

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SHRI G.D.AGRAWAL, VICE PRESIDENT
&
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.-2964-67/Del/2017
(Assessment Year: 2003-04, 2004-05, 2005-06, 2006-07)**

U.P. Distillers Association PHD House, 4 th Floor, 4/2, Siri Institutional Area, August Kranti Marg New Delhi PAN : AAATU0170H	Vs.	ACIT Central Circle-31 New Delhi
Appellant		Respondent

**Assessee by : Sh. K.Sampath, Sh. V. Raj Kumar, Adv.
Revenue by : Ms. Deepika Mittal, CIT(DR)**

Date of Hearing	26.02.2019
Date of Pronouncement	27.02.2019

ORDER

PER BENCH:

These four appeals are filed by the assessee and challenge the confirmation of imposition of penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') for the captioned for assessment years as under:-

- (i) Assessment year 2003-04 – Penalty of Rs. 17,89,20,000/-
- (ii) Assessment year 2004-05 – Penalty of Rs. 25,59,55,757/-

(iii) Assessment year 2005-06 – Penalty of Rs. 15,22,42,295/-

(iv) Assessment year 2006-07 – Penalty of Rs. 18,99,01,155/-.

2. The brief facts of the case are that the assessee is an Association of Distillers in the state of Uttar Pradesh. The Association was granted registration u/s 12AA of the Act vide order dated 23.05.1994 with effect from 26.10.1989. The order of granting registration was further made effective up 01.10.2014 by virtue of the order of the Hon'ble High Court of Delhi. Search and seizure action u/s 132 of the Act was conducted at the residence of Shri R.K. Miglani, Secretary General of the Association as well as at the premises of the Association on 14.02.2006. Documents found at the residence of Shri R.K. Miglani were seized and his statement was recorded u/s 132(4) of the Act. Fresh assessments were completed u/s 153A of the Act in respect of all the captioned years and penalty proceedings u/s 271(1)(c) of the Act were also initiated for all the four years. The assessee's appeals in the quantum assessments were dismissed by the Ld. CIT (Appeals). However, the assessee's appeals before the ITAT were allowed and the quantum additions stood deleted in ITA nos. 9, 10, 11/Del/2012 and 3208, 3209, 3210, 3211/Del/2013 vide order dated 14.12.2018. Vide Para 202 on page 126, the ITAT held

that the action taken u/s 153A of the Act against the assessee was vide *ab initio* and illegal because no search had taken place in the case of the assessee. Thereafter, on merits also the ITAT held that the quantum additions made to the returned income of the assessee were unsustainable in facts and law. The relevant observations of the ITAT in this regard are found in Para 230 appearing at page 153 of the said order.

3.0 The Ld. Authorized Representative has placed on record, copy of the above said ITAT order in the quantum proceedings and has submitted that in view of the quantum additions having been deleted by the ITAT, the impugned penalties did not survive.

4.0 The Ld. CIT-DR supported the orders of the lower authorities but fairly accepted that the quantum proceedings had been settled by the Tribunal in favour of the assessee.

5.0 Accordingly, in view of the fact that the Tribunal has held the assessment proceedings u/s 153A of the Act as being *void ab initio* and invalid and has also deleted the additions on merits in all the four years under appeal, the impugned penalties do not survive. The orders of the Ld. CIT (Appeals) are set aside and the impugned penalties are directed to be deleted.

6.0 In the final result, all the four appeals of the assessee stand allowed.

Order pronounced in the open court on 27.02.2019.

Sd/-
(G.D.AGRAWAL)
VICE PRESIDENT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 27.02.2019

BR

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	27/02/2019
Date on which the typed draft is placed before the dictating Member	27/02/2019
Date on which the typed draft is placed before the Other Member	27/02/2019
Date on which the approved draft comes to the Sr. PS/PS	27/02/2019
Date on which the fair order is placed before the Dictating Member for pronouncement	27/02/2019
Date on which the fair order comes back to the Sr. PS/PS	27/02/2019
Date on which the final order is uploaded on the	27/02/2019

website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	