

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, AHMEDABAD

BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
& SHRI MAHAVIR PRASAD, JUDICIAL MEMBER

आयकर अपील सं./I.T.A. Nos. 1796 & 1797/Ahd/2017
(निर्धारण वर्ष / Assessment Years : 2005-06 & 2006-07)

| | | |
|-----------------------------------------------------|---------------------|--------------------------------------------------------------------------------------------------------|
| D.C.I.T. Circle-4(1)(1), Ahmedabad | बनाम/ Vs. | Shah Foils Pvt. Ltd. 26, Block-B, Galaxy Signature, Science City Road, Sola, Ahmedabad |
| स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAICS0490F | | |
| (अपीलार्थी /Appellant) | .. | (प्रत्यर्थी / Respondent) |

| | |
|------------------------------------------|---------------------------|
| अपीलार्थी ओर से /Appellant by : | Shri Mudit Nagpal, Sr. DR |
| प्रत्यर्थी की ओर से / Respondent by : | Shri K. C. Thaker, A.R. |

| | |
|------------------------------------------|------------|
| सुनवाई की तारीख / Date of Hearing | 01/04/2019 |
| घोषणा की तारीख /Date of Pronouncement | 10/04/2019 |

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The captioned appeals have been filed at the instance of the Revenue against the orders of the Commissioner of Income Tax (Appeals)-8, Ahmedabad ('CIT(A)' in short), dated 22.05.2017 arising in the penalty order dated 25.03.2015 passed by the Assessing Officer (AO) under S. 271(1)(c) of the Income Tax Act, 1961 (the Act) in both concerning AYs. 2005-06 & 2006-07.

2. In both the appeals, the Revenue has challenged the action of the CIT(A) in deleting penalty of Rs.25,51,499/- and Rs.1,75,58,793/- for AYs. 2005-06 & 2006-07 respectively under s. 271(1)(c) of the Act which was reversed by the CIT(A).

3. When the matter was called for hearing, before the Tribunal, the learned AR for the assessee submitted at the outset that the quantum additions giving rise to the impugned penalty has been deleted by the co-ordinate bench in ITA No. 300/Ahd/2013 pertaining to AY 2005-06. It was further submitted that the aforesaid order of the ITAT was challenged by the Revenue before the Hon'ble Gujarat High Court under s.260A of the Act and the hon'ble Gujarat High Court was pleased to dismiss the appeal of the Revenue in Tax Appeal No. 993 of 2017, judgment dated 07.02.2018. The learned AR submitted that the additions in 2005-06 & 2006-07 are identical and therefore where the very basis of imposition of penalty does not survive. The penalty under s.271(1)(c) of the Act cannot be naturally follow.

4. The learned DR, on the other hand, relied upon the order of the AO but could not controvert the averments made on behalf of the assessee.

5. We have heard the rival submissions. In view of the fact that the quantum additions/disallowances itself does not survive and ceases to exist having regard to the appellate order of the ITAT in quantum proceedings. The very basis for imposition of penalty under s. 271(1)(c) does not survive any more. Therefore,

the action of the AO towards imposing penalty is set aside and cancelled.

6. In the result, appeals of the Revenue are dismissed.

This Order pronounced in Open Court on 10/04/2019

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER
Ahmedabad: Dated 10/04/2019

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

S. K. SINHA

आदेश की प्रतिलिपि अद्येषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।