

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND

DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No. 457/SRT/2023 (AY: 2010-11)

(Virtual Hearing)

I.T.O., Ward-1(1)(3) Surat.	Vs.	Amitkumar Mathuradas Kaneria, 64, Himgiri Bunglows, Near Rajhans Cinema, Piplod, Surat. PAN No. ADPPK 7315 J
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Ms. Himali Mistry, C.A.
Department represented by	Shri Vinod Kumar, Sr. DR
Date of Institution of Appeal	07/07/2023
Date of hearing	26/09/2023
Date of pronouncement	26/09/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the Revenue is directed against the order of learned National Faceless Appeal Centre, Delhi (NFAC)/Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 12/05/2023 in deleting the penalty of Rs. 65,40,420/- levied under Section 271(1)(c) of the Income Tax Act, 1961 (in short, the Act) for the Assessment Year (AY) 2010-11.
2. At the outset of hearing, the learned Authorised Representative (Id. AR) of the assessee submits that the addition, on the basis of which the penalty was initiated by the Assessing Officer, has been restored back to the file of Assessing Officer by the Tribunal in assessee's appeal in

quantum assessment in ITA No. 2663/Ahd/2015 for the A.Y. 2010-11 dated 26/09/2018. Thus, the penalty order has become infructuous. Though, at this stage, the order is in favour of assessee. The Id. AR of the assessee submits that the Assessing Officer, after passing the order giving effect has further initiated penalty under Section 271(1)(c) of the Act, therefore, the earlier penalty levied under Section 271(1)(c) of the Act would not otherwise survive.

3. On the other hand, the learned Senior Departmental Representative (Id. Sr. DR) for the revenue submits that the Bench may take decision as per law.
4. We have considered the submissions of both the parties and find merit in the submission of Id. AR of the assessee that the addition on the basis of which the Assessing Officer initiated and levied penalty under Section 271(1)(c) has been restored back to the file of Assessing Officer in assessee's appeal against the addition in quantum addition in **ITA No. 2031 for the A.Y. 2010-11 dated 26/09/2018**. The relevant part of this order is extracted below:

"8. We have heard the rival submissions and perused the material available on record. We find that the similar addition was made in assessment year 2009-10 in the case of assessee, his wife Julie Kaneria and his mother Jayaben Kaneria on the basis of unexplained cash deposits in the bank accounts of the concerned assessee's. After considering the facts on record, the Tribunal has accepted the concept of peak credit in respect of cash deposits in the

bank account of assessee as per para 17 of ITAT no.1613 & 1692/Ahd/2013 dated 16.05.2014 wherein the Tribunal has observed as under :

"..... We therefore for similar reasons while deciding the appeals in the case of Jayaben Kaneria (ITA Nos.1605 & 1739/A/2013) remit the entire issue to the file of AO to examine the evidence and submission of the Assessee and with respect to the cash deposits, to work out the peak credit on the basis of settled practice and thereafter decide the issue as per law. Needless to state that AO shall grant adequate opportunity of hearing to the Assessee. We also direct the Assessee to submit promptly all the required details called for by the Assessing Officer. Thus the grounds of Assessee and Revenue are allowed for statistical purposes."

9. *We find that this bank account is continuation from the assessment year 2009-10 wherein the peak credit balance accepted by ITAT and the issue was set-aside to the file of the AO for working out correct peak credit and assessed accordingly. In compliance thereof, the AO has accepted the peak credit of the assessee. In view of above, the facts of present case are similar to that of A.Y.2009-10, we direct the AO to adopt peak credit for addition. However, since the peak credit working was not before the AO, therefore on the similar line of direction as in A.Y. 2009-10, of Tribunal Order, we deem it fit to set-aside this issue for limited purpose to the file of the AO to work out the peak credit on the basis of settled working and consider accordingly for addition instead of entire cash deposit. With regard to telescoping, we find that Tribunal has not given any finding on this issue for A.Y. 2009-10. Further, the AO noticed that theory of opening cash brought forward is not correct, as there are several ambiguity like withdrawal of cash of Rs.13 lakhs for the period from 15.05.2004 to 20.05.2009 when the assessee was having cash in hand of Rs.52,62,023/- on 12.05.2009. Hence, telescoping claim is not justified, accordingly, this ground of appeal is dismissed. This ground is therefore disposed off accordingly."*

In view of the aforesaid factual narration, we also find merit that once the basis of initiation of penalty has been restored back to the Assessing

Officer, the penalty order will not survive. Hence, the appeal filed by revenue become infructuous and dismiss as such.

5. In the result, this appeal of revenue is dismissed.

Order announced in open court on 26th September, 2023.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 26/09/2023

**Ranjan*

Copy to:

1. Assessee
2. Revenue
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat