

**आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'SMC' ,मुंबई**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCHES, 'SMC' MUMBAI**

**श्री जोगिन्दर सिंह, न्यायिक सदस्य के समक्ष**  
**Before Shri Joginder Singh, Judicial Member**

**ITA No.1843/Mum/2015**  
**Assessment Year: 2006-07**

Income Tax Act Officer 14(2)(3) Room No. 609, 6 <sup>th</sup> Floor Piramal Chambers, Parel Mumbai 400012	<b><u>बनाम/</u></b> <b>Vs.</b>	Shri Kapil Ashok Bajaj 9, Sea Glimpses 7 Bungalow, J.P. Road Andheri (W) Mumbai 400061
(राजस्व /Revenue)		(निर्धारिती /Assessee)
PAN. No.AFBPB7764A		

राजस्व की ओर से / Revenue by	Shri Rajesh Ojha, JCIT
निर्धारिती की ओर से / Assessee by	Shri Sandesh Rane

सुनवाई की तारीख / <b>Date of Hearing :</b>	<b>11/07/2016</b>
<b>आदेश की तारीख /Date of Order:</b>	<b>11/07/2016</b>

**आदेश / O R D E R**

Per Joginder Singh (Judicial Member)

The instant appeal has been filed by the Revenue for Assessment Year 2006-17 against the order of Ld. Commissioner of Income Tax (Appeals)-36, Mumbai dated 22/01/2015, challenging deletion of penalty imposed under

section 271(1)(c) of the Income Tax Act, 1961 (hereinafter the Act) on the plea that the learned first Appellate Authority did not appreciate the fact that wrong claim of deduction was made by the assessee under section 80IB(10) of the Act and further without considering the decision from Hon'ble Apex Court in Dharmendra Textile Processors (306 ITR 277) (SC).

2. On the other hand, Shri Sandesh Rane, learned counsel for the Assessee, defended the conclusion arrived at in the impugned order by contending that neither there is concealment of income nor furnishing of inaccurate particulars of such income. Therefore penalty is not leviable.

3. I have considered the rival submissions and perused the material available on record. The facts in brief are that the assessee originally declared nil income in its return. A survey action under section 133A of the Act was carried out at the business premises of the assessee on 24.08.2007. The assessee did not claim any additional income and practically nothing really much turns during the survey. During the year the assessee had included the profits/results from B and C wings of Vastu Project at Thane. The assessee claimed exemption/deduction under section 80IB(10) in respect of the profit from Vastu Project. Assessment was completed under section 143(3) of the Act denying the claimed deduction sought under section 80IB(10). The learned Assessing Officer imposed penalty under section 271(1)(c) of the Act.

4. On appeal before the learned CIT(A) the impugned penalty was deleted against which the Revenue is in appeal before this Tribunal.

5. If the observation made in the assessment order, leading to addition made to the total income, conclusion drawn in the impugned order, material available on record, assertions made by the ld. respective counsel, if kept in juxtaposition and analyzed, I find that a perusal of the fact shows that the penalty was imposed under section 271(1)(c) of the Act with respect to disallowance of claim made under section 80IB(10) of the Act with reference to B and C wings of Vastu Projects at Thane. Broadly the disallowance was made by the Assessing Officer that the project on which construction was made was having the area less than one acre and some of the flats, sold by the assessee were exceeding the area of 1000 sq.ft. The explanation of the assessee was not found convincing by the Assessing Officer. There is no denial to the fact that the project was completed on the basis of plans approved by the competent authority. So far as the issue of area exceeding 1000 sq.ft. it was explained that the flats were bought independent of each other and at the later stage the buyers/occupants got them combined. It is also noted that while adjudicating the quantum addition the explanation of the assessee was accepted by the learned First Appellate Authority as is mentioned in para 5.7 of the impugned order. Considering the totality of facts and the decision from Hon'ble Apex Court in Reliance Petroproducts Ltd. (322 ITR 152) (SC), CIT vs. Fortis Financial Services (ITA No. 243 of 2011 and 244

of 2011) (Del), Shivlal Desai & Sons (114 ITR 377) (Bom), Indersons Leathers (329 ITR 167) (P&H) I found force in the argument of the learned Counsels for the assessee. It is not the case of the Revenue that either the assessee concealed its income or furnished inaccurate particulars of such income. The Hon'ble Apex Court in Reliance Petroproducts P. Ltd. (supra) clearly held that in order to expose the assessee to the penalty, unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing inaccurate particulars. Therefore it is obvious that in order to attract the penalty provision under section 2171(1)(c) either there should be concealment of income or furnishing of inaccurate particulars. There can be no dispute that everything would depend up on the written filed by the assessee because which is the basic document where the assessee can furnish the particulars of his income. In view of the factual matrix and the judicial decisions discussed hereinabove I find no infirmity in the conclusion rendered by the CIT(A). It is affirmed.

6. Finally, the appeal of the Revenue is dismissed.

This order was pronounced in the open court in the presence of the ld. representative from both sides at the conclusion of the hearing on 11/07/2016.

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated : 11/07/2016

n.p, P.S./नि.स.

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

1. अपीलार्थी / The Appellant (Respective assessee)
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT-9, Mumbai.
4. आयकर आयुक्त / CIT(A)-36 , Mumbai,
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR,  
SMC, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

**आदेशानुसार/ BY ORDER,**

सत्यापित प्रति //True Copy//

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

**आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**