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% 05.05.2011

Present: Mr. Piyush Kaushik, Advocate for the appellant.

**+ ITA Nos. 717/2011, 875/2008 and 136/2009**

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Today, ITA No. 717/2011 is listed for hearing which appeal is preferred by the Revenue against the order of the Tribunal deleting the penalty imposed upon the respondent herein under Section 271(1)(c) of the Income Tax Act, 1961. The penalty is deleted *inter alia* on the ground that the quantum addition itself was deleted by the Tribunal and, therefore, there was no question of imposition of penalty.

It is mentioned in the appeal that against the decision of the Tribunal in quantum proceedings, the Revenue has filed ITA Nos.136/2009 and 875/2008 which has been admitted by this Court. In view of this we have called for the records of ITA Nos.136/2009 and 875/2008, and the same are taken up for disposal along with the present appeal with the consent of learned counsel for the parties.


Insofar as, ITA No. 136/2009 is concerned, it is admitted on the question of law where the ITAT was correct in law in holding that the assessee is entitled to claim deduction under Section 80 HHC for the purpose of computing book profits under Section 115JB. This issue has now been authoritatively determined by the Supreme Court in the case of ***Ajanta Pharma Ltd. v. CIT*** 327 ITR 305 in favour of the assessee.



Following that judgment the question is answered in favour of the assessee and against the Revenue and as a result said appeal is dismissed.

In view of the aforesaid nothing survives in ITA 717/2011, even otherwise in such circumstances penalty could not be imposed as held by this Court in **CIT v. Nalwa Sons Investment Ltd.** 327 ITR 543.

As a result, this appeal also stands disposed of.

  
A.K. SIKRI, J.

  
M.L. MEHTA, J.

**MAY 5, 2011**

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