

IN THE INCOME TAX APPELLATE TRIBUNAL

AHMEDABAD “C” BENCH

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI WASEEM AHMED, ACCOUNTANT MEMBER))**

**ITA. Nos: 410 & 411/AHD/2019
(Assessment Year: 2007-08)**

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| Smt. Zabuben Desai and Smt. Rinaben Nishitbhai Desai, 2, Kailash Society, B/h. H.K. House, Ashram Road, Ahmedabad | V/S | Income Tax Officer, Ward- 5 (2)(4), Ahmedabad |
| (Appellant) | | (Respondent) |

PAN: AAPPD 7928M

**Appellant by : Shri Sakar Sharma, AR
Respondent by : Shri Lalit P. Jain, Sr. D.R.**

(आदेश)/ORDER

Date of hearing : 21 -08-2019
Date of Pronouncement : 11-09-2019

PER MAHAVIR PRASAD, JUDICIAL MEMBER

1. These two appeals filed by the Assessee are directed against the order of the Ld. CIT(A)-5, Ahmedabad dated 28.01.2019 arising out of Penalty order dated

05.03.2018. Since issues and assessment years are common, therefore, for the sake of convenience, we would like to dispose of both the appeals by way of a common order.

2. In both the appeal, assessee has challenged that the ld. CIT(A) erred on facts and in law in confirming the penalty u/s. 271(1)(c) amounting to Rs. 31,25,210/-.
3. Facts of the case are that appellants are individual deriving income from long term capital gains as well as income from other sources. Appellants furnished return of income on 25.03.2008 declaring total income of Rs. 70 and 60 respectively. Thereafter assessment u/s. 143(3) r.w.s. 147 was completed on 31.03.2015 resulting into addition of Rs. 1,40,69,376/- and 1,40,69,436/- respectively. The ld. Assessing Officer also initiated penalty proceeding u/s. 271(1)(c) read with Section 274 of the Act.
4. Thereafter in appeal before the ld. CIT(A) he confirmed the action of the Assessing Officer and confirmed penalty.
5. At the outset, ld. A.R. Shri Sakar Sharma filed an order of Co-ordinate Bench in Assessee's own case wherein in quantum proceeding relief was granted by the Co-ordinate Bench and relevant Para of the Co-ordinate Bench order is reproduced:

Further that on the basis of the above discussion and observation we find the entire proceeding is void ab initio i.e. invalid from the very outset and therefore is liable to be quashed and hence the entire proceeding under section 148 of the Act as initiated by the revenue against the assessee is hereby quashed. Thus, assessee's appeal is allowed.

6. *Since the preliminary part has been allowed in favour of the assessee rest of the grounds become academic and no order need be passed.*

7. *The issue involved in rest of the appeals is identical to that of the issue already been dealt with by us in ITA No.1407/Ahd/2017 for A.Y. 2007-08 and in the absence of any changed circumstances the same shall apply mutatis mutandis. Hence, the rest of the appeals preferred by the assessee are also allowed.*

8. *In the combined result, all the assessee's appeals are allowed.*

6. Since relief has been granted by the Co-ordinate Bench in quantum proceeding to the assessee/ appellant, thus, there is no res integra. In view of the above, we allow the appeal of the assessee and direct A.O. to delete the penalty.

7. In the result, appeals filed by the Assesseees are allowed.

Order pronounced in Open Court on 11 - 09- 2019

Sd/-

(WASEEM AHMED)
ACCOUNTANT MEMBER True Copy
Ahmedabad: Dated 11 /09/2019

Sd/-

(MAHAVIR PRASAD)
JUDICIAL MEMBER

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad