

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
INDORE BENCH, INDORE**

**BEFORE Ms. MADHUMITA ROY, JUDICIAL MEMEBR  
&SHRI BHAGIRATH MAL BIYANI, ACCOUNTANT MEMBER**

आयकर अपीलसं./I.T.A. No. 1002/Ind/2019  
(निर्धारण वर्ष / Assessment Year :2009-10)

<b>NileshPatwari, 759, PatwariChowk, Bijalpur, Indore, (M.P.)</b>	<b>बनाम/ Vs.</b>	<b>ITO-3(2), Indore</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: AKQPN 6501 K</b>		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

आयकर अपीलसं./I.T.A. No. 29/Ind/2020  
(निर्धारण वर्ष / Assessment Year :2009-10)

<b>Prakash HiralalPatwari, PatwariChowk, Bijalpur, Indore, (M.P.)</b>	<b>बनाम/ Vs.</b>	<b>ITO-3(2), Indore</b>
<b>स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: BHDPP 7198 F</b>		
(अपीलार्थी/Appellant)	..	(प्रत्यर्थी / Respondent)

<b>अपीलार्थी ओर से/Appellant by :</b>	None (Written submission)
<b>प्रत्यर्थी की ओर से/ Respondentby:</b>	Shri Ashish Porwal, Sr. DR

<b>सुनवाईकीतारीख/Date ofHearing</b>	28.09.2022
<b>घोषणा की तारीख /Date of Pronouncement</b>	22 .11.2022

## ORDER

### **PER Ms. MADHUMITA ROY, JM:**

The instant appeals filed by two different assessesees are directed against the orders both dated 15.11.2019 passed by the Learned Commissioner of Income Tax (Appeals)-III, Indore arising out of order both dated 09.09.2014 passed by the Income Tax Officer-3(2), Indore u/s 271(1)(c) of the Act for A.Y.-2009-10 challenging the confirmation of penalty imposed u/s 271(1)(c) of the Act. Since, in both the appeals, the same issue of confirmation of penalty under Section 271(1)(c) of the Act is involved, we are deciding both the appeals simultaneously being identical in nature.

2. Though the assesseees have not appeared before us, written notes as submission has been duly filed. On the other hand, the ld. Sr. DR relied upon the orders passed by the authorities below.

3. The penalty under Section 271(1)(c) of the Act to the tune of Rs.2,70,000/- in both cases are under challenge before us. It is an admitted fact that the assesseees had not made any compliance before the Ld.AO and assessments under Section 144 r.w.s. 147 of the Act were framed and penalty under Section 271(1)(c) of the Act was initiated. Even during course of penalty proceedings, the assesseees did not appear and no written submission was filed by the assesseees for rejection of penalty proceedings. Therefore, the penalty under Section 271(1)(c) of the Act was imposed on both the assesseees treating the cash deposit of Rs.11,09,000/- as unexplained investment. Hence, there is no such mention of concealment of particulars of income or furnishing inaccurate particulars of income. We find that the same was confirmed by the Ld. CIT(A). It further appears that the assesseees

havefiled appeals against said orders made under Section 144/147 of the Act before the Ld. CIT(A) which are still pending. Therefore, taking into consideration, the entire aspect of the matters, we do not find any reason to confirm the penalty imposed under Section 271(1)(c) of the Act, particularly, when there is no allegation of concealment of particulars of income or furnishing inaccurate particulars of income by both the assesseees in the said penalty orders. We, thus, find no merit in the impugned orders and, thus, quashed. Accordingly, the appeals filed by both the assessee stand allowed.

4. In the result, appeals filed by both the assesseees are allowed.

**This Order pronounced on 22/11/2022**

Sd/-  
(BHAGIRATH MAL BIYANI)  
ACCOUNTANT MEMBER  
Indore: Dated 22 /11/2022

Sd/-  
(MADHUMITA ROY)  
JUDICIAL MEMBER

*S.K.SINHA*

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, Indore / DR, ITAT, Indore
6. गार्ड फाइल / Guard file.

By order

Sr. Private Secretary  
Income Tax Appellate Tribunal  
Indore Bench, Indore

1. Date of dictation on 16.11.2022
2. Date on which the typed draft is placed before the Dictating Member 17.11.2022
3. Date on which the approved draft comes to the Sr.P.S./P.S.
4. Date on which the fair order is placed before the Dictating Member for pronouncement
5. Date on which the fair order comes back to the Sr.P.S./P.S
6. Date on which the file goes to the Bench Clerk
7. Date on which the file goes to the Head Clerk.....
8. The date on which the file goes to the Asstt. Registrar for signature on the order.....
9. Date of Despatch of the Order.....