

आयकर अपीलिय अधिकरण, अहमदाबाद न्यायपीठ, अहमदाबाद ।

**IN THE INCOME TAX APPELLATE TRIBUNAL  
"A" BENCH, AHMEDABAD  
[Through Virtual Court]**

**BEFORE SHRI RAJPAL YADAV, VICE-PRESIDENT  
AND  
SHRI PRADIPKUMAR KEDIA, ACCOUNTANT MEMBER**

**ITA.No.2108/Ahd/2018  
निर्धारण वर्ष/Asstt.Year : 2012-13**

Infinite Civil Solutions P.Ltd. F.P.25, Nr.Aditya Elegance & Railway Track CMS hospital Road Thaltej, Ahmedabad 380 054. PAN : AABCI 7586 H	Vs.	ACIT, Cir.2(1)(1) Ahmedabad.
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<b>अपीलार्थी/ (Appellant)</b>		<b>प्रत्यर्थी/ (Respondent)</b>
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Revenue by :	Shri S.S. Shukla, Sr.DR
Assessee by :	Shri B.K. Patel, AR

सुनवाई की तारीख/Date of Hearing : 11/02/2021

घोषणा की तारीख /Date of Pronouncement: 15/02/2021

**आदेश/O R D E R**

**PER RAJPAL YADAV, VICE-PRESIDENT**

Assessee is in appeal before the Tribunal against order of the Id.CIT(A)-2, Ahmedabad passed for the Asstt.Year 2012-13.

2. Sole grievance of the assessee is that the Id.CIT(A) has erred in confirming the penalty imposed by the AO under section 271(1)(c) of the Income Tax Act, 1961 amounting to Rs.9,97,256/-.

3. Brief facts of the case are that the assessee company was engaged in the providing consultancy services. It has filed its return of income on 29.9.2012 declaring total income at Rs.92,14,300/-. An assessment order was passed on 19.1.2015 under section 143(3) of the

Act, and the income of the assessee was determined at Rs.1,23,50,300/-. The Id.AO has made two additions viz. (a) disallowance of rent expenses under section 37(1) and under section 40A(2)(b), and (b) disallowance of bogus expenses amounting to Rs.25,30,500/-. Dissatisfied with the above additions, the assessee carried the matter in appeal before the Id.CIT(A). The Id.CIT(A) has decided the appeal against the assessee on 22.1.2016. Aggrieved with the order of the Id.CIT(A) assessee has filed an appeal bearing ITA No.772/Ahd/2016. This appeal was listed for hearing on 7.8.2018, and it was dismissed for want of prosecution. The assessee has filed an MA bearing No.270/Ahd/2018 contending therein that assessee was very much interested in prosecuting the appeal. This MA was allowed by the Tribunal vide order dated 1.1.2019 and the appeal was restored to its original number. The appeal again heard by the Tribunal on 17.6.2019. The order was pronounced on 11.9.2019. The assessee found certain apparent mistake in the order of the Tribunal, and therefore, filed another MA bearing no.324/Ahd/2019 on 4.10.2019. This application was listed before the Tribunal on 20.12.2019, and the Tribunal agreed with contentions of the assessee that its order was suffering from an apparent error, therefore, MA was allowed and this appeal was again restored to its original number. Earlier order dated 1.1.2019 was recalled. The Tribunal has again decided the appeal of the assessee vide order dated 10.11.2020. The Tribunal has deleted both the major additions i.e. disallowance of Rs.6 lakhs out of rent expenses and disallowance of legal and profession fees of Rs.25,30,500/-. Copy of the Tribunal's order dated 10.11.2020 has been placed on record.

4. The Id.counsel for the assessee submitted that the assessee has been visited with penalty under section 271(1)(c) of the Act *qua* the additions made on account of disallowance of rent of Rs.6 lakhs and

disallowance of alleged bogus expenditure of Rs.25,30,500/-. Both the additions stand deleted at the end of the Tribunal vide order dated 10.11.2020 passed in ITA No.772/Ahd/2016. The Id.DR was unable to controvert this factual position.

5. On due consideration of the above facts and circumstances, we find that sub-clause (iii) of section 271(1)(c) provides mechanism for quantification of penalty. It contemplates that the assessee would be directed to pay a sum in addition to taxes, if any, payable him, which shall not be less than but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of income and furnishing of inaccurate particulars of income. In other words, the quantification of the penalty is depended upon addition made to the income of the assessee. Since in the present case, basis for visiting the assessee with penalty has been extinguished by deleting addition by the Tribunal vide order dated 10.11.2020 (supra) the impugned penalty does not survive. In other words, there is no room for the Revenue to impose penalty under section 271(1)(c) in this case. Therefore, we cancel the orders of the Revenue authorities on this issue, and allowed grounds of appeal of the assessee.

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

**Order pronounced in the Court on 15<sup>th</sup> February, 2021 at Ahmedabad.**

Sd/-  
**(PRADIPKUMAR KEDIA)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(RAJPAL YADAV)**  
**VICE-PRESIDENT**

Ahmedabad; Dated 15/02/2021