



ITA Nos. 3447 & 3453/Mum/2014  
Assessment Year : 2007-08

**आयकर अपीलिय अधिकरण “सी” न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“C” BENCH, MUMBAI**

श्री डी.टी. गरासिया, न्यायिक सदस्य एवं  
श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष ।

**BEFORE SHRI D.T. GARASIA, JM AND  
SHRI MANOJ KUMAR AGGARWAL, AM**

आयकर अपील सं./I.T.A. No.3447 /Mum/2014  
(निर्धारण वर्ष / Assessment Year: 2007-08)

<b>Prem Kumar T. Batra</b> 321, Trilok Building 1 <sup>st</sup> Floor Near Madhupark, Khar(W) Mumbai – 400 052	<b>बनाम/ Vs.</b>	<b>Assistant Commissioner Of Income Tax</b> Central Circle 18 & 19 Aaykar Bhavan Mumbai -400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AABPB-3511-G</b>		
(आपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

&

आयकर अपील सं./I.T.A. No.3453 /Mum/2014  
(निर्धारण वर्ष / Assessment Year: 2007-08)

<b>Chaturbhuj T. Batra</b> 321, Trilok Building 1 <sup>st</sup> Floor Near Madhupark, Khar(W) Mumbai – 400 052	<b>बनाम/ Vs.</b>	<b>Assistant Commissioner Of Income Tax</b> Central Circle 18 & 19 Aaykar Bhavan Mumbai -400 020
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. <b>AABPB-3512-F</b>		
(आपीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shailesh Parmar, Ld. AR
<b>Revenue by</b>	:	V.Vidhyadhar, Ld. DR



सुनवाई की तारीख / <b>Date of Hearing</b>	:	28/07/2017
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	04/10/2017

## आदेश / ORDER

### Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeals by separate assessee for Assessment Year [AY] 2007-08 assails the separate order of First Appellate Authority *qua* confirmation of penalty u/s 271(1)(c). Since common facts are involved in both appeals, we dispose-off the same by way of this common order for the sake of convenience and brevity. First we take up ITA No.3447/Mum/2014 which contest confirmation of certain penalty of Rs.19,20,868/- u/s 271(1)(c) by Ld. Commissioner of Income Tax(Appeals)-39 [CIT(A)], Mumbai dated 14/02/2014.

### ITA No. 3447/Mum/2014 AY 2007-08 Prem Kumar T. Batra

2.1 The assessee has raised the following effective grounds of appeal:-

2. *On the facts and circumstances of the appellants case and in law Ld. CIT(A) erred in confirming the A.O. action in imposing penalty of Rs.19,20,868/- by invoking the provisions of Section 271(1)(c) of the Income Tax Act, 1961.*

3. *On the facts and circumstances of the appellants case and in law Ld. CIT(A) failed to appreciate that additions made by the A.O. & confirmed by the Ld. CIT(A) are based on estimates & presumptions only and therefore, no penalty was leviable.*

2.2 Facts leading to the same are that the assessee is a member of *Batra Group* who were *builders and engaged in construction activity*. Consequent to search operation u/s 132 on the said group on



18/01/2007, the assessee was also served with notice u/s 153A dated 27/08/2007. In response to the same, the assessee filed return of income for impugned AY on 22/09/2008 at Rs.27,49,160/-.

2.3 Since the search was conducted in the impugned AY, the assessment was completed u/s 143(3) at Rs.1,76,32,180/- after certain additions of Rs.1,48,83,019/-. The quantum additions, upon appeal to first appellate authority was reduced to Rs.58,73,348/- which comprised of following items:-

<b>No.</b>	<b>Particulars</b>	<b>Amount (Rs.)</b>
1.	Cash Component of brokerage	53,28,348/-
2.	Investment in Diamond Jewellery	4,45,000/-
3.	Household Expenditure	1,00,000/-
	<b>Total</b>	<b>58,73,348/-</b>

2.4 Consequently, penalty proceedings u/s 271(1)(c) were initiated in the quantum assessment order by Ld. AO and the assessee was saddled with penalty of Rs.19,20,868/- on 29/03/2012 by invoking Explanation-1 to Section 271(1)(c). The penalty was further contested with partial success before Ld.CIT(A) vide impugned order dated 14/02/2014. The Ld. CIT(A) noted that the assessee could not give satisfactory explanation of money, jewellery and entries found in the papers impounded during the course of search. Further, no documentary evidences could be adduced by assessee and the assessee failed to disclose the correct income in the return of income. Finally, Ld. CIT(A) confirmed penalty on all additions except additions on account of Household withdrawals. Aggrieved, the assessee is in further appeal before us and contest confirmation of penalty.



