

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "D" BENCH, AHMEDABAD**

[Coram: Pramod Kumar AM and S S Godara JM]

ITA No.1125Ahd/2015 & CO No.108/Ahd/2015
Assessment Year: 2009-10

The DCIT

Circle 1(1)(1),
Ahmedabad

.....Appellant

Vs.

M/s. Amol Dicalite Ltd

301, "Akshay", Shrimali
Society, Navrangpura,
Ahmedabad - 380009
[PAN : AABCA 2807 K]

.....Respondent &
Cross-Objector

Appearances by:

VK Singh for the appellant

None for the respondent

Date of concluding the hearing : 25.09.2017

Date of pronouncing the order : 25.09.2017

O R D E R

Per Pramod Kumar, AM:

1. This appeal by the Revenue and the cross-objection thereof by the assessee are directed against the order dated 26.02.2015 passed by the learned CIT(A)-6, Ahmedabad in the matter of penalty under Section 271(1)(c) of the Act for the Assessment Year 2009-10.

2. The cross-objection raised by the assessee is merely in support of the order of the learned CIT(A) and is thus dismissed as infructuous.

3. The grievance raised by the Assessing Officer is as follows:-

"The Id. CIT(A) has erred in law and on facts in cancelling the penalty order by holding that the disallowance made by the AO no longer survives as the issue was remitted back to the AO for deciding afresh and the penalty of Rs.33,63,900/- levied with reference to the said disallowance cannot stand on its own."

3. There is no dispute so far as the quantum disallowance of Rs.96,76,737/- is concerned. The matter has been remitted back to the file of the Assessing Officer for adjudication *de novo* and it was in this backdrop the CIT(A) has cancelled the related penalty, which is in impugned appeal before us, by observing as follows:-

“3.4 As seen from the Tribunal’s order [reproduced at para 3.2 above], the issue was remitted back to the AO for deciding afresh. Therefore, the disallowance made by the AO no longer survives. Penalty [levied w.r.t. the said disallowance] cannot stand on its own. Impugned penalty order is cancelled. However, AO is at liberty to initiate penalty proceedings afresh while passing the assessment order u/s 143(3) r.w.s. 254. This ground of appeal is allowed for statistical purposes.”

4. The Assessing Officer, however, aggrieved by the relief so granted, is in appeal before us.

5. We have heard the learned Departmental Representative, perused the material on record and duly considered facts of the case in the light of applicable legal position.

6. We have noted that, while cancelling the impugned penalty, CIT(A) has given liberty to the Assessing Officer to initiate penal proceedings afresh, if deciding the matter afresh. In this view of the matter, the Assessing Officer cannot have any grievance against the relief granted by the CIT(A) as to whether the issues of Assessment Year 2008-09 and 2009-10 are similar or not. All these things are open before the Assessing Officer and the Assessing Officer has to take a fresh call on correctness of the disallowance. The grievance of the Assessing Officer is thus devoid of any basis and we reject the same.

7. The appeal of the Assessing Officer is, thus, dismissed.

8. To sum up, the appeal and the cross-objection, both are dismissed. Pronounced in the open court today on the 25th of September, 2017.

Sd/-

Sd/-

S S Godara
(Judicial Member)

Pramod Kumar
(Accountant Member)

Ahmedabad, the 25th day of September, 2017

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Copies to: (1) The appellant
(2) The respondent
(3) Commissioner
(4) CIT(A)
(5) Departmental Representative
(6) Guard File

By order

TRUE COPY

Assistant Registrar
Income Tax Appellate Tribunal
Ahmedabad benches, Ahmedabad