

**आयकर अपीलीय अधिकरण “ए” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, MUMBAI**

श्री आय.पी. बंसल, न्यायिक सदस्य एवं श्री संजय अरोड़ा, लेखा सदस्य के समक्ष ।  
**BEFORE SHRI I. P. BANSAL, JM AND SHRI SANJAY ARORA, AM**

आयकर अपील सं./I.T.A. No. 3619/Mum/2012  
(निर्धारण वर्ष / Assessment Year: 2004-05)

Ambuja Cement India Private Limited (Formerly known as Ambuja Cement India Limited) Elegant Business Park, MIDC Cross Road ‘B’, Off. Andheri Kurla Road, Andheri (E), Mumbai-400 059	<b>बनाम /</b> Vs.	Dy. CIT, Circle- 3(1), Aayakar Bhawan, M. K. Road, Mumbai-400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AACCA 3390 A		
(अपीलार्थी /Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से / Appellant by	:	Shri Sunny Ahok Wadhwa & Shri Basant Kasat
प्रत्यर्थी की ओर से/Respondent by	:	Shri Manoj Kumar

सुनवाई की तारीख / <b>Date of Hearing</b>	:	12.06.2013
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	21.06.2013

**आदेश / ORDER**

**Per Sanjay Arora, A. M.:**

This is an Appeal by the Assessee directed against the Order by the Commissioner of Income Tax (Appeals)-5, Mumbai (‘CIT(A)’ for short) dated 01.03.2012, confirming the levy of penalty u/s.271(1)(c) of the Income Tax Act, 1961 (‘the Act’ hereinafter) for the assessment year (A.Y.) 2004-05 vide order dated 31.03.2010.

2. The penalty in the instant case stands levied in the sum of Rs.2,41,858/-, i.e., at 100% of the tax sought to be evaded, in view of *Explanation (4)* to section 271(1)(c). The entire enhancement in assessment having been absorbed against brought forward (unabsorbed) business losses, there was no tax impact of the said enhancement. The same was, however, considered as of no moment by the Id. CIT(A) in view of *Explanation (4)* to the provision, further relying on the decision *inter alia* by the hon'ble apex court in the case of *CIT vs. Gold Coin Health Food P. Ltd.* [2008] 304 ITR 308 (SC). Aggrieved, the assessee is in further appeal.

3. We have heard the parties, and perused the material on record as well as the case law cited. The assessee's case before us was based primarily on the decision by the hon'ble Delhi High Court in the case of *CIT vs. Nalwa Sons Investments Ltd.* [2010] 327 ITR 543 (Del). It stands explained therein that notwithstanding the increase in the assessed income vis-à-vis as returned, under the regular provisions of the Act, the same has no tax impact inasmuch as the tax paid and assessed is in terms of 'book profit', which remains unchanged on assessment. There is consequently no tax that could be said to have been evaded even on invoking *Explanation (4)* to the provision. The decision in the case of *Gold Coin Health Food P. Ltd.* (supra) stands also considered by the hon'ble court. No decision taking a contrary view in the matter has been brought to our notice. Rather, as informed, the Special Leave Petition (SLP) preferred by the Revenue against the said decision by the hon'ble Delhi Court has since been dismissed by the apex court (in SLP No.18564/2011). The matter, thus, stands effectively concluded in favour of the assessee and against the Revenue. Under these circumstances, we have no hesitation in, accepting the assessee's plea per its Grounds # 1 & 2, directing deletion of the impugned levy. We decide accordingly.

4. In the result, the assessee's appeal is allowed.  
परिणामतः निर्धारिती की अपील स्वीकृत की जाती है ।

*Order pronounced in the open court on June 21, 2013*

आदेश की घोषणा खुले न्यायालय में दिनांक:जून 21, 2013 को की गई ।

Sd/-

Sd/-

(I. P. BANSAL)

(SANJAY ARORA)

न्यायिक सदस्य / JUDICIAL MEMBER

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांकDated : 21.06.2013

व.नि.स./Roshani, Sr. PS

**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 – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /  
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)**

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**