

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

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI MAKARAND VASANT MAHADEOKAR,
ACCOUNTANT MEMBER**

**ITA No.5776/Mum/2025
(Assessment Year :2008-09)**

Income Tax Officer Room No.129, 1 st Floor Aayakar Bhavan M.K. Road, Mumbai - 400 020	Vs.	M/s. Amaya Infrastructure Pvt. Ltd., Room No.R/3, Aai Jivdani Chawl Darshan Chawl Virar East Palghar- 401 020
PAN/GIR No.AAGCA7304L		
(Appellant)	..	(Respondent)

Assessee by	Shri Tanzil Padvekar
Revenue by	Shri Rajesh Kumar Yadav, CIT DR
Date of Hearing	22/01/2026
Date of Pronouncement	29/01/2026

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The present appeal has been preferred by the Revenue against the order dated 04.07.2025 passed by the National Faceless Appeal Centre, Delhi, whereby the learned Commissioner of Income Tax (Appeals) has deleted the penalty levied under section 271(1)(c) of the Income-tax Act, 1961, for the Assessment Year 2008-09.

2. The solitary ground raised by the Revenue reads as under:

“Whether the Ld. CIT(A) has erred in deleting the penalty of Rs. 32,65,02,996/- without appreciating that the Revenue has filed appeal before the Hon’ble Bombay High Court (ITXAL/27362/2024) against quantum and the same is pending?”

3. At the outset, it is an admitted and undisputed position, fairly conceded by both the parties, that the very quantum addition which constituted the sole foundation for the levy of the impugned penalty stood deleted by this Tribunal vide its order dated 10.11.2023. It is equally not in dispute that the penalty under section 271(1)(c) had been levied entirely with reference to the said addition and had no independent or separable basis dehors the quantum proceedings.

4. Once the very basis on which the penalty was levied no longer survives, the penalty itself cannot be sustained. Penalty proceedings are purely consequential in nature. Once the very addition on which the penalty rests does not survive judicial scrutiny, the penalty cannot independently stand and must necessarily fall. This legal position is well-settled and requires no further elaboration.

5. The contention of the Revenue that an appeal against the quantum order is pending before the Hon’ble Bombay High Court does not, in our considered view, carry the matter any further. The mere pendency of an appeal does not efface

the binding nature of the Tribunal's order unless the same is stayed, set aside or reversed by a superior forum. So long as the quantum addition stands deleted by a subsisting order of this Tribunal, the levy of penalty cannot be sustained on a speculative premise that the quantum may be restored at some indeterminate future point.

6. The learned CIT(A), therefore, in deleting the penalty, has merely applied the settled judicial principle that penalty proceedings cannot outlive the quantum addition which alone gave rise to them. No perversity, illegality or infirmity can be discerned in the impugned appellate order warranting any interference.

7. In view of the foregoing discussion, we find no merit in the ground raised by the Revenue. The same is accordingly dismissed.

8. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 29th January, 2026.

**Sd/-
(MAKARAND VASANT
MAHADEOKAR)**

ACCOUNTANT MEMBER

Mumbai; Dated 29/01/2026
KARUNA, *sr.ps*

**Sd/-
(AMIT SHUKLA)**

JUDICIAL MEMBER

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai