IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

BEFORE SHRI R. C. SHARMA, AM AND SHRI AMARJIT SINGH, JM

आयकर अपील सं/ I.T.A. No.5766/Mum/2015

(**निर्धारण वर्ष** / Assessment Year: 2004-05)

DCIT-10(2)(2) Room No. 216-A, Aayakar Bhavan, M.K. Road, Mumbai-400020.	**बनाम**/ Vs.	M/s. Manz Retail Private Limited, Knowledge House, Off. Jogeshwari Vikhroli Link Road, Shyam Nagar, Jogeshwari (E), Mumbai-400060
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AACCM1978J		
(अपीलार्थी /**Appellant**)	..	(प्रत्यर्थी / **Respondent**)

Assessee by:	Ms. Dinkle Hariya (AR)
Revenue by:	Shri T. A. Khan (DR)

सुनवाई की तारीख / Date of Hearing: 22.03.2018

घोषणा की तारीख /Date of Pronouncement: 31.05.2018

आदेश / O R D E R

PER AMARJIT SINGH, JM:

The revenue has filed the present appeal against the order dated 11.09.2015 passed by the Commissioner of Income Tax (Appeals)-17, Mumbai [hereinafter referred to as the "CIT(A)"] relevant to the A.Y. 2004-05 in which the penalty levied by the AO has been ordered to be deleted.

2. The revenue has raised the following grounds: -

> *"On the facts and in the circumstances of the case end in law, the Ld. CIT(A) erred in cancelling the penalty u/s 271(1)(c) of the Act on the issue of holding the profit on sale of shares of Pantaloon*

Retail (India) Ltd, as business income as against long term capital gain, without appreciating the fact that the entire motive and the design of the transaction was to trade in shares of its holding company which is evident from the fact that the assessee had no funds to invest and in fact the investment was made from the funds received as unsecured loans.

"On the facts and in the circumstances of the case and in law the Ld, CIT(A) erred in cancelling the penalty u/s.271UXt) of the Act on the issue of holding the profit on sale of shares of Pantaloon Retail (India) Ltd. as business income as against long term capital gain, without appreciating the fact that the assesses traded in the shares of group company where it had inside information with regard to the price of the share which enabled it to sell the same at the appropriate time to earn the maximum profit. The intention at the time of purchase was to trade and earn profit and not to hold the same as investment.

"On the facts and in the circumstances of the case and in law, the Ld. GT(A) erred in cancelling the penalty u/s.271U)(c) of the Act on the disallowance of Rs.67,99,715/ being capital expenditure incurred for acquiring tenancy rights without appreciating that the assessee is well aware of the fact that the impugned expenditure does not fall in the realm of revenue expenditure as the assesses itself capitalized the expenditure in its books of account but claimed it as a revenue expenditure in the computation of total income?*

"On the facts and in the circumstances of the case and in law, the Ld, CIT(A) erred in cancelling the penalty u/s.271(l)(c) of the Act on the disallowance of Rs.67,89,715/- being capital expenditure incurred for acquiring tenancy rights without appreciating that by making wrong claim of deduction which is not admissible as per law, the assessee has not only concealed its income but has also filed inaccurate particulars thereof?

"On the facts and in the circumstances of the case and in law, the Ld, CIT(A)

erred in deleting the penalty u/s.271(1)(c) of the Act without appreciating that the assessee had failed to rebut the presumption in Explanation-1 of section 271U(1)(c) of the Act'

The appellant prays that the order of the CIT(A) on the above ground be set aside and that of the A.O. he restored.

The appellant craves leave to amend or alter any grounds or add a new ground which may be necessary."

3. The brief facts of the case are that the assessee filed its return of income for the A.Y. 2004-05 on 29.10.2004 declaring total income to the tune of Rs.3,44,94,442/-. Thereafter, the case was reopened by issuing notices u/s 148 of the Act and the reassessment was completed on 24.12.2009 u/s 143(3) r.w.s 147 of the Act determining the total income to the tune of Rs.4,20,47,340/-. The Assessing Officer disallowed the claim of the assessee below.: -

Sl. No.	Nature of Additions	Amount disallowed	Penalty initiated	Relief Allowed by Ld. CIT(A)	Disallowance confirmed
1	Capital Gain treated as business income	Rs.4,07,69,668/-	Yes	--	Rs.4,07,69,668/-
2	Disallowance u/s 14A	Rs.7,63,184/-	Yes	-	Rs.7,63,184/-
3	Disallowance of Tenancy Rights	Rs.6789,715/-	Yes	-	Rs.67,89,715/-
Total disallowance on which penalty was initiated and the said disallowance was duly confirmed by CIT(A)'s order					Rs.4,83,22,567/-

4. Thereafter, the penalty was initiated and penalty to the tune of Rs.1,31,56,830/- was levied. The assessee filed an appeal before the CIT(A) who deleted the penalty. Therefore feeling aggrieved, the revenue has filed the present appeal before us.

5. We have heard the argument advanced by the Ld. Representative of the parties and perused the record. The Assessing Officer levied the penalty on account of this fact that the capital gain

shown by assessee in his return of income was treated as business income to the tune of Rs.4,07,69,668/-. The Assessing Officer also disallowance the claim of the assessee in view of the provision u/s 14A of the Act to the tune of Rs.7,63,184/-. The Assessing Officer also disallowance the claim of tenancy rights to the tune of Rs.67,89,715/-. The said disallowance was added to the income of the assessee and the Assessing Officer initiated the penalty. The CIT(A) has deleted the penalty basically on the facts of that the disallowance nowhere attract the penalty in accordance with law. The CIT(A) has also placed reliance upon the law settled in **CIT Vs. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158.** We find that the disallowance of the claim of the assessee nowhere attract the penalty in view of the provision u/s 271(1)(c) of the Act, in view of the law settled by Hon'ble Supreme Court in the case of Reliance Petroproducts (P) Ltd. (supra). However, the CIT(A) has also placed reliance upon the number of decision which has been mentioned in his order. The first ground on the basis of which the penalty levied is in connection with treating the capital gain as business income. The finding of the CIT(A) in this regard is hereby mentioned below: -

> *"The matter has been considered. There is absolutely no doubt that the details of the underlying share transactions as well as the resultant gain, was truly and fully declared by the appellant-company in the return of income and in the details furnished during the course of assessment proceedings. No falsehood or inaccuracy therein was detected by the AO. The taxable amount determined by the AO as being assessable under the head 'Income from Business & Profession is exactly the same as was offered by the appellant under the head 'Long Term Capital Gams'. Thus,*

only the head of income was been changed by the Assessing Officer. The explanation tendered by the appellant as to why it reflected the aforesaid gains under the head 'Long Term Capital Gains' and not as Income from Business, is also on record and has been discussed above. Essentially, the appellant has premised its belief on the fact that there was only sale transaction of shares by one group company by another group company. This, it fell, was inadequate for it to be called a share trader. Even a cursory perusal of the order of the CIT(A) shows that the discussion made is predominantly on legal lines with a very large number of applicable case taws being pressed into service both by the appellant and by the First Appellate Authority. The fact that the finding of the Assessing Officer was upheld is not decisive. The issue that is to be considered is that even if the appellant's claim of share transaction yielding Long Term Capital Gain was wrong, whether the claim itself was lacking bona fides, or was fraudulent, or was abjectly false. The answer has to be in the negative. Whether the gains arising from sale of shares is to be treated as business income or income from capital gains is one of the most litigated issues in direct taxes. The very order of the CIT(Appeals) demonstrate-, this. In this light, the reasons proffered by the appellant, cannot be characterized as being such that could not have been reasonably taken, being wholly untenable in law or lacking any foundation whatsoever. Hence, the decision of the Hon'ble Delhi High Court in CIT vs. Zoom Communications Pvt. Ltd. (2010) reported in 233 ITR 465 is distinguishable.

4.3.6 In the case of Commissioner of Income Tax as. Harshavardhan Chemicals and Minerals Ltd. [2003] reported in Z59 ITR 212, the Hon'ble Rajasthan High Court held that no falsity inviting penalty could be attached to a claim that was arguable, controversial or debatable and if it was not to be so, then it would become impossible for any assesses to raise any claim which is debatable.

4.3.7 In the case of Commissioner of Income tax vs. Caplin Point Laboratories Ltd. [2007] reported in 293 ITR 524, the Hon'ble Madras High Court held after considering the decision of the Hon'ble Supreme Court in Dilip N. Shroff vs. JCIT [2007} reported in 291 ITR 519, that penalty can be levied only when the explanation of the assesses was main fide and also that the facts material to the computation o£ income were not disclosed.

4 3.8 In the case of Immortal Financial Services Pvt. Ltd. Vs. DCIT 2(2), Mumbai (ITA No. 2563/M/2012 dated 30.04.2013), the Id. Appellate Tribunal, Mumbai, had an occasion to consider a similar matter where Short Term Capital Gains on sale of shares was assessed as Income from Business & Profession. The Id. Jurisdictional Tribunal took into account the decision of the Hon'ble Supreme Court in Dharnwndra Textile Protestors and On 1306 ITR 277] and its own decision in Sukdham Construction Developers [IT A No. 2172/M/2011] to hold that change in

head of income dos riot ipso facto lead to the conclusion that assesses concealed particulars of income or furnished inaccurate particulars. A similar view has been taken by Id. Appellate Tribunal, Ahmedabad in M/s.. Crown Tradlink Pvt, Ltd. us ACST (QSD) [JJA No. 276S/M/2Q12 dated 31.01.2013] where it has been held as under:

"Having heard the submissions of both the sides and on due consideration of the facts of the case, we are of the considered opinion that the transaction in respect of the share trading was duly disclosed at the time of filing of the return Some of the income TOGS shown long term capital gain and par! of the income was no shown as speculative business in shares! scripts trading. As per the annexures. the assesses has disclosed the names of the companies, description of the shares, dale of I transfer of shares, $de consideration, cost of acquisition and the index cost On the basis of the said calculation, the assessee has considered that the gain was long-term capita! gain. However, that explanation of the assessee was not found satisfactory by the AO, therefore treated the same as speculative business. But the fact remained that there was no allegation of concealment offsets or dealing in sham transaction. Even this fact has also not been denied that some par! of the trading in was disclosed fry the assesses itself as speculative transaction. Meaning thereby the addition was made merely because of change in the head of income. On this issue there are several decisions in favour of the assessee, as cited supra, wherein it was held that in the absence of any inaccuracy in She particulars of income or concealment offsets the - penalty must not be levied. Respectfully following these decisions, we hereby reverse the findings of the authorities and direct So delete the penalty."

4.3,9 In the case of DOT, Citcle-8(3), Mumbai vs. Mis Varan Resorts Limited in IT A No. 6224/Mum/2013 dated C5.06.20l5, the Id. Appellate Tribunal, Mumbai, held that just because of a decision taken in quantum proceedings, jl cannot be held That the assesses had concealed particulars of income The assessee had filed all the necessary details before (he Assessing Officer and there was a difference of opinion between assessee and the Assessing Officer about the treatment to be given to the share transaction? undertaken by the assessee In that case, the Assessing Officer had noted that the assessee had declared income from shod term capital gain on sale of shares/ mutual funds, while the same was eventually assessed as Income from Business and penalty proceedings under section 271(l)(c) of the Act were initiated.
4.3.10 In the case of Kanbay Software India (P) ltd vs. DCIT, Circle-S, Pune [2Qfl9J reported in 31 SOT 153, the Ld. Appellate Tribunal, Pune, considered the decision of the Hon'ble Supreme Court in Union of Indians. Dharmendra Textiles Processors [20081 reported in 306 JTR

227 and held that admission or refection of a claim is a subjective exercise and had nothing to do with the furnishing of inaccurate particulars of income. It was further held that raising a legal claim, even if it is found to be legally unacceptable, cannot amount to furnishing of inaccurate particulars of income within the meaning of section 271(1)(c) of the Act. As regards concealment of income, (he learned ITAT, Pune, held that the same implies that an income is hidden, camouflaged or covered up so that it cannot be seen, found, observed or discovered. In the instant case, no ingredients regarding either the furnishing of inaccurate particulars of income or the concealment of income exists at all.

4.3.11 In the case of ACIT, Cirde-43tt), New Delhi us Neenu Datta in ITA No.215/Del/2Ql2 dated 20.07.2012, the Id. Appellate Tribunal, New Delhi, held as under :

"On careful consideration to the above submissions of both the parties and material before us, we observe from the facts of the case that the main dispute in this case js whether the income from sale of stock options is assessable as long term capital gain facts disclosed by the assessed ***or short term*** *capital gain (as assessed by the AO). We also observe that the return filed by the* ***assesses*** *(page No. 3 & 4 of the Paper Book) for the* ***year under*** *consideration apparently* ***reveal*** *that there is no concealment of any fact* ***or furnishing*** *of a fact or furnishing any inaccurate or wrong fact, merely because in the opinion of the AO, the income from sale of Stock* ***option*** *is assessable as short term* ***gain*** *and not as long term capital gain, it* ***would not amount AO concealment of income ..... ,in (he facts and*** *circumstances of (his case, the judgement of Hon'ble Supreme Court in the case of CIT us Reliance Petra Products p. Ltd. Reported as 2010 322 ITR 158 Assessment Year 2003-09 (SC) is squarely applicable At Ibis point, life also view judgment of Hon'ble Bombay High Court dated 12.7 2021 in IT A Nc.340/2010 in the case of CIT-23, Mumbai vs Hemtata Hamilapurkar wherein their lordships held thai merely making a wrong claim in the return of income cannot a ground for imposing penalty u/s 271(l)(c) of Ike Act a$ it neither amount? to furnishing inaccurate particulars an amounts to conceal men! of income."*

