

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI**

**BEFORE S. RIFAUH RAHMAN, AM AND SHRI AMARJIT SINGH, JM**

आयकर अपील सं/ I.T.A. No. 373/Mum/2021

(निर्धारण वर्ष / Assessment Year: 2010-11)

JCIT (OSD), CC-7(2) Room No.655, Aayakar Bhavan, M. K. Road, Mumbai-400020.	<b>बनाम/</b> Vs.	M/s. Anik Industries Ltd. 610, Tulsiani Chambers, Nariman Point, Mumbai- 400021, Maharashtra, India- 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAACM2696K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)
Assessee by:	Shri Arvind Jain	
Revenue by:	Shri Mehul Jain	

सुनवाई की तारीख / Date of Hearing: 05/01/2022

घोषणा की तारीख /Date of Pronouncement: 31/01/2022

**आदेश / ORDER**

**PER AMARJIT SINGH, JM:**

The revenue has filed the present appeal against the order dated 13.01.2021 passed by the Commissioner of Income Tax (Appeals) -49, Mumbai [hereinafter referred to as the “CIT(A)”] relevant to the A.Y.2010-11 in which the penalty levied by the AO has been ordered to be deleted.

2. The revenue has raised the following grounds: -

“1. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A) as correct in deleting the penalty solely on perusal of Hon'ble ITAT's decision of deleting quantum addition made by the AO, without appreciating the fact that revenue has not



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*accepted the decision of Hon'ble ITAT and decision of Hon'ble High Court is being awaited?"*

*2. "The appellant craves leave to amend or alter any ground and/or add new grounds which may be necessary."*

**3.** The brief facts of the case are that the assessee filed its return of income on 13.10.2010 declaring total income to the tune of Rs.10,19,10,090/-. Thereafter, the assessment was completed u/s 143(3) of the Act on 22.03.2013 determining total income of Rs.14,19,55,790/-. During the assessment proceedings, the AO disallowed the claim of deduction of Rs.4,00,00,000/- on account of surrender of 5% share of profit in the partnership firm Mahakosh Property Developers treating the same as long term capital gain as per provisions of Section 45(1) of the I. T. Act. Penalty proceeding was initiated by issuance of notice dated 22.03.2013. After the reply of the assessee, the penalty to the tune of Rs.90,64,000/- was levied. Feeling aggrieved, the assessee filed an appeal before the CIT(A) who deleted the penalty but the revenue was not satisfied, therefore, the revenue has filed the present appeal before us.

**4.** We have heard the argument advanced by the Ld. Representative of the parties and perused the record. Before going further, we deem it necessary to advert the finding of the CIT(A) on record:

*"6.2.1. During the course of appellate proceedings, the authorized representative of the appellant has submitted that the assessee had filed an appeal before the Hon'ble ITAT against the order of the Id. CIT(A) confirming the quantum addition in respect of which the impugned penalty, was levied and that Hon'ble ITAT has passed a combined*



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*order for AYs 2010-11 and 2012-13 on 19.03.2020 wherein the appeal was decided in favour of the assessee deleting the said quantum addition for the year under reference. A copy of the order of the Hon'ble ITAT was filed along with the submissions. It was accordingly pleaded that since the quantum addition in respect of which the impugned penalty, was levied did not survive, the penalty should also be deleted.*

*6.2.2. I have considered the acts of the case. It is found that Hon'ble ITAT vide a combined order dated 19.03.2020 in ITA No. 7189/Mum/2014 for AY 2010-11 and ITA No. 5234/Mum/2016 for AY 2012-13, has deleted the addition made by the AO for the Assessment year 2010-11 holding that the compensation received by the assessee from existing partners for reduction in profit sharing ratio would not tantamount to Capital gains chargeable to tax u/s 45(1). Since, the quantum addition in respect of which the penalty was levied has been deleted by the Hon'ble ITAT, thus there remains no addition on which the penalty has been levied and consequently the penalty cannot stand or be upheld on its own. Accordingly, the penalty of Rs.90,64,000/levied by the AO is directed to be deleted. Grounds are allowed.*

*6.2.3. However, since the impugned penalty is deleted solely on the ground that the additions on which the impugned penalty was levied, stands deleted by the Hon'ble ITAT, as on date, hence, in future, in case, the said decision of the Hon die ITAT in deleting the impugned quantum addition is reversed by the Higher Courts, then, the Ld. AO will be at liberty to take recourse or action u/s. 275(1A) of the Act.”*



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5. On appraisal of the above mentioned finding, we noticed that the Hon'ble ITAT has deleted the quantum by virtue of order dated 19.03.2020, therefore, the penalty was ordered to be deleted. Since the quantum is nowhere in existence, therefore, the issue has rightly been decided by CIT(A) in his order in question. Accordingly, we affirm the finding of the CIT(A) on this issue and decide this issue in favour of the assessee against the revenue.

### **ISSUE NO.2**

6. Issue no. 2 is formal in nature which nowhere required any adjudication.

7. In the result, the appeal filed by the revenue is hereby dismissed.

Order pronounced in the open court on 31/01/2022

Sd/-

(S. RIFAUR RAHMAN)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 31/01/2022

*Vijay Pal Singh (Sr. PS)*

Sd/-

(AMARJIT SINGH

न्यायिक सदस्य/JUDICIAL MEMBER



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**आदेश की 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.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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