

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND  
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER  
**ITA No. 158/SRT/2018** (AY 2010-11)  
(Hearing in Virtual Court)

M/s Bhaga Doshi Cottex, 4, Shreeji Krupa, Navyug Society, Kabarpurani Wasi, Opp.Vakil Petrol Pump, Paliyawad Road, Batod- 364710 <b>PAN : AAHFB 5360 P</b>	Vs	Income Tax Officer, Ward- 1(3)(6), Aayakar Bhavan, Majura Gate, Surat
Appellant / assessee		Respondent / Revenue

Assessee by	Shri Mehul Shah, C.A
Revenue by	Ms. Anupama Singla, Sr-DR
Date of hearing	30.03.2022
Date of pronouncement	30.03.2022

**Order under section 254(1) of Income Tax Act**

**PER PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by assessee is directed against the order of Id. Commissioner of Income-tax-(Appeals)-2, Surat [‘CIT(A)’ for short] dated 06.12.2017, which in turn arises from the penalty order passed under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as ‘the Act’) dated 08.03.2016 for assessment year (AY) 2010-11. The assessee has raised the following grounds of appeal:-

*“1. On the facts and in the circumstances of the case as well as law on the subject, the learned Commissioner of the Income Tax (Appeals) has erred in confirming the action of assessing officer in levying penalty of Rs.74,16,000/- u/s 271(1)(c) of the I.T.Act, 1961, on*

*addition of Rs.1,50,00,000/- on account of cash receipt from advances given in earlier year and Rs.90,00,000 on account of cash receipts from debtors.”*

2. At the outset of hearing, Ld. Authorized Representative (AR) for the assessee submits that the addition, on the basis of which the penalty was levied by Assessing Officer had been set aside to the file of Assessing Officer in quantum assessment appeal in ITA No.1039/Ahd/2015) dated 07.02.2022. Therefore, the penalty order would not survive.
3. On the other hand, Ld. Senior Departmental Representative (Sr.DR) for the Revenue after going through the grounds of appeal and the order of Tribunal dated 07.02.2022 in ITA No. 1039/AHD/2015 in quantum assessment submits that the matter may be restored back to the file of Assessing Officer to take appropriate action after passing the assessment order in restoration proceedings in terms of order dated 07.0.2022 (supra).
4. We have considered the submission of both the parties and perused the order of penalty dated 08.03.2016 and also the order of Tribunal in quantum assessment in ITA No.1039/AHD/2015 dated 07.02.2022 for AY 2012-13 and find that the addition on the basis of which the penalty was levied by Assessing Officer has been restored back to the file of Assessing Officer who decide the issue by considering the additional evidence furnished by assessee. The Tribunal has passed the following order (supra):-

*“8. We have considered the rival submission of both the parties and perused the orders of lower authorities. We find that the books of account was rejected by Assessing Officer for the want of supporting vouchers and cash books. Similarly, the addition was also made by taking view that no sufficient evidence to substantiate the claim was furnished by Assessing Officer. The ld CIT(A) also confirmed the addition for the want of evidence. Now before us the assessee has filed voluminous evidence and prayed for admission of additional evidence. Considering the fact that the certain entries recorded in the cash books are having direct bearing on the issue under consideration. Therefore, considering the relevancy of documents, we admit the additional evidence and restore the matter back to the file of Assessing Officer who examine both the issue/ disallowances afresh and pass the order in accordance with law. The assessee is also directed to provide all necessary evidence, documents and information to the Assessing Officer and not to cause for further delay before the Assessing Officer. Hence, the grounds of appeal raised by the assessee are allowed for statistical purpose.”*

5. Considering the fact that the addition on the basis of which the penalty was levied by Assessing Officer has been restored back to the file of Assessing Officer. Therefore, the penalty order dated 08.03.2016 is no more survived. However, the Assessing Officer is given liberty to initiate the afresh proceedings, if so desire in accordance with law after deciding the issue in restoration proceedings in terms of order dated 07.02.2022 (supra).

6. In the result, the appeal of the assessee is allowed in above terms.

Order pronounced in the open court on 30/03/2022 at the closing of hearing by placing the result on the Notice Board.

Sd/-

**(Dr ARJUN LAL SAINI)**  
**ACCOUNTANT MEMBER**

Surat, Dated: 30/03/2022  
*Dkp. Out Sourcing P.S*

Copy to:

1. Appellant-
2. Respondent-
3. CIT(A)-
4. CIT
5. DR
6. Guard File

//True Copy //

Sd/-

**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

By order

Assistant Registrar, ITAT, Surat