

IN THE INCOME TAX APPELLATE TRIBUNAL “B” BENCH, MUMBAI

**BEFORE HON’BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER
AND
HON’BLE SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

I.T.A. No.1797/Mum/2018
I.T.A. No.1798/Mum/2018
I.T.A. No. 1799/Mum/2018
(Assessment Year: 2009-10)
(Assessment Year: 2010-11)
(Assessment Year: 2011-12)

In the matter of

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|--|-----|---------------------------------------|
| M/s Dixit Processors H. No. 1581, New Kaneri, Nr. Jain compound, Kalyan Road, Bhiwandi-421302 PAN/GIR No.AAEFD1227G | Vs. | Income Tax Officer, WD 1(1) Kalyan |
| (Revenue) | : | (Assessee) |

| | | |
|--------------------|---|---------------------|
| Assessee by | : | Shri. Mukul J. Vora |
| Revenue by | : | Shri. D.G. Pansari |

| | | |
|------------------------------|---|------------|
| Date of Hearing | : | 25.4.2019 |
| Date of Pronouncement | : | 26.04.2019 |

ORDER

SANDEEP GOSAIN, J.M.:

These appeals arising out of orders of learned Commissioner of Income Tax (Appeals)-2, Pune dated 11.12.2017 pertaining to the Assessment Years 2009-10, 2010-11 & 2011-12.

2. At the outset, Ld. AR submitted that the Hon’ble ITAT in quantum appeal bearing ITA Nos. 937, 938 & 939/Mum/2016 for Assessment Years 2009-10, 2010-11 & 2011-12 in case titled M/s Dixit Processors vs. Income Tax Officer dated

31.01.2017 has set aside the order of Ld. CIT(A) and restored back to the file of Assessing Officer for fresh adjudication. Therefore, the penalty in the present case is not sustainable in law.

3. On the perusal of para no. 12.1 of the said order of Hon'ble ITAT in ITA Nos. 937, 938 & 939/Mum/2016 for Assessment Years 2009-10, 2010-11 & 2011-12 dated 31.01.2017, we noticed that the Hon'ble ITAT has restored back the matter to the file of Assessing Officer for fresh adjudication.

4. Since the present penalty proceedings were borne out of the assessment order, which has now been set aside to the file of Assessing Officer by the order of the Hon'ble ITAT in the above case, therefore the penalty arising out of the said order is not sustainable in the eyes of law. In view of the above facts, circumstances and discussion, we drop the penalty.

However, the Assessing Officer would be at liberty to examine the imposition of penalty, if any, on the basis of outcome of the quantum addition if any. It is ordered accordingly.

5. In the result, the appeal filed by the assessee stands allowed with no order as to cost.

Order pronounced in the open court on 26.4.2019

Sd/-
(M. BALAGANESH)
ACCOUNTANT MEMBER

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Mumbai; Dated : 26.4.2019
SH

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai