

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

**BEFORE SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER
& SHRI NARENDRA PRASAD SINHA, ACCOUNTANT MEMBER**

I.T.A. No.210/Ahd/2020
(Assessment Year: 2011-12)

Rohitji Chanduji Thakore, Chandanmani Niwas, Thakor Vas, Ambali Gam, Ahmedabad-380058	Vs.	Income Tax Officer, Ward-3(3)(1), Ahmedabad
[PAN No.ADTPT4435C]		
(Appellant)	..	(Respondent)

I.T.A. No.217/Ahd/2020
(Assessment Year: 2011-12)

Shri Ashokji Chanduji Thakore, Chandanmani Niwas, Thakor Vas, Ambali Gam, Ahmedabad-380058	Vs.	Income Tax Officer, Ward-3(3)(1), Ahmedabad
[PAN No.ADTPT4434D]		
(Appellant)	..	(Respondent)

I.T.A. No.218/Ahd/2020
(Assessment Year: 2011-12)

Shri Ashokji Chanduji Thakore, Chandanmani Niwas, Thakor Vas, Ambali Gam, Ahmedabad-380058	Vs.	Income Tax Officer, Ward-3(3)(1), Ahmedabad
[PAN No.ADTPT4434D]		
(Appellant)	..	(Respondent)

I.T.A. No.211/Ahd/2020
(Assessment Year: 2005-06)

Shri Ashokji Chanduji Thakore, Chandanmani Niwas, Thakor Vas, Ambali Gam, Ahmedabad-380058	Vs.	Income Tax Officer, Ward-3(3)(1), Ahmedabad
[PAN No.ADTPT4434D]		
(Appellant)	..	(Respondent)

I.T.A. No.212/Ahd/2020
(Assessment Year: 2006-07)

Shri Ashokji Chanduji Thakore, Chandanmani Niwas, Thakor Vas, Ambali Gam, Ahmedabad-380058	Vs.	Income Tax Officer, Ward-3(3)(1), Ahmedabad
[PAN No.ADTPT4434D]		
(Appellant)	..	(Respondent)

I.T.A. No.213/Ahd/2020
(Assessment Year: 2007-08)

Shri Ashokji Chanduji Thakore, Chandanmani Niwas, Thakor Vas, Ambali Gam, Ahmedabad-380058	Vs.	Income Tax Officer, Ward-3(3)(1), Ahmedabad
[PAN No.ADTPT4434D]		
(Appellant)	..	(Respondent)

I.T.A. No.214/Ahd/2020
(Assessment Year: 2008-09)

Shri Ashokji Chanduji Thakore, Chandanmani Niwas, Thakor Vas, Ambali Gam, Ahmedabad-380058	Vs.	Income Tax Officer, Ward-3(3)(1), Ahmedabad
[PAN No.ADTPT4434D]		
(Appellant)	..	(Respondent)

I.T.A. No.215/Ahd/2020
(Assessment Year: 2009-10)

Shri Ashokji Chanduji Thakore, Chandanmani Niwas, Thakor Vas, Ambali Gam, Ahmedabad-380058	Vs.	Income Tax Officer, Ward-3(3)(1), Ahmedabad
[PAN No.ADTPT4434D]		
(Appellant)	..	(Respondent)

I.T.A. No.216/Ahd/2020
(Assessment Year: 2010-11)

Shri Ashokji Chanduji Thakore, Chandanmani Niwas, Thakor Vas, Ambali Gam, Ahmedabad-380058	Vs.	Income Tax Officer, Ward-3(3)(1), Ahmedabad
[PAN No.ADTPT4434D]		
(Appellant)	..	(Respondent)

Appellant by :	Shri Tushar Hemani, Sr. Advocate, Shri Parimalsinh B. Parmar, A.R. & Shri Vijay Govani, A.R.
Respondent by:	Ms. Namita Khurana, Sr. D.R. & Shri Ashok Natha Bhalekar, Sr. D.R.

Date of Hearing	04&05.07.2024
Date of Pronouncement	31.07.2024

ORDER

PER BENCH:

These are appeals filed by the Assessee for various assessments years against levy of penalty by Ld. CIT(A)-3, Ahmedabad vide separate orders dated 27.12.2018, 27.12.2019 and 27.02.2019. Since common facts and issues for consideration are before us for all the years under consideration, all the appeals are being disposed of by way of a common order.

Condonation of Delay:

2. At the outset, we observe that the appeals filed by the assessee are time barred for all the years and in respect of the same the assessee has filed an application for condonation of delay alongwith an Affidavit stating the reasons for delay in filing of the present appeals, alongwith request for condonation of the delay in filing of the present appeals. We observe that the delay in filing of the appeals are time barred by 282 days (in ITA Nos. 210/Ahd/2020, 211/Ahd/2020 & 214/Ahd/2020) and 332 days (in ITA Nos. 212/Ahd/2020, 213/Ahd/2020, 215/Ahd/2020, 216/Ahd/2020, 217/Ahd/2020 & 218/Ahd/2020). The assessee has submitted similar Affidavits for the impugned years under consideration in which it has been submitted that the order passed Ld. CIT(A) was to be handed over by the assessee to the concerned Tax Practitioner for filing of appeal before the Hon'ble ITAT, however, inadvertently, the assessee forgot to handover such orders to the Practitioner for onward filing. The assessee submitted that he is not well read and was unable to comprehend the orders and further it took the assessee some time to gather the records and thereafter consult the concerned Chartered

Accountant. Thereafter, once the matter had been handed over by the assessee to the Chartered Accountant, on further enquiry the assessee found that the Chartered Accountant had also omitted to forward the relevant papers to the concerned Advocate for filing of appeal before ITAT. Therefore, it was also due to negligence of the concerned Chartered Accountant as well that the appeal could not be filed before the ITAT on time. However, as soon as the assessee was aware about the delay in filing of appeal before ITAT, he immediately took steps to ensure that the appeal got filed before the ITAT, albeit with delay. Before us, the Counsel for the assessee submitted that the present appeals have been filed against confirmation of levy of penalty by Ld. CIT(A) and the assessee has a good case on merits and therefore, looking into the instant facts, it is a fit case that the delay in filing of the present appeals may be condoned.

3. We have gone through the facts of the instant case and we are of the considered view that there has been no deliberate or intentional delay on part of the assessee in preferring the present appeals before us. Further, since multiple years for consideration are involved against which appeals have been filed before us, looking into the totality of facts, we are of the view that it is a fit case where, in the interest of justice, the delay in filing of the present appeal may be condoned.

4. In the result, we are hereby condoning the delay in filing of the present appeals.

We shall first take up ITA No. 210/Ahd/2020 in the case of Shri Rohit C. Thakore for A.Y. 2011-12

5. The assessee has taken the following grounds of appeal:

“1. The Ld. CIT(A) has erred on facts and in law in upholding the assessment order u/s 271AAA of the Income Tax Act, 1961 passed by the Assessing Officer on 31.03.2016.

2. The Ld. CIT(A) has erred on facts and in law in upholding the penalty levied on additions made by the Assessing Officer on account of alleged undisclosed sale consideration on Block No. 325 of Rs. 1,48,00,000/- on account of undisclosed sale consideration on Block No. 325 which has been added without considering & appreciating the facts of the case and accordingly levied penalty on the same by Assessing Officer which has been upheld by CIT Appeal.

3. The Ld. CIT(A) has erred on facts and in law in upholding the penalty levied on additions made by the Assessing Officer on account of alleged undisclosed amounts of capital gain on Block No. 485A of Rs. 1,89,43,840/- on account of undisclosed amount of capital gain on Block No. 485A which has been added without considering & appreciating the facts of the case and accordingly levied penalty on the same by Assessing Officer which has been upheld by CIT Appeal.

4. The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal.”

6. The issue involves levy of penalty under Section 271AAA on two additions made while framing assessment, consequent to search carried out on 21.09.2010:

Amt. (Rs.)	Particulars
Rs.1,89,43,840/-	Undisclosed consideration on sale of land
Rs.1,48,00,000/-	Protective addition w.r.t. undisclosed capital gain

Penalty on addition of Rs. 1,89,43,840/-

7. The brief facts in relation to this ground of appeal are that the assessee alongwith other co-owners, had sold land bearing Block No. 485 in two lots admeasuring 3521 sq. meters and 880 sq. meters approximately, during the year under consideration and declared capital gain in the return of income. Based on certain materials found during the course of search, the Assessing Officer concluded that the real rate of land in question was Rs. 16,000/- per sq. yard and hence the Assessing Officer held that the actual sale consideration was Rs. 8,42,36,640/- (Rs.

16,000 x 5264.79 sq. yards) and accordingly, the Assessing Officer made addition of Rs. 1,89,43,840/- in respect of undisclosed consideration on sale of land. In appeal, Ld. CIT(A) confirmed the quantum additions in the hands of the assessee. The assessee filed appeal before ITAT against the order of Ld. CIT(A), who vide order dated 27.12.2017 restored the matter to the file of Ld. CIT(A) for de-novo consideration on the ground that the assessee was not specifically put to notice by Ld. CIT(A) regarding the notice of hearing and the assessee did not have effective opportunity of representing it's case before Ld. CIT(A). However, the Revenue filed appeal before High Court against the aforesaid order passed by Hon'ble ITAT, and the appeal of the Revenue was allowed with the following observations:

"We may noticed that in case of the group of assesses, this Court in Tax Appeal No. 710 of 2018 and connected appeals, by judgment dated 27th June 2018 had reversed such a view of the Tribunal. The Court was of the opinion that the Tribunal had exercised its discretion without stating reasons. Eventually, the Court made the following observations :

*"8.0. It is required to be noted that in the present case right from very begging i.e. assessment proceeding, assessee was non cooperative. Number of opportunities were given by the AO, however assessee did not cooperate and even did not file any reply. Therefore, considering the material on record, the AO made addition as unexplained investment. Even before the learned CIT(A) also the assessee was non cooperative. Number of opportunities were given to the assessee to represent his case, however none remained present on behalf of assessee. Thereafter, the learned CIT(A) proceeded further with the appeal ex parte and decided the appeal on merits and confirmed the order passed by the AO confirming additions of unexplained investment. Thus, even learned CIT(A) also decided the matter on merits. On going through the orders passed by the AO as well as learned CIT(A), we are of the opinion that in absence of any explanation by the assessee on the investment in question, AO was justified in making the addition of unexplained investment and thereafter learned CIT(A) was justified in confirming the same. **Therefore, even the order passed by the learned CIT(A) which was on merits was not required to be interfered with by the learned CIT(A) and ought not to have been quashed and set aside without assigning any reasons. Under the circumstances, the impugned orders passed by the learned Tribunal cannot be sustained.***

9.0. In view of the above and for the reasons stated above, the questions of law are answered in favour of the Revenue and against the

assessee and impugned common judgment and order passed by the learned Tribunal in IT(SS)A No.117/AHD/2015 to IT(SS)A No.122/AHD/2015 is hereby quashed and set aside and the orders passed by the AO as well as learned CIT(A) are restored. All the appeals are allowed accordingly. No costs."

In the result, these Tax Appeals are also allowed Impugned common order of the Tribunal is set-aside."

8. Special Leave Petition (SLP) filed by the assessee against the order was dismissed by Hon'ble Supreme Court as being barred by limitation. Accordingly, so far as the quantum additions are concerned, the same stand confirmed in the hands of the assessee.

9. With regards to levy of penalty, the Counsel for the assessee submitted before us that it may be noted from Page 407 of the Paper Book (English translation of seized material), that the seized material could not have formed the basis of making addition since the seized material was clearly sketchy in nature, wherein no date has been mentioned, there is no name of the payer of the money, seized material does not bear any signature and on the basis of the said paper no correlation can be made out between the sale of property and receipt of money by the assessee, the seized document is not in the handwriting of the assessee and therefore, for these reasons, neither additions could have been sustained in the name of the assessee and nor can the levy of penalty be upheld in the name of the assessee, on the basis of these documents. The Counsel for the assessee submitted that the Assessing Officer did not put any efforts so as to verify the correct amount of sale consideration from the "buyers" of the land, whose details were available in the final conveyance deed. Further, the Counsel for the assessee submitted that the Assessing Officer has not brought on record any third party evidence so as to even remotely demonstrate that any consideration was received over and above the documented price. The Counsel for the

assessee placed reliance on few judicial precedents in support of the contention that in absence of any corroborative material, addition made merely on the basis of entries recorded in the “seized material” deserves to be deleted. Further, levy of penalty under Section 271AAA of the Act is “discretionary” in nature and such discretion has to be applied cautiously after considering all the facts and circumstances of the given case. Accordingly, the Counsel for the assessee submitted that since the quantum additions have been sustained on the basis of a sketchy piece of evidence, without any corroborative evidence and without adequate opportunity of presenting it’s case on merits, then looking into these facts, Ld. CIT(A) ought to have deleted levy of penalty under Section 271AAA of the Act since the power to levy penalty is a “discretionary power” which should be used cautiously, keeping into view the complete set of facts of each case.

