



**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.3537 & 3448/Mum/2014  
(निर्धारण वर्ष / Assessment Years: 2006-07 & 2007-08)

<b>Nisha P. 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>AFIPB-8047-H</b>		
(□ पीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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आयकर □ पील सं./I.T.A. No.3572,3445 & 3446/Mum/2014  
(निर्धारण वर्ष / Assessment Years:2005-06,2006-07 & 2007-08)

<b>Bipin P 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>AJWPB-7711-Q</b>		
(□ पीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )



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आयकर □ पील सं./I.T.A. No.3449 & 3450/Mum/2014  
(निर्धारण वर्ष / Assessment Years: 2004-05 & 2007-08)

<b>Karan P. 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>AJWPB-7713-N</b>		
(□ पीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )
(□ पीलार्थी / <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shailesh Parmar, Ld. AR
<b>Revenue by</b>	:	Rajat Mittal, Ld. DR

सुनवाई की तारीख / <b>Date of Hearing</b>	:	28/06/2017
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	12/07/2017

### आदेश / ORDER

#### Per Manoj Kumar Aggarwal (Accountant Member)

1. The captioned appeals by separate assessee for various Assessment Years [AY] assails the order of First Appellate Authority *qua* confirmation of penalty u/s 271(1)(c). Since, the same arise out of common set of facts, we dispose-off the same by way of this common order for the sake of convenience and brevity.



**ITA No. 3449/Mum/2014 AY 2004-05 Karan P. Batra**

2. Briefly stated, the assessee being *resident individual* was assessed for impugned AY u/s 153C on 29/12/2008 at Rs.7,86,970/- consequent to search operations u/s 132 on 18/01/2007 on *Batra Group*. The assessee being part of the said group was assessed u/s 153C since a *Sonata Note Book* consisting of 88 pages belonging to assessee was seized. The regular return for impugned AY was filed at Rs.1,26,290/- and the same return was offered pursuant to notice u/s 153C. The assessment u/s 153C was completed by enhancing the returned income by Rs.6,60,680/- on various accounts, against which penalty u/s 271(1)(c) was initiated in the quantum assessment.

2.1 The assessee contested the quantum addition before Ld. CIT(A) and got relief to the extent of Rs.2,47,870/- leaving balance addition of Rs.4,12,810/- against which an amount of Rs.1,21,472/- has finally been imposed as penalty u/s 271(1)(c) vide penalty order dated 29/02/2012 which upon confirmation by Ld. CIT(A) vide impugned order dated 14/02/2014, has been contested before us.

2.2 The Ld. Counsel for Assessee [AR] pointed out that the assessee successfully contested the balance quantum addition before this Tribunal vide ITA No. 1115/Mum/2011 order dated 06/01/2016 and therefore, the penalty could not be sustained. The copy of the said order has been placed before us. The Ld. DR fairly conceded the same. We have perused the said order and concur with the stand of Ld. AR. Since quantum additions have been deleted in full, the resultant penalty does not survive and therefore, we delete the same. The assessee's appeal stands allowed.



**ITA No. 3450/Mum/2014 AY 2007-08 Karan P. Batra**

3. The assessee on similar facts have suffered addition of Rs.20,81,285/- in an assessment u/s 143(3) for AY 2007-08 and the same upon appeal before Ld. CIT(A) has been reduced to Rs.10,92,867/- against which penalty of Rs.3,91,984/- u/s 271(1)(c) has been levied on 29/03/2012.

3.1 The Ld. AR has pointed out that the assessee, in an appeal against quantum order, before this Tribunal vide ITA No.1116/Mum/2011 order dated 25/04/2014 has got major relief leaving balance addition of Rs.27,000/- on account of certain petty loans obtained by the assessee, the confirmation of which could not be filed. The Ld. DR fairly conceded the same. We have perused the Tribunal Order and concur with the stand of Ld. AR. The balance addition left is only Rs.27,000/- which is on account of two petty loans of Rs.20,000/- & Rs.7,000/-, the confirmation of which could not be filed by the assessee. Since the majority of the additions have been deleted and the balance addition is of such a nature which does not amount to furnishing of inaccurate particulars of income or concealment of income, the resultant penalty does not survive and therefore, by deleting the same, we allow assessee's appeal.

**ITA No. 3445/Mum/2014 AY 2005-06 Bipin P. Batra**

4. The assessee has similarly been assessed u/s 153A and suffered net addition of Rs.1,41,810/- on account of excess bank credit, against which penalty of Rs.40,527/- has been imposed on 29/03/2012 which has been confirmed by Ld. CIT(A). Aggrieved, the assessee is in appeal before us.



4.1 The Ld. AR pointed out that the remaining addition is on account of IPO refund received by the assessee, certain prize money and Loan from LIC, the explanation of which was furnished by the assessee but not accepted by the revenue and hence, penalty was not justified. The Ld. DR contended that the onus was on assessee to explain the transactions and therefore failure towards the same has rightly attracted the impugned penalty.

4.2 We have heard the rival contentions and perused the order of Ld. CIT(A). We find that the assessee has suffered the addition of Rs.1,08,750/- on account of loan taken from LIC, Rs.30,060/- on account of IPO refund and Rs.3,000/- on account of prize money received by the assessee. The said additions were sustained since the assessee could not produce evidence for the source of deposits. This being the case, we find that the nature of quantum addition does not lead to any furnishing of inaccurate particulars of income or concealment of income so as to attract penalty and therefore, we are inclined to delete the impugned penalty which result into assessee's appeal being allowed.

**ITA No. 3446/Mum/2014 AY 2006-07 Bipin P. Batra**

5. The assessee has been saddled with penalty of Rs.28,277/- on account of unexplained credit in bank for Rs.1,23,300/-, which upon confirmation by Ld. CIT(A) has been assailed before us.

5.1 The Ld. AR has pointed out that the balance addition of Rs.1,23,300/- represent two IPO refund of Rs.82,500/- & Rs.40,800/- and since the assessee could not produce evidence against the same, the said additions have been made. The Ld. DR supported the penalty levied upon the assessee. However, we are of the opinion that since the



same was towards IPO refund, the nature of additions does not warrant for imposition of penalty and hence, by deleting the same, we allow assessee's appeal.

**ITA No. 3572/Mum/2014 AY 2007-08 Bipin P. Batra**

6. The assessee has been saddled with a penalty of Rs.1,48,188/- on account of quantum addition of Rs.12,26,160/- as sustained by Ld. CIT(A), which upon confirmation by Ld. CIT(A), has been contested before us.

6.1 The Ld. AR has pointed out that the assessee contested addition of Rs.11,76,160/- before this Tribunal vide ITA No.1117/Mum/2011 order dated 17/06/2016 where the matter has been restored back to the file of Ld. AO. Regarding uncontested addition of Rs.50,000/-, it is contended that the same represented certain petty loans, the confirmation of which could not be produced by the assessee. Since, the major quantum addition has been restored back to the file of Ld. AO, the penalty to that extent, for the time being, does not survive. The revenue is free to re-initiate the same, if warranted for, on the basis of outcome of quantum additions. Regarding addition of Rs.50,000/- on account of petty loans, the additions are not of such a nature so as to leading to furnishing of inaccurate particulars of income or concealment of income and therefore, we are inclined to delete the same. Resultantly, the assessee's appeal stands allowed.

**ITA No. 3537/Mum/2014 AY 2006-07 Nisha P. Batra**

7. The assessee has been assessed u/s 153A and saddled with a penalty of Rs.24,731/- against quantum addition of Rs.1.00 Lacs



towards excess bank credits. The penalty, upon confirmation by Ld. CIT(A) has been assailed before us.

7.1 The Ld. AR has contended that the quantum addition represent loan obtained from a person namely *Prem Punjabi* and the addition has been made since the assessee could not produce loan confirmation letter from the lender. Nevertheless, the same was received and repaid during impugned AY through account payee cheque and therefore, the penalty was not warranted for. The Ld. DR justified the same on the ground that the assessee failed to discharge the onus of proving the loan transaction.

7.2 Upon perusal of relevant material on record, we are inclined to delete the impugned penalty since the loan has been received and repaid back by account payee cheque and the addition has been sustained only in view of the fact that the assessee could not produce confirmation letter from the lender. Resultantly, the assessee's appeal stands allowed.

**ITA No. 3448/Mum/2014 AY 2007-08 Nisha P. Batra**

8. In this year, the assessee has been saddled with a penalty of Rs.1,48,188/- on account of addition of Rs.4,84,275/- towards cash brokerage.

8.1 The Ld. AR has pointed out that the assessee has successfully contested the quantum addition before this Tribunal vide ITA No. 1270/Mum/2011 order dated 06/01/2016, a copy of which has been placed before us. The Ld. DR fairly conceded the same. Therefore, since quantum addition has been deleted, the impugned penalty does not survive which results into assessee's appeal being allowed.



9. Resultantly, all the appeals filed by assessee stands allowed.

*Order pronounced in the open court on 12<sup>th</sup> July, 2017.*

**Sd/-**  
**(D.T. Garasia)**  
न्यायिक सदस्य / **Judicial Member**

**Sd/-**  
**(Manoj Kumar Aggarwal)**  
लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 12.07.2017  
Sr.PS:- Thirumalesh

**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**