

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, D, मुंबई ।

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

श्री संजय गर्ग, न्यायिक सदस्य एवं

श्री अश्वनी तनेजा, लेखा सदस्य, के समक्ष

**Before Shri Sanjay Garg, Judicial Member, and
Shri Ashwani Taneja, Accountant Member**

**ITA NO.679/Mum/2015
Assessment Year: 2006-07
&
ITA NO.682/Mum/2015
Assessment Year: 2009-10**

Alembic Securities P. Ltd., Block H Shri Sadashiv CHS Ltd. 6 th RD Santacruz(E) Mumbai-400055	बनाम/Vs.	DCIT CC 46 R.No.659, 6 th Floor, Aayakar Bhavan M.K. Rd. Mumbai-
(Appellant)		(Revenue)
P.A. No. AAACA7087N		

**ITA NO.683/Mum/2015
Assessment Year: 2009-10
&
ITA NO.684/Mum/2015
Assessment Year: 2010-11**

Kanak Stock Brokers P. Ltd. Block H Shri Sadashiv CHS Ltd. 6 th RD Santacruz(E) Mumbai-400055	बनाम/Vs.	DCIT CC 46 R.No.659, 6 th Floor, Aayakar Bhavan M.K. Rd. Mumbai-
(Appellant)		(Revenue)
P.A. No. AACCK8999H		

Appellant by	Shri Mukesh Choksi (AR)
Revenue by	Shri B.S. Bist (Sr. DR)

सुनवाई की तारीख/Date of Hearing :	21/10/2016
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आदेश की तारीख / Date of Order:	21/10/2016
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आदेश / O R D E R

Per Bench:

These Appeals pertain to two assessees involving identical issue, therefore these were heard together and disposed of by this common order.

2. During the course of hearing, arguments were made by Shri Mukesh Choksi on behalf of the Assessee and by Shri B.S. Bist, Departmental Representative (Sr. DR) on behalf of the Revenue.

3. These appeals have been filed against the common order of Ld. CIT(A) dated 14.11.2014 passed against the penalty order u/s 271(1)(c) for different years. Identical issue raised in all the appeals is with regard to levy of penalty u/s 271(1)(c). During the course of hearing Mr. Mukesh Choksi, Director of these companies appeared and submitted that in the quantum appeal, the Tribunal has set aside the assessment order of Ld. CIT(A) and restored the matter back to the file of the AO to redetermine the total income as per direction of the Tribunal after giving original opportunity of hearing to the assessee. Thus, as on date, order of the AO no more survives and therefore, penalty order should also go.

3.1. Per contra, Ld. DR submitted that penalty orders should also be sent back to the file of the AO.

3.2. We have gone through the orders passed by the Tribunal dated 30.09.2016 in ITA No.243 to 245/Mum/2013 in the

case of M/s. Alembic Securities Pvt. Ltd. v. DCIT and order dated 09.09.2016 in ITA No.309 & 310/Mum/2013 in the case of Kanak Stock Brokers Pvt. Ltd. In both these orders, the Tribunal has set aside the order of the Ld. CIT(A) passed in the quantum proceedings and restored the matter back to the file of AO to re-determine the total income as per Tribunal's directions contained in its orders. Under these circumstances, impugned penalty orders are also set aside. The AO is at his liberty to initiate the penalty proceedings after passing fresh assessment order as per law and facts of the case.

4. In the result, these four appeals may be treated as allowed for statistical purposes.

Order was pronounced in the open court at the conclusion of hearing.

Sd/-
(Sanjay Garg)

न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-
(Ashwani Taneja)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 21/10/2016

Patel, P.S./नि.स.

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai
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**