

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, 'ए' चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'A', CHANDIGARH

श्री एन. के. सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य
BEFORE SHRI N.K. SAINI, VICE PRESIDENT & SHRI SANJAY GARG,
JUDICIAL MEMBER

आयकर अपील सं./ ITA Nos. 907 & 908/CHD/2018

धारण वर्ष / Assessment Years : 2005-06 & 2006-07

The DCIT, Yamunanagar Circle, Yamunanagar	Vs. बनाम	M/s Kunal Calcium Ltd., 17-18F, DAV Market, Yamunanagar
PAN No. AABCK4507G		
अपीलार्थी/Appellant		

निर्धारित की ओर से/Assessee by : Shri Rohit Goel, CA

राजस्व की ओर से/ Revenue by : Sh. Rajesh Kumar

सुनवाई की तारीख/Date of Hearing : 24.04.2019

उदघोषणा की तारीख/Date of Pronouncement : .04.2019

आदेश/Order

Per N.K. Saini, Vice President:

These two appeals by the Department are directed against the common order dated 7.5.2018 of CIT(A), Panchkula.

2. Since the issue involved is common and appeals were heard together so these are disposed off by this consolidated order for the sake of convenience and brevity.

3. The common issue involved in both the appeals relates to the deletion of penalty levied by the Assessing officer u/s 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

4. During the course of hearing, Ld. Counsel for the assessee at the very outset stated that the addition on the basis of which the penalty was levied by the Assessing officer has been deleted by the ITAT vide order

dated 6.2.2018 in ITA Nos. 46 & 47/Chd/2015 for the assessment year 2005-06 & 2006-07 respectively. Copy of the said letter was furnished which is placed on record. It was pointed out that the Ld. CIT(A) also deleted the impugned penalties for this reason that the quantum additions had been deleted by the ITAT.

5. In his rival submissions, the Ld. Sr. DR although supported the orders of the authorities below but could not controvert the aforesaid factual position narrated by the Ld. Counsel for the assessee.

6. We have considered the rival submissions and have perused the material available on record. In the present case, it is noticed that the Ld. CIT(A) deleted the impugned additions levied by the Assessing officer u/s 271(1)(c) by observing in para 5 of the impugned order as under:-

“5. I have carefully considered argument of the counsel for the appellant and have also perused the order of the Hon'ble ITAT. The Hon'ble ITAT, Chandigarh in ITA No. 46 & 47/C/2015 vide its order dated 6.2.2018 in the appellant's own case for the assessment year 2005-06 & 2006-07 allowed the appellant's appeal. Since the quantum additions have been deleted by the ITAT, the penalty levied against the same has no legs to stand and is accordingly ordered to be deleted for both the years A.Y. 2005-06 and A.Y. 2006-07.”

7. It is well settled that no penalty u/s 271(1)(c) of the Act can be levied when the additions on the basis of which said penalty is levied, has been directed to be deleted. In the present case, it is noticed that this Bench of the Tribunal vide order dated 6.2.2018 in ITA Nos. 46 & 47/Chd/2015 for the assessment years 2005-06 and 2006-07 respectively deleted the additions on the basis of which the Assessing officer levied the impugned penalties u/s 271(1)(c) of the Act.

8. On a similar issue, the Hon'ble Supreme Court in the case of K. C. Builders & Others Vs ACIT (2004) 265 ITR 562 has held as under:-

“Where the additions made in the assessment order on the basis of which penalty for concealment is levied, are deleted, there remains no basis at all for levying penalty for concealment and, therefore, in such a case no penalty can survive and the penalty is liable to be cancelled. Ordinarily, penalty cannot stand if the assessment itself is set aside.”

9. In the present case also, the addition on the basis of which the impugned penalty u/s 271(1)(c) of the Act was levied by the Assessing officer has been deleted, therefore, the impugned penalty was not leviable and the Ld. CIT(A) was fully justified in deleting the same. We, therefore, do not see any merit in these appeals of the Department.

10. In the result, the appeals of the assessee are allowed.

(Order Pronounced in the Court on 24/04/2019)

Sd/-
संजय गर्ग
(SANJAY GARG)

न्यायिक सदस्य/ Judicial Member

Dated : . 24. 04.2019

“आर.के.”

Sd/-
एन के . सैनी
(N.K. SAINI)
उपाध्यक्ष / Vice President

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar