

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**INDORE BENCH, INDORE**  
**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**  
**AND SHRI MANISH BORAD, ACCOUNTANT MEMBER**

**ITA No.554/Ind/2017**  
**Assessment Year: 2008-09**

Shri Mahesh Kumar, Gram Sulakhedi, Post Manglia, Indore	Vs.	ITO 5(5), Indore
(Appellant)		(Respondent )
PAN No.AYPPM2201G		

Revenue by	Shri P.K. Mitra, Sr.DR
Assessee by	Shri S.S. Deshpande,C.A
Date of Hearing	11.10.2018
Date of Pronouncement	12.10.2018

**ORDER**

**PER MANISH BORAD, AM.**

This appeal of Assessee pertaining to A.Y. 2008-09 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-II, Indore (in short 'CIT(A)'), dated 01.05.2017 which is arising out of the order u/s 271(1)(c) of the Income Tax Act 1961(hereinafter called as the 'Act') framed on 01.03.2016 by ITO-5(5), Indore.

2. The assessee's sole grievance is against the order of Ld.CIT(A)-II, Indore confirming the penalty of Rs.39,82,800/- levied by the Ld. Assessing Officer u/s 271(1)(c ) of the Act on account of unexplained source of deposit in bank account.

3. At the outset Ld. Counsel for the assessee submitted that the impugned penalty of Rs.39,82,800/- was levied by the Ld. Assessing Officer on the addition for unexplained deposit in bank of Rs.1,32,76,000/-. He further submitted that the assessee went in appeal before Hon'ble Tribunal against the quantum of addition and Hon'ble Tribunal vide order dated 24.5.2017 in I.T..A No. 752/Ind/2014 deleted the quantum addition of Rs.1,32,76,000/-. He prayed that as the quantum has been deleted, no penalty is leviable u/s 271(1)(c ) of the Act.

4. Ld. Departmental Representative failed to controvert the submission made by the assessee.

5. We have heard rival contentions and perused the records placed before us. We find that the addition of unexplained deposit in bank account at Rs.1,32,76,000/- was made by the Income Tax Officer Ward 3(3), Indore in the assessment order framed us/ 143(3)

of the Act dated 31.12.2010 which was followed by the penalty proceedings u/s 271(1)(c ) and vide order dated 01.03.2016 penalty @100% of tax sought to be evaded on the addition of Rs.1,32,76,000/- was levied at Rs.39,82,800/-.

6. We find that the Co-ordinate Bench in I.T.A.No. 752/Ind/2014 order dated 24.05.2017 while adjudicating the issue of quantum of addition in the case of assessee deleted the addition of Rs.1,32,76,000/- made on account of unexplained cash credit on the basis of circumstantial evidences on record and statement of Power of Attorney holder recorded by the A.O and holding that the amount of Rs.1,32,76,000/- is received by the assessee on account of sale of agriculture land and the same is to be treated as capital receipt.

7. In the instant appeal the issue before us limits to penalty levied u/s 271(1)(c ) of the Act at Rs.39,82,800/- on the quantum of addition of Rs.1,32,76,000/- on account of unexplained cash credit. The basis of levying penalty u/s 271(1)(c ) of the Act is on the addition made in the hands of the assessee. In the instant case, the very basis of levying penalty i.e. the quantum addition has been

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deleted by the Co-ordinate Bench therefore penalty u/s 271(1)(c) has no legs to stand for. In our considered view the impugned penalty needs to be deleted. We accordingly do so and direct the Ld. Assessing Officer to delete the penalty of Rs.32,82,800/-.

8. In the result the appeal of the assessee is allowed.

The order pronounced in the open Court on 12.10.2018.

Sd/-

Sd/-

**( KUL BHARAT )**  
**JUDICIAL MEMBER**

**(MANISH BORAD)**  
**ACCOUNTANT MEMBER**

दिनांक /Dated : 12 October, 2018  
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Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By order  
Asstt.Registrar,I.T.A.T., Indore