

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "E" MUMBAI**

**BEFORE SHRI OM PRAKASH KANT (ACCOUNTANT MEMBER)  
AND  
SHRI SANDEEP SINGH KARHAIL (JUDICIAL MEMBER)**

**ITA No. 6133/MUM/2025  
Assessment Year: 2011-12**

DY. Commissioner of Income Tax  
Room No. 420, Kautilya Bhawan,  
G Block, Bandra Kurla Complex,  
Mumbai- 400051

**Vs.** Kanakia Spaces Realty  
Private Limited  
Plot No. 8, Vilco Centre, 3<sup>rd</sup>  
Floor, Subhash Road, Opp  
Garware House, Vile Parle  
East, Mumbai- 400057  
**PAN NO. AACCC 4199 F**  
**Respondent**

**Appellant**

Assessee by : Ms. Shweta Vardhan  
Revenue by : Shri. Hemanshu Joshi, SR DR

Date of Hearing : 25/11/2025  
Date of pronouncement : 20/01/2026

**ORDER**

**PER OM PRAKASH KANT, AM**

This appeal has been filed by the Revenue challenging the order passed by the learned Commissioner of Income-tax (Appeals)-52, Mumbai, whereby the penalty levied by the Assessing Officer for the assessment year 2011-12 has been deleted.

2. At the outset, the learned counsel for the assessee submitted that the very assessment proceedings, on the basis of which the impugned penalty was levied, have already been quashed by the



Tribunal vide its order in ITA No. 1639/Mum/2024 and Cross Objection No. 86/Mum/2024. It was, therefore, contended that once the foundation of the assessment itself no longer survives, the consequential penalty proceedings are rendered unsustainable in law.

3. We have heard the rival submissions and perused the material available on record. The learned Commissioner of Income-tax (Appeals), while adjudicating the penalty appeal, has taken note of the fact that the assessment order passed under section 143(3) read with section 147 of the Income-tax Act, 1961 had already been subjected to appellate proceedings. The learned Commissioner of Income-tax (Appeals) further recorded that, pursuant to the decision of the Tribunal in the quantum proceedings, the entire assessment order stood quashed. Consequently, the very basis on which the penalty under section 271(1)(c) was levied ceased to exist. The relevant finding of the Ld. CIT(A) is reproduced as below:

*“6.1 Ground No.1 raised by the appellant pertains to levy of penalty u/s 271(1)(c) of the Act amounting to Rs. 1,69,950/-. I have considered the facts of the case, submissions made by the appellant. In this case, the appellant has e-filed his return of income on 28.09.2011 declaring income of Rs. 3,05,31,399/-. Thereafter, the appellants case was re-opened on the basis of the information received from DGIT(Inv.), Mumbai that appellant had made bogus purchases amounting to Rs.13,52,010/- from the entities M/s Siddhivinayak Trading Company, M/s Subh Enterprises and M/s R B Enterprises amounting to Rs. 31,149/-, 3,29,913/- & 9,90,948/- respectively. Accordingly, assessment was completed on 21.03.2016 assessing total income at Rs. 7,27,77,186/-, The additions were made on account of bogus purchases of Rs. 13,52,010/- and accommodation entry donation of*



*Rs. 3,00,00,000/-, The AO has also initiated penalty u/s 271(1)(c) of the Act in assessment order for furnishing inaccurate particulars of income. Aggrieved by the assessment order, the appellant filed appeal before Ld.CIT(A). The Ld.CIT(A) vide his order dated 30.01.2024 has deleted the addition made on account of accommodation entry of donation amounting to Rs. 3,00,00,000/-. However, on the issue of the bogus purchase, the Ld.CIT(A) restricted the addition amount to Rs. 1,69,001/- as against Rs. 13,52,010/- as added by the AO. Pursuant to the action of Ld.CIT(A), the AO imposed penalty of Rs. 56,140/- on Bogus Purchase of Rs. 1,69,001/- as determined by the Ld.CIT(A).*

*6.2 Thereafter, revenue as well as appellant preferred appeal before Hon'ble ITAT vide ITA No.1639/Mum/20224 & CO No.86/Mum2024 respectively. Further, the appellant submitted that the Hon'ble ITAT vide its pronouncement dated 20.12.2024 has quashed the assessment order and dismissed the appeal of the revenue and on other hand allowed the appeal of the appellant. Since, the Hon'ble ITAT has quashed the assessment order u/s 143(3) r.w.s 147 dated 21.03.2016, then the penalty u/s 271(1)(c) of the Act levied by the AO become infructuous and unsustainable. Therefore, the AO is directed to delete the penalty u/s 271(1)(c) amounting to Rs. 56,137/- for A.Y 2011-12. Hence, the appeal of the appellant on Ground No.1 stands Allowed.”*

4. The above findings recorded by the learned Commissioner of Income-tax (Appeals), clearly demonstrate that the penalty was levied solely with reference to the additions made in the assessment order. Once those additions and, indeed, the assessment itself have been annulled by the Tribunal, the penalty proceedings cannot independently survive. It is a well-settled principle of law that penalty proceedings are accessory and consequential in nature and cannot stand when the substantive assessment giving rise to the penalty is set aside or quashed.



5. In the present case, there is no dispute that the assessment order dated 21.03.2016 has been quashed by the Tribunal in the quantum proceedings. In such circumstances, the learned Commissioner of Income-tax (Appeals) was fully justified in holding that the penalty levied under section 271(1)(c) of the Act had become infructuous and unsustainable. We find no infirmity, legal or factual, in the reasoning or the conclusion arrived at by the learned Commissioner of Income-tax (Appeals).

6. Accordingly, the order of the learned Commissioner of Income-tax (Appeals) deleting the penalty is upheld.

7. In the result, the appeal filed by the Revenue is dismissed.

**Order pronounced in the open Court on 20/01/2026.**

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

**Sd/-  
(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai;  
Dated: 20/01/2026  
Disha Raut, Stenographer

**Copy of the Order forwarded to :**

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

//True Copy//

BY ORDER,

(Assistant Registrar)  
**ITAT, Mumbai**