

**THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “C” BENCH, AHMEDABAD**

**BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**ITA Nos.322 & 323/Ahd/2020  
Assessment Years: 2008-09 & 2009-10**

The A.C.I.T.,  
Mehsana Circle, Mehsana.

vs. Shri Rameshbhai Jivrajbhai Desai  
5, Ashoknagar Society,  
Radhanpur Road,  
Mehsana – 384 002.  
[PAN – AAWPD 3249 A]  
(Respondent)

(Appellant)

Appellant by : None (Adjournment Application)  
Respondent by : Shri S.N. Divatia, Advocate

Date of hearing : 23.05.2022  
Date of pronouncement : 31.05.2022

**ORDER**

**PER SUCHITRA KAMBLE, JUDICIAL MEMBER :**

These are appeals filed by the assessee against different orders, both dated 07.02.2020, passed by the CIT(A)-12, Ahmedabad for the Assessment Years 2008-09 & 2009-10.

2. The assessee in **ITA No.322/Ahd/2020 for A.Y. 2008-09** has raised the following ground of appeal :

*“1. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in deleting the penalty levied of Rs.61,90,480/- u/s.271(1)(c) of the Act.*

The assessee in **ITA No.323/Ahd/2020 for A.Y. 2009-10** has raised the following ground of appeal :

“1. Whether on the facts and circumstances of the case and in law, the Id. CIT(A) is right in deleting the penalty levied of Rs.1,61,88,780/- u/s.271(1)(c) of the Act.

3. A search action under Section 132 of the Income Tax Act, 1961 was carried out in the group case of Master Group in F.Y. 2012-13. The assessee furnished return of income under Section 139 on 27.09.2008 declaring total income of Rs.47,33,760/-. In response to notice issued under Section 153A the assessee has again filed return dated 05.05.2014. Thereafter, order under Section 153A read with Section 143(3) of the Act was passed on 31.03.2015 determining total income at Rs.3,60,26,185/-. During the course of assessment proceedings, the Assessing Officer initiated penalty proceedings under Section 271(1)(c) of the Act. The Assessing Officer imposed penalty of Rs.61,90,480/- in A.Y. 2008-09 and penalty of Rs.1,61,88,780/- in A.Y. 2009-10.

4. Being aggrieved by the penalty order, the assessee filed appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. AR submitted that the assessment order passed under Section 153A of the Act was held to be *void ab initio* and thus there is no addition in the Assessment Order which survives. Hence, the penalty also does not sustain. Ld. AR submitted the decision of the Tribunal in assessee's case for A.Y. 2008-09 & 2009-10 being IT(SS)A Nos.107 & 108/Ahd/2017, order dated 17.01.2020 wherein the additions were partly allowed.

6. We have heard the Ld. AR and perused the relevant material available on record. During the hearing, the Department has filed adjournment application which is rejected as the issue involved does not sustain once the assessment itself becomes *void ab initio*. Thus, the decision in the quantum appeal in assessee's case given by the Tribunal clearly set out the additions which were deleted in favour of the assessee.

Thus, penalty on the said additions does not survive. Hence, the appeals filed by the Revenue are not sustainable.

7. In the result, both the appeals filed by the Revenue are dismissed.

Order pronounced in the open Court on this 31<sup>st</sup> day of May, 2022.

Sd/-  
**(WASEEM AHMED)**  
Accountant Member

Sd/-  
**(SUCHITRA KAMBLE)**  
Judicial Member

**Ahmedabad, the 31<sup>st</sup> day of May, 2022**

**PBN/\***

Copies to: (1) *The appellant*  
(2) *The respondent*  
(3) *CIT*  
(4) *CIT(A)*  
(5) *Departmental Representative*  
(6) *Guard File*

*By order*

*Assistant Registrar  
Income Tax Appellate Tribunal  
Ahmedabad benches, Ahmedabad*