

**IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD “SMC” BENCH, AHMEDABAD**

BEFORE Ms. SUCHITRA KAMBLE, JUDICIAL MEMBER

**ITA No.893/Ahd/2023
Assessment Year: 2008-09**

Manilal Dhramshibhai Sharma, Plot No.265/2, Sector – 1C, Gandhinagar – 382 007, Gujarat. [PAN – ADGPN 3240 G]	Vs.	The Income Tax Officer, Ward - 3, Gandhinagar.
(Appellant)		(Respondent)
Assessee by	Shri M.K. Patel, Advocate	
Revenue by	Shri Sushil Kumar Katiar, Sr. DR	
Date of Hearing	01.01.2024	
Date of Pronouncement	10.01.2024	

ORDER

This appeal is filed by the assessee against order dated 08.09.2023 passed by the CIT(A), National Faceless Appeal Centre (NFAC), Delhi for the Assessment Year 2008-09.

2. The assessee has raised the following grounds of appeal :-

- “1. That on facts, and in law, the learned NFAC has grievously erred in dismissing the appeal as not admitted and in not condoning the delay in filing the appeal.
2. That on facts, and in law, the learned NFAC ought to have deleted the penalty levied u/s. 271(1)(c) of the Act of Rs.4,18,900/- as the assessment order itself is quashed by Hon’ble ITAT as invalid and without jurisdiction.”

3. The assessee filed return on income on 29.01.2009 declaring income of Rs.1,31,350/-. The case was reopened and notice under Section 148 of the Income Tax Act, 1961 was issued on 30.03.2015 to verify the source of investment of Rs.24,06,100/- made with Bank of India, Gandhinagar. The Assessment Order under Section 144 read with Section 147 of the Act was completed on 11.02.2016 thereby making addition of Rs.12,90,350/- as

unexplained cash deposit. The penalty proceedings under Section 271(1)(c) of the Act was initiated on addition on account of unexplained cash deposit of Rs.12,90,350/-. The Penalty Order was passed on 19.03.2018 under Section 271(1)(c) of the Act levying penalty of Rs.4,18,900/-.

4. Being aggrieved by the Penalty Order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the addition in respect of unexplained cash credit of Rs.12,90,350/- under Section 68 of the Act was deleted by the Tribunal and thus the basis for the penalty does not survive and hence the penalty becomes *void ab initio*.

6. The Ld. DR relied upon the Assessment Order, Penalty order and the Order of the CIT(A).

7. Heard both the parties and perused all the relevant material available on record. It is pertinent to note that the Tribunal vide order dated 14.06.2023 in the quantum appeal being ITA No.507/Ahd/2007 deleted the addition thereby stating that the assessment itself is *void ab initio* and thus the very purpose of imposition of penalty on the same addition does not survive. Thus, the penalty under Section 271(1)(c) of the Act becomes infructuous. Hence, appeal of the assessee is allowed and penalty under Section 271(1)(c) of the Act is deleted.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open Court on this 10th January, 2024.

Sd/-
(SUCHITRA KAMBLE)
Judicial Member

Ahmedabad, the 10th January, 2024

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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