

**आयकर अपीलीय अधिकरण “एफ” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI**  
**BEFORE SHRI SHAMIM YAHYA, AM AND SHRI C. N. PRASAD, JM**

आयकर अपील सं./I.T.A. No. 3650/Mum/2015

(निर्धारण वर्ष / Assessment Year: 2008-09)

Asst. CIT, Circle-2(2)(2), R. No. 545, Aayakar Bhavan, M. K. Road, Mumbai-400 020	<b>बनाम/ Vs.</b>	M/s. Milton Plastics Ltd. Asian Building, 4 <sup>th</sup> Floor, R. Kamani Marg, Ballard Estate, Mumbai-400 001
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAACM 4047 Q		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by	:	Shri T. A. Khan
प्रत्यर्थी की ओर से/Respondent by	:	Shri Alpesh Paragbhai Lad

सुनवाई की तारीख / Date of Hearing	:	18.10.2017
घोषणा की तारीख / Date of Pronouncement	:	01.11.2017

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the Revenue is directed against the order of learned CIT(A)-5, Mumbai dated 31.03.2015 and pertains to assessment year 2008-09.

2. The grounds of appeal read as under:

1. *On the facts and in the circumstances of the case and in law the ld. CIT(A) erred in cancelling the penalty levied u/s. 271(1)(c), without appreciating that assessee had made 78% of its sales to associates concerns at*

*a discount of 12% with sole motive of evading payment of tax particularly because the associate concern was eligible for deduction u/s. 80-IB of the Act.*

2. *On the facts and in the circumstances of the case and in law the ld. CIT(A) erred in cancelling the penalty levied u/s. 271(1)(c), without appreciating the fact that the quantum addition on account of selling goods to its associates concern at a discount of 12% had been upheld by the ld. CIT(A).*

3. At the outset, in this case the learned counsel of the assessee submitted that this is an appeal relating to levy of penalty u/s. 271(1)(c) of Rs.1,74,44,453 with reference to addition of Rs.5,68,14,843/- on account of the difference in price charged from sister concern. The learned counsel submitted that the quantum appeal with reference to which this penalty has been levied has already been decided in favour of the assessee by this tribunal in ITA No. 7120/Mum/2011 dated 01.09.2017.

4. Hence, the learned counsel pleaded that since the addition has already been deleted, the penalty levied does not survive.

5. Per Contra, the learned departmental representative accepted that the addition with reference to which this penalty has been levied has already been deleted by this tribunal, as above.

6. Accordingly, after careful consideration, we find that since the addition with reference to which this penalty u/s. 271(1)(c) has been levied and has already been deleted by the tribunal. The penalty levied with reference to the above addition also doesn't survive. Hence, the deletion of the penalty by the ld. CIT(A) is upheld.

7. In the result, this appeal filed by the Revenue stands dismissed  
परिणामतः राजस्व की अपील खारिज की जाती है ।

*Order pronounced in the open court on 01.11.2017*

Sd/-  
(C. N. Prasad)

न्यायिक सदस्य / Judicial Member

Sd/-  
(Shamim Yahya)

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 01.11.2017

व.नि.स./Roshani, Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT - concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**