

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

आयकर अपील सं./I.T.A. No.6308/Mum/2016

(निर्धारण वर्ष / Assessment Year: 2002-03)

Shri Vimal Kumar Rathi C/o. G. P. Mehta & Co., CAS, 807, Tulsiani Chambers, 212, Nariman Point, Mumbai-400 021	<b>बनाम/</b> Vs.	ITO-Ward 25(3)(5), C-10, BKC, Bandra (E), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AABPR 3676 A		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)
अपीलार्थी की ओर से / Appellant by	:	Shri G. P. Mehta
प्रत्यर्थी की ओर से/Respondent by	:	Ms. Pooja Swaroop
सुनवाई की तारीख / Date of Hearing	:	21.03.2018
घोषणा की तारीख / Date of Pronouncement	:	22.03.2018

**आदेश / ORDER**

Per Shamim Yahya, A. M.:

This appeal by the assessee is directed against the order by the Commissioner of Income Tax (Appeals) dated 17.4.2014 and pertains to the assessment year 2002-03.

2. The grounds of appeal read as under:

01. The orders passed by the learned lower authorities are bad in law and bad in facts.

02. The learned CIT (A) has grossly erred in holding that appeal filed by the appellant against the penalty order passed by the Assessing Officer u/s 271 (1) (c )

of the I. T. Act, 1961, was rendered infructuous in view of the appeal filed by the appellant against the assessment order passed having been allowed by the Hon'ble Income Tax Appellate Tribunal, inasmuch as, there is no provision in the I. T. Act, 1961 in operation, by virtue of which penalty order u/s. 271 (1) {c} of the Act automatically becomes in operative or redundant on deletion of additions made to the returned income.

03. The learned CIT (A) has grossly erred in making a concluding remark in the impugned appellate order, "In the result the appeal is dismissed" even though in substance and effect, the learned CIT (A) intended to allow the appeal.

04. Having regard to the facts of the case, provisions of law and judicial propositions, the concluding remark in impugned order may please be directed to be modified / corrected so as to bring it in conformity with the reasoning and substance of the decision.

3. We have heard both the counsel and perused the records. We find that actually the Id. Commissioner of Income Tax (Appeals) has deleted the penalty upon finding that the addition has been already deleted by the ITAT in the quantum appeal. However, the assessee is only aggrieved by the last line of the Id. Commissioner of Income Tax (Appeals)'s order wherein it has been mentioned that the appeal is dismissed. We may gainfully refer to the operative part of the Id. Commissioner of Income Tax (Appeals) order as under:

4. It is evident from the order of ITAT that the honourable ITAT has decided the appeal in favour of the assessee and deleted the entire addition made by the assessing officer. In the case of *K.C.Builders vs. ACIT* reported at 255 ITR 562/135 Taxman 461 (SC), the Hon'ble Supreme Court has held that if the quantum addition based on which the penalty is levied, is deleted, penalty u/s 271(1)(c) on the additions/disallowances made does not sustain. In view of the same, since the quantum addition made in the assessment order is deleted by the Hon'ble ITAT vide Order No. ITA No.3094/Mum/2013 dated 16/10/2015, the penalty levied thereon does not survive. On account of these facts, the penalty levied is cancelled. The ground raised become infructuous.

5. In the result, the appeal is dismissed.

4. From the above, it is evident that the Id. Commissioner of Income Tax (Appeals) has actually deleted the penalty and the Revenue is not in appeal before us. Hence, since the Id. Commissioner of Income Tax (Appeals) has in effect deleted the penalty, this appeal filed by the assessee is infructuous and hence the same is dismissed as such.

5. In the result, this appeal by the assessee stands dismissed.

*Order pronounced in the open court on 22.03.2018*

Sd/-

Sd/-

(Pawan Singh)

(Shamim Yahya)

न्यायिक सदस्य / Judicial Member

लेखा सदस्य / Accountant Member

मुंबई Mumbai; दिनांक Dated : 22.03.2018

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**