

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: 'D', NEW DELHI

BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 130/Del/2015

AY: 2008-09

ITO, Ward 14(2) C.R.Building New Delhi	vs.	Kashyap Metals & Allied Industries Ltd. 49, Square House Community Centre Friends Colony New Delhi 110 065 PAN: AAACK4822B
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(Appellant)

(Respondent)

Revenue by : Sh. J.K.Mishra, CIT (DR)

Assessee by : Sh. Rohit Jain, Adv. &
Sh. Vibhu Gupta, CA

Date of Hearing : 21/01/2019

Date of Pronouncement: 29/01/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present penalty appeal has been filed by revenue against order dated 14/10/14 passed by Ld. CIT (A)-8, New Delhi, on following grounds of appeal:

"1. Whether on the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the penalty u/s 271(1)(c) of the

I.T.Act, 1961 of Rs.3,66,39,385/- especially when the appeal against the quantum is still pending before the Tribunal.

2. That the order of Id.CIT(A) is erroneous and is not tenable on facts and in law.

3. That the grounds of appeal are without prejudice to each other.

4. That the appellant craves leave to add, alter, amend or forego any ground(s) of appeal raised above at the time of hearing."

2. Brief facts of the case are as under:

Assessee filed its return of income on 27/09/08, declaring total income of Rs.5,32,08,378/- including long term capital gain of Rs.4,07,35,010/-. Assessment order was passed on 30/12/10 at income of Rs.6,33,80,570/- by re-computing long term capital gain at Rs.5,08,54,387/- computed by assessee. Aggrieved by order of Ld. AO, assessee preferred appeal before the Ld. CIT (A) who partially granted relief to assessee. Aggrieved by order of Ld. CIT (A), assessee preferred appeal before this Tribunal.

2.1. In the meantime Ld. AO passed penalty order by levying hundred percent penalty of Rs. 3,66,39,385/-.

2.2. Aggrieved by penalty order passed by Ld. AO assessee preferred appeal before Ld. CIT (A) who deleted penalty levied.

2.3. Aggrieved by order of Ld. CIT (A) revenue is in appeal before us now.

3. At the outset Ld.A.R. submitted that issue regarding quantum addition stands fully settled by order of this Tribunal, wherein indexation benefit has been granted to assessee. He placed reliance upon order of this Tribunal for assessment year

under consideration in ITA No. 5102/Del/2011 placed at page 1-12 of paper book in support.

3.1. Further it has been submitted that, revenue preferred appeal before *Hon'ble Delhi High Court* and admitted revenue's appeal in ITA No. 1029/15 vide order dated 22/12/15, wherein question of law framed as under:

"B. Whether in the present facts and circumstances of the case the ITAT has erred in allowing indexation benefit on the borrowing cost when the leasehold rights was cancelled on 29 March, 1998 and the same was restored back on 06/08/04?"

A copy of the said order has been placed at page 13-14 of paper book.

3.2. He submitted that said question was decided by *Hon'ble Delhi High Court*, vide order dated 16/05/2017, a copy of which has been placed at page 15-18 of paper book, wherein revenue's appeal has been dismissed, thereby upholding order of this Tribunal.

3.3. Under such circumstances we do not see any reason for sustaining the penalty.

3.4. Accordingly we dismiss ground raised by revenue.

4. In the result appeal filed by revenue stands dismissed.

Order pronounced in the open court on 29th January, 2019.

Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Sd/-

**(BEENA A PILLAI)
JUDICIAL MEMBER**

Dt. 29th January, 2019

*Gmv

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR, ITAT

- TRUE COPY -

By Order,

ASSISTANT REGISTRAR
ITAT Delhi Benches

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