

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "A", MUMBAI**

**BEFORE SHRI NARENDRA KUMAR BILLAIYA, HON'BLE ACCOUNTANT MEMBER**

**AND**

**SHRI SANDEEP SINGH KARHAIL, HON'BLE JUDICIAL MEMBER**

**ITA NO. 446/MUM/2024 (A.Y: 2010-11)**

<b>DCIT – CC-2(3)</b> Room No. 803, Old CGO Annex Building Pratishtha Bhawan, M.K. Road Mumbai - 400020	v.	<b>AVINASH NIVRUTTI BHOSALE</b> 2 Abil House, Ganesh Khind Road Range Hills Corner, Pune – 411007  <b>PAN: ABTPB8151F</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Assessee Represented by</b>	<b>:</b>	<b>Shri Vijay Mehta</b>
<b>Department Represented by</b>	<b>:</b>	<b>Shri Mirza Azhar Beig</b>
<b>Date of conclusion of Hearing</b>	<b>:</b>	<b>22.05.2024</b>
<b>Date of Pronouncement</b>	<b>:</b>	<b>22.05.2024</b>

**ORDER**

**PER NARENDRA KUMAR BILLAIYA (AM)**

**1.** This appeal by the revenue is preferred against order of the Learned Commissioner of Income-Tax (Appeals) – 48, Mumbai [hereinafter in short "Ld. CIT(A)"] dated 30.11.2023 pertaining to A.Y.2010-11.

**2.** The grievance of the revenue read as under: -

*"1. Whether, on the facts and in the circumstances of the case and in law, The Ld.CIT (4) has erred in deleting Penalty levied us 271(1)(c) of the IT Act of Rs.2,60,94,724/- wherein the quantum of addition made in the assessment proceedings was confirm by the Ld.CIT(4).*

*2. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in appreciating the fact that decision of the Hon'ble ITAT on which the Ld.CIT (A) deleted the penalty was not accepted by the Revenue and further appeal was filed u/s 260A of the Act, before Hon'ble High Court, against the deletion of quantum addition."*

**3.** The roots for the levy of Penalty lie in the assessment order dated 29.05.2019 framed under section 143(3) of Income-tax Act, 1961 (in short "Act") by which the returned income of the assessee at ₹.12,31,20,230/- was assessed at ₹.20,30,24,730/- after making addition on unaccounted cash transactions under section 69C of the Act amounting to ₹.7,99,04,500/-. The quantum addition travelled up to the Tribunal and this Tribunal in ITA No. 531/MUM/2021 has deleted the addition of ₹.7,99,04,500/- vide order dated 10.07.2023. Since the quantum addition has been deleted the impugned Penalty has no legs to stand.

**4.** The other addition on which the Penalty has been levied is the difference of income of ₹.45,44,444/- being returned income under

section 139(1) of the Act and the income declared in the return filed under section 153A of the Act.

**5.** We do not find any merit in this part of the Penalty for a simple reason that the assessee has been assessed as per the return of income filed pursuant to the notice under section 153A of the Act and the returned income has been assessed after making the addition under section 69C of the Act which has been deleted by this Tribunal (supra). It appears that the Assessing Officer has levied the Penalty on the additional income offered by the assessee in its return of income filed under section 153A of the Act invoking Explanation 5A to section 271(1)(c) of the Act. In our understanding of the law, once the return of income is filed under section 153A of the Act the original return filed under section 139 of the Act abates and becomes non-est. Therefore, for the purpose of levying Penalty under section 271(1)(c) of the Act all that has to be seen is whether there was any concealment in return filed by the assessee under section 153A of the Act and not with the return filed under section 139 of the Act. Since the returned income under section 153A of the Act has been accepted there was no concealment of income by the assessee on this issue, moreover, no incriminating material found in connection with the additional income. Therefore, we

do not find any reason to interfere with the findings of the Ld. CIT(A).  
the Penalty levied on this ground also stands deleted.

6. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 22<sup>nd</sup> May, 2024.

**Sd/-**  
**(SANDEEP SINGH KARHAIL)**  
**JUDICIAL MEMBER**

Mumbai / Dated 22.05.2024  
Giridhar, Sr.PS

**Sd/-**  
**(NARENDRA KUMAR BILLAIYA)**  
**ACCOUNTANT MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)  
**ITAT, Mum**