10. In response, Ld. D.R. submitted that the Assessing Officer after taking into consideration the material on record and after carrying out a detailed analysis of the same, has confirmed the quantum additions in the hands of the assessee. He further submitted that even the High Court while upholding the quantum additions observed that the assessee was non-cooperative before Ld. CIT(A) despite number of opportunities having been given to the assessee to present it’s case on merits. Further, the High Court specifically noted that even Ld. CIT(A) has decided the matter on merits, confirming the additions of unexplained investment. Accordingly, when the High Court itself has confirmed the quantum additions by holding that Ld. CIT(A) had decided the matter on merits and had held that the Assessing Officer was justified in making the addition of unexplained investment and thereafter, Ld. CIT(A) was justified in confirming the same, then in these facts and circumstances ,

Ld. CIT(A) has not erred in facts and in law in confirming the levy of penalty under Section 271AAA of the Act. Secondly, the documents are not dumped documents and the Assessing Officer has clearly correlated the area sold by the assessee as per registered sale deed with the seized documents found during the course of search action. It was also submitted that the seized documents were found at the premises of the assessee and the assessee has not been able to shift the onus that the said documents do not “belong” to the assessee. The assessee in these facts, has clearly failed to prove that these papers do not belong to him. It is immaterial that the documents are not in the handwriting of the assessee or do not bear mention of any specific deed, since the area mentioned in these documents clearly corresponds to the final conveyance deed entered by the assessee.

11. We have heard the rival contentions and perused the material on record. We observe that during the course of assessment, the Assessing Officer has dealt with the contents of the seized documents relating to undisclosed consideration on the sale of land amounting to Rs. 1,89,43,840/- and has observed that the relevant seized material (Annexure BS-24) was seized from the premises of the assessee himself and contains details of various unaccounted transaction. The Assessing Officer further observed that the assessee during the course of search and post search proceedings did not object that the seized paper does not belong to him. Further, though the paper was found in the premises of the assessee, and the name of the assessee is also mentioned in that page, the assessee never contended that the contents in the seized material were prepared by some other person. If that be so, the onus was on the assessee to give details of such other person once the signed material has been found from the premises of the assessee. Accordingly, the

Assessing Officer, after looking into the facts and circumstances of the case had confirmed the addition in the hands of the assessee on account of undisclosed consideration on sale of land. The assessee at any stage of proceedings, has not challenged the “rate” of sale consideration of such land, as mentioned in the seized documents. Further, the assessee has also not disputed the fact that the documents were recovered from his premises and the said documents also clearly mentioned the name of the assessee. Accordingly, looking into the instant facts, we are of the considered view that the additions have not been made by the Assessing Officer based on dumped documents. Further, the additions made by the Assessing Officer have also been confirmed by the Ld. CIT(A) and subsequently by the Hon’ble High Court. Accordingly, looking into the instant facts we are of the considered view that Ld. CIT(A) has not erred in facts and in law in confirming levy of penalty under Section 271AAA of the Act.

12. In the result, this ground of the assessee is dismissed.

The next issue for consideration is regarding levy of penalty with respect to protective addition made in the hands of undisclosed capital gain amounting to Rs. 1,48,00,000/-

13. The brief facts relating to this ground of appeal are that the Assessing Officer made addition of Rs. 1,48,00,000/- on “protective basis” in the hands of assessee in respect of undisclosed consideration on sale of land based on Pages 9-22 of Annexure BS-24 found during the course of search, from the premises of the assessee. While making the addition in the hands of the assessee, the Assessing Officer observed that the document relating to the above transaction was seized from the

premises of the assessee, the seized documents shows that the name of the assessee was specifically mentioned in every receipt relating to sale of this property and therefore, the sale consideration of Rs. 1.48 crores was actually received by the assessee himself (though he was not the owner of the land, but the land was jointly owned by his brother Shri Ashok C. Thakore and Shri Nagarji Govaji Thakore). Accordingly, the Assessing Officer made substantive addition of Rs. 1.48 crores in the hands of the actual owners of land and the same amount of Rs. 1.48 crores was also added in the hands of the assessee on protective basis, since this amount of Rs. 1.48 crores was directly received by the assessee himself. Subsequently, the Assessing Officer levied penalty under Section 271AAA of the Act @ 10% of the impugned addition and the same was also confirmed by Ld. CIT(A) as well.

14. Before us, the contention of the Ld. Counsel for the assessee is that the underlying addition has been made in the hands of the assessee on protective basis. Therefore, it was submitted that though there can be “protective addition” in the hands of the assessee, but there cannot be any levy of “protective penalty”. The Counsel for the assessee relied on several judicial precedents in support of the contention that penalty cannot be levied on an addition made on the assessee on “protective basis”. Further, the Counsel for the assessee submitted that the Assessing Officer himself has noted that the assessee is not the owner of the land in question and under such circumstances, no part of sale consideration can be taxed as income of the assessee.

15. In response, Ld. D.R. placed reliance on the observation made by the Assessing Officer and Ld. CIT(A) in their respective orders.

16. We have heard the rival contentions and perused the material on record. In our considered view, the judicial precedents on this issue have taken a unanimous view that penalty cannot be sustained in case the assessment order has been made on the protective basis in the hands of the assessee. In the case of **Bhailal Manilal Patel vs. CIT 49 taxmann.com 539 (Gujarat)**, the High Court held that where assessment order was a protective assessment order, penalty cannot be levied under Section 271(1)(c) of the Act. In the case of **CIT vs. Super Steel (Sales) Co. 178 ITR 451 (Calcutta)**, the High Court held that penalty under Section 271(1)(c) of the Act for concealment of income cannot be levied on the assessee when protective assessment was made in case of assessee and income was actually assessed in the hands of another person and it was therefore, not certain as to who out of the two had concealed the income. In the case of **Mohd. Khasim vs. ACIT 69 taxmann.com 315 (Bangalore – Tribunal)**, the ITAT held that where Revenue itself was not sure as to whether alleged capital gains was to be assessed in the hands of assessee and such addition was made on protective basis, penalty under Section 158BFA could not be levied on the assessee. In the case of **CIT vs. Sanatan Seva Mandal 40 taxmann.com 397 (Gujarat)**, the High Court held that where pursuant to search proceedings, certain addition was made to assessee's income on protective basis and in case of one 'K' on substantive basis, in view of fact that substantive additions were already subjected to penalty, no penalty could be levied in respect of said additions protectively made against the assessee.

17. Accordingly, in view of the above judicial precedents and keeping in light the fact that additions have been made in the hands of the assessee on "protective basis", we are of the considered view that Ld.

CIT(A) has erred in confirming levy of penalty under Section 271AAA of the Act on additions made in the hands of the assessee on protective basis.

18. Accordingly, assessee's appeal with respect to this ground of appeal, succeeds.

19. In the result, the appeal of the assessee is partly allowed.

Now we shall take up Appeal No. 217/Ahd/2020 (Ashok Chanduji Thakore for A.Y. 2011-12)

20. The assessee has raised the following grounds of appeal:

“1. The Ld. CIT(A) has erred on facts and in law in upholding the assessment order u/s. 271AAA of the Income Tax Act, 1961 passed by the Assessing Officer on 30.03.2016.

2. The Ld. CIT(A) has erred on facts and in law upholding the penalty levied on additions made by the Assessing Officer on account of alleged deposit in bank of Rs. 7,86,580 on account of unexplained deposits in bank which has been added without considering & appreciating the facts that the relevant - +bank deposit has been declared in return of income filed by the assessee. And also the penalty levied on additions made by the Assessing Officer on account of alleged capital gain of Rs.49,00,000 & Rs.1,89,43,840 on account of undisclosed capital gain on Land Block No. 325 & 485A respectively which has been added without considering & appreciating the facts that that relevant capital gain of survey no. 485 has been declared in return of income filed by the assessee and accordingly levied penalty on the same by Assessing Officer which has been upheld by CIT Appeal.

3. The appellant also request to honourable court for condonation of delay in filing appeal.

4. The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal.”

21. We observe that penalty under Section 271AAA of the Act has been levied on the same two additions made in the hands of Shri Rohit

Thakore (assessee's brother), while framing assessment consequent to search action carried out on 21.09.2010:

Amt. (Rs.)	Particulars
Rs.1,89,43,840/-	Undisclosed capital gain on sale of land
Rs.49,00,000/-	Undisclosed capital on sale of land

22. With respect to levy of penalty under Section 271AAA with regards to undisclosed capital gain on sale of land amounting to Rs. 1,89,43,840/-, we have, in the preceding paragraphs while discussing the appeal of assessee's brother, Shri Rohit C. Thakore have on identical set of facts confirmed the levy of penalty under Section 271AAA of the Act. Accordingly, the penalty under Section 271AAA is hereby confirmed in the hands of the present assessee as well.

23. With regards to levy of penalty of Rs. 49 lakhs under Section 271AAA in the hands of the assessee, the brief facts are that the assessee, alongwith Shri Nagarji Thakore sold land bearing Block No. 325 at Ambli to "Jayesh Kotak" and "Pravin Kotak" for Rs. 50,00,000/- and declared capital gain of Rs. 16,28,303/- in the return of income. The Assessing Officer took a view that sale consideration of such land was Rs. 1,48,00,000/-. After giving the benefit of indexed cost of acquisition of Rs. 8,71,697/-, "Long Term Capital Gain" ("LTCG" for short) in the hands of the assessee worked out at Rs. 65,28,303/-. Since assessee had already declared LTCG of Rs. 16,28,303/- in the return of income, Assessing Officer made addition of Rs. 49,00,000/- in respect of undisclosed capital gain on sale of land. Eventually, penalty under Section 271AAA came to be levied on such addition which was confirmed by CIT(A) as well.

24. In this case, we observe that the Ld. CIT(A), after taking into consideration the seized material found during the course of search, confirmed the quantum additions in the hands of the assessee. Further, such quantum additions amounting to Rs. 1.48 crores towards unaccounted sale consideration was later confirmed by order of Hon'ble Gujarat High Court (at Pages 21-23 of the Legal Paper Book). Accordingly, in our considered view, looking into the instant facts, the Ld. Assessing Officer and Ld. CIT(A), after analysis of the seized documents on record have come to the conclusion that the assessee had earned undisclosed capital gain on sale of land. The aforesaid additions were also later confirmed by the Hon'ble Gujarat High Court vide order dated 09.10.2018. Accordingly, in view of the above facts, we find no infirmity in the order of Ld. CIT(A) while confirming levy of penalty under Section 271AAA of the Act in the hands of the assessee. The Department has taken into consideration the seized material found during the course of search and after careful analysis has confirmed the quantum additions in the hands of the assessee.

25. Accordingly, the assessee's appeal with respect to levy of penalty of Rs. 49 lakhs is hereby dismissed.

26. In the result, the assessee's appeal is dismissed for A.Y. 2011-12.

Now we shall take up ITA No. 218/Ahd/2020 (Shri Ashokji Chanduji Thakor for A.Y. 2011-12)

27. The assessee has raised the following grounds of appeal:

"1. The Ld. CIT(A) has erred on facts and in law in upholding the assessment order u/s 271(1)(c) of the Income Tax Act, 1961 passed by the Assessing Officer on 30.03.2016.

2. *The Ld. CIT(A) has erred on facts and in law in upholding the penalty levied on additions made by the Assessing Officer on account of alleged deposit in bank of Rs.7,86,580 on account of unexplained deposits in bank which has been added without considering & appreciating the facts that that relevant bank deposit has been declared in return of income filled by the assessee. And also the penalty levied on additions made by the Assessing Officer on account of alleged capital gain of Rs.49,00,000 & Rs.1,89,43,840 on account of undisclosed capital gain on Land Block No. 325 & 485A respectively which has been added without considering & appreciating the facts that that relevant capital gain of survey no. 485 has been declared in return of income filled by the assessee and accordingly levied penalty on the same by Assessing officer which has been upheld by CIT Appeal.*

3. *The appellant also request to honourable court for condonation of delay in filling appeal.*

4. *The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal.”*

28. The limited issue for consideration for the impugned assessment year is the levy of penalty of Rs. 59,34,456/- under Section 271(1)(c) of the Act by the Assessing Officer and such penalty has been confirmed by Ld. CIT(A), against which the assessee is in appeal before us.

29. The Counsel for the assessee has taken a specific legal point before us, which is to the effect that search action took place on 21.09.2010 i.e. F.Y. 2010-11 relevant to A.Y. 2011-12. Therefore, A.Y. 2011-12 is the “search year”. The Counsel for the assessee submitted that Section 271AAA of the Act provides for levy of penalty for “search year”. The Counsel for the assessee submitted that it is a settled law that penalty under Section 271AAA only can be imposed in “search year” and not penalty under Section 271(1)(c) of the Act. The Counsel for the assessee placed reliance on several judicial precedents on this issue. Accordingly, it was submitted by the Counsel for the assessee that on the short count, penalty under Section 271(1)(c) of the Act deserves to be deleted.

30. In response, the Ld. D.R. submitted that he had nothing to further state on this issue and relied on the observations made by the Ld. CIT(A) on the appellate order.

31. We observe that in the case of **Dr. Naman A. Shastri vs ACIT 63 taxmann.com 363 (Ahmedabad Bench)**, the ITAT held that provisions of sections 271AAA and 271(1)(c) are mutually exclusive and, thus, once penalty is initiated under section 271AAA for 'specified previous year', there cannot be any occasion to impose penalty under Section 271(1)(c) of the Act. While making the additions, the ITAT made the following observations:

"8. The scheme of Section, which governs penalty on undisclosed income for the 'specified previous year', is like this. In the cases in which search is initiated, the penalty under section 271AAA will come into play in respect of 'undisclosed income' of 'specified previous year', and, to that extent, the provisions of Section 271(1)(c) will not be applicable. In other words, so far as penalty in respect of undisclosed income is concerned, Section 271AAA will apply to the extent of the 'specified previous year' and, for the other previous years, the provisions of Section 271(1)(c) will continue to hold the field. The expression 'specified previous year' refers to the previous year in which the search is conducted or the year which has ended but the due date for filing of income tax return in respect of the same has not ended. Coming to the facts of the present case, the search took place on 21st August 2008, and, accordingly, the due date of filing income tax return in respect of the income of this previous year was on or before 30th September 2008. Clearly, even though the previous year ending 31st March 2008 relating to the assessment year 2008-09, which is the year before us, had ended on 31st March 2008, the due date of filing of the income tax return had not lapsed. The year before us was, therefore, covered by the definition of 'specified previous year' as per Explanation (b) to Section 271AAA. It is not in dispute that the income in question has been assessed as income of the assessment year 2008-09, i.e. specified previous year on the facts of this case. The Assessing Officer himself has treated the undisclosed income of the assessee as such. Once we come to the conclusion that the year before us is a 'specified previous year', and the undisclosed income belongs to this year, an inevitable corollary to this finding, in view of the discussions above, is that the provisions of Section 271AAA will come into play. It is also important to bear in mind the fact that the situations in which provisions of Section 271AAA and the provisions of Section 271(1)(c) can apply are inherently mutually exclusive as Section 271AAA(3) clearly states that, "(n)o penalty under the provisions of clause (c) of sub-section (1) of section 271 shall be imposed upon the assessee in respect of the undisclosed income referred to in sub-section (1) (of Section 271AAA)". Accordingly, the provisions of Section 271(1)(c) cannot be put into service here. Learned counsel has also

invited our attention to the fact that, on the same set of facts and in connection with the same investment in the land-cash component of which has been treated as 'income from other sources' in the hands of all the persons jointly making this investment, penalties have been levied under section 271AAA in the cases of Dr Anil Jain, Dr Vishal Gupta and B Srinivas Mallaya. It is contended that it cannot be open to the Assessing Officer to take different stand in the cases of different assessees placed in the same situation. However, we see no need to deal with this contention since we have upheld the plea of the assessee on merits that the penalty for undisclosed income', on the given facts and in respect of the assessment year before us, could only be imposed, if at all, only under section 271AAA and not under section 271(1)(c). In any case, once the penalty is initiated under section 271AAA in the assessment order, there cannot be any occasion to impose the penalty under section 271(1)(c). We have perused the copy of the assessment order filed by the assessee which specifically states that the penalty is initiated under section 271AAA and no other document, suggesting that penalty was initiated under section 271(1)(c), has been filed before us. Be that as it may, as have held that penalty under section 271(1)(c) could not have been imposed on the facts of this case, the initiation aspect of the penalty is anyway no more than academic. In view of these discussions, the Assessing Officer was clearly in error in invoking the provisions of Section 271(1)(c) on the facts of this case. We, therefore, delete the impugned penalty."

32. In the case of **Shri Girish Vitthalbhai Patel vs. ITO in ITA Nos. 798, 799, 800 & 801/Ahd/2015**, the ITAT Ahmedabad made the following observations on this issue:

"12. As regards ITA No.801/Ahd/2015 for Assessment Year 2011-12, penalty under Section 271(1)(c) cannot be levied in this assessment year as this is the search year in view of the provisions of Section 271AAA of the Act as the search took place on 21.09.2010, the reliance of the Ld. AR on the decision of the Tribunal in case of Dr. Naman A. Shastri vs. ACIT (2015) 155 ITD 1003 is apt in the present case. Thus, the Revenue has invoked incorrect provisions of the penalty and that cannot be said the fault of the assessee. Therefore, penalty does not sustain. Hence appeal of the assessee being ITA No.801/Ahd/2015 for Assessment Year 2011-12 is allowed."

33. Accordingly, looking into the instant facts we are of the considered view that Ld. CIT(A) erred in confirming penalty under Section 271(1)(c) of the Act for the impugned assessment year.

34. In the result, the appeal of the assessee is allowed on this issue.

Now we shall take up ITA No. 211/Ahd/2020 (Shri Ashokji Chanduji Thakor for A.Y. 2005-06)

35. The assessee has raised the following grounds of appeal:

“1. The Ld. CIT(A) has erred on facts and in law in upholding the assessment order u/s 271(1)(c) of the Income Tax Act, 1961 passed by the Assessing Officer on 28.03.2016.

2. The Ld. CIT(A) has erred on facts and in law in upholding the penalty levied on additions made by the Assessing Officer on account of alleged unexplained investment of Rs. 5,13,883/- on account of unexplained investment block no. 77 which has been added without considering & appreciating the facts of the case and accordingly levied penalty on the same by Assessing officer which has been upheld by CIT Appeal.

3. The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal.”

36. The brief facts of the case are that search proceedings was conducted at the premises of the assessee on 21.09.2010. The assessee filed return of income in recourse to proceedings under Section 153A of the Act.

37. During the course of assessment, the Assessing Officer observed that assessee had purchased land bearing Block No.77 on 17.03.2005, situated at Bopal for an amount of Rs. 5,13,833/- for which the assessee was unable to provide any explanation. Accordingly, the assessee made an addition of Rs. 5,13,833/- as unexplained investments in the hands of the assessee. Thereafter, the Assessing Officer proceed to levy penalty of Rs. 1,57,250/- under Section 271(1)(c) of the Act.

38. In appeal before Ld. CIT(A), the assessee submitted that the aforesaid addition was made in the hands of the assessee on the basis of material which was not seized during the course of search proceedings at the residence of Shri Rohit Thakore (brother of the assessee) and the additions were based upon the material which was available in the course of assessment proceedings. Further, it was submitted that additions on merits were confirmed by the appellate authorities taking into

consideration the fact of non-appearance on part of the Authorized Representative of the assessee. On merits, the assessee submitted before Ld. CIT(A) that the Revenue has neither established the nexus nor brought any substantial material to establish that the deposits in the bank as well as the investment made by the assessee was out of unexplained sources. However, the Ld. CIT(A) rejected the arguments of the assessee and confirmed the levy of penalty of Rs. 1,57,258/- under Section 271(1)(c) of the Act, with the following observations:

*“Even In the present case Appellant has failed to establish source of purchase, for Block No. 77 which was not shown in the Return of Income, The act of the appellant is in mala fide, and Explanation 1 to section 271(1) would come into play and work to the disadvantage of the assessee. In this case assessee filed the inaccurate particulars leading to concealment for which, Explanation 1 to section 271(1)(c) would come into play and assessee will be liable for penalty. In view of the facts mentioned above, / am of the considered opinion that the appellant had made patently inaccurate particulars of income leading to concealment of income. Considering the facts discussed herein above, it is held that the appellant had concealed particulars of income as discussed above. In view of the above discussion and judicial ratios (supra), and in absence of any bonafide explanation, it is held that Assessing Officer was justified in levying penalty of Rs. 1,57,250/- under Section 271(1)(c) of the Act. **The grounds of appeal are dismissed.**”*

39. Before us, the Counsel for the assessee submitted that the brother of the assessee, Shri Rohit Thakore was the co-owner of this property, wherein assessments were framed pursuant to the same search carried out on 21.09.2010. The Counsel for the assessee submitted that consequential penalty under Section 271(1)(c) of the Act was levied on the brother of the assessee with respect to same addition (since he was the co-owner of the property) and the matter travelled to ITAT and the Hon’ble ITAT vide order in the case of **Rohitji Chanduji Thakore vs. DCIT in IT(SS)A No. 45 and ITA No. 204/Ahd/2020** deleted the addition on merits. Further, the penalty thereon was also deleted by ITAT vide the same order (at Para 25 of the said order). Accordingly,

the Counsel for the assessee submitted that since the instant appeal relates to only levy of penalty and the additions made in the hands of the brother of the assessee with respect to investment of the same amount in the same property has been deleted by ITAT in the hands of the co-owner of the property (being the assessee's brother Shri Rohit C. Thakore), then there is no justifiable basis for levy of penalty under Section 271(1)(c) of the Act. Further, the Counsel of the assessee also submitted that the underlying addition is not based on any "incriminating material" found and seized during search and hence the very addition itself is not justified since no "incriminating material" with respect to underlying addition has been found during the course of search carried out in the case of the assessee. It was submitted that even the timeline for issuing statutory notice under Section 143(2) of the Act for the year under consideration expired prior to the date of search being 21.09.2010. This fact also has not been disputed by the Assessing Officer. The Counsel for the assessee submitted that it is settled law that completed assessments can be interfered with by Assessing Officer while framing assessment under Section 153A/153C only on the basis of some incriminating material unearthed during the course of search and in absence of any such incriminating material, no assessment can be framed under section 153A/153C of the Act. The Ld. Counsel for the assessee placed reliance in the case of **PCIT vs. Saumya Construction Pvt. Ltd. 387 ITR 292 (Gujarat)**. Further, the Counsel for the assessee also relied on the case of **Abhisar Buildwell 454 ITR 212 (SC)**. Therefore, it was submitted that since the assessment itself was not framed in accordance with the scheme of the Act, there is no question of levy of penalty in the instant facts.

40. It would be useful to reproduce the relevant extracts of the ITAT ruling in case of two co-owners of the said property i.e. Rohit G. Thakore, in which similar additions and penalty under Section 271(1)(c) of the Act were deleted by the Hon'ble ITAT, Ahmedabad in IT(SS)A No. 45/Ahd/2020 and ITA No. 204/Ahd/2020. The relevant extracts of the ruling are reproduced for ready reference:

“12. The grounds of appeal taken by the assessee are not in consonance with the Rule 8 of the Income Tax (Appellate Tribunal) Rules, 1963 - they are descriptive and argumentative in nature. In brief the grievance of the assessee is that the ld.CIT(A) has erred in confirming the addition of Rs.4,48,378/- which was added by the AO on account of unexplained deposits in the bank account, and addition of Rs.5,13,883/- which was added by the AO on account of unexplained investment in purchase of the property.

