

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH : A : NEW DELHI

BEFORE SHRI C.M. GARG, JUDICIAL MEMBER  
AND  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

ITA No1347/Del/2022  
Assessment Year: 2015-16

ACIT,  
Central Circle-II,  
Noida.

Vs. Apple Sponge & Power Ltd.,  
House No.1/3787, 1<sup>st</sup> Floor,  
Bhagwanpur Khera,  
Ramnagar, Shahdara,  
Delhi – 110032.

PAN: AAFCA1965L

(Appellant)

(Respondent)

Assessee by	:	Shri Nipun Mittal, CA
Revenue by	:	Shri Kanav Bali, Sr. DR
Date of Hearing	:	17.01.2023
Date of Pronouncement	:	17.01.2023

ORDER

PER C.M. GARG, JM:

This appeal filed by the Revenue is directed against the order dated 08.03.2022 of the CIT(A), Kanpur-4, for Assessment Year 2015-16.

2. The Id. Sr. DR does not controvert to the contention of the Id. AR that the Tribunal, by order dated 25.02.2022 in ITA No.7638/Del/2018 for same assessment year 2015-16 has deleted the addition by holding the assessment order framed u/s 143(3) of the Act as invalid. However, the Id. CIT-DR submitted that the Revenue has filed appeal against the order dated 25.02.2022 (supra) before the Hon'ble High

Court, thus, penalty order cannot be set aside till adjudication of the matter by the Hon'ble High Court.

3. Accordingly, in view of above factual position and orders of the Tribunal in quantum appeal quashing the assessment order, grounds of the Revenue are disposed of by holding that penalty does not survive, in view of finding of the Tribunal order dated 25.02.2022 (supra). However, before we part with the order, we make it clear that the Revenue will be entitled to seek recall of this order as per outcome of the judgement of the Hon'ble High Court, if required.

4. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 17.01.2023.

Sd/-

(PRADIP KUMAR KEDIA)  
ACCOUNTANT MEMBER

Sd/-

(C.M. GARG)  
JUDICIAL MEMBER

Dated: 17<sup>th</sup> January, 2023.

dk

Copy forwarded to :

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asstt. Registrar, ITAT, New Delhi