आयकर अपीलीय अधिकरण "C" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER

आयकर अपील सं./I.T.A. No.6479/Mum/2017

(**निर्धारण वर्ष /** Assessment Year : 2009-10)

DCIT 4(2)(1) Mumbai	**बनाम**/ v.	M/s. Prabhudas Liladhar P. Ltd., 3rd Floor, Sadhna House, 570, P.B Marg, Worli, Mumbai- 400018
	स्थायी लेखा सं./PAN:AAACP2733Q	
(अपीलार्थी **/Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Revenue by:	Shri. D.G. Pansari (DR)
Assessee by :	Shri Divyesh Fotaria,Advocate

सुनवाई की तारीख **/Date of Hearing : 14.01.2019**
घोषणा की तारीख **/Date of Pronouncement : 16.01.2019**

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member:

This appeal, filed by Revenue, being ITA No. 6479/Mum/2017, is directed against appellate order dated 22.08.2017 passed by learned Commissioner of Income-tax (Appeals)-9, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2009-10, the appellate proceedings had arisen before learned CIT(A) from the penalty order dated 30.03.2015 passed by the learned Assessing Officer (hereinafter called " the AO ") u/s 271(1)(c) of the Income-tax Act,1961 for assessment year 2009-10.

2. The grounds of appeal raised by Revenue in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

> *1. "On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the appeal of the assessee and cancelling the penalty levied u/s 271(1)(C) of Rs, 69,67,950/- without appreciating the fact that consent fees paid by the assessee to SEBI was nothing but in the nature of compounding of penalty to avoid suspension for infringement of law, which is disallowable u/s 37(1) of I.T. Act."*
>
> *2. "The appellant craves leave to amend or alter any ground or add a new ground which may be necessary.*

3. This is an appeal filed by the Revenue against appellate order dated 22.08.2017 passed by learned CIT(A) deleting penalty u/s 271(1)(c) of the 1961 Act which was levied by the AO vide penalty order dated 30.03.2015 u/s. 271(1)(c) of the 1961 Act . This order dated 30.03.2015 levying penalty passed by the AO u/s 271(1)(c) of the 1961 Act was later rectified by the AO u/s. 154 of the 1961 Act vide orders dated 08.06.2015 , wherein mistake apparent from record was rectified by the AO , as the amount paid by the assessee as SEBI fee was Rs. 2,05,00,000/- which was erroneously mentioned by the AO as Rs. 20,50,00,000/- in its penalty order dated 30.03.2015 passed u/s 271(1)(c) of the 1961 Act . Thus, the penalty u/s 271(1)(c) of the 1961 Act got levied by the AO erroneously on the amount of Rs. 20,50,00,000/- instead of correct amount of SEBI fess of Rs. 2,05,00,000/- actually paid by the assessee. The assessee is engaged in the business of share and stock broking including depository operations and proprietary trading in shares and securities. It all happened that there were some allegations on the assessee of being involved in manipulations of scrips of DSQ Software and DSQ Biotech. The enquiry was conducted by SEBI against the assessee for manipulation in stock market under SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations,

1995 and recommendation was made in terms of Regulation 13 of SEBI(Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulation , 2002 wherein it was recommended to suspend the registration granted to the assessee for manipulation in trading of shares of DSQ Software Limited and DSQ Biotech Limited. SEBI issued SCN for taking action based on enquiry report but the assessee moved consent application dated 09th August 2007 which was later revised by the assessee on 17th September 2008 before SEBI which culminated into an consent order issued on 05th December 2008 by SEBI, whereby the assessee was asked to deposit Rs. 2,05,00,000/- . The said order of the SEBI was based on the acceptance of consent terms offered by the assessee by High powered Advisory Committee constituted by SEBI . The assessee remitted said amount towards settlement charges vide demand draft of Rs. 2,05,00,000/- drawn on ICICI Bank without accepting or denying the charges . With this, the enquiry initiated by SEBI stood disposed of. The AO invoked explanation 1 to Section37(1) of the 1961 Act to disallow the said expenditure in quantum assessment. The matter in quantum travelled upto tribunal and the tribunal was pleased to hold the issue in favour of the assessee in ITA no. 3986/Mum/2014 for AY 2009-10 , vide appellate order dated 16.06.2017 , by holding as under:-

> *" 12. We have heard the rival submissions and perused the material on record and gone through the case laws cited before us. The factual matrix of the issue emerging from the materials on record indicates that on receiving allegations relating to certain omissions and commissions in respect of share transactions relating to scrips of two companies viz. DSQ Software Ltd. And DSQ Biotech Ltd., SEBI appointed an enquiry officer to enquire into the allegation. Notably, in case of DSQ Software Led., the enquiry officer submitted his report stating therein that in the course of enquiry, it was found that the assessee has indulged in synchronized and manipulated transactions. Therefore, he recommended for suspension of registration certificate for a period of 12 months. Similarly, in case of transactions of shares*

relating to DSQ Biotech Ltd., the enquiry officer found that assessee has indulged in synchronized transactions, hence, recommended for suspension of registration certificate for a period of three months. On the basis of enquiry report submitted by the enquiry officer, SEBI issued a show cause notice to the assessee calling upon it to explain why the recommendation of the enquiry officer should not be implemented. As appears from the facts on record, the assessee filed a show cause contesting the charges brought against him. However, before the final adjudication on the issue of violation of SEBI regulations assessee filed a consent application and the issue was referred to a high powered committee constituted by the SEBI. The high powered advisory committee after considering the consent terms proposed by the assessee recommended the case for settlement subject to payment of Rs.2.05 crore by the assessee. Undisputedly, the assessee has paid the amount of Rs 2.05 crore through demand draft purchased on 29th December 2008. Accepting the recommendation of high powered advisory committee, SEBI passed a consent order on 16th February 2009 disposing off the enquiry proceedings pending against the assessee. Further, on going through the consent order dated 16th February 2009, in consent application no.72 and 73 of 2008, a copy of which is at Page-151 of the paper book, it is noticed that the assessee consented to settlement of charges without admitting or denying the charges. Thus, from the aforesaid facts, it is very much evident that the consent order was passed before final adjudication of proceeding before the SEBI. Though, the enquiry officer recommended for suspension of registration certificate of the assessee, however, there is no final order by the adjudicating authority imposing penalty on the assessee. The proceedings were terminated at a stage prior to final adjudication by virtue of the consent order. Thus, the facts on record demonstrate that there is no order passed by the SEBI imposing penalty against the assessee.

13. In case of Reliance Shares and Stock Brokers (supra), the coordinate bench upheld deletion of disallowance of consent fee paid to SEBI more or less on identical facts and circumstances. While doing so, the Tribunal observed that the settlement of dispute by the assessee on payment of settlement charges is for business consideration, hence, cannot be equated to levy of penalty tor infraction of law. The Tribunal also found that as per the circular issued by SEBI consent application is for action taken u/s 11 of the SEB1 Act which falls in the category of administrative or

civil action. The Tribunal also observed that the settlement charges / consent fee paid is not related to penalty imposed by SEBI but for settlement of dispute legal expenditure enc other administrative charges of SEBI. The Tribunal also took note of the fact that the assesses agreed for settlement of dispute without admitting or denying the charges. Thus ultimately, it was held by the Tribunal that the assessee has taken the decision to settle the dispute on commercial expediency and in business interest. Keeping in view the facts of the aforesaid case and the ratio laid down by the Tribunal, the assessee's case stands in a much better footing. As could be seen in the case of Reliance Share & Stock Brokers Pvt. Ltd, (supra), there was adjudication of the issue by SEBI and when the matter was pending before the appellate authority, the assessee applied for settlement of dispute which was accepted. Whereas, in case of present assessee there was no final adjudication on the issue of imposition of penalty by the SEBI. Possibly, there could have been a situation where SEBI after considering assessee's explanation might have dropped the proceedings. Thus, when there is no order passed by the adjudicating authority imposing penalty, the settlement charges / consent fee paid by the assessee to SEBI cannot be treated as penalty for infraction of any law. At best, the payment made by the assessee can be said to be for mitigating the consequences of the allegations/charges brought against it which still remained to be decided finally. The other decisions cited by the AR also support this view. Thus, in view of the aforesaid, we hold that the settlement charges / consent fee paid by the assessee to SEBI not being in the nature of penalty cannot be disallowed in terms of Explanation-1 to section 37. Accordingly, we delete the addition. This ground is allowed.

14. Ground no. 3, being consequential to ground no.1 raised by the Revenue will be taken up while deciding the said ground in Revenue's. "

4. Thus in nutshell , the tribunal allowed the claim of deduction of expenses to the tune of Rs. 2,05,00,000/- paid by the assessee under the consent order passed by the SEBI which was held to be an allowable business expenditure under the head ' Income from Profits and Gains from Business or Profession' and it was held not to be penalty for an infraction of law within provision of explanation 1 to section 37(1), while adjudicating appeal against quantum assessment.

Since there was a mistake apparent from record in the appellate order dated 16.06.2017 in ITA no. 3986/Mum/2014 passed by the tribunal, the assessee moved an miscellaneous application vide MA No. 402/Mum/2014 arising out of ITA no.3986/Mum/2014 for AY 2009-10 and the tribunal was pleased to pass an order dated 18.12.2017 wherein it corrected mistake apparent from records wherein the erroneous amount of payment reflected in the said tribunal order dated 16.06.2017 of Rs. 2,05,000/- was rectified to the correct amount of Rs. 2,05,00,000/- , by holding as under:-

> *" By this M.A , the assessee seeks rectification in the order dated 16th June 2017, passed by the Tribunal in the captioned appeals.*
>
> *2. The learned Authorised Representative submitted before us that a mistake has crept in the order dated 16th June 2017, passed by the Tribunal. The learned Authorised Representative submitted, at Page-6, Para-8, line no 2, the Tribunal has mistakenly mentioned the amount as Rs. 2,05,000/- which , in fact, ought to have been mentioned as Rs 2,05,00,000/-*
>
> *3. On perusal of the records available before us, we find that the aforesaid mistake as pointed out by the assessee is apparent on record which needs rectification. Consequently, we proceed to rectify the same.*
>
> *4. At page-6, Para-8, in line no.2 of the said order, the amount as wrongly shown as Rs. 2,05,000/- is hereby substituted and may be read as Rs. 2,05,00,000/-*
>
> *5. The order dated 16th June 2017, is modified to the above extent only."*

5. The AO levy penalty u/s 271(1)(c) of the 1961 Act vide orders dated 30.03.2015 on the disallowance so made of settlement and administrative charges as per consent order paid by the assessee . The AO considered erroneously an amount of payment of aforesaid charges paid under consent order to the tune of Rs. 20,50,00,000/- while computing penalty u/s 271(1)(c) of the 1961 Act instead of an correct amount of Rs. 2,05,00,000/- , which was later rectified by the AO u/s 154 vide orders dated 08.06.2015 . The assesssee filed first appeal

with learned CIT(A) against penalty order dated 30.03.2015 passed by the AO u/s 271(1)(c) of the 1961 Act which penalty order was later modified by the AO vide orders dated 08.06.2015 passed u/s 154 of the 1961 Act. The Ld. CIT(A) was pleased to delete the penalty vide appellate order dated 22.08.2017 by following aforesaid tribunal order dated 16.06.2017 against quantum assessment in ITA no. 3986/Mum/2014, wherein penalty levied by the AO u/s 271(1)(c) stood deleted by Ld. CIT(A), by holding as under:-

> " 2.4.1 I have given my careful consideration to the rival submissions, perused the material on record and duly considered the factual matrix of the case as also the applicable legal position.
>
> *2.4.2. This appeal is against the order u/s.271(1)(c) of the Act dated 30-03-2015. At the outset, it has been stated by the Ld.AR for the appellant that the quantum appeal has been decided by the Hon'ble 'C' Bench, ITAT, Mumbai in appellant's favour in ITA No, 3986/Mum/2014 vide order dated 16-06-2017. a copy of which has been placed on record. I have perused the order passed by the Hon'ble 'C' Bench, ITAT, Mumbai as referred to above and find that the only ground on which penalty was levied was in respect of disallowance of SEBI fees of Rs.2.05 crores (wrongly typed as 20.50 crores in the penalty order) and the said issue has been decided in the appellant's favour by the Hon'ble ITAT by, inter alia, holding as under:*
>
> > *"12. We have heard the rival submissions and perused the material on record and gone through the case laws cited before us. The factual matrix of the issue emerging from the materials on record indicated that on receiving allegations relating to certain omission and commissions in respect of share transactions relating to scrips of two companies viz. DSQ Software Ltd, and DSQ Biotech Ltd., SEBI appointed an enquiry office to enquire into the allegation. Notably, in case of DSQ Software Ltd., the enquiry officer submitted his report stating therein that in the course of enquiry, it was found that the assessee has indulged in synchronized and manipulated transactions. Therefore, he recommended for suspension of registration certificate for a period of 12 months. Similarly, in case of transactions of shares relating to DSQ Biotech Ltd., the enquiry officer found that assessee has indulged in synchronized transactions, hence recommended for suspension of registration certificate for a period of three months. On the basis of*

enquiry report submitted by the enquiry officer, SEBI issued a show cause notice to the assessee calling upon it to explain why the recommendation of the enquiry officer should not be implemented. As appears from the facts on record, the assessee filed a show cause contesting the charges brought against him. However, before the final adjudication on the issue of violation of SEBI regulations assessee filed consent application and the issue was referred to a high powered committed constituted by the SEBI. The high powered advisory committee after considering the consent terms proposed by the assessee recommended the case for settlement subject to payment of Rs.2.05 crore by the assessee. Undisputedly, the assessee has paid the amount of Rs.2.05 crore through demand draft purchased on 29th December, 2008. Accepting the recommendation of high powered advisory committee, SEBI passed a consent order on 16tn February, 2009 disposing off the enquiry proceedings, pending against the assessee. Further, on going through the consent order dated 16th February, 2009, in consent application No. 72 and 73 of 2008, a copy of which is at Page 151 of the paper book, it is noticed that the assessee consented to settlement of charges without admitting or denying the charges. Thus, from the aforesaid facts, it is very much evident that the consent order was passed before final adjudication of proceeding before the SEBI. Though, the enquiry officer recommended for suspension of registration certificate of the assessee, however, there is no final order by the adjudicating authority imposing penalty on the assessee. The proceedings were terminated at a stage prior to final adjudication by virtue of the consent order. Thus the facts on record demonstrate that there is no order passed by the SEBI imposing penalty against the assessee.

13. In case of Reliance Shares and Stock Brokers (supra), the coordinate bench upheld deletion of disallowance of consent fee paid to SEBI more or less on identical facts and circumstances. While doing so, the Tribunal observed that the settlement or dispute by the assessee on payment of settlement charges is for business consideration, hence, cannot be equated to levy of penalty for infraction of law. The Tribunal also found that as per the circular issued by SEBI consent application for action taken u/s.11 of the SEBI Act which falls in the category of administrative or civil action. The Tribunal also observed that the settlement charges/consent fee paid is not related to penalty

imposed by SEBI but for settlement of dispute legal expenditure and other administrative charges of SEBI. The Tribunal also took note of the fact that the assessee agreed for settlement of dispute without admitting or denying the charges. Thus, ultimately, it was held by the Tribunal that the assessee has taken the decision to settle the dispute on commercial expediency and in the business interest. Keeping in view the facts of the aforesaid case and the ratio laid down by the Tribunal, the assessee's case stands in a much better footing. As could be seen in the case of Reliance Shares and Stock Brokers (supra), there was adjudication of the issue by SEBI and when the matter was pending before the appellate authority, the assessee applied for settlement of dispute which was accepted. Whereas, in case of present assessee there was no final adjudication on the issue of imposition of penalty by the SEBI. Possibly, there could have been a situation where SEBI after considering assessee's explanation might have dropped the proceedings. Thus, when there is no order passed by the adjudicating authority imposing penalty, the settlement charges/consent fee paid by the assessee to SEBI cannot be treated as penalty for infraction of any law. At best, the payment made by the assessee can be said to be for mitigating the consequences of the allegations/charges brought against it which still remained to be decided finally. The other decisions cited by the AR also support this view. Thus, in view of the aforesaid, we hold that the settlement charges / consent fee paid by the assessee to SEBI not being in the nature of penalty cannot be disallowed in terms of Explanation 1 to section 37. Accordingly, we delete the addition. This ground is allowed."

As the quantum addition has been deleted by the Hon'ble 'C Bench, ITAT, Mumbai (supra), imposition of penalty has no legs to stand and accordingly, the grounds raised are Allowed in favour of the appellant and the penalty imposed is hereby cancelled.

6. Now the matter has reached tribunal at the behest of Revenue and at the outset Ld. Counsel for the assessee as well as Ld. DR have agreed that the addition in quantum has been deleted by ITAT in ITA no. 3986/Mum/2014 vide orders dated 16.06.2017 , which order was later rectified by tribunal vide its orders dated 18.12.2017 in MA no. 402/Mum/2014 arising out of appeal in ITA No. 3986/Mum/2014.

7. We have considered rival contentions and perused the material on record including orders of authorities below . We have observed that the assessee is engaged in the business of share and stock broking including depository operations and proprietary trading in shares and securities . There were some allegations against the assessee of being involved in manipulations of scrips of DSQ Software Limited and DSQ Biotech Limited. The enquiry was conducted by SEBI against the assessee for manipulation in stock market under SEBI(Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 1995 and recommendation was made in terms of Regulation 13 of SEBI(Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulation , 2002 wherein it was recommended to suspend the registration granted to the assessee for manipulation in trading of shares of DSQ Software Limited and of DSQ Biotech Limited. SEBI issued SCN for taking action based on enquiry report but the assessee moved consent application dated 09th August 2007 which was later revised by the assessee on 17th September 2008 before the SEBI which culminated into an consent order issued on 05th December 2008 whereby the assessee was asked to deposit Rs. 2,05,00,000/- by SEBI, based on the acceptance of consent terms offered by the assessee by High powered Advisory Committee constituted by SEBI . The assessee remitted said amount towards settlement charges vide demand draft of Rs. 2,05,00,000/- drawn on ICICI Bank without accepting or denying the charges . With this, the enquiry initiated by SEBI stood disposed of. The AO invoked explanation 1 to Section37(1) of the 1961 Act to disallow the said expenditure in quantum assessment. The matter in quantum travelled upto tribunal and the tribunal was pleased to hold the issue in favour of the assessee in ITA no. 3986/Mum/2014 for AY 2009-10 vide appellate order dated 16.06.2017 , by holding as under:-

> *" 12. We have heard the rival submissions and perused the material on record and gone through the case laws cited before us. The factual matrix of the issue*

emerging from the materials on record indicates that on receiving allegations relating to certain omissions and commissions in respect of share transactions relating to scrips of two companies viz. DSQ Software Ltd. And DSQ Biotech Ltd., SEBI appointed an enquiry officer to enquire into the allegation. Notably, in case of DSQ Software Led., the enquiry officer submitted his report stating therein that in the course of enquiry, it was found that the assessee has indulged in synchronized and manipulated transactions. Therefore, he recommended for suspension of registration certificate for a period of 12 months. Similarly, in case of transactions of shares relating to DSQ Biotech Ltd., the enquiry officer found that assessee has indulged in synchronized transactions, hence, recommended for suspension of registration certificate for a period of three months. On the basis of enquiry report submitted by the enquiry officer, SEBI issued a show cause notice to the assessee calling upon it to explain why the recommendation of the enquiry officer should not be implemented. As appears from the facts on record, the assessee filed a show cause contesting the charges brought against him. However, before the final adjudication on the issue of violation of SEBI regulations assessee filed a consent application and the issue was referred to a high powered committee constituted by the SEBI. The high powered advisory committee after considering the consent terms proposed by the assessee recommended the case for settlement subject to payment of Rs.2.05 crore by the assessee. Undisputedly, the assessee has paid the amount of Rs 2.05 crore through demand draft purchased on 29th December 2008. Accepting the recommendation of high powered advisory committee, SEBI passed a consent order on 16th February 2009 disposing off the enquiry proceedings pending against the assessee. Further, on going through the consent order dated 16th February 2009, in consent application no.72 and 73 of 2008, a copy of which is at Page-151 of the paper book, it is noticed that the assessee consented to settlement of charges without admitting or denying the charges. Thus, from the aforesaid facts, it is very much evident that the consent order was passed before final adjudication of proceeding before the SEBI. Though, the enquiry officer recommended for suspension of registration certificate of the assessee, however, there is no final order by the adjudicating authority imposing penalty on the assessee. The proceedings were terminated at a stage prior to final adjudication by virtue of the consent order. Thus, the facts on record demonstrate that

there is no order passed by the SEBI imposing penalty against the assessee.

13. In case of Reliance Shares and Stock Brokers (supra), the coordinate bench upheld deletion of disallowance of consent fee paid to SEBI more or less on identical facts and circumstances. While doing so, the Tribunal observed that the settlement of dispute by the assessee on payment of settlement charges is for business consideration, hence, cannot be equated to levy of penalty tor infraction of law. The Tribunal also found that as per the circular issued by SEBI consent application is for action taken u/s 11 of the SEB1 Act which falls in the category of administrative or civil action. The Tribunal also observed that the settlement charges / consent fee paid is not related to penalty imposed by SEBI but for settlement of dispute legal expenditure enc other administrative charges of SEBI. The Tribunal also took note of the fact that the assesses agreed for settlement of dispute without admitting or denying the charges. Thus ultimately, it was held by the Tribunal that the assessee has taken the decision to settle the dispute on commercial expediency and in business interest. Keeping in view the facts of the aforesaid case and the ratio laid down by the Tribunal, the assessee's case stands in a much better footing. As could be seen in the case of Reliance Share & Stock Brokers Pvt. Ltd, (supra), there was adjudication of the issue by SEBI and when the matter was pending before the appellate authority, the assessee applied for settlement of dispute which was accepted. Whereas, in case of present assessee there was no final adjudication on the issue of imposition of penalty by the SEBI. Possibly, there could have been a situation where SEBI after considering assessee's explanation might have dropped the proceedings. Thus, when there is no order passed by the adjudicating authority imposing penalty, the settlement charges / consent fee paid by the assessee to SEBI cannot be treated as penalty for infraction of any law. At best, the payment made by the assessee can be said to be for mitigating the consequences of the allegations/charges brought against it which still remained to be decided finally. The other decisions cited by the AR also support this view. Thus, in view of the aforesaid, we hold that the settlement charges / consent fee paid by the assessee to SEBI not being in the nature of penalty cannot be disallowed in terms of Explanation-1 to section 37. Accordingly, we delete the addition. This ground is allowed.

14. Ground no. 3, being consequential to ground no.1 raised by the Revenue will be taken up while deciding the said ground in Revenue's. "

We have observed that the penalty u/s 271(1)(c) of the 1961 Act was levied by the AO on the grounds that these payments of Rs. 2,05,00,000/- paid by the assessee to SEBI under consent order was in the nature of penalty for infraction of law and is hit by Explanation 1 to section 37(1) and hence was not an allowable business expenditure keeping in view Explanation 1 to Section 37(1) of the Act. The quantum addition made by the AO in assessment framed in quantum has held by the tribunal to be an allowable business expenses and the additions were deleted by the tribunal vide orders dated 16.06.2017 in ITA no. 3986/Mum/2014 for AY 2009-10, wherein the tribunal held that the aforesaid payment of Rs. 2,05,00,000/- paid by the assessee to SEBI under the consent order is not infraction of law and is not hit by Explanation 1 to section 37(1) and the said expenses were held to be an allowable business expenditure , in ITA no. 3986/Mum/2014 vide orders dated 16.06.2017 order of the tribunal was later rectified by an order dated 18.12.2017 passed in miscellaneous application. Once the whole basis of addition itself as made by the AO in quantum has been deleted by the tribunal and expenses were held to be business , we do not find any reason and merit in the penalty being levied by the AO u/s 271(1)(c) on this ground and which was later confirmed by learned CIT(A) on the aforesaid amount of Rs.2,05,00,000/- . We have also observed that Ld. CIT(A) by following the aforesaid order of tribunal against quantum assessment , correctly deleted the penalty. We do not find any discrepancy/defect in Ld. CIT(A) granting relief to the assessee and we have no hesitation in holding that under these circumstances , the penalty levied by the AO u/s. 271(1)(c) on payment of Rs. 2,05,00,000/- made by the assessee to SEBI under consent order is not sustainable in the eyes of law. We confirm learned

CIT(A) appellate order deleting the penalty levied u/s 271(1)(c) of the 1961 Act. The Revenue fails in this appeal. We order accordingly.

Order pronounced in the open court on 16.01.2019.

आदेश की घोषणा खुले न्यायालय में दिनांकः 16.01.2019 को की गई

Sd/-	Sd/-
(PAWAN SINGH)	(RAMIT KOCHAR)
JUDICIAL MEMBER	ACCOUNTANT MEMBER

Mumbai, dated: 16.01.2019

Nishant Verma
Sr. Private Secretary

copy to…

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

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BY ORDER

DY/ASSTT. REGISTRAR
ITAT, MUMBAI