

IN THE INCOME TAX APPELLATE TRIBUNAL PANAJI BENCH

PANAJI

BEFORE SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER &amp;

SHRI GD PADMAHSHALI, ACCOUNTANT MEMBER

I T A. No.137,138,139&amp;140/PAN/2023

(A.Y. 2007-08, 2009-10,2010-11&amp;2011-12)

KAMAT CONSTRUCTION PVT LTD., F/2, INDIRA APARTMENTS, CAETANOALBURQUERQUE ROAD, PANAJI, GOA-403001.	Vs.	THE ASSISTANT COMMISSIONER OF INCOME TAX, CIRCLE 1(1), PANAJI, GOA-403001.
PAN.No. AAACK8135H		
(अपीलार्थी/Appellant)		(प्रत्यर्थी/Respondent)

Assessee by	Shri.Nishant Thakkar & Ms Jasmin Amalsadvala.AR
Revenue by	Shri.Satish M.CIT DR

सुनवाईकीतारीख/Date of Hearing	25.02.2026
घोषणाकीतारीख/Date of Pronouncement	02.04.2026

**ORDER****PER BENCH:**

These four appeals are filed by the assessee against the separate orders of Commissioner of Income Tax(CIT(A) passed for A.Y. 2007-08, 2009-10 & 2010-11 u/s 27!(1)(C) and u/sec250 of the Act and for the A.Y. 2011-12 passed u/s 271AAA and u/sec250of the Act. The assessee has raised the grounds of appeal challenging the order of CIT(A) sustaining the levy of penalty and also additional ground of appeal for the A.Y.2011-12 that the impugned A.Y does not fall within the ambit of the term “specified previous year”

2. Since the issued involves in these appeals are common and identical. Hence, they are clubbed and heard and a consolidated order is passed for the sake of convenience. We shall take up ITA 137/PAN/2023 for A.Y. 2007-08 as a lead case and the facts narrated.

3. The brief facts of the case are that the assessee company is engaged in the business as builders, developers and hospitability services. The appellant has filed the return of income for the A.Y. 2007-08 on 31-10-2007 disclosing a total income of Rs. 53,73,755/- and the return was processed u/s 143(1) of the Act. A search u/s 132 of the I.T Act was carried out on 31-01-2012 on the assessee and notice u/s 153A of the I.T. Act, 1961 was issued. Further, notice u/s 142(1) and 143(2) of the Income Tax Act, 1961 was issued for the impugned

assessment year and the Ld.AR of the assessee appeared from time to time and filed the submissions. And the assessment was completed vide order dated 31.01.2014 passed u/s 143(3) r.w.s.153A of the Act with the addition u/s 2(22)(e) of the Act on account of deemed dividend. As per the assessment order the penalty proceedings u/s 271(1) (C) of the Act was stated to be initiated. The assessee preferred an appeal against the order u/s 143(3) r.w.s. 153A of the Act before the Commissioner of Income Tax (Appeals)-1 against the impugned assessment order. The Ld. Commissioner of Income Tax (Appeals) passed an order dated 28-08-2015 deleting the additions made on account of deemed dividend.

4.The Ld. Commissioner of Income Tax Appeals held that the transactions are in the nature of business advances and that the provisions of Section 2(22)(e)of the Act with regards to shareholding are not fulfilled in case of the assessee and that the advances are in the nature of business transactions and do not fall within the purview of deemed dividend. Subsequently, the Income Tax Department has filed an appeal against the order of the Ld. Commissioner of Income Tax (Appeals) before the Hon'ble ITAT, Panaji Bench. The Hon'ble ITAT passed an order dated 30-03-2017 confirming CIT(A) order deleting the addition on account of deemed dividend in respect of some amounts by holding the same as business transactions. The assessee has filed an appeal against the order of the

Hon'ble ITAT before the High Court of Bombay at Goa. The appeal was admitted and orders have been passed staying the recovery proceedings under the order of the Hon'ble ITAT. Consequent to the order of the Hon'ble ITAT, the Ld. AO has issued notice dated 05.10.2017 and served on 11.10.2017 for levy of penalty. The assessee has filed the explanations and submissions before the Ld. AO vide letter dated 23-10-2017. Whereas The Ld. AO was not satisfied with the explanations and levied penalty u/sec271(1)(c) of the Act vide order dated 30.10.2017. Aggrieved by the penalty order the assessee has filed appeal before the CIT(A). Whereas the CIT(A) has confirmed the penalty levied by AO and dismiss the assessee appeal. Aggrieved by the CIT (A) order, the assessee has filed an appeal with the Honble Tribunal.

5. At the time of hearing, the Ld.AR submitted that the CIT(A) has erred in confirming the action of the Assessing officer overlooking the information of the proceedings. The Ld.AR mentioned that the CIT(A) has not dealt on the details, documents and evidences filed in the appellate proceedings that the levy of penalty is based solely upon assessment information and no independent findings are made in the penalty proceedings and the A.O has ignored the submissions and levied penalty without providing sufficient opportunity of hearing and The Ld.AR prayed for allowing the appeal supported the submissions with the

factual paper book and judicial decisions. Per Contra, the Ld.DR supported the order of the CIT(A).

6. We heard the rival submissions and perused the material on record. The sole crux of the disputed issue envisaged by the Ld.AR that the CIT(A) has erred in sustaining the levy of penalty made by the Assessing Officer without providing proper opportunity and overlooking the facts and material evidences. The assessee has filed the details before the lower authorities and the CIT(A) has not considered the documents and information supporting the claim of the assessee. The Ld.AR highlighted on the submissions made in the proceedings Prima-facie, the CIT(A) has dealt on the findings of the AO and the penalty is levied solely based upon the assessment order and no independent findings and also ignoring the material filed by the assessee. Therefore, We considering the facts, circumstances and principles of natural justice shall provide with one more opportunity of hearing and accordingly restore the disputed issue for the limited purpose to the file of the Assessing Officer to adjudicate a fresh and the assessing officer shall provide adequate opportunity of being heard to the assessee and the assessee should also cooperate in submitting the information. And these grounds of appeal of the assessee are allowed for statistical purpose.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

**ITA 138/PAN/2023, AY 2009-10 & ITA 139/PAN/2023  
AY 2010-11**

8. As the facts and circumstances in these two appeals are identical to ITA No.137/PAN/2023 for the A.Y 2007-08 (except variance in figures) and the decision rendered in above paragraphs 6&7 would apply mutatis mutandis for these appeal also. Accordingly, the grounds of appeal of the assessee are allowed for statistical purpose.

**ITA.No.140/PAN/2023.A.Y.2011-12.**

9. The Ld.AR submitted that the penalty u/sec271AAA of the Act cannot be levied as preconditions for initiating penalty are not fulfilled and the penalty cannot be levied on the deeming provisions of section 2(22)(e) of the Act .The Impugned A.Y.2011-12 does not fall within the ambit of the term “specified previous year” as defined in the explanation to section 271AAA of the Act. Further the Ld.AR relied on the decision of interpreting the words “specified year” as defined u/s 271AAA of the Act in the case of Mahendra R. Gupta Vs. DCIT (38 taxmann.com 391) “wherein it was held that the specified year is the previous year in which the search is conducted or the previous year which has expired before the date of search in conducted or the previous year which has expired before the date of search but the due date for filing for return of

income u/s 139(1) of the Act has not expired and the assessee has not furnished the return of income before the dated of search. Whereas the impugned A.Y.2011-12 is not the specified year, hence considering the facts, circumstances and submissions, we set aside the order of the CIT(A) and direct the Assessing officer to delete the penalty u/sec271AAA of the Act as it is not applicable.

10. In the result the three appeals ITA.No.137,138 &139/PAN/2023 are allowed for statistical purposes. And ITA.No.140/PAN/2023 is allowed.

Order Pronounced in the open court on 02.04.2026.

**Sd/-**

**(GD PADMAHSHALI)**

**ACCOUNTANT MEMBER**

Panaji, Dated: 02/04/2026

**Sd/-**

**(PAVAN KUMAR GADALE)**

**JUDICIAL MEMBER**

**Copy of the Order forwarded to:**

1. The Appellant,
2. The Respondent
3. The CIT(A)-
4. CIT
5. DR, ITAT,
6. Guard file.

//True copy//

BY ORDER,  
(Asstt. Registrar)ITAT,  
Panaji

		Date	<u>Initial</u>	
1.	Draft dictated on			PS
2.	Draft placed before author			PS
3.	Draft proposed & placed before the second member			PS
4.	Draft discussed/approved by Second Member.			PS
5.	Approved Draft comes to the Sr.PS/PS			PS
6.	Kept for pronouncement on			
7.	File sent to the Bench Clerk			
8.	Date on which file goes to the AR			
9.	Date on which file goes to the			

	Head Clerk.			
10.	Date of dispatch of Order.			
11.	Dictation Pad is enclosed			