

आयकर अपीलीय अधिकरण,सुरत न्यायपीठ, सुरत
IN THE INCOME TAX APPELLATE TRIBUNAL
SURAT BENCH, SURAT

BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER
AND SHRI O.P.MEENA, ACCOUNTANT MEMBER

आ.अ.सं./I.T.A.No.2066/AHD/2015

निर्धारण वर्ष /Assessment Year : 2008-09

Shri Piyush Prakashchandra Ghadioli, 2/375, Pariswad, Ghanti Sheri, Rustampura, Surat – 395 002. [PAN: ANJPG 4306 M]	Vs.	The Income Tax Officer Ward-1(2),(4), Surat.
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से /Assessee by:	Shri P.M.Jagasheth - CA
राजस्व की ओर से /Revenue by:	Shri Prasoon Kabra - Sr.DR

सुनवाई की तारीख/ Date of hearing:	15.05.2019
उद्घोषणा की तारीख/Pronouncement on:	15.05.2019

आदेश /O R D E R

PER BHAVNESH SAINI, JM:

1. This appeal by the Assessee has been directed against the order of Learned Commissioner of Income Tax (Appeals)-II [Id.CIT(A)], Surat dated 09.06.2015 for assessment year 2008-09 challenging the levy of penalty u/s.271(1)(c) of the Act.
2. The assessee is engaged in the business of small scale trading during the year under consideration. The Assessing Officer noted that assessee has enhanced his capital and in absence of any explanation and evidence addition of Rs.7,12,775/- was made. On this addition, penalty u/s.271(1)(c) of the Act was levied which is confirmed by the Id.CIT(A).
3. The Learned Counsel for the assessee at the outset submitted the assessee preferred appeal against the quantum addition before ITAT

Surat in ITA No.2829/Ahd/2012/SRT and the addition has been deleted by the Tribunal vide order dated 01.11.2018. Copy of the order is placed on record.

4. The Learned Departmental Representative did not dispute this.
5. Considering the above facts, it is clear that the addition has been deleted by the ITAT in the case of the same assessee on which penalty have been levied. Since foundation of the penalty has gone, therefore there was no justification to levy the penalty u/s.271(1)(c) of the Act.
6. We, accordingly, set-aside the orders of the authorities below and cancel the penalty.
7. In the result, appeal of the assessee is allowed.
8. The order pronounced in the open court 15-05-2019.

Sd/-

(O.P.MEENA)

(लेखासदस्यकेसमक्ष /ACCOUNTANT MEMBER) (न्यायिकसदस्यतथा/JUDICIAL MEMBER)

सुरत/ Surat, दिनांक Dated: 15th May , 2019 /S.Gangadhara Rao, Sr.PS

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard file of ITAT.

By order

/ / TRUE COPY / /

Assistant Registrar, Surat