13. Brief facts of the case are that search under section 132 of the Income Tax Act was carried out in group cases of Thakore group on 21.9.2010. The residence of the assessee was also covered by the search and in order to give logical end to the proceedings, a notice under section 153A was issued and served upon the assessee on 18.10.2011. In response to the notice, the assessee submitted a letter dated 17.11.2011 stating that PAN mentioned in the notice was incorrect. Further, the assessee requested to provide copies of statement recorded during the course of search. The ld.AO thereafter discussed how the confusion on account of different PAN has arisen, and how the assessee did not file return in response to the notice under section 153A of the Act. The ld.AO thereafter recorded a finding that notice for lodging prosecution was issued upon the assessee, and thereafter the assessee filed return of income on 1.11.2012. The ld.AO had issued notice under section 143(2) and proceeded to pass assessment order. He passed the assessment order under section 143(3) read with section 153A on 30.3.2013. The ld.AO has observed that the assessee has purchased block no.77 on 17.3.2005 and purchase price of this block was at Rs.5,13,883/-. The assessee has purchased this block along with other family members, and was having 1/6th share. The AO has made addition of Rs.5,13,883/- on account of unexplained investment in block no.77. Similarly, the assessee has made addition of Rs.4,48,378/- on account of unexplained deposits in the bank account. The computation of income made by the AO read as under:

Total Income	Rs. 91,630/-
Add: Unexplained investment in block no.77	Rs. 5,13,883/-
Add: Unexplained credit in the banks	Rs.4,48,378/-
Total Income	Rs.10,53,891/-

14. Appeal to the CIT(A) did not bring any relief to the assessee.

15. The ld.counsel for the assessee at the very outset submitted that time limit for issuing the statutory notice under section 143(2) for passing scrutiny assessment under section 143(3) was expired much prior to the date of search

relevant to this assessment year. He pointed out that search was conducted on 21.9.2010. This is assessment year 2005-06. Therefore, this is an unabated assessment order as provided in second proviso to section 153A of the Act. The addition can only be made if during the course of search any incriminating material was found. For buttressing his contentions, he relied upon the judgment of Hon'ble Gujarat High Court in the case of PCIT Vs. Saumya Construction P.Ltd., 387 ITR 292 (Guj). He also emphasized that the AO has not made reference to any seized material for making addition in the hands of the assessee. This is not relevant assessment year where he can look into all this aspects. This is an assessment year which unabated as per the second proviso to section 153A of the Act, and therefore the AO cannot tinker with the assessment of income unless any incriminating material demonstrating escapement of income was found during the course of search. On the other hand, the ld.DR relied on the order of the AO.

16. We have duly considered rival contentions and gone through the record carefully. Before advertng to the facts and alleged seized material considered by the ld.AO for making the addition in the hands of the assessee, we deem it appropriate to bear in mind the position of law propounded in various authoritative judgments recording scope of section 153A of the Act. We are of the view that in this regard, there were large numbers of decisions. First we refer to the decision of Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla, 380 ITR 573 (Del). Hon'ble Delhi High Court after detailed analysis has summarized the following legal position:

37. On a conspectus of Section 153A(1) of the Act, read with the provisos thereto, and in the light of the law explained in the aforementioned decisions, the legal position that emerges is as under:

i. Once a search takes place under Section 132 of the Act, notice under Section 153 A(1) will have to be mandatorily issued to the person searched requiring him to file returns for six AYs immediately preceding the previous year relevant to the AY in which the search takes place.

ii. Assessments and reassessments pending on the date of the search shall abate. The total income for such AYs will have to be computed by the AOs as a fresh exercise.

iii. The AO will exercise normal assessment powers in respect of the six years previous to the relevant AY in which the search takes place. The AO has the power to assess and reassess the 'total income' of the aforementioned six years in separate assessment orders for each of the six years. In other words there will be only one assessment order in respect of each of the six AYs "in which both the disclosed and the undisclosed income would be brought to tax".

iv. Although Section 153 A does not say that additions should be strictly made on the basis of evidence found in the course of the search, or other post-search material or information available with the AO which can be related to the evidence found, it does not mean that the assessment "can be arbitrary or made without any relevance or nexus with the seized material. Obviously an assessment has to be made under this Section only on the basis of seized material."

v. In absence of any incriminating material, the completed assessment can be reiterated and the abated assessment or reassessment can be made. The word 'assess' in Section 153 A is relatable to abated proceedings (i.e. those pending on the date of search) and the word 'reassess' to completed assessment proceedings.

vi. Insofar as pending assessments are concerned, the jurisdiction to make the original assessment and the assessment under Section 153A merges into one. Only one assessment shall be made separately for each AY on the basis of the findings of the search and any other material existing or brought on the record of the AO.

vii. Completed assessments can be interfered with by the AO while making the assessment under Section 153 A only on the basis of some incriminating material unearthed during the course of search or requisition of documents or undisclosed income or property discovered in the course of search which were not produced or not already disclosed or made known in the course of original assessment.”

17. ITAT, Delhi Bench in the case of DIT Vs. Smt. Shivali Mahajan and others, rendered in ITA No.5585/Del/2015 (copy of the decision placed on record) has considered this aspect in its decision. Thereafter, the Tribunal has specifically held that serial no.(iv) of the above proposition, the Hon'ble Delhi High Court has specifically held that assessment under section 153A of the Act has to be specifically made on the basis of seized material. ITAT Delhi Bench was considering an aspect whether the evidence in the shape of books of accounts, money, bullion, jewellery found during the course of search relates to other person than the searched person, can that be considered while making assessment under section 153A of the Act. Like in the present appeals, simultaneous search was carried out at the premises of the Venus Infrastructure and Ashok Sunderdas Vaswani, and the material found during the search of Venus Infrastructure Developers or Ashok Sunderdas Vaswani could be used while framing the assessment of Rajesh Sunderdas Vaswani and Deepak Budharmal Vaswani under section 153A of the Act. ITAT Delhi Bench has specifically held that material recovered from the premises of other person cannot be used in the hands of the searched person. For that purpose an assessment under section 153C or 147 is to be made. At this stage, in order to fortify ourselves, we would like to make reference to the following paragraphs of the ITAT Delhi Bench's order. It reads as under:

“15. Thus, when during the course of search of an assessee any books, document or money, bullion, jewellery etc. is found which relates to a person other than the person searched, then the Assessing Officer of the person searched shall hand over such books of account, documents, or valuables to the Assessing Officer of such other person and thereafter, the Assessing Officer of such other person can proceed against such other person. However, in the case under appeal before us, admittedly, Section 153C is not invoked in the case of the assessee and the assessment is framed under Section 153A. We, respectfully following the above decisions of Hon'ble Jurisdictional High Court, hold that during the course of assessment under Section 153A, the incriminating material, if any, found during the course of search of the assessee only can be utilized and not the material found in the search of any other person.”

18. *Order of the ITAT Delhi Bench in other cases viz. Asha Rani Lakhotia vs. ACIT and Subhag Khattar Vs. ACIT are on the same line.*

19. *Hon'ble Delhi High Court in the case of Subhag Khattar in Tax Appeal No.60 of 2017 has considered the following question of law:*

"Did the Income Tax Appellate Tribunal (ITAT) fall into error in holding that the additions made under Section 153A read with Section 143(3) of the Income Tax Act, 1961 in the circumstances of the case, were not justified and supportable in law? "

20. *After putting reliance upon its decision in the case of CIT Vs. Kabul Chawla (supra) has replied this question as under:*

"6. The Assessee went in appeal before the Commissioner of Income Tax (Appeals) who dismissed it by an order dated 27th November, 2014. A further appeal was filed by the Assessee before the ITAT. The ITAT, inter alia, found substance in the contention of the Assessee that the assessment under Section 153(A) of the Act, in the absence of any incriminating material found during the search on the premises of the Assessee was not sustainable in law. Reliance was placed on the decision of this Court in Commissioner of Income Tax v. Kabul Chawla, [2016] 380 ITR 573.

7. A question was posed to the learned counsel for the Revenue whether in the present case anything incriminating has been found when the premises of the Assessee was searched. The answer was in the negative. The entire case against the Assessee was based on what was found during the search of the premises of the AEZ Group. It is thus apparent on the face of it, that the notice to the Assessee under Section 153A of the Act was misconceived since the so-called incriminating material was not found during the search of the Assessee's premises. The Revenue could have proceeded against the Assessee on the basis of the documents discovered under any other provision of law, but certainly, not under Section 153A. This goes to the root of the matter."

21. *Hon'ble Court has specifically observed for the purpose of section 153A that only seized material is required. However, if there is any other incriminating material belong to the assessee found at the premises of the some other person, then the assessment has to be made under other provisions and not under section 153A of the Act. Hon'ble jurisdictional high Court has also considered the decision of Hon'ble Delhi High Court in the case of CIT Vs. Kabul Chawla (supra). Hon'ble Gujarat High Court framed the following question of law in the case of Pr.CIT Vs. Saumya Construction (supra):*

"[A] Whether the order of Tribunal is right in law and on facts in deleting the addition made in assessment made u/s 153A of the Act?

[B] Whether the Tribunal is right in law in holding that the addition should be based on the incriminating material found during the course of search under new procedure of assessment u/s 153A which is different from earlier procedure u/s 158BC r.w.s. 158BB of the Act and by reading

into the section, the words 'the incriminating material found during the course of search' which are not there in section 153A?

[C] Whether the Tribunal erred in relying on the ITAT order in Sanjay Aggarwal v. DCIT (2014) 47 Taxmann.Com 210 (Del) which has interpreted undisclosed income unearthed during the search to imply incriminating material, as against the finding of the Delhi High Court in Filatex India Ltd. v. CIT-IV (2015) 229 Taxman 555 wherein it is held that during the assessment u/s 153A additions need not be restricted or limited to incriminating material found during the course of search?"

22. Hon'ble Court concurred with the decision of Hon'ble Delhi High Court. We deem it appropriate to take note of relevant part of the decision, which reads as under:

"16. Section 153A bears the heading "Assessment in case of search or requisition". It is well settled as held by the Supreme Court in a catena of decisions that the heading of the section can be regarded as a key to the interpretation of the operative portion of the section and if there is no ambiguity in the language or if it is plain and clear, then the heading used in the section strengthens that meaning. From the heading of section 153, the intention of the legislature is clear viz., to provide for assessment in case of search and requisition. When the very purpose of the provision is to make assessment in case of search or requisition, it goes without saying that the assessment has to have relation to the search or requisition. In other words, the assessment should be connected with something found during the search or requisition, viz., incriminating material which reveals undisclosed income. Thus, while in view of the mandate of sub-section (1) of section 153A of the Act, in every case where there is a search or requisition, the Assessing Officer is obliged to issue notice to such person to furnish returns of income for the six years preceding the assessment year relevant to the previous year in which the search is conducted or requisition is made, any addition or disallowance can be made only on the basis of material collected during the search or requisition. In case no incriminating material is found, as held by the Rajasthan High Court in the case of Jai Steel (India) (supra), the earlier assessment would have to be reiterated. In case where pending assessments have abated, the Assessing Officer can pass assessment orders for each of the six years determining the total income of the assessee which would include income declared in the returns, if any, furnished by the assessee as well as undisclosed income, if any, unearthed during the search or requisition. In case where a pending reassessment under section 147 of the Act has abated, needless to state that the scope and ambit of the assessment would include any order which the Assessing Officer could have passed under section 147 of the Act as well as under section 153A of the Act.

17. In the facts of the present case, a search came to be conducted on 07.10.2009 and the notice was issued to the assessee under section 153A of the Act for assessment year 2006-07 on 04.08.2010. In response to the notice, the assessee filed return of income on 18.11.2010. In terms of section 153B, the assessment was required to be completed within a

period of two years from the end of the financial year in which the search came to be carried out, namely, on or before 31st March, 2012. Here, insofar as the impugned addition is concerned, the notice in respect thereof came to be issued on 19.12.2011 seeking an explanation from the assessee. The assessee gave its response by reply dated 21.12.2011 calling upon the Assessing Officer to provide copies of statements recorded on oath of Shri Rohit P. Modi and Smt. Pareshaben K. Modi during the search as well as the copies of the documents upon which the department placed reliance for the purpose of making the proposed addition as well as the copy of the explanation given by Shri Rohit P. Modi and Smt. Pareshaben K. Modi regarding the on-money received, copies of the assessment orders in case of said persons and also requested the Assessing Officer to permit him to cross-examine the said persons. The Assessing Officer issued summons to the said persons, however, they were out of station and it was not known as to when they would return. In this backdrop, without affording any opportunity to the assessee to cross-examine the said persons, the Assessing Officer made the addition in question.

18. In this case, it is not the case of the appellant that any incriminating material in respect of the assessment year under consideration was found during the course of search. At the relevant time when the notice came to be issued under section 153A of the Act, the assessee filed its return of income. Much later, at the fag end of the period within which the order under section 153A of the Act was to be made, in other words, when the limit for framing the assessment as provided under section 153 was about to expire, the notice has been issued in the present case seeking to make the proposed addition of Rs.11,05,51,000/- on the basis of the material which was not found during the course of search, but on the basis of a statement of another person. In the opinion of this court, in a case like the present one, where an assessment has been framed earlier and no assessment or reassessment was pending on the date of initiation of search under section 132 or making of requisition under section 132A, while computing the total income of the assessee under section 153A of the Act, additions or disallowances can be made only on the basis of the incriminating material found during the search or requisition. In the present case, it is an admitted position that no incriminating material was found during the course of search, however, it is on the basis of some material collected by the Assessing Officer much subsequent to the search, that the impugned additions came to be made.

19. On behalf of the appellant, it has been contended that if any incriminating material is found, notwithstanding that in relation to the year under consideration, no incriminating material is found, it would be permissible to make additions and disallowance in respect of all the six assessment years. In the opinion of this court, the said contention does not merit acceptance, inasmuch as, the assessment in respect of each of the six assessment years is a separate and distinct assessment. Under section 153A of the Act, an assessment has to be made in relation to the search or requisition, namely, in relation to material disclosed during the search or requisition. If in relation to any assessment year, no incriminating material is found, no addition or disallowance can be

made in relation to that assessment year in exercise of powers under section 153A of the Act and the earlier assessment shall have to be reiterated. In this regard, this court is in complete agreement with the view adopted by the Rajasthan High Court in the case of Jai Steel (India), Jodhpur (supra). Besides, as rightly pointed out by the learned counsel for the respondent, the controversy involved in the present case stands concluded by the decision of this court in the case of Jayaben Ratilal Sorathia (supra) wherein it has been held that while it cannot be disputed that considering section 153A of the Act, the Assessing Officer can reopen and/or assess the return with respect to six preceding years; however, there must be some incriminating material available with the Assessing Officer with respect to the sale transactions in the particular assessment year

20. *For the foregoing reasons, it is not possible to state that the impugned order passed by the Tribunal suffers from any legal infirmity so as to give rise to a question of law, much less, a substantial question of law, warranting interference. The appeal, therefore, fails and is, accordingly, dismissed.”*

23. A perusal of the assessment order would indicate that there is no seized material referred by the AO while making additions. Hence, respectfully following proposition of law laid down by the Hon’ble Supreme Court, Hon’ble jurisdictional High Court in the cases cited (supra), which were followed by the ITAT in earlier similar other cases, the impugned additions are not sustainable. Hence, we allow both these grounds of appeal, and delete additions of Rs.4,48,378/- and Rs.5,13,883/-.

24. Now we take ITA No.204/Ahd/2020 (Penalty order)

25. Since additions on which impugned penalty has been levied, stand deleted by order of the Tribunal in the quantum appeal adjudicated hereinabove, impugned penalty levied by the AO and confirmed by the Id.CIT(A) is not sustainable, hence the same stands cancelled.

26. In the result, both appeals of the assessee are allowed.”

41. Accordingly, in view of the above facts, wherein similar additions with respect to the same piece of land has been deleted in the hands of co-owner of the said property and the consequential penalty was also deleted by ITAT, vide order dated 17.09.2021, we are of the considered view that penalty under Section 271(1)(c) of the Act is liable to be deleted in the hands of the assessee as well. Further, we also wish to point out that in case of assessee, the quantum additions have not been decided against the assessee on merits. The ITAT had referred the

matter back to the file of CIT(A) for de-novo consideration since adequate opportunity was not granted to the assessee on merits, however, the Hon'ble High Court set-aside the order of ITAT on the ground that there was no infirmity in order of CIT(A), who had also decided the case on merits. However, we observe that CIT(A) had not discussed the merits of the case in detail. Accordingly, in so far as levy of penalty under Section 271(1)(c) of the Act is concerned, we are of the view that it is a fit case where penalty is liable to be deleted.

42. In the result, the appeal of the assessee is allowed in ITA No. 211/Ahd/2020 for A.Y. 2005-06.

Now we shall take up ITA No. 212/Ahd/2020 (Ashokji Chanduji Thakore for A.Y. 2006-07)

43. The assessee has taken the following grounds of appeal:

“1. The Ld. CIT(A) has erred on facts and in law in upholding the assessment order u/s 271(1)(c) of the Income Tax Act, 1961 passed by the Assessing Officer on 28.03.2016.

2. The Ld. CIT (A) has erred on facts and in law in upholding the penalty levied on additions made by the Assessing Officer on account of alleged capital gain of Rs.86,60,942 on account of undisclosed short term capital gain of block no. 76 & 77 which has been added without considering & appreciating the facts that relevant capital gain has been declared in return of income filed by the assessee and accordingly levied penalty on the same by Assessing officer which has been upheld by CIT Appeal.

3. The appellant also request to honourable court for condonation of delay in filling appeal.

4. The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal.”

44. The brief facts of the case are that search action was conducted at the premises of the assessee on 21.09.2010. During the course of assessment proceedings, the Assessing Officer observed that assessee

had purchased Block No. 77 & 76 on 17.03.2005, alongwith Shri Rohit C. Thakore and other co-owners for a sum of Rs. 29,75,000/-. Subsequently, the said land was sold by the assessee and other co-owners on 29.12.2005. During the course of search action on 21.09.2010, search documents were seized from the residential premises of Shri Rohit C. Thakore (assessee's brother) and as per the seized documents, the sale consideration of Rs. 4,58,74,125/- was worked out by the Assessing Officer towards the aforesaid block of land. Accordingly, the Assessing Officer made an addition of Rs. 86,60,942/- as Short Term Capital Gain (in short "STCG") in the hands of the assessee towards sale of this land. In view of this additions, the Assessing Officer imposed penalty of Rs. 29,16,360/- under Section 271(1)(c) of the Act, while framing the assessment in the hands of the assessee. In appeal, Ld. CIT(A) confirmed the addition in the hands of the assessee with the following observation:

*"Even in the present case Appellant has failed to establish unexplained sale proceeds of Block No.77 (79223 sq.mt.) which was not shown in the Return of Income. Considering the facts discussed herein above, it is held that the appellant had concealed particulars of income as discussed above. In view of the above discussion and judicial ratios (supra), and in absence of any bonafide explanation, it is held that Assessing Officer was justified in levying penalty of Rs.29,16,360/- under Section 271(1)(c) of the Act. **The grounds of appeal are dismissed.**"*

45. The assessee is in appeal before us against the order passed by Ld. CIT(A) confirming the penalty in the hands of the assessee. At the outset, the Counsel for the assessee submitted that the brother of the assessee was also the co-owner of this piece of land and similar assessments were framed pursuant to the same search carried out by the Department on 21.09.2010. However, the same addition, which was made with respect to undisclosed sale consideration in the hands of the assessee's brother, Rohit C. Thakore, who was also the co-owner of this

block of land, was deleted by ITAT for the same assessment year (A.Y. 2006-07) (Para 16-24 of the ITAT's order). Further, similar penalty imposed in the hands of Rohit C. Thakore, with respect to sale of same block of land (as assessee's co-owner) was also deleted by the Hon'ble ITAT (Para 80-82 of ITAT order). Accordingly, it is submitted that when on identical facts similar additions and penalty has been deleted by ITAT in the case of the co-owner of this property vide order dated 23.11.2021, then it is a fit case, where penalty under Section 271(1)(c) of the Act on identical set of facts is liable to be deleted.

46. In response, the Ld. D.R. placed reliance on the observations made by Ld. CIT(A) in the appellate order.

47. We have heard the rival contentions and perused the material on record. It would be useful to reproduce the relevant extracts of order passed by Hon'ble ITAT Ahmedabad in the case of Rohit C. Thakore (co-owners of the property) in IT(SS)A Nos. 46 to 50/Ahd/2020 and ITA Nos. 205 to 209/Ahd/2020 vide order dated 23.11.2021, for ready reference. We observe that similar addition towards sale of the same block of land was deleted by ITAT vide the above order at Para 16-24 of the order. The relevant paragraphs of the order passed by ITAT are reproduced for ready reference:-

“16. Next dispute agitated by the assessee is that the ld.CIT(A) has erred in confirming addition of Rs.86,60,942/- which was added by the AO on account of short term capital gain on sale of Bopal land.

17. Brief facts, according to the AO, are that during the course of search, certain loose papers were found and seized under Annexure BS-25. Page no.48 & 49 of the said seized material do indicate that transactions related to sale of land at Block No.77 and 76. The ld.AO has reproduced brief summary of the seized documents i.e. page nos.48 & 49 in paragraph 6.5 of the impugned assessment order. The AO was of the view that in these papers, the land was sold at the rate of Rs.1125/- per square yard which is not duly reflected by the assessee. He has 1/5th share, and therefore, the short term capital gain

assessable in his hand has escaped income. The AO computed share of short term capital required to be assessed in the hands of the assessee, and accordingly made addition of Rs.86,60,942/-. On appeal, the ld.CIT(A) rejected the contentions of the assessee by observing as under:

“6.3 As to the addition of Rs.86,60,942/- on account of STCG in relation to plot No. 77 and 76 at Bopal it is seen that the land was purchased by the assessee along with other 4 buyers (on 17/03/2005 for Rs.29,75,000/-) and the land was sold by them (on 29/12/2005 for a consideration of Rs.30,00,000/-) and that the assessee had shown capital loss of Rs.13,831/-thereon but during the course of search Annexure BS 25 was seized from the residential premises of the assessee and pages 48 and 49 thereof showed the rate per square yard was Rs.1125/- and accordingly sale consideration for plot No. 77 as at Rs.2,16,25,875/- and for plot No. 76 and 77 was Rs.4,58,74,125/-. The AO has been able to establish that the explanation furnished by the assessee was not for those plots and accordingly the STCG of Rs.86,60,942/- (Rs.91,74,825/- being sale consideration of 1/5 of land (-) Rs.5,13,883/- being assessee's share in the cost of acquisition) was added to the total income. The assessee was duty bound to rebut the initial presumption in favor of the Revenue by virtue of sections 132(4) and 292C but has not led any argument and any iota of evidence in this regard and thus has not discharged his primary onus. I find no basis to interfere in the addition made. The addition of Rs.86,60,942/- is confirmed and the related ground is dismissed.”

18. The ld.counsel for the assessee while impugning the addition, took us through the assessment order, and explained as to how no gain has arisen to the assessee, and how no addition is required to be made. He specifically took us through question and answer given by the assessee during his statements recorded under section 131 of the post-search inquiry. On the other hand, the ld.CIT-DR also relied upon the assessment order, and submitted that evidence during the course of search duly seized exhibiting the earning of short term capital gain by the assessee on the land transactions comprised at block no.77 and 76.

19. We have duly considered rival submissions and gone through the record carefully. First we take brief detail shown in the page no.48 and 49, as noticed by the AO, which reads as under:

“6.5 The brief of the seized document is as under:-

Page -48:-

This page shows details of block no.77 at Bopal at the rate of Rs.1125/- per sq.mt., area of 40777 sq.yd. for the consideration of Rs.4,58,74,125/-. Purchased by Shri Sanjaybhai Patel, seller is Shri Rohitbhai Thakore.

Land of block 76,	18,150 sq.yd.
77	<u>22,627</u> sq.yd
	40,777 sq.yd
(multiply by Rs.)	<u>1,125</u> per sq.yd

4,58,74,125/-

Rs.58,74,125/- received on 05.03.05.

Page-49:

These are agreement dated 22.01.05 on plain paper for the block no.73 situated at Bopal admeasuring to 10,000 sq.yd. at the rate of Rs.33,51,000/- per vigha purchased by Shri Rohitji Chanduji Thakore sold by Shri Ratibhai Kantibhai for which Bana of Rs.900,000/- is receied.”

20. *The case of the AO is that both these blocks comprised of 40,777 sq.yards land. The assessee along with Shri Ashok Chanduji Thakore, Maniben C. Thakore, Chanduji Somaji and Shardaben Thakore has purchased land of the above blocks on 17.3.2005 for a consideration of Rs.29,75,000/-. This land was sold by the assessee and other co-owners to Shri Mahesh Kaniyalal Patel, Smt. Chandrikaben M. Patel and Shri Nitin Patel on 29.12.2005 for a consideration of Rs.30 lakhs. The assessee has shown capital loss on sale of this land at Rs.13,831/-. However, during the course of search, two documents annexure BS-25 i.e. page no.48 and 49 of were found and seized. The Id.AO has reproduced details of these pages which we have also taken cognizance (supra). According to the AO, the rate per yard was fixed at Rs.1125/-, and accordingly, the sale consideration for both these piece of land should be Rs.4,58,74,125/-. The AO has accordingly taken the sale consideration, and computed the short term capital gain.*

21. *On the other hand, stand of the assessee was being reflected from the answers he had given on 8.10.2010 when his statement was recorded under section 131 of the Act. He also filed reply explaining transaction. We deem it important to take note of the answers given to question no.78 and 79, which reads as under:*

<i>Q-78</i>	<i>I am showing you annexure BS-25 explain what is about ?</i>
<i>A-78</i>	<i>.... On page 42 there is receipt dated 30.06.2005 of Rs.30 lakhs for land at Bopal 77. The deal of Bopal land was lloked after by my father. So I do not have knowledge about such transaction. On page 43, there is detail of block no.77 deal for Rs.60 lakhs. I do not have more details about this transaction.... On page no.48 of this annexure there is chitthi dated 05.03.2005 of block no.77 land which has prepared as a broker. The deal did not take place due to dispute...</i>
<i>Q-79</i>	<i>On page 114 to 140 annexure A-15 Bopal block no.77 land is purchased by you. This land is purchased on 17.03.2005 for Rs.,29,75,000/-. I am showing you page no.42 and 43 in which receipt of Rs.30,00,000 dated 30.06.2005 is there. Whereas on page no.43 there is detail of Rs.60 lakhs paid for this land. Kindly explain how much money did you actually paid for this land.</i>
<i>A-79</i>	<i>The transaction of this land was done by my father. Bopal block no.77 land was decided to purchase for brokerage on behalf o Anilbhai of Surat for which Rs.60 lakhs was collected from Anilbhai and was given to land owner. There was dispute for measurement issue and unauthorized construction which were not cleared and were unsolved and so Anilbhai refused to purchase the land, hence the deal was cancelled by Anilbhai. But my father</i>

	<p>on page no.114 to 140 of annexure A-15 has shown that this land was purchased for Rs.29,75,000/- and the payment was done through cheque by us. Money was returned back to Anilbhai after collecting from farmer. On page 42 there is receipt of the money given to Anilbhai.</p>
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22. Thus, stand of the assessee is that earlier he has purchased the land along with family members though mainly the land in block no.77 was handled by his father. There is no dispute with regard to the fact that this land was purchased on 17.3.2005 for a consideration of Rs.29,75,000/-. During the course of search other pages were found which were inventorised as Annexure A-15 and page nos.114 to 140 contain certain other nottings. While explaining all these pages, he deposed that originally the land was purchased in the capacity of a broker. This land was arranged for one Shri Anilbhai of Surat. The assessee took Rs.60 lakhs from Anilbhai of Surat. However, the deal was not materialized and he has repaid Rs.60 lakhs. The details of Rs.60 lakhs, vis-à-vis repayment is reflected on page no.42 & 43. Thus, under compelling consideration, this land was sold subsequently only at Rs.30,20,0000/-. Thus, his stand is that as far as the rate of Rs.1125/- written on the paper was never materialized; this is a rough paper and deal was never materialized on this basis of the paper. Secondly, the alleged deal for the block no.76 was never materialized. In other words, he or his family has ever purchased this land. Therefore, according to the assessee no short term capital gain is leviable in his hand.

23. On consideration of the above, we find that the ld.AO has made reference to the details in an incomplete manner. He made reference to the details of block no.73 on page no.49. This detail is being referred with an idea to harbor a belief that rate in the area was prevalent at Rs.1125/- per square yard. To our mind, the chain of event has not been completed by the AO with an analytical mind. There is no statement either from the vendors or from the vendees. There is no action on the alleged vendee who has purchased the land. There is a sale deed executed for a consideration of Rs.30,20,000/-. The AO wants to dispel the terms of contract materialized in a registered sale deed. Before advertng to the kind of material possessed by the AO to refute terms of contract translated in those registered sale deed, we would like to refer to the judgment of Hon'ble Punjab and Haryana High Court in the case of Paramjit Singh Vs. ITO, 323 ITR 588 (P&H) in which on the strength of sections 91 and 92 of Evidence Act, the Hon'ble Court has held that when terms of contracts, grants or other dispositions of property have been reduced to the form of documents, then no evidence is permissible to be given in proof of any such terms of such grants or deposition of the property except the documents itself. In this case, there were three brothers viz. Tarlochan Singh, Paramjit Singh and Surmukh Singh. Shri Paramjit Singh and Surmukh Singh went to UK and settled down some 45 to 48 years back from the Assessment year 2003-04. According to them, their brother, Tirath Singh has helped them settle in UK. Therefore, they have given their share of land to his brother. The sale deed was registered in the name of Paramjit Singh, son of their brother Tarlochan Singh. As per the registered sale deed, the sale consideration was Rs.24,65,000/-. Paramjit Singh was asked to explain the source of this Rs.24,65,000/-. In that background, a plea was taken that no sale consideration was exchanged hands. It was merely mention in the deal for the purpose of computing stamp duty. This plea was not accepted by the AO. However, on appeal, the ld.CIT(A) has accepted. But on further appeal, the Tribunal reversed

this, and held that once in a document, this amount has been mentioned, then it is to be considered as sale consideration, and whose source is required to explain. In this background, Hon'ble High Court has examined the scope of sections 91 and 92 of the Evidence Act. The finding recorded by the Hon'ble Court reads as under:

“4. We have thoughtfully considered the submissions made by the learned counsel and are of the view that they do not warrant acceptance. There is well-known principle that no oral evidence is admissible once the document contains all the terms and conditions. Sections 91 and 92 of the Indian Evidence Act, 1872 (for brevity 'the 1872 Act') incorporate the aforesaid principle. According to section 91 of the Act when terms of a contracts, grants or other dispositions of property has been reduced to the form of a documents then no evidence is permissible to be given in proof of any such terms of such grant or disposition of the property except the document itself or the secondary evidence thereof. According to section 92 of the 1872 Act once the document is tendered in evidence and proved as per the requirements of section 91 then no evidence of any oral agreement or statement would be admissible as between the parties to any such instrument for the purposes of contradicting, varying, adding to or subtracting from its terms. According to illustration 'b' to section 92 if there is absolute agreement in writing between the parties where one has to pay the other a principal sum by specified date then the oral agreement that the money was not to be paid till the specified date cannot be proved. Therefore, it follows that no oral agreement contradicting/varying the terms of a document could be offered. Once the aforesaid principal is clear then ostensible sale consideration disclosed in the sale deed dated 24-9-2002 (A.7) has to be accepted and it cannot be contradicted by adducing any oral evidence. Therefore, the order of the Tribunal does not suffer from any legal infirmity in reaching to the conclusion that the amount shown in the registered sale deed was received by the vendors and deserves to be added to the gross income of the assessee-appellant.”

24. *Let us revert back to the case on hand. There is a purchase deed for a sum of Rs.29,75,000/- on 17.3.2005, which was not disputed by the Revenue also. There is a sale deed on this land at block no.77 on 29.12.2005 i.e. roughly after nine months for consideration of Rs.30 lakhs. This consideration is being disputed by the Revenue. According to the Revenue, this consideration should be considered at Rs.2,16,25,875/-. The evidence for such calculation is of some jotting on page no.48 of the seized material. According to the assessee, this is chitty written to work out some brokerage or some other details. It does not give any specific guidance for the rate. It is also pertinent to note that section 50C of the Income Tax Act provides that where the consideration received or accruing as a result of transfer by an assessee of a capital asset, being land or building or both, is less than the value adopted or assessed by any authority for the purpose of payment of stamp duty in respect of such transfer, the value so adopted or assessed shall for the purposes of section 48, be deemed to be the full value of the consideration. In other words, full consideration mentioned in section 48 is to be replaced by the consideration on which value of the property was adopted for the purpose of payment of stamp duty. The AO has nowhere tried to find what could be the deemed consideration for the purpose of computing capital gain under*

section 48 of the Act. He simply construed rough paper as a gospel truth. It is also pertinent to note that he has taken into consideration that land in block no.76 must have been purchased and sold by the assessee. No efforts were made to collect details of the sale deed or purchase deed; whether any transaction has taken place or not. The assessee has explained that originally some calculations required to be made on account of arranging the land to Shri Anilbhai of Surat, but the deal has never materialized. To rebut this explanation, there is no corroborative material collected by the AO. He simply took shelter under section 292C of the Income Tax Act which has been reproduced by him para 6.11 of the assessment order. He was of the view that section 292C contemplates that whatever document is to be found will carry a premise of truth and it will be presumed as books of accounts; but in the present case, the assessee has explained his position. He has submitted that land at block no.76 was never purchased nor sold in respect of that the AO did not bother to collect truth from the Registrar's office. Therefore, to our mind, one loose paper found during the course of search and possessed by the Revenue is not sufficient to allege that the assessee has sold land at such a huge price than the one disclosed in the sale deed. Therefore, no addition requires to be made in the hands of assessee on account of unexplained short term capital gain earned by him."

48. Further, the penalty imposed in the hands of the co-owner of the property was also deleted by ITAT Ahmedabad in the above order, at Para 80-82 of this order. The relevant paragraphs of the order passed by ITAT deleting the penalty are reproduced below for ready reference:

"80. Now, we take penalty appeals i.e. ITA No.205 to 209/Ahd/2020 for adjudication.

81. By way of present above five appeals, the assessee has challenged imposition of penalty under section 271(1)(c) of the Income Tax Act imposed by the AO and confirmed by the Id.CIT(A) vide separate order of even dated 27.12.2018 for all these assessment years.

82. With the help of Id.representatives of both the sides, we have gone through the impugned orders. Impugned penalties have been imposed by the Revenue on account of additions in respect of unexplained investment in properties, short term capital gain on sale of land and unexplained credits in the books etc. Further, sub-clause (iii) of section 271(1)(c) provides mechanism for quantification of penalty. It contemplates that the assessee would be directed to pay a sum in addition to taxes, if any, payable him, which shall not be less than but which shall not exceed three times the amount of tax sought to be evaded by reason of concealment of income and furnishing of inaccurate particulars of income. In other words, the quantification of the penalty is depended upon the addition made to the income of the assessee. On the question of additions in the present case, we have already dealt with these issues hereinabove while dealing with quantum appeals, and after detailed discussion and finding thereof, we have concluded that no corroborative evidence with the department in order to make the additions, and therefore, all the additions made by the Revenue have been

deleted by the Tribunal. This being so, as additions stand extinguished, the impugned penalties imposed under section 271(1)(c) of the Act do not survive, the same accordingly cancelled, except on the issue of unexplained investment made in the purchase of car that has been remitted back to file of the AO in the Asstt.Years 2007-08, 2008-09 and 2010-11. The ld.AO will be at liberty to initiate or not to initiate penalty proceeding in these assessment years after adjudication the issue on account of unexplained investment made in the car. Thus, in these assessment years, the penalty appeals of the assessee are partly allowed for the statistical purpose, and remaining two assessment years appeals are allowed.”

49. Therefore, looking into the instant facts, we are of the considered view that so far as penalty under Section 271(1)(c) of the Act is concerned, it is a fit case where looking into the observations made by ITAT, when similar additions and penalty levied in the hands of the co-owner of the property was deleted, in our considered view, it is a fit case that penalty is not liable to be sustained in the hands of the assessee, for the impugned assessment year. Further, we also wish to point out that in case of assessee, the quantum additions have not been decided against the assessee on merits. The ITAT had referred the matter back to the file of CIT(A) for de-novo consideration since adequate opportunity was not granted to the assessee on merits, however, the Hon'ble High Court set-aside the order of ITAT on the ground that there was no infirmity in order of CIT(A), who had also decided the case on merits. However, we observe that CIT(A) had not discussed the merits of the case in detail. Accordingly, in so far as levy of penalty under Section 271(1)(c) of the Act is concerned, we are of the view that it is a fit case where penalty is liable to be deleted.

50. In the result, the penalty under Section 271(1)(c) for A.Y. 2006-07 is directed to be deleted and the appeal of the assessee is allowed.

Now we shall take up ITA No. 213/Ahd/2020 (Ashokji Chanduji Tahkore for A.Y. 2007-08)

51. The assessee has taken the following grounds of appeal:

“1. The Ld. CIT (A) has erred on facts and in law in upholding the assessment order u/s 271(1)(c) of the Income Tax Act, 1961 passed by the Assessing Officer on 28.03.2016.

2. The Ld. CIT (A) has erred on facts and in law in upholding the penalty levied on additions made by the Assessing Officer on account of alleged undisclosed capital gain of Rs.45,99,000 on account of undisclosed investment in Kasindra Survey No.1104 & 1290 which has been added without considering & appreciating the facts of the case and accordingly levied penalty on the same by Assessing officer which has been upheld by CIT Appeal.

3. The appellant also request to honourable court for condonation of delay in filing appeal.

4. The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal.”

52. The brief facts of the case are that a search action was conducted at the premises of the assessee on 21.09.2010. During the course of assessment proceedings, the Assessing Officer observed that as per Annexure BS-24, the assessee alongwith his father had purchased a land at Block No. 1104 and 1290, Kasindra and on the basis of documents seized during the course of search, the Assessing Officer added a sum of Rs. 45,99,000/- as unexplained investment in the hands of the assessee vide order dated 30.03.2013. Subsequently, penalty proceedings were initiated in the case of the assessee and penalty of Rs. 15,42,190/- under Section 271(1)(c) of the Act was levied on the assessee. In appeal, the Ld. CIT(A) confirmed the levy of penalty with the following observation:

“Even in the present case Appellant has failed to establish unaccounted income from the land transactions at Kasindra Block No. 1104 and 1290 of Rs.46,26,570/- which was more than the income shown by the appellant in his return of income. Considering the facts discussed herein above, it is held that the appellant had concealed particulars of income as discussed above by filing inaccurate particulars of income. In view of the above discussion and judicial ratios (supra), and in absence of any bonafide explanation, it is held that

Assessing Officer was justified in levying penalty of Rs. 15,42,190/- under Section 271(1)(c) of the Act. The grounds of appeal are dismissed.

4. *In result, the appeal of the appellant is dismissed.”*

53. Before us, the Counsel for the assessee submitted that though the quantum appeal has been decided against the assessee on this issue, however, the ITAT in quantum proceedings had remitted back the matter to the file of Ld. CIT(A) for de-novo consideration with a direction to adjudicate and give proper opportunity of hearing of the assessee. However, in view of the order of High Court, the additions made by Ld. CIT(A) were confirmed in the assessee's hands. However, for this particular year, certain important facts are noteworthy. Assessee's brother name Rohit C. Thakore in the assessment proceedings of the assessee (at Page 4, Para 5.1 of the assessment order) submitted that the land in question had never been purchased by the assessee or his father. The land in question was under the “brokerage” with his father and no payment has been made for purchase of this land by the assessee or his family. After the death of his father, this deal was not finalized by the assessee or his family and this land deal was finalized by other brokers and other parties. However, despite a categorical denial from the assessee's side, the Assessing Officer did not put any effort to verify whether any such investment was actually made by the assessee in the land in question. The Counsel for the assessee submitted that no addition could have been made merely on the basis of entries recorded in the seized materials. Under these circumstances, it was duty of the Assessing Officer to have brought on record third party proof in the form of confirmation of the so-called seller (recipient of sum) substantiating the allegation that such sum of money has been paid by the assessee. However, the Assessing Officer did not make any effort whatsoever to

confirm the fact that the so-called recipient of money mentioned in the seized material had sold this land to the assessee. Without carrying out even the basic investigation required in the case, the Assessing Officer had made this addition as unexplained income in the hands of the assessee. Further, the Assessing Officer also did not issue notices under Section 133(6) to the sub-Registrar Officer to provide information on who was the buyer of the land in question. Instead the Assessing Officer simply treated the notings in the seized material as reflecting the true state of affairs and proceeded to make additions in the hands of the assessee as unexplained investment, without carrying on any further investigation, which was required to be done by the Assessing Officer in these facts. Therefore, in these facts, there was no corroborative evidences in support of allegation of the Assessing Officer that the assessee had made unexplained investment in such property. The Counsel for the assessee relied on the following decisions in support of his argument that it is a well settled law that no addition can be made merely on “entries” recorded in the seized material without any corroborative evidence. The Counsel for the assessee placed reliance on the following decision:

- *Common Cause (A Regd society) vs. UOI – 394 ITR 220 (SC)*
- *CIT vs. Maulikkumar K. Shah – (2008) 307 ITR 137 (Guj.)*
- *ITO vs. Bharat A Mehta – 60 taxmann.com 31 (Guj.)*

Thus, it was submitted that in absence of any corroborative material, addition made merely on the basis of “entries” recorded in the seized material deserves to be deleted. Further, the Counsel for the assessee submitted that in case of Rohit C. Thakore, similar additions were made in the hands of the assessee’s brother as well which were based on the

same document BS-24 which was in possession of the Assessing Officer pursuant to the search. In the facts of the assessee's brother's case as well, the Assessing Officer has made similar allegation of undisclosed investment made by Rohit C. Thakore alongwith his father and the assessee's brother had also filed his rebuttal stating that he alongwith his father had only entered into a "brokerage deal". The ITAT at Para 47-49 of the decision in the case of **Rohit C. Thakore vs. DCIT in IT(SS)A No. 46 to 50/Ah/d2020** had deleted additions made under similar circumstances for A.Y. 2008-09. Accordingly, the Counsel for the assessee submitted before us that notably in this case as well, no sale or purchase deed was ever found by the Assessing Officer, no land Revenue records have been produced which could establish that the assessee or his father were the purchaser of such land, no corroborative evidence whatsoever had been produced by Ld. Assessing Officer which could show that the assessee alongwith his father had made any investment in the land whatsoever and hence the entire additions were made only on the basis of seized documents only and without any supporting evidences to establish the sanctity / veracity of such documents. Accordingly, it was submitted that it is fit case where penalty is liable to be deleted in the hands of the assessee under Section 271(1)(c) of the Act.

54. In response, the Ld. D.R. placed reliance on the observations made by Ld. Assessing Officer and Ld. CIT(A) while confirming the penalty in the hands of the assessee.

55. We have heard the rival contentions and perused the material available on record. In view of the detailed arguments given by the Ld. Counsel for the assessee, we are of the considered view that so far as penalty under Section 271(1)(c) of the Act is concerned, it is a fit case

where penalty is liable to be deleted. In this case, the entire addition has been made by the Assessing Officer only on the basis of seized material “in an ex-parte order passed under Section 144 of the Act” and from the contents of the order it is observed that the Assessing Officer had no concrete proof / corroborative evidences to establish that the assessee, alongwith his father had in fact purchased the property in question. No notices were issued to the so-called “sellers” of such property to confirm whether any sale of such property had been made to the assessee and his father, no land revenue records were called for to establish that the assessee and his father had in fact purchased the property, there was no “sale deed / purchase deed” to establish that the assessee and his father had purchased the property in question and the entire additions in these facts were only made on the basis of entries made in seized documents, without any corroborative evidence to support the factum of purchase of such property. Accordingly, in our considered view, this is a fit case where levy of penalty under Section 271(1)(c) of the Act is liable to be deleted.

56. In the result, the appeal of the assessee is allowed for A.Y. 2007-08.

Now we shall take up ITA No. 214/Ahd/2020 (Ashokji Chanduji Thakore for A.Y. 2008-09)

57. The assessee has taken the following grounds of appeal:

“1. The Ld. CIT (A) has erred on facts and in law in upholding the assessment order u/s 271(1)(c) of the Income Tax Act, 1961 passed by the Assessing Officer on 28.03.2016.

2. The Ld. CIT (A) has erred on facts and in law in upholding the penalty levied on additions made by the Assessing Officer on account of alleged

unexplained investment of Rs. 2,00,000/- on account of unexplained investment in Kasindra which has been added without considering & appreciating the facts of the case. And also the penalty levied on additions made by the Assessing Officer on account of alleged unexplained investment of Rs. 3,49,930/- on account of unexplained investment in land at Bopal Block No. 73 which has been added without considering & appreciating the facts of the case and accordingly levied penalty on the same by Assessing officer which has been upheld by CIT Appeal.

3. *The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal.”*

58. The brief facts of the case are that a search was conducted at the premises of the assessee on 21.09.2010. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee alongwith Shri Rohit C. Thakore had purchased land at Kasindra for a sum of Rs. 4,00,000/- on 25.05.2007. Further, the Assessing Officer observed that the assessee alongwith other co-owners had purchased certain land on 29.03.008. The share of the assessee in the said land was Rs. 3,46,930/-. Since the assessee was unable to explain the source of investment in the aforesaid two properties, the Assessing Officer added a sum of Rs. 2,00,000/- and Rs. 3,46,930/- as unaccounted investment in land in the hands of the assessee. The Assessing Officer also levied penalty of Rs. 1,16,471/- under Section 271(1)(c) of the Act. The penalty levied by the Assessing Officer was confirmed by Ld. CIT(A) with the following observations:

“Even in the present case Appellant has failed to establish unaccounted income from the land transactions at Kasindra of Rs.2,00,000/- and share of the assessee in the Bopa/ land was Rs.3,46,930/- which was more than the income shown by the appellant in his return of income. The act of the appellant is in mala fide, and Explanation 1 to section 271(1) would come into play and work to the disadvantage of the assessee. In this case assessee filed the inaccurate particulars leading to concealment for which, Explanation 1 to section 271(1)(c) would come into play and assessee will be liable for penalty. In view of the facts mentioned above, I am of the considered opinion that the appellant had made patently inaccurate particulars of income leading to concealment of income. Considering the facts discussed herein above, it is held that the appellant had concealed particulars of income as discussed above by filing inaccurate particulars of income. In view of the above discussion and judicial ratios (supra), and in absence of any bonafide explanation, it is held that Assessing Officer was

*justified in levying penalty of Rs. 1,16,477/- under Section 271(1)(c) of the Act.
The grounds of appeal are dismissed.*

4. *In result, the appeal of the appellant is dismissed.”*

59. Before us, the Counsel for the assessee submitted that so far as the addition of Rs. 2,00,000/- is concerned, the said investment in property was made by the assessee alongwith his brother Shri Rohit C. Thakore being the co-owner of property. It was submitted before us that assessments were framed in the name of Rohit C. Thakore for the same search carried out on 21.09.2010 and consequential penalty under Section 271(1)(c) of the Act was also levied with respect to the same property in the hands of Shri Rohit C. Thakore, being the co-owner of such property alongwith his brother i.e. the assessee. The matter travelled before the ITAT and the ITAT, Ahmedabad vide order in the case of **Rohit C. Thakore vs. DCIT in IT(SS)A No. 45/Ahd/2020** and others, deleted the additions (at Para 13-23 and also deleted the penalty at Para 25 of the order). Therefore, it was submitted that since similar additions have been deleted in the hands of the co-owners, there is no question of levy of penalty under Section 271(1)(c) of the Act. Secondly, so far as the additions of Rs. 3,46,930/- is concerned, the Counsel for the assessee submitted that this is an unabated assessment year and the perusal of the assessment order would clearly show that the underlying addition of Rs. 3,46,930/- towards unaccounted investment in land was not based on any incriminating material found and seized during the course of search and therefore, the addition itself was not justified. Nevertheless, at least so far as penalty is concerned, there is no question of levy of penalty under Section 271(1)(c), since the entire additions on account of investment in land of Rs. 3,46,930/- was made in absence of any incriminating material found during the course of search.

60. In response, the Ld. D.R. placed reliance on the observations made by the Assessing Officer and Ld. CIT(A) while confirming the levy of penalty under Section 271(1)(c) of the Act.

61. We have heard the rival contentions and perused the material on record.

62. In this case, the Counsel for the assessee submitted that similar addition had been made in the hands of Rohit C. Thakore as co-owner of property, which had been deleted by ITAT. However, on going through the case records, there is nothing on record to show that similar additions made in the hands of the assessee's brother Shri Rohit C. Thakore for a sum of Rs. 2 lakhs had been deleted by any of the appellate authorities. In the instant case, the quantum additions in the hands of the assessee have been confirmed by the appellate authority. Accordingly, since the additions have also been confirmed in the hands of the assessee, we are of the considered view that the Ld. CIT(A) has not erred in facts and in law in holding levy of penalty under Section 271(1)(c) of the Act in the instant facts. Accordingly, we confirm the levy of penalty of Rs. 2 lakhs in the hands of the assessee. Further, so far as addition of Rs. 3,46,930/- is concerned, the assessee had been asked to furnish source of investment in certain block of land purchased 29.03.2008. However, the assessee did not file any reply with regard to the source of investment in such land, during the course of assessment proceedings. Further, the additions in the hands of the assessee were also confirmed subsequently confirmed by the appellate authorities and even during the subsequent hearings the assessee was unable to furnish any evidence regarding source of investment in such property.

63. Accordingly, looking into the instant facts, we find no infirmity in order of Ld. CIT(A) so as to call for any interference.

64. The assessee's appeal is dismissed for A.Y. 2008-09.

Now we shall take up ITA No. 215/Ahd/2020 (Ashokji Chanduji Thakore for A.Y. 2009-10)

65. The assessee has taken the following grounds of appeal:

“1. The Ld. CIT(A) has erred on facts and in law in upholding the assessment order u/s 271(1)(c) of the Income Tax Act, 1961 passed by the Assessing Officer on 28.03.2016.

2. The Ld. CIT(A) has erred on facts and in law in upholding the penalty levied on additions made by the Assessing Officer on account of alleged undisclosed capital gain of Rs.2,61,93,070 on account of undisclosed capital gain on Bopal Survey No.73 which has been added without considering & appreciating the - facts that that relevant capital gain has been declared in return of income filled by the assessee. And also the penalty levied on additions made by the Assessing Officer on account of alleged deposit in bank of Rs.53,16,417 on account of unexplained deposits in bank which has been added without considering & appreciating the facts that that relevant bank account has been declared in return of income filled by the assessee and accordingly levied penalty on the same by Assessing officer which has been upheld by CIT Appeal.

3. The appellant also request to honourable court for condonation of delay in filling appeal.

4. The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal.”

66. The brief facts of the case are that a search was conducted at the premises of the assessee on 21.09.2010. During the course of assessment proceedings the Assessing Officer observed that the assessee was unable to explain the excess amount of bank deposit of Rs. 53,16,417/- in his bank account. Accordingly, a sum of Rs. 53,16,417/- was added as unexplained deposit in the hands of the assessee. Further, the Assessing Officer observed that certain block of land was sold by the assessee on 24.04.2008, however, on the basis of seized documents found during the

course of search action on 21.09.2010, the Assessing Officer found that the actual sale consideration of such land was Rs. 16,15,40,700/-. Accordingly, a sum of Rs. 2,61,93,070/- was added to the assessee's income as undisclosed capital gain on sale of Bopal land being 1/5th of assessee's share in such land). Penalty of Rs. 1,07,10,074/- under Section 271(1)(c) of the Act was levied in the hands of the assessee with respect to the aforesaid additions made in the assessment order. This levy of penalty was later confirmed by Ld. CIT(A) with the following observation:

*“Even in the present case Appellant has failed to establish unexplained sale proceeds of land of Block No.73 Bopal of Rs.2,61,93,070/- and the excess amount of bank deposit of Rs.53,16,417/- which was not shown in the Return of Income. Considering the facts discussed herein above, it is held that the appellant had concealed particulars of income as discussed above. In view of the above discussion and judicial ratios (supra), and in absence of any bonafide explanation, it is held that Assessing Officer was justified in levying penalty of Rs 1,07,10,074/- under Section 271(1)(c) of the Act. **The grounds of appeal are dismissed.***

4. *In result, the appeal of the appellant is **dismissed.** ”*

67. The assessee is in appeal before us against the aforesaid levy of penalty confirmed by the Ld. CIT(A)

68. On the basis of arguments of both the parties presented before us, we observe that so far as addition of Rs. 2,61,93,070/- is concerned (related to undisclosed capital gain on sale of Bopal land), similar addition was also made in the hands of Shri Rohit C. Thakore, with respect to the very same property and this addition was deleted in the hands of Shri Rohit C. Thakore by ITAT in IT(SS)A No. 46 & 47 and ITA No. 205 & 206/Ahd/2020 vide order dated 23.11.2021. The relevant extracts of the order of ITAT wherein similar additions were

deleted in the hands of the co-owner of this property, Shri Rohit C. Thakore are reproduced below for ready reference:

“62. Ld.AO harboured a belief that land at block no.73 was sold by these persons for a consideration of Rs.16,15,40,700/-. He calculated the share of assessee at 1/5th of the total. He further observed that the assessee himself has disclosed Rs.64.62 lakhs as business income from sale of this land, and remaining amount of Rs.2,58,46,140/- is added to the total income as undisclosed income for sale of land at survey no.73, Bopal. Appeal to the CIT(A) did not bring any relief to the assessee.

63. With the assistance of the ld.representatives, we have gone through the record carefully. No doubt, during the course of search documents exhibiting certain calculations were found. The case of the assessee is that first it had negotiated with Umangbhai Thakkar, and there were lot of encroachment and measurement problems. Ultimately, the deal was not materialized. Thereafter it was discussed with other persons, Shri Bapa Sitaram, but ultimately again the deal was not materialized. Assessee's family has purchased this land in March and sold in April. What is the evidence possessed by the AO to indicate that this land was not sold for a consideration of Rs.3.23 crores as disclosed by the assessee, rather it was Rs.16.15 crores ? Search was conducted at the premises of the assessee as well as other family members. What unexplained investments were noticed by the Revenue representing this difference of Rs.13 crores ? The ld.AO did not get it verified from the vendee who purchased this land; what are the source of fund with the vendee of Rs.13 crores over and above sale consideration stated in the sale deed ? There were certain rough notings which according to the assessee were by his father, who died in 2008 before the deal could be materialized. We could appreciate the case of the AO, had the said land was sold to Umang Hiralal Thakkar. During the negotiation there could be many merits and demerits discussed among the parties, but what was ultimate sale consideration accepted that has to be considered. The AO failed to bring any other corroborative evidence for buttressing his contentions. The assessee has specifically pointed out that the amounts collected from Shri Umang were returned to him, and the deal never taken place. The AO even did not bother to collect the sale deed. Apart from the above, the assessee's role has been assigned as confirming party; but it has not been brought to on record in what capacity. What rights were vested in the assessee in this land which has been relinquished by him. No documents were collected by the AO to this effect, as to why the assessee was called upon to sign as confirming party; whether any agreement to purchase was standing in the name of the assessee. Answer is negative; because land was purchased by the family in the month of March, and sold in the month of April. There is a substantial increase in the purchase price vis-à-vis sale price i.e. from Rs.13 lakhs to Rs.3.23 crores. It itself indicates that if any encroachment or other legal hurdles were there, those have been removed. To estimate assumed sale consideration at a figure of Rs.16.15 crores, there is no evidence except certain jottings which are not conclusive; nor cross-verified by the AO with corroborative evidence. Therefore, the addition is not sustainable in the hands of the assessee. This ground of appeal is allowed, and addition of Rs.2,58,46,140/- is deleted.”

69. Accordingly, we observe that since similar additions with respect to the same property in which the assessee was the co-owner has been deleted in the hands of the assessee Rohit C. Thakore, therefore, so far as levy of penalty under Section 271(1)(c) is concerned on account of undisclosed capital gain on this property, we are of the considered view that this is a fit case for deletion of levy of penalty, looking into the instant facts. Accordingly, the levy of penalty with respect to undisclosed capital gain on sale of Bopal land is liable to be deleted.

70. So far as levy of penalty with respect to addition of Rs. 53,16,417/- as unexplained bank deposit is concerned, we observe that this is an unabated assessment year and during the course of assessment proceedings despite being specifically asked to produce the source of such bank deposits, the assessee was unable to provide the same. Therefore, the additions were confirmed by the assessee in the absence of any information regarding source of such cash deposits coming from the assessee and subsequently, the additions were later confirmed by the appellate authorities in quantum proceedings. We also observe that this is an abated assessment year and therefore, the additions in quantum proceedings are not restricted to only the material found during the course of search proceedings. Accordingly, looking into the instant facts, wherein the appellate authorities, in quantum proceedings have also confirmed the additions in the case of the assessee, we accordingly uphold the levy of penalty under Section 271(1)(c) of the Act with respect to addition of unexplained deposit in bank amounting to Rs. 53,16,417/-, in the hands of the assessee.

71. In the result, the appeal of the assessee is partly allowed for A.Y. 2009-10.

Now we shall take up ITA No. 216/Ahd/2020 (Ashokji Chanduji Thakore for A.Y. 2010-11)

72. The assessee has taken the following grounds of appeal:

“1. The Ld. CIT(A) has erred on facts and in law in upholding the assessment order u/s 271(1)(c) of the Income Tax Act, 1961 passed by the Assessing Officer on 28.03.2016.

2. The Ld. CIT(A) has erred on facts and in law in upholding the penalty levied on additions made by the Assessing Officer on account of alleged deposit in bank of Rs.33,83,768 on account of unexplained deposits in bank which has been added without considering & appreciating the facts that that relevant bank account has been declared in return of income filled by the assessee and accordingly levied penalty on the same by Assessing officer which has been upheld by CIT Appeal.

3. The appellant also request to honourable court for condonation of delay in filling appeal.

4. The appellant craves for liberty to add fresh ground(s) of appeal and also to amend, alter, modify any of the grounds of appeal.”

73. The brief facts of the case are that search action was conducted at the premises of the assessee on 21.09.2010. During the course of assessment proceedings, the Assessing Officer observed that the assessee had made certain deposits in his bank account and the assessee was unable to offer any explanation for the excess amount of bank deposit of Rs. 33,83,768/-. Accordingly, a sum of Rs. 33,83,768/- was added as unexplained bank deposit in the hands of the assessee. Further, the Assessing Officer proceeded to levy penalty of Rs. 10,38,180/- under Section 271(1)(c) of the Act, with respect to the aforesaid addition. The Ld. CIT(A) confirmed the additions in the hands of the assessee with the following observations:

“Even in the present case Appellant has failed to establish unexplained deposits of Rs. 33,83,768/- in bank (cash and cheque) which was more than the income shown by the appellant in his return of income. Considering the facts discussed herein above, it is held that the appellant had concealed particulars of income as

discussed above. In view of the above discussion and judicial ratios (supra), and in absence of any bonafide explanation, it is held that Assessing Officer was justified in levying penalty of Rs. 10,38,180/- under Section 271(1)(c) of the Act. The grounds of appeal are dismissed.

4. *In result, the appeal of the appellant is dismissed.”*

74. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(A) confirming the levy of penalty under Section 271(1)(c) of the Act.

75. Before us, the Counsel for the assessee submitted that similar addition with respect to unexplained bank deposits had also been deleted in the case of the brother of the assessee Shri Rohit C. Thakore and the Counsel for the assessee placed reliance on the relevant extract of the order of Hon'ble ITAT (Para 56-57) of the said order wherein similar additions were deleted in the case of assessee's brother, Rohit C. Thakore.

76. Further, the Counsel for the assessee also placed reliance on the legal submission with respect to levy of penalty forming part of synopsis of arguments for A.Y. 2005-06.

77. In response, Ld. D.R. placed reliance on the observation made by Ld. CIT(A) in the appellate order.

78. In the instant case, certain facts are noteworthy. This is a case of abated assessment year and the Assessing Officer is not restricted to only make additions with respect to incriminating material found during the course of search only. Secondly, in our view, reliance cannot be placed on observations made by the ITAT in case of similar additions with respect to unexplained bank deposits / credit entries in the hands of the assessee's brother, since such relief had been granted taking into

consideration the particular facts of assessee's brother's case. It is not a case of unexplained sale consideration coming out the land co-owned by the assessee's brother, but separate cash deposits were made in assessee's brother's bank account for which he gave an independent explanation, which came to be accepted by Appellate Authorities. Relief was granted by ITAT in the assessee's brother's case taking into consideration the particular set of facts in assessee's brother's case and such order passed by ITAT has been rendered on separate set of facts. In our considered view, this order would have no bearing with respect to the facts relating to additions made in the hands of the assessee on account of unexplained deposits in his bank account for A.Y. 2010-11. As noted by us earlier, this is a case of abated assessment year and during the course of assessment proceedings the assessee was unable to provide any explanation with regard to excess deposits in his bank account amounting to Rs. 33,83,768/-. In absence of any explanation provide by assessee, a sum of Rs. 33,83,768/- was added as unexplained income in the hands of the assessee and in quantum appeal against the aforesaid addition, the Appellate Authorities also subsequently confirmed these additions in the hands of the assessee. Accordingly, looking into the instant facts, we are of the considered view that since the assessee was not able to provide any plausible explanation regarding the excess cash deposits in his bank account, there was no infirmity on the part of Ld. CIT(A) in confirming levy of penalty under Section 271(1)(c) of the Act in the hands of the assessee. Accordingly, looking into the instant facts, we find no infirmity in the order of Ld. CIT(A) so as to call for any interference.

79. In the result, assessee's appeal is dismissed for A.Y. 2010-11.

80. In the combined result,

- (i) ITA No. 210/Ahd/2020 appeal of the assessee is partly allowed.
- (ii) ITA No. 217/Ahd/2020 appeal of the assessee is dismissed.
- (iii) ITA No. 218/Ahd/2020 appeal of the assessee is allowed.
- (iv) ITA No. 211/Ahd/2020 appeal of the assessee is allowed.
- (v) ITA No. 212/Ahd/2020 appeal of the assessee is allowed.
- (vi) ITA No. 213/Ahd/2020 appeal of the assessee is allowed.
- (vii) ITA No. 214/Ahd/2020 appeal of the assessee is dismissed.
- (viii) ITA No. 215/Ahd/2020 appeal of the assessee is partly allowed.
- (ix) ITA No. 216/Ahd/2020 appeal of the assessee is dismissed.

This Order pronounced in Open Court on

31/07/2024

Sd/-

**(NARENDRA P. SINHA)
ACCOUNTANT MEMBER**

Ahmedabad; Dated 31/07/2024

TANMAY, Sr. PS

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)

आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad