

2. In brief, the relevant facts are that the Assessing Officer in the assessment finalised u/s 143(3)(ii) r.w.s. 147 of the Act on 10.12.2010 made an addition of Rs.55,00,000/- on account of unexplained cash credit u/s 68 of the Act and had initiated separately, penalty proceedings u/s 271(1)(c) of the Act. The Assessing Officer levied penalty of Rs.20,12,587/- being 100% of the tax sought to be evaded. Even the CIT(A) has affirmed the levy of penalty. Against such a decision of the CIT(A), assessee is in further appeal before us.

3. At the time of hearing, the learned representative for the assessee pointed out that the quantum proceedings against the addition on account of cash credit has been decided in favour of the assessee by the Tribunal vide its order in ITA No. 6412/Mum/2011 dated 04.03.2016. The learned representative also submitted that since the addition, on the basis of which the penalty has been levied u/s 271(1)(c), itself has been deleted by the Tribunal vide its order dated 04.03.2016 (supra), the penalty does not survive.

4. The Id. DR did not oppose the factual matrix brought out by the learned representative for the assessee.

5. We have heard the rival submissions. We find that the addition on the basis of which the penalty proceedings were initiated have been deleted by the Tribunal vide its order in ITA No. 6412/Mum/2011 dated 04.03.2016. Therefore, the penalty levied u/s 271(1)(c) of the Act does not survive and is hereby deleted.

6. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 31st January, 2018.

Sd/-
(SANDEEP GOSAIN)
JUDICIAL MEMBER

Sd/-
(G.S. PANNU)
ACCOUNTANT MEMBER

Mumbai, Date : 31st January, 2018

SSL

Copy to :

- 1) The Appellant
- 2) The Respondent
- 3) The CIT(A) concerned
- 4) The CIT concerned
- 5) The D.R, "F" Bench, Mumbai
- 6) Guard file

By Order

Dy./Asstt. Registrar
I.T.A.T, Mumbai