

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "D", NEW DELHI  
BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER  
AND  
SMT. BEENA A. PILLAI, JUDICIAL MEMBER**

**ITA No.6753/Del/2015  
Assessment Year : 2009-10**

DCIT, Circle- 17(2), New Delhi.	<b>Vs.</b>	Nanda Mint & Pine Chemicals Ltd., Munshi Niketan, 1/10, Asaf Ali Road, New Delhi.
		<b>PAN : AACCN0965G</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

Department by : Shri Amit Jain, Sr.DR  
Assessee by : Shri S. Krishnan, Adv.  
Date of hearing : 11-01-2018  
Date of pronouncement : 16-01-2018

**ORDER**

**PER R. K. PANDA, AM :**

This appeal filed by the Revenue is directed against the order dated 23.10.2015 of CIT(A)- 20, New Delhi relating to assessment year 2009-10.

2. Levy of penalty of Rs.27,54,119/- by the Assessing Officer u/s 271(1)(c) which was deleted by the Id. CIT(A) is the only issue raised by the Revenue in the grounds of appeal.

3. Facts of the case, in brief, are that the assessee is a company engaged in the business of manufacturing of essential oils, menthol solutions, DMO and

Menthol. It filed its return of income on 29.09.2009 declaring income of Rs. Nil. The Assessing Officer completed the assessment u/s 143(3) on 30.11.2011 determining the total income at Rs.72,39,100/- wherein he had made disallowance of excise duty refund of Rs.79,100/- and disallowed the deduction u/s 80IB of Rs.76,868/-. The assessee filed an appeal before the Id. CIT(A), who upheld the above disallowance made by the Assessing Officer. In the meantime, the Assessing Officer issued penalty notice u/s 271(1)(c) of the I.T. Act. Rejecting the various explanations given by the assessee, he levied penalty of Rs.27,54,119/- on account of above two additions/disallowances.

4. The assessee filed the appeal before the Tribunal against the quantum addition. The Tribunal vide ITA No.6192/Del/2012 order dated 08.04.2016 for assessment year 2009-10 allowed the appeal filed by the assessee holding that the central excise duty refund due to the assessee is part of the profit derived from the industrial undertaking and, therefore, the assessee was eligible for deduction u/s 80IB on the said refund.

5. The appeal filed by the Revenue against the order of the Tribunal has been dismissed by the Hon'ble Delhi High Court in ITA No.677 of 2016 and 680 of 2016 both order dated 23.09.2016. Since the very basis on which penalty has been levied does not survive in view of the decision of the Tribunal as well as the Hon'ble High Court, therefore, penalty does not survive. Accordingly,

the order of the Id. CIT(A) is set-aside and the Assessing Officer is directed to cancel the penalty. The grounds raised by the assessee are accordingly allowed.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on this 16<sup>th</sup> January, 2018.

**Sd/-**  
(BEENA A. PILLAI)  
JUDICIAL MEMBER

**Sd/-**  
(R. K. PANDA)  
ACCOUNTANT MEMBER

Dated: 16-01-2018.

*Sujeet*

*Copy of order to: -*

- 1) The Appellant
- 2) The Respondent
- 3) The CIT
- 4) The CIT(A)
- 5) The DR, I.T.A.T., New Delhi

By Order

//True Copy//

Assistant Registrar  
ITAT, New Delhi