

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD "C" BENCH, AHMEDABAD**

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

**ITA No.317/Ahd/2020  
Assessment Year: 2014-15**

Income Tax Officer,  
Ward – 2, Dahod.

vs. Shri Rupam Rajendra Gorecha,  
1350, Achar Nivas, Nava Bazar,  
At & PO – Limdi, Tal. Jhalod,  
Dist. Dahod.  
[PAN – AHYPG 8190 Q]

(Appellant)

(Respondent)

Appellant by : None (Adjournment Application)  
Respondent by : Shri Piyush Agrawal, A.R.

Date of hearing : 23.05.2022  
Date of pronouncement : 15.06.2022

**ORDER**

**PER WASEEM AHMED, ACCOUNTANT MEMBER :**

The captioned appeal has been filed at the instance of the Revenue against the order of the Learned Commissioner of Income Tax (Appeals-4), Vadodara dated 24.02.2020 arising in the matter of penalty order passed under Section 271(1)(c) of the Income Tax Act, 1961 (here-in-after referred to as "the Act") relevant to the Assessment Year 2014-15.

2. The Revenue has raised the following grounds of appeal:

"1. On the facts and in the circumstances of the case, the learned CIT(A) erred in deleting the penalty u/s.271(l)(c) of the Act by annulling the penalty order by disregarding the facts mentioned by the Assessing Officer in the penalty order that the penalty was made after proper analysis and verification of materials found and seized along with statement recorded u/s 132(4) of the Income Tax Act. It is evident from statements recorded that the assessee has concealed the income to the extent of Rs.2,33,02,700/-.

2. *On the facts and in the circumstances of the case, the learned CIT(A) erred in deleting the penalty u/s.271(l)(c) of the Act by taking into consideration the order of the ITAT in assessee's own case in which quantum has been deleted by the ITAT on technical grounds. However the revenue has filed an appeal before the Hon'ble High Court of Gujarat against this order of the ITAT.*

3. *The appellant craves leave to add to, amend or alter the above grounds as may be deemed necessary.*

**Relief claimed in appeal**

*The order of the CIT(A) on the issues raised in the aforesaid Grounds be set aside and that of the Assessing Officer be restored."*

3. The Revenue has challenged the deletion of the penalty by the learned CIT-A which was levied by the AO under the provisions of section 271(1)© of the Act for ₹ 79,01,200.00 being hundred percent of tax sought to be evaded on account of concealment of particulars of income.

4. At the time of hearing, we have perused the grounds of appeal raised by the Revenue and found that the quantum additions in respect of which penalty was levied by the AO were deleted by the ITAT. On being observed this fact, we decline the adjournment petition filed by the Revenue and decided to proceed to adjudicate the issue involved in the appeal after hearing the learned counsel for the assessee.

5. The learned AR before us contended that there were quantum additions made by the AO in the assessment framed under section 153C read with section 143(3) of the Act by the AO vide order dated 25 October 2016 with respect to the following items:

- i. Unaccounted silver bullion of 479.50 KG amounting to ₹ 2,05,22,600.00 only.
- ii. Unaccounted cash of ₹ 27,80,100.00 only.

6. The learned AR further submitted that both the above additions were deleted by the ITAT in the case of the assessee. Thus, according to the learned AR, the question of penalty under the provisions of section 271(1)(c) of the Act does not arise. The learned AR vehemently supported the order of the learned CIT-A.

7. We have heard the learned AR for the assessee and perused the materials available on record. The learned CIT-A in his order dated 24<sup>th</sup> February 2020 has deleted the penalty by observing as under:

*"6. I have considered the facts and circumstances of the case, the observations of the AO, submissions of the appellant, material available on record and the relevant judicial pronouncements on the above matter. While going through the order of Hon'ble ITAT, ITA No.151/AHD/2018 dated 24.07.2019, in the appellant's case for the AY under consideration, it is observed that the quantum addition has been deleted by the Hon'ble ITAT. On Page No.17 of the said order, Hon'ble ITAT has observed that 'Be that as it may, there is no evidence suggesting that the Assessing Officer of Nayan Kothari has recorded any satisfaction note before handing over the requisition material to the AO having Jurisdiction over the assessee. From the above, it is concluded that the recording of satisfaction for invoking the provision of Sec 153C is mandatory requirement as reveals that the AO has applied his mind to reach to the conclusion that materials belong to the other person. If the AO of the person searched not recorded the satisfaction note, then initiation of proceedings u/s. 153C of the Act was not held to be valid.' Further the Hon'ble ITAT relied on the decision of Hon'ble ITAT, Delhi in the case of DSL Properties Pvt. Ltd. (33 Taxmann.com 420) and the decision of Hon'ble ITAT, Ahmedabad in the case of Parshwa Corporation (88 Taxmann.com 43). In these decisions it had been held that where no satisfaction was recorded by Assessing Officer of searched person and even Assessing Officer of assessee also did not record satisfaction before issuing notice u/s.153C to assessee, notice issued u/s.153C was invalid.*

*6.1 Against the above mentioned order of Hon'ble IT AT, department had preferred miscellaneous application before Hon'ble IT AT, Ahmedabad. Vide MA No.236/AHD/2019 dated 11.01.2019, Hon'ble ITAT, Ahmedabad has dismissed the departmental petition. It is pertinent to mention here that the Hon'ble ITAT, Ahmedabad has not decided the issue of quantum addition on merits.*

*6.2 I proceed to peruse the grounds of appeal raised by the appellant in light of facts contained in para 6 and 6.1 above. The appeal before the undersigned pertains to levy of penalty u/s 271(l)(c) on the quantum addition made by the Assessing Officer. As seen above the quantum addition does not stand anymore. In the case of Anilkumar Darji, ITA No.3042 and 3043/AHD/2016 dated 10.05.2018, Hon'ble ITAT, Ahmedabad has held that the penalty imposed cannot be sustained if the quantum addition has been quashed. In the case of Babul Harivadan Parikh, (37 Taxmann.com 52), Hon'ble Gujarat High Court has taken similar stand.*

*6.3 In the case of K.C. Builders vs. ACIT (135 Taxman 461 Supreme Court), Hon'ble Apex Court held that where the additions made in the Assessment Order, on the basis of which penalty for concealment was levied, are deleted, there remains no basis at all for levying the penalty for concealment, and*

*therefore, in such a case, no such penalty can survive and the same is liable to be cancelled.*

*6.4 In the case of Prabhudas Liladhar Pvt. Ltd. (ITAT Mumbai), ITA No.6479/Mum/2017 dated 16.01.2019, ITAT held that once the whole basis of addition itself as made by the AO in quantum has been deleted by the Tribunal and expenses were related to the business penalty levied by the Assessing Officer u/s. 271(1)(c) is deleted.*

*6.5 In the case of Shah Alloys Ltd (35 taxmann.com 532) Hon'ble Gujarat High Court has held that when deletion made was set aside, whole basis which led to imposition of penalty ceased to exist and, thus, no ground could survive to sustain penalty. In the case of Atul Ltd (44 taxmann.com 320) Hon'ble Gujarat High Court has held that where in course of appellate proceedings, revenue authorities admitted that quantum addition on account of transfer pricing difference which was basis for imposition of penalty had already been deleted, impugned penalty order based on said addition also deserved to be set aside.*

*6.6 In light of above judicial pronouncements, I proceed to delete the penalty levied by the Assessing Officer. The appellant succeeds on this ground."*

8. From the above finding of the learned CIT-A and in the light of the ground of appeal raised by the Revenue, there remains no ambiguity that the additions on the basis of which the penalty was levied upon the assessee by the AO has ceased to exist. In other words, the quantum additions made by the AO were deleted by the ITAT as evident from the order of the learned CIT-A reproduced above. Thus, the question of concealment of income does not arise and therefore the penalty cannot be sustained. Under the provisions of section 271(1)(c) of the Act the amount of penalty has been specified which shall not be less than hundred percent of the amount of tax sought to be evaded subject to the maximum limit of 300% of such amount. Under explanation 4 to section 271(1)(c) of the Act, the manner for quantifying the amount of tax sought to be evaded has been specified which has direct nexus with the additions/ disallowances made during the quantum proceedings. Therefore, where the quantum additions/disallowances have been deleted, then the manner of quantifying the amount of penalty under explanation 4 to section 271(1)(c) of the Act as discussed above fails. Accordingly, we are of the view that that there cannot be any penalty with respect to the quantum additions which have been deleted by the

authorities whether on merit or on technical grounds. Thus, we find no infirmity in the order of the learned CIT-A and therefore the appeal filed by the Revenue is hereby dismissed.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on this 15<sup>th</sup> day of June, 2022.

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

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

**Ahmedabad, the 15<sup>th</sup> day of June, 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*