

आयकर अपीलीय अधिकरण  
मुंबई पीठ "ई", मुंबई  
श्री विकास अवस्थी, न्यायिक सदस्य एवं  
श्री ओमप्रकाशकांत, लेखा सदस्य के समक्ष  
IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E", MUMBAI  
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER &  
SHRI OM PRAKASH KANT, ACCOUNTANT MEMBER  
आअसं. 2090/मुं/2022 (नि. व. 2009-10)  
ITA NO.2090/MUM/2022(A.Y.2009-10)  
आअसं. 1969/मुं/2022 (नि. व. 2010-11)  
ITA NO.1969/MUM/2022(A.Y.2010-11)

Essel Mining & Industries Limited,  
Industry House, 18<sup>th</sup> Floor,  
10, Camac Street,  
Kolkata – 700 017  
PAN: AAACE-6607-L

..... अपीलार्थी/Appellant

बनाम Vs.

Dy. Commissioner of Income Tax,  
Central Circle -1(4),  
9<sup>th</sup>Floor, Old CGO Building,  
M.K.Road,Mumbai- 400 020

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Shri Yogesh Thar and  
Ms.Sukanya Jayaram  
प्रतिवादी द्वारा/Respondent by : Shri Ashish Heliwal  
सुनवाई की तिथि/ Date of hearing : 17/11/2022  
घोषणा की तिथि/ Date of pronouncement : 28/11/2022

**आदेश/ORDER**

PER VIKAS AWASTHY, JM:

These two appeals by the assessee are directed against the order of Commissioner of Income Tax (Appeals) -47, Mumbai [ in short 'the CIT(A)'] dated 16/06/2022 common for the Assessment Year 2009-10 and 2010-11, confirming levy of penalty u/s 271(1)(c) of the Income Tax Act, 1961 ( in short 'the Act').

2. Shri Yogesh Thar appearing on behalf of the assessee submitted that the addition on account of suppressed production was made in assessment order passed u/s 153C of the Act for the respective Assessment Years. In respect of said addition penalty proceedings u/s. 271(1)(c) of the Act were also initiated. The Assessing Officer vide separate orders of even date i.e. 28/03/2019 levied penalty of Rs.6,81,18,520/- for the Assessment Year 2009-10 and penalty of Rs.7,66,13,980/- in the Assessment Year 2010-11. The Id. Authorized Representative for the assessee pointed that the additions made in assessment proceedings were deleted by the Tribunal in ITA No.1021/Mum/2018 for Assessment Year 2010-11 and ITA No.1023/Mum/2018 for Assessment Year 2009-10 vide common order dated 15/11/2022.

3. Shri Ashish Heliwal representing the Department fairly admitted that the additions made in the assessment order on which penalty u/s 271(1)(c) of the Act was levied has been deleted by the Tribunal.

4. Both sides heard. Both sides are unanimous in stating that the addition on which penalty u/s. 271(1)(c) of the Act was levied has been deleted by the Tribunal vide order dated 15/11/2022(supra) . Once substratum for levy of penalty has eroded, the penalty proceedings does not survive. In the light of undisputed facts, the impugned order confirming penalty u/s. 271(1)(c) of the Act for Assessment Year 2009-10 and 2010-11 is quashed and the appeals of the assessee are allowed.

5. In the result, appeals by the assessee for Assessment Year 2009-10 and 2010-11, respectively are allowed.

Order pronounced in the open court on Monday the 28<sup>th</sup> day of November, 2022.

Sd/-

(OM PRAKASH KANT)

लेखा सदस्य/ACCOUNTANT MEMBER

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई/ Mumbai, दिनांक/Dated 28 /11/2022

Vm, Sr. PS(O/S)

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

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

BY ORDER,

//True Copy//

(Dy./Asstt.Registrar)ITAT, Mumbai