

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES "E", MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND  
SHRI RAJESH KUMAR, ACCOUNTANT MEMBER**

**ITA No. 81/MUM/2020  
Assessment Year: 2009-10  
&  
ITA No. 82/MUM/2020  
Assessment Year: 2010-11**

Asst. Commissioner of Income Tax, Circle-16(1), Room No. 439, 4 <sup>th</sup> Floor, Aayakar Bhavan, M.K. Road, Mumbai - 400020	<b>Vs.</b>	M/s Tata Sky Ltd., 3 <sup>rd</sup> Floor, C1, Wadia International Centre, Worli, Mumbai- 400025 PAN: AAGCS9294M
<b>(Appellant)</b>		<b>(Respondent)</b>

Revenue by : Shri Sanjeev Kashyap (CIT DR)  
Assessee by : Shri J.D. Mistri (Senior Counsel)

Date of Hearing: 23/06/2021  
Date of Pronouncement: 06/07/2021

**ORDER**

**PER SAKTIJIT DEY, JM**

Captioned appeals by the revenue arise out of two separate orders, both dated 17.10.2019, of learned Commissioner of Income Tax (Appeals)-4, Mumbai, deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 for the assessment years 2009-10 and 2010-11.

2. At the very outset, Shri J.D. Mistri, learned Senior Counsel for the assessee submitted, the additions based on which the Assessing Officer (AO) imposed penalty under section 271(1)(c) of the Act in both the assessment years, in the meanwhile, have been deleted by the Tribunal while deciding assessee's appeals arising out of the assessment order passed for the impugned assessment years. In this context, he drew our attention to

observations of the Tribunal while deleting the additions made by the AO in the quantum proceedings. Thus, he submitted, when the additions have been deleted, the penalty imposed under section 271(1)(c) of the Act, based on such additions, cannot survive.

3. The learned Departmental Representative, though, agreed that the additions based on which penalty under section 271(1)(c) of the Act were imposed have been deleted by the Tribunal, however, he submitted, the department has not accepted the decision of the Tribunal and has preferred further appeal before the Hon'ble jurisdictional High Court. Thus, he relied upon the observations of the AO.

4. Having considered rival submissions and perused the material on record, we find that based on certain additions made in the assessment orders passed for the impugned assessment years, the AO had initiated proceedings for imposition of penalty under section 271(1)(c) of the Act and ultimately passed orders imposing penalty under the said provision. Pertinently, against the additions made in the assessment orders passed for the impugned assessment years, the assessee had preferred appeals before learned Commissioner (Appeals). Being partly successful before the first appellate authority, the assessee went in further appeal before the Tribunal. Even, revenue also preferred appeals before the Tribunal challenging the partial relief granted by learned Commissioner (Appeals). While deciding the cross appeals, the Tribunal in ITA No. 3214/Mum/2014 and others dated 10.09.2020 read with order dated 05.01.2021 passed in MA No. 254/Mum/2020, deleted all the additions made by the AO in both the assessment years. Thus, it is an admitted factual position that the additions based on which the AO had imposed penalty under section 271(1)(c) of the Act are no longer in existence. That being the case, penalty imposed based on such additions cannot survive. Taking note of the aforesaid orders passed by the Tribunal, learned Commissioner (Appeals), for the very same reason, has deleted the penalty imposed under section 271(1)(c) of the Act. Merely because the revenue has not accepted the decision of the Tribunal in quantum proceedings and has

preferred further appeals before the Hon'ble High Court, cannot be a ground to confirm the penalty imposed under section 271(1)(c) of the Act. In view of the aforesaid, we do not find any infirmity in the decision of learned Commissioner (Appeals) in deleting the penalty imposed under section 271(1)(c) of the Act in both the assessment years under dispute. Grounds are dismissed.

7. In the result, appeals are dismissed.

Order pronounced in the open court on 6<sup>th</sup> July, 2021.

Sd/-  
(RAJESH KUMAR)  
ACCOUNTANT MEMBER

Sd/-  
(SAKTIJIT DEY)  
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 06/07/2021

Alindra, PS

**आदेश प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.  
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आदेशानुसार/By ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai