

**आयकर अपीलीय अधिकरण, मुंबई “बी” खंडपीठ**

**Income-tax Appellate Tribunal -“B”Bench Mumbai**

**सर्वश्री राजेन्द्र,लेखा सदस्य एवं , न्यायिक सदस्य**

**Before S/Shri Rajendra, Accountant Member and Amarjit Singh, Judicial Member**

**आयकर अपील सं./I.T.A.No.6474/Mum/2013, निर्धारण वर्ष /Assessment Year: 2007-08**

DCIT 10(1), R No.432, 4 <sup>th</sup> Floor, Aayakar Bhavan, M K Road, Mumbai 400 020	Vs.	Maharashtra State Power Generation Co. Ltd. Plot No.G-19, Prakash Ghad, Anant Kanekar Marg, Station Road, Bandra (E), Mumbai 400 051 <b>PAN : AAECM2935R</b>
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

**Revenue by : Shri H N Singh (DR)**

**Assessee by : Shri Niraj Sheth**

**सुनवाई की तारीख / Date of Hearing: 27.03.2018**

**घोषणा की तारीख / Date of Pronouncement: 06.04.2018**

**आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश**

**Order u/s.254(1)of the Income-tax Act,1961(Act)**

**लेखा सदस्य, राजेन्द्र के अनुसार- PER RAJENDRA, AM-**

Challenging the order dated 5.08.2013 of CIT(A)-21, Mumbai, the Assessing Officer (AO) has filed the present appeal. Assessee - company is engaged in the business of generation of electricity. It filed return of income on 31.10.2007, declaring income at Rs Nil and at Rs 354.05 crores u/s. 115JB. Later on the income of the assessee was assessed at Rs 677.58 crores under the normal provisions while completing the assessment u/s. 143(3) r.w.s 147 of the Act. The AO made addition on account of (i) understatement of closing stock (ii) over statement of current liabilities being provision made for material received (iii) over statement of liabilities being staff related liabilities and provisions and disallowance of prior period expenditure. In the appellate proceedings, the First Appellate Authority (FAA) deleted additions/disallowances made by the AO. The assessee was assessed as per the provisions of section 115JB of the Act.

**2.**The AO initiated penalty u/s. 271(1)(c) of the Act for the abovementioned additions/disallowances. Vide his order dated 31.03.2012, he levied penalty of Rs.107.32 crores for furnishing inaccurate particulars of income.

**3.**Aggrieved by the penalty order of the AO, the assessee filed appeal before the First Appellate Authority (FAA) and made detailed submissions. He also relied upon certain case laws. After

considering available material the FAA held the AO had levied penalty under normal provisions of the Act on the additions/disallowances made, that after the order of the then FAA the income of the assessee was assessed u/s. 115JB of the Act. He referred to case of Hon'ble Delhi High Court delivered in the case of Nalwa Sons Investments Limited (327 ITR 543) and held penalty cannot be levied if the assessment was made under the MAT provisions.

4. During the course of hearing before us, the Departmental Representative (DR) stated that the matter could be decided on merits. The Authorized Representative (AR) supported the order of the FAA and stated that the AO has made three additions, that in the quantum appeal two additions were deleted, that one of the issues was coal cost freight of Rs 16.31 crores, that this was the first year of trifurcation of Maharashtra State Electricity Board, that the assessee had filed return of income, at that time audit accounts were not ready, in the revised return of income the assessee had made the claim for freight expenses, that by that time audited accounts were available, that it was not the case of filing of inaccurate particulars, that the income of the assessee was finally computed as per the provisions of section 115JB of the Act.

5. We have heard the rival submissions and perused the material before us. We find after order of the FAA the income of the assessee was computed under the MAT provisions. The Hon'ble Delhi High Court in the case of Nalwa Sons Investments Limited (supra) has held as under:

*Under the scheme of the Income-tax Act, 1961, the total income of the assessee is first computed under the normal provisions of the Act and tax payable on such total income is compared with the prescribed percentage of the book profits computed under section 115JB of the Act. The higher of the two amounts is regarded as total income and tax is payable with reference to such total income. If the tax payable under the normal provisions is higher, such amount is the total income of the assessee, otherwise, the book profits are deemed as the total income of the assessee in terms of section 115JB of the Act. Where the income computed in accordance with the normal procedure is less than the income determined by legal fiction, namely, the book profits under section 115JB of the Act and the income of the assessee is assessed under section 115JB and not under the normal provisions, the tax is paid on the income assessed under section 115JB of the Act. Concealment of income would have no role to play and would not lead to tax evasion. Therefore, penalty cannot be imposed on the basis of disallowances or additions made under the regular provisions."*

Respectfully, following above judgment and considering the facts and circumstances of the case, we decide the effective ground of appeal against the AO.

As a result, appeal filed by the AO stands dismissed.

फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील नामंजूर की जाती है।

Order pronounced in the open court on 06<sup>th</sup> April, 2018.

आदेश की घोषणा खुले न्यायालय में दिनांक 06, अप्रैल, 2018 को की गई।

**Sd/-**

**(Amarjit Singh)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक/Dated : 06 .04.2018.

SA, PS...JV, Sr.PS

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

- 1.Appellant /अपीलार्थी
2. Respondent /प्रत्यर्थी
- 3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त,
- 4.The concerned CIT /संबद्ध आयकर आयुक्त
- 5.DR "B " Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अ.न्याया.मुंबई
- 6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**  
आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.