

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD “B” BENCH**

**(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER  
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)**

[Through Virtual Court]

**ITA. No: 102/Ahd/2019  
(Assessment Years: 2011-12)**

<b>The Asstt. Commissioner of Income-tax (Exemptions), Circle-1, Ahmedabad</b>	<b>Gujarat Housing Board 1<sup>st</sup> Floor, F A &amp; C A O Department, Gujarat Housing Board Building, Pragatinagar Cross Road, Naranpura</b>
<b>(Appellant)</b>	<b>PAN No. AAALG0206E (Respondent)</b>

**Appellant by : Shri R.R. Makwana  
Respondent by : Ms. Arti N. Shah, A.R.**

**(आदेश)/ORDER**

Date of hearing : 10 -03-2021  
Date of Pronouncement : 15-03-2021

**PER MAHAVIR PRASAD, J.M.**

1. This appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax ('hereinafter called CIT(A)') order no. CIT(A)-9/10025/ACIT(E), Cir-

1/17-18 order dated 19/11/2018 arising out of penalty order dated 17/03/2017.

Revenue has taken following grounds of appeal:

- 1. Whether on the facts and in the circumstances of the case and in law the Id. CIT(Appeals) was justified in holding that the penalty of Rs.3,95,05,185/- levied under section 271(1)(c) of the Income tax Act, 1961, does not survive without appreciating the fact that the decision of the Hon. ITAT in respect of quantum appeal in assessment year 2011-12 has not attained finality, as the department has filed Special Leave Petition before the Hon'ble Supreme Court, against the decision of Hon. High Court in Tax Appeal No. 752 of 201.*
- 2. The Revenue craves to add, alter, amend, modify, substitute, delete and/or rescind all or any Grounds of Appeal on or before the final hearing, in necessity so arises.*

2. Facts of the case are that in this case, the assessment was finalized u/s. 144 of the I.T. Act treating the income shown as the assessed income. In the absence of the supporting evidences, the expenses made by the trust such as addition to assets, expenses on property, expenses for the object of trust, deficit on sale of property/items, exemptions claimed u/s. 11(1)(a) & 11(2) of the Act were not allowed and the income of assessee was assessed at Rs. 38,45,98,670/- and penalty proceedings u/s. 271(1)(c) were also initiated.
3. At the outset, Ld. A.R. contended that in quantum proceedings ITAT has set aside this issue back to the file of the Assessing Officer with the direction to the A.O. to thoroughly examine primary level record material and activities performed by the assessee accordingly and to decide afresh appeal of the assessee and prayed before us. Penalty proceedings appeal may also be set aside to the file of the A.O. to decide afresh along with quantum proceedings.

4. On the other hand, if matter is set aside to the file of the A.O. Ld. D.R. has no objection.
5. We have heard both the parties and gone through the impugned order. We think that prayer of the Ld. A.R. is justifiable and can be accepted as penalty proceedings is arising from a quantum proceedings since quantum proceedings has already been set aside to the file of the A.O. in ITA No. 1224/Ahd/2016 vide order dated 23/01/2018 has already been set aside to the file of the ld. A.O. to decide afresh after considering all the material available with the ld. A.O. Thus, penalty appeal also set aside to the file of the ld. A.O. to decide afresh after giving an opportunity of being heard to the assessee and will decide as per law.
6. In the result, appeal filed by the Revenue is allowed for statistical purposes. .

Order pronounced in Open Court on	15 - 03- 2021
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**Sd/-**  
**(AMARJIT SINGH)**  
**ACCOUNTANT MEMBER True Copy**  
Ahmedabad: Dated 15/03/2021

**Sd/-**  
**(MAHAVIR PRASAD)**  
**JUDICIAL MEMBER**

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar  
ITAT,Ahmedabad