

**आयकर अपील अाधिकरण, अहमदाबाद ढयायपीठ**  
**IN THE INCOME TAX APPELLATE TRIBUNAL,**  
**"A" BENCH, AHMEDABAD**  
**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**  
**AND**  
**SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No. 150/AHD/2016

ढधरण वष/Asstt. Year: 2009-2010

Shri Chandrakant N. Patel, 2, Shree Vallabhkunj Co-Op. Soc. Ner Maha Prabhi Bethak, Naroda, Ahmedabad-380025.  PAN: ABNPP2158G	Vs.	The I.T.O, Ward 14(3), Now 5(1)(3), Ahmedabad.
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(Applicant)	(Respondent)
Assessee by :	Shri P.F. Jain, A.R
Revenue by :	Shri S.K. Dev, Sr. D.R

सुनवाई क ताराख/Date of Hearing : 27/08/2019

घोषणा क ताराख /Date of Pronouncement: 01/10/2019

**आदेश/O R D E R**

**PER WASEEM AHMED, ACCOUNTANT MEMBER:**

The captioned appeal has been filed at the instance of the Assessee against the order of the Learned Commissioner of Income Tax (Appeals) Ahmedabad-5, dated 17/12/2015 (in short ò Ld.CIT(A)ö) arising in the matter of assessment order passed under s. 143(3) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") dt.08/12/2011 relevant to the Assessment Year 2009-2010.

The assessee has raised the following grounds of appeal:

1. *The learned CIT(appeals) has grossly erred in law and on facts in upholding the levy of penalty of Rs.27,87,977/0 for alleged furnishing of inaccurate particulars of income without properly appreciating and considering the penalty replied of the appellant to the A.O as well as written submission before the CIT(appeals).*
2. *The CIT (appeals) has grossly erred in law and on facts in upholding the penalty without appreciating the fact that no investment in the property was made by the appellant duty substantiated by the affidavit of the other co-owner Shri Girish Ramanlal Vyas in whose case addition for alleged investment in the property stand already made in his scrutiny order.*
3. *The learned CIT (appeals) in para 3.6 has wrongly observed that no reply to the letter dated 18/03/2014 by the A.O. was made by the assessee in as much as that said letter said served to the assessee on 26/03/2014 to which reply was filed on 28/03/2014 as appearing in on page no.21 to 23 of the Paper Book before him.*
4. *The penalty order is submitted to be bad in law and on fact as the assessment year mentioned in the penalty order and notice of demand is A.Y.2010-11 and not A.Y. 2009-10.*
5. *The penalty levied is submitted to be bad in law and on facts in as much as that there is no furnishing of in accurate particulars of income by the appellant.*
6. *On the facts and the evidence on record no such penalty ought to have been levied.*
7. *The appellant craves leave to add, to alter, and or modify any grounds of appeal.*

2. The assessee has also raised the additional ground of appeal vide letter dated 25/11/2017.

1. *The penalty is submitted to be legally bad-in-law as notice issued u/s.274 read with section 271(1)(c) was bad in law, as it did not specify under which limb of section 271(1)(c) penalty proceedings had been initiated read with the Decision of Supreme Court in the case of SSA's EMERALD MEDOWS-242 TAMAN-180.*

2. *The penalty is submitted to be invalid having been levied for alleged furnishing inaccurate particulars and concealing income without specifying the exact default and wrongly applying explanation-1 of clause-C of sub section-1 of section 271.*

*Prayer :*

*The above grounds which are legal are respectfully prayed to be admitted as they go to the root of the penalty as evident from the penalty notice dated 08/12/2011 and penalty order facts whereof are already on record.*

3. The Ld. AR for the assessee at the outset submitted that the assessee along with Shri Girish Ramanlal Vyas has purchased a piece of land located at Taluka, dascroi, Village Kathwada through sale deed dated 29<sup>th</sup> September 2008 at a consideration of Rs. 83,13,850/- including the stamp duty. The impugned amount was added in the hands of both the parties on substantive basis by the respective assessing officers as unexplained investment. The impugned addition was challenged by both the parties i.e. assessee and Shri Girish Ramanlal Vyas upto the level of ITAT where the substantive additions were confirmed in the hands of the both the parties.

3.1 However, the assessee against the confirmation of the quantum addition by the ITAT has carried the matter before the Honøble High Court where the tax appeal No. 822 of 2016 was admitted.

3.2 The Ld. AR further submitted that the other party Shri Girish Ramanlal Vyas has not carried the matter before the Honøble Gujarat High Court. Thus it is implied that the order of the ITAT in the case of Shri Girish Ramanlal Vyas has reached to its finality.

In view of the above the Ld. AR submitted that it is the trite law that the same income cannot be taxed twice in the hands of two different persons. Accordingly, the Ld. AR before us submitted that once the quantum addition has been finalized in the hands of the other person, thus the penalty levied under section 271(1)(c) of the Act for the same quantum addition is not sustainable.

4. On the other hand the Ld. DR filed a report from the income tax officer having jurisdiction over Shri Girish Ramanlal Vyas which reads as under:

Kindly refer to the above referred letter wherein status of appeal in case of Girish Ramanlal Vyas has been asked for in pursuant to an order of Hon'ble member of ITAT during the course of hearing in the case of Shri Chandrakant Nathalal Patel ( ITA No.150/Ahd/2016)

It may kindly be noted that the events in the instant case arranged chronologically and depicted in tabulated for as below:

<b>Date</b>	<b>Narration</b>	<b>Remark</b>
26/11/2011	Assessment order was passed u/s.143(3) of the Act	Addition of Rs.83,13,850/- was made u/s.69 of the Act.
22/08/2012	Appellate order [CIT(A)] was passed.	Appeal against 143(3) of the assessee was dismissed.
25/10/2012	Assessee filed an appeal before ITAT, Ahmedabad	ITA NO.2387/Ahd/2012
20/03/2014	Penalty order u/s.272(1)(c) of the Act was passed.	Penalty of Rs.27,55,471/- was levied.
09/05/2015	ITAT dismissed the appeal of the assessee	Reason for dismissed was absence of assessee before ITAT Ahmedabad was allowed.
17/10/2016	The appeal of the assessee [appeal no.2387/Ahd/2012] was restored.	M.A No.92/Ahd/2012 filed by the assessee before ITAT, Ahmedabad was allowed.
20/06/2017	Hon'ble ITAT passed an order dismissing the appeal of the assessee.	Addition made by AO in assessment order was confirmed.

It may also be kindly noted that as per our office record, the assessee Shri Girish Ramanlal Vyas has not filed any further appeal except the appeals mentioned supra and no appeals are pending before any appellate authority as on today.

4.1 As such the Ld. DR before us conceded that the addition in the case of Shri Girish Ramanlal Vyas has reached to the finality by the order of this tribunal vide order dated 20-06-2017 in ITA number 2387/Ahd/2012.

5. We have heard the rival contentions of both the parties and perused the materials available on record. From the preceding discussion there remains no ambiguity that the addition of Rs. 83,13,850/- has already been suffered to tax in the case of Shri Girish Ramanlal Vyas. Therefore, the assessee in respect of

such addition cannot be visited with the penalty under section 271(1)(c ) of the Act. Accordingly we set aside the order of the Ld.CIT (A) and direct the AO to delete the addition made by him. Hence the ground of appeal of the assessee is allowed.

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

**Order pronounced in the Court on 01/10/2019 at Ahmedabad.**

**-Sd-  
(KUL BHARAT)  
JUDICIAL MEMBER**

**-Sd-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER**

**(True Copy)**  
Ahmedabad; Dated 01/10/2019  
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