3. The Ld. Counsel for assessee [AR], at the outset, drew our attention to the fact that the assessee got further relief against quantum additions from this Tribunal vide ITA No. 8438/Mum/2010 order dated 06/01/2016. A copy of the same has been placed before us. The Ld. DR, while fairly conceding the same, placed reliance on the stand of lower authorities *qua* penalty on remaining additions and contended that the assessee was required to reflect true and correct income in the return and the failure to do so has rightly attracted the penalty.

4. Heard the rival contentions and perused relevant material on record. After going through the same, first of all, we summarize the net additions which has finally been sustained by the Tribunal and which could be the subject matter of penalty in the following manner:-

<b>No.</b>	<b>Particulars</b>	<b>Amount (Rs.)</b>
1.	<i>Credit in Savings Bank Account</i>	1,89,260/-
2.	<i>Sundry Creditors</i>	9,20,000/-
3.	<i>Cash found at the residence</i>	2,27,000/-
4.	<i>Investment in Diamond Jewellery</i>	4,45,000/-
	<b>Total</b>	<b>17,81,260/-</b>

5. The Ld. AR explained that addition of Rs.4.45 Lacs on account of investment in diamond jewellery represent *protective addition* in assessee's hand since *substantive addition* thereof has been made in the hands of assessee's wife *Nisha P.Batra*. The Tribunal, in the appeal filed by *Nisha P. Batra* vide ITA No. 1270/Mum/2011 order dated 06/01/2016, has restricted the substantive addition to Rs.50,000/- and therefore, penalty against the same is not justified. After going through cited Tribunal's order, we concur with the same and conclude that the penalty against addition of Rs.4.45 Lacs was not warranted for.



6. The balance additions aggregating Rs.13,36,260/- represent Rs.9,20,000/- on account of *sundry creditors*, Rs.1,89,260/- credit entries in Savings Bank Account & Rs.2,27,000/- cash found at the residence. The amount of Rs.9,20,000/- represents loans & advances reflected in the Balance Sheet by the assessee. However, no cash book or other documentary evidences could be filed by assessee to substantiate the same as noted by Ld. AO in para-12.8 of the quantum assessment order. Similarly, cash of Rs.2,27,000/- was found during search operations from the assessee's residence on 18/01/2007 at *Flat No. 501, Chandralok, Khar (West), Mumbai* out of which Rs.2 Lacs was seized. The assessee stated that the same is duly accounted for in the cash book maintained by the assessee. However, no cash book was produced by the assessee to substantiate the same as noted by Ld. AO in paras-14 to 14.2 in the quantum assessment order and accordingly, the same was added to the income of the assessee. The credit entries in savings book were thoroughly examined by Ld. CIT(A), who after examining the same in detail reached a conclusion that an amount of Rs.1,89,260/- remained unexplained by the assessee for want of evidences / proper explanation.

7. On the above factual matrix, we find that ultimately those additions have been sustained for which assessee could not furnish any cogent / plausible explanation / evidences despite being provided with adequate opportunity of being heard at various stages including *remand proceedings*. The assessee was under an obligation to furnish true and correct return of income for the impugned AY particularly when the search took place in the impugned AY. The failure to do so justifies



imposition of penalty. We find that Explanation-1 to Section 271(1)(c) was rightly invoked since the assessee has either failed to offer any explanation or furnished an explanation which he is not able to substantiate. Therefore, we confirm the penalty *qua* additions of Rs.13,36,260/-. Resultantly, assessee's appeal stands partly allowed.

### **ITA No. 3453/Mum/2014 AY 2007-08 Chaturbhuj T.Batra**

8. The assessee has raised the following effective grounds of appeal:-

2. *On the facts and circumstances of the appellants case and in law Ld. CIT(A) erred in confirming the A.O. action in imposing penalty of Rs.44,13,810/- by invoking the provisions of Section 271(1)(c) of the Income Tax Act, 1961.*

3. *On the facts and circumstances of the appellants case and in law Ld. CIT(A) failed to appreciate that additions made by the A.O. & confirmed by the Ld. CIT(A) are based on estimates & presumptions only and therefore, no penalty was leviable.*

9. The captioned assessee, being part of the same group, in similar manner, has been saddled with penalty of Rs.44,13,810/- on 29/03/2012 which upon confirmation by Ld. CIT(A), has been contested before us.

10. The assessee had contested the quantum additions before first appellate authority and further before this Tribunal vide ITA No. 7773/Mum/2010 order dated 06/01/2016. The net additions as finally sustained by the Tribunal and which could be subject matter of penalty are summarized in the following manner:-

<b>No.</b>	<b>Particulars</b>	<b>Amount (Rs.)</b>
1.	<i>Additions accepted by the Assessee</i>	<i>12,50,000/-</i>
2.	<i>Income claimed to be not received by the assessee</i>	<i>7,17,690/-</i>
	<b>Total</b>	<b>19,67,690/-</b>



11. The Ld. AR contended that the additions have been made merely on presumption basis and the commission amount of Rs.7,17,690/- was not received by the assessee in the impugned AY and therefore, not taxable since assessee was following cash system of accounting. Our attention has been drawn to the fact that addition has been made merely on the basis of a loose paper which belonged to assessee and his brother and which was *undated* and therefore, addition could not be made since no corresponding assets were found. The Ld. DR justified the imposition of penalty on remaining additions.

12. Heard the rival contentions. At this stage, we are not required to delve into the merits of the quantum additions. The fact is that the addition to the extent of Rs.19,67,690/- has been upheld by the Tribunal out of which Rs.12.50 Lacs has *suo-moto* been offered by the assessee. Regarding balance addition, the assessee could not furnish any evidence to prove his contentions which resulted into confirmation of the same by this Tribunal. For the sake of ready reference, we reproduce the relevant portion of the Tribunal's order as follows:-

*14.9 With regard to the claim of the assessee that he did not receive a sum of Rs.7,17,690/-, we notice that the assessee has not substantiated the said claim with evidences. In our view, the assessee should have at least identified the property to which this commission relate and should have furnished the name and addresses of the parties who have defaulted in making commission payment to the assessee. Had the assessee filed these details, then the assessing officer could have made due inquiries to verify the submissions of the assessee. In our view, the assessee has failed to discharge the said burden and hence we have no other option, but to confirm the additions of Rs.7,17,690/-.*

We find that there are clear cut findings that the assessee failed to file even the basic details to substantiate the same. It is also noted that the return of income for impugned AY was due after the date of search i.e.



18/01/2007 and the assessee was obliged to offer the true and correct income in the same. Regarding *suo-moto* disallowance of Rs.12.50 Lacs offered by the assessee, we find that the same stood against the assessee in view of the judgment of Hon'ble Apex Court rendered in *Mak Data Pvt. Ltd. Vs. CIT [2014 1 SCC 674]*.

13. The assessee has placed reliance on the decision of Hon'ble Delhi High Court rendered in *PCIT Vs. Neeraj Jindal [393 ITR 1]*. However, we find the same distinguishable as that decision dealt with a situation where return filed u/s 153A has been accepted as such by the department without any making any further additions. Here we are dealing with a situation when the income has been assessed u/s 143(3) and the assessee has been saddled with further additions and the same has already been confirmed by the Tribunal.

14. Therefore, we conclude that the assessee was under an obligation to furnish true and correct return of income for the impugned AY and explain the entries found in the seized material and books of account and the failure to do so justify imposition of penalty on balance addition of Rs.19,67,690/- in terms of Explanation to Section 271(1)(c). Resultantly, assessee's appeal stands dismissed.

15. In nutshell, ITA No. 3447/Mum/2014 stands partly allowed whereas ITA No.3453/Mum/2014 stands dismissed.

Order pronounced in the open court on 04<sup>th</sup> October, 2017.

Sd/-

**(D.T. Garasia)**

न्यायिक सदस्य / **Judicial Member**

मुंबई Mumbai; दिनांक Dated : 04 .10.2017

Sr.PS:- *Thirumalesh*

Sd/-

**(Manoj Kumar Aggarwal)**

लेखा सदस्य / **Accountant Member**



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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT – concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai**