

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "B", MUMBAI**

**BEFORE SHRI C.N. PRASAD, HON'BLE JUDICIAL MEMBER AND
SHRI RAJESH KUMAR, HON'BLE ACCOUNTANT MEMBER**

ITA NO.128/MUM/2018 (A.Y: 2006-07)

D.C.I.T Central Circle – 8(4) Room No. 658, 6 th Floor Aayakar Bhavan, M.K. Road, Mumbai-400 020	v.	M/s. Bermaco Energy Ltd., D-73/1, TTC Industrial Area, MIDC Road, Turbhe, Navi Mumbai – 400 705 PAN: AACCB 7021 P
(Appellant)		(Respondent)

Assessee by : **None**
Department by : **Shri Chaudhary Arunkumar Singh**

Date of Hearing : **28.03.2019**
Date of Pronouncement : **29.03.2019**

ORDER

PER C.N. PRASAD (JM)

1. This appeal is filed by the Revenue against the order of the Learned Commissioner of Income Tax (Appeals)-50, Mumbai [hereinafter in short "Ld.CIT(A)"] dated 24.10.2017 for the A.Y. 2006-07 in sustaining the penalty levied u/s. 271(1)(c) of the Act.
2. In spite of issue of notice through RPAD, none appeared on behalf of the assessee nor any adjournment was sought. In the circumstances, we dispose off this appeal on hearing the Ld.DR.

3. Ld. DR submitted that the Ld.CIT(A) deleted the penalty taking note of the fact that the Tribunal in ITA.No.4309/Mum/2014 by order dated 13.09.2017 deleted the addition made u/s. 68 of the Act in the assessment made u/s. 143(3) of the Act. Ld. DR fairly submits that since the quantum addition is deleted by the Tribunal penalty may not survive.

4. On a perusal of the order of the Ld.CIT(A), we notice that the Ld.CIT(A) deleted the penalty since the Tribunal in ITA.No.4309/Mum/2014 by order dated 13.09.2017 deleted the quantum addition made u/s. 68 of the Act in the assessment proceedings. Since quantum addition is deleted by the Tribunal he observed that the penalty levied will not survive in view of the decision of the Hon'ble Supreme Court in the case of KC Builders v. ACIT [265 ITR 562]. Thus, we do not find any infirmity in the order passed by the Ld.CIT(A) in deleting the penalty u/s. 271(1)(c) of the Act. Accordingly, we uphold the order of the Ld.CIT(A) and reject the grounds raised by the Revenue.

5. In the result, appeal of the Revenue is dismissed.

Order pronounced in the open court on the 29th March, 2019

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER
Mumbai / Dated 29/03/2019
Giridhar, Sr.PS

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. The CIT(A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum