred these appeals, inter alia, on the ground that the Id. CIT(A) was not justified in dismissing the appeals, *in limine*, without considering the merits of the

cases as held by Hon'ble Bombay High Court in CIT vs. Prem Kumar Arjundas Luthra (HUF) (2016) 69 taxmann.com 407 ; that the penalties imposed on the basis of estimated additions made by the Assessing Officer, which too were substantially altered by Id. CIT(A) in quantum appeals, are not sustainable; and that no particular charge – whether concealment of particulars of income or furnishing of inaccurate particular thereof, were specified in the notices for penalty.

4. When the matter is called, neither the assessee nor any authorised representative entered appearance nor any adjournment application is moved, despite the fact that the notices sent to the address given in form No. 36 were served on the assessee. Basing on the record we, therefore, proceed to hear the counsel for Revenue and decide the matter on merits.

5. It is the submission on behalf of the Revenue that more than sufficient opportunities were afforded to the assessee, but they failed to avail the same either before the Id. Assessing Officer in the penalty proceedings or before the Id. CIT(A) in appeals. Even no reasons for assessee's failure to appear or to respond various notices issued by the authorities below are assigned. Learned DR, therefore, submits that impugned orders do not call for any interference.

6. We have gone through the record in the light of submission of the Id. DR and the impugned order. It is notable at the outset that the assessee failed to enter their presence either in penalty proceedings, or before Id. CIT(A) or even before the Tribunal without assigning any reason for such failure. Such a lackadaisical attitude of the assessee

cannot be appreciated. However, a perusal of impugned order reveals that the Id. CIT(A) while disposing of the appeals of the assessee, has also failed to appreciate the merits of the issues involved, but dismissed the appeals *in limine* for non-prosecution by the assessee. It is not the case of the Revenue that the appeals filed by the assessee before the Id. CIT(A) did not fulfil the requirement of maintainability or admissibility u/s. 246, 246A, 248 and 249 of the Act. Once the appeals filed by the assessee fulfil the requirement of maintainability and admissibility, then it is not open for the first appellate authority to dismiss the appeals *in limine* for non-prosecution by the assessee. Learned first appellate authority cannot ignore either the procedure for disposal of appeal prescribed u/s. 250 or the powers of commissioner (Appeals) prescribed u/s. 251 of the Act. Learned CIT(A) has no power to dismiss assessee's appeals *in limine* for non-prosecution without deciding the appeals on merits by way of an order in writing, stating the points for determination, the decision thereon and reason for such decision, as provided under sub-section (6) of section 250 of the Act, which is completely lacking in the impugned orders of CIT(A). Points for determination were well discernible from the grounds of appeals raised by the assessee before the Id. CIT(A) but the Id. CIT(A) did not try to adjudicate them on merits and chose to dismiss the appeals *in limine*, which is not permissible under law. We, therefore, think it appropriate to set aside the impugned order and to remand the appeals to the file of the Id. CIT(A) for deciding them afresh on merits by way of speaking orders as per procedure provided u/s. 250(6) of the Act. Needless to say, the assessee shall be given an

opportunity of being heard on merits. The assessee is directed to cooperate with the Id. CIT(A) in getting the appeals decided on merits.

7. In the result, all the three appeals of the assessee are allowed for statistical purposes.

Order pronounced in the open court on this the 8th day of December, 2021.

Sd/-

(ANIL CHATURVEDI)
ACCOUNTANT MEMBER

Dated: 08/12/2021

'aks'

Sd/-

(K. NARSIMHA CHARY)
JUDICIAL MEMBER