

आयकर अपीलीय अधिकरण  
मुंबई पीठ "बी" मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री एम.बालागनेश, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "B", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI M.BALAGANESH, ACCOUNTANT MEMBER  
आअसं. 5943/मुं/2014 (नि. व.2004-05)  
ITA No. 5943/MUM/2014 (A.Y.2004-05)

M.P. Beer Products Ltd.  
601, maker Chamber-V,  
Nariman Point,  
Mumbai-400021

**PAN: AABCM0354P**

..... अपीलार्थी /Appellant

बनाम Vs.

DCIT, Circle-3(2),  
Mumbai.

..... प्रतिवादी /Respondent

अपीलार्थी द्वारा/ Appellant by : None

प्रतिवादी द्वारा/Respondent by : Shri Tharian Oommen

सुनवाई की तिथि/ Date of hearing : 05/07/2021

घोषणा की तिथि/ Date of pronouncement : 09/07/2021

आदेश/ ORDER

**PER VIKAS AWASTHY, JM:**

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals)-4, Mumbai [hereinafter referred to as 'the CIT(A)'] dated 04.08.2014 for Assessment Year 2004-05.

2. The solitary issued raised by the assessee in appeal is against confirming levy of penalty under section 271(1)(c) of the Income Tax Act, 1961 [hereinafter referred to as 'the Act']. Initially this appeal was dismissed by the co-ordinate bench vide order dated 30.11.2017 in ex-parte proceedings. Thereafter, the assessee filed Miscellaneous Application (M.A) No. 387/Mum/2018 with a prayer to recall the order as the Tribunal in ITA No. 651/Mum/2009 for AY 2004-05 decided on 29.11.2017 deleted the entire addition. Hence, the penalty proceedings which are under challenge in present appeal had become inconsequential. The Tribunal vide order dated 12.03.2021 allowed aforesaid M.A of the assessee and recalled the order dated 30.11.2017. For the sake of completeness relevant extract of the order passed by the Tribunal in M.A is reproduced here in below:

“By way of this miscellaneous application assessee seeks recall of the ex-parte order of this tribunal in Income Tax Appeal Number 5943/Mum/2014 vide order dated 30.11.2017.

2. We have heard learned Departmental Representative and perused the records. It has been pleaded in the Miscellaneous Application that the appeal on penalty has been dismissed by the ITAT in the above ex-parte order. However, the appeal on quantum has been decided by the ITAT in favour of the assessee which is before date of this order. That hence the penalty there on does not survive. That hence a mistake has crept into the order of the Tribunal.

3. Upon careful consideration and hearing the learned Departmental Representative we are of the considered opinion that above ex-parte the order of this Tribunal deserves to be recalled. Accordingly the above said order of the Tribunal is duly recalled. The registry is directed to fix the appeal for hearing in normal course.”

3. The notice of hearing of the appeal was sent through RPAD on the address mentioned in Form-36. The same has been received back unserved from the postal authorities. It is observed that on earlier occasions also the notices sent through RPAD to the assessee have been returned back unserved

by postal authorities. It appears that the assessee has either shifted from the address mentioned in Form-36 or the assessee is not interested in pursuing the appeal.

4. The Id. Departmental Representative (DR) fairly admitted that the Tribunal in quantum appeal ITA No. 651/Mum/2009 (supra) has deleted the addition on which penalty under section 271(1)(c) of the Act is levied.

5. Submissions made by Id. DR heard, orders and documents on record examined. The Assessing Officer (AO) in assessment proceedings had disallowed assessee's claim of Rs. 1.22 crores under section 35AC of the Act. The Tribunal in ITA No. 651/Mum/2009 (supra) deleted the addition of Rs. 1.22 crores in respect of assessee's claim of deduction under section 35AC of the Act. The AO vide order dated 13.05.2009 had levied penalty under section 271(1)(c) of the Act on aforesaid disallowance. The same was upheld by the CIT(A), against which now the assessee is in appeal before the Tribunal . Once, the substratum for levy of penalty has eroded, there is no ground for levy of penalty. Therefore, the impugned order is set-aside and the penalty levied under section 271(1)(c) of the Act is directed to be deleted.

6. In the result, appeal of assessee is allowed.

Order pronounced in the open court on **Friday**, the **09<sup>th</sup>** day of July, 2021.

Sd/-

(M. BALAGANESH)

लेखा सदस्य/ACCOUNTANT MEMBER

मुंबई/ Mumbai, दिनांक/Dated: 09/07/2021

S.K., PS

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

**प्रतिलिपि अग्रेषितCopy of the Order forwarded to :**

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. आयकर आयुक्त(अ)/ The CIT(A)-
4. आयकर आयुक्त CIT
5. विभागीय प्रतिनिधि, आय.अपी.अधि., मुंबई/DR, ITAT,  
Mumbai
6. गार्ड फाइल/Guard file.

//True Copy//

BY ORDER,

(Dy./Asstt. Registrar)  
**ITAT, Mumbai**