4.3.12 The Id. Appellate Tribunal in the case of Income-tax Officer vs. Investments (P) Ltd 12006] reported in 7 SOT 131, the facts were that the assesses had shown rental income as service charges under the head 'Income from business'. The Assessing Officer, however, assessed I he said rental income as income from house property On appeal, (the Commissioner (Appeals) confirmed the impugned order. The assesses did not file any appeal against the order of the Commissioner (Appeals). Thereafter, the Assessing Officer imposed penalty upon the assessee in view of Explanation 1 to section 271(l)(c) on the ground of failure on Us part lo offer the service charges/rental income for tax under the head 'Income from house property'. After considering the matter, the Id. ITAT

> *observed that "we are of the opinion that mere rejection of a legal claim of the asset e for taxability of income under a particular head of income is not by itself sufficient lo warrant imposition of penalty Tax matters are highly complex and hence there is bound to be a genuine difference of opinion in waiters of Sow between the tax collectors and the taxpayers. It is indeed very difficult for the assessee lo predict, in advance, as to what view Assessing Officer or appellate authorities take on the Sega! claim made by the assessee. Cases involving genuine difference of opinion on mailers of law between the assessee and the Assessing Officer are dearly outside the scope of Explanation 1 to section 271(1) provided the assessee has made full disclosure of ail the relevant facts and also acted bonafide."*
>
> *4.3.13 Under the circumstances, the ingredients tor levying penalty under section 271(1)(c) of the Act on the change of assessment head from "Long Term Capital Gains" to "Income from Business", are missing. The levy of penalty on the same cannot be sustained. The same is cancelled."*

6. On appraisal of the above said finding, we are of the view that the CIT(A) has taken the right view to dealt with the issues and by relying upon the law settled by the different authority. The CIT(A) has arrived at this conclusion that the no penalty is leviable. There is no need to describe the law relied by the CIT(A) in his order separately because the same was elaborately discussed in the order. However, mainly the CIT(A) has relied upon the decision passed by the Hon'ble Supreme Court of India in case of tiled as **CIT Vs. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158.** On this ground the CIT(A) has rightly deleted the penalty. So far as the second ground to levy the penalty is concerned, the same was levied on account of disallowance u/s 14A of the Act. The finding of the CIT(A) has been mentioned in para no. 4.4.5 which is hereby reproduced below.:-

> "4.4.5 The matter has been considered. The short issue that has fallen for consideration is whether penalty under section 271 (l){c} would be

attracted in a case where a tea I Iowa nee has been made under section 14A of the Act An identical matter was considered by the Hon'ble Supreme Court in the case of Commissioner *of Income Tax Ahmedabad vs. Reliance Petroproducts (P) Ltd.* [2010] reported in 322 TTR 158. There also, the assessing Officer had disallowed the said expenditure under section 14A and thereafter vied penalty under section 271(l)(c) of the Act, on account of concealment of income/Furnishing inaccurate particulars of income. After considering the matter, the Hon'ble apex Court held as under:

"It was tried So be suggested that Section 14A of the Act specifically excluded the deductions in respect of the expenditure incurred by the assesses in relation to income which doe-$ not form part of the total income under the Ad. It was further pointed out that the dividends from the shares did not form the part of the total income. It was, therefore, reiterated before us that the Assessing Officer had correctly reached the conclusion that since the assessee had claimed excessive deductions knowing that they are incorrect', it amounted to concealment of income. It was tried to be argued that the falsehood in accounts can take either of the two forms; (i) an *item of receipt may be suppressed fraudulently; Hi) an item of expenditure may fa falsely for in an exaggerated amount) claimed, and both types attempt if reduce the taxable income and, therefore, both types amount to concealment of particulars of one's income us well o$ furnishing of inaccurate particulars of income. We do not agree, as the assessee had furnished alt the details of its expenditure as well as income in its Return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the Return in the Return or not. Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion attract the penalty under section 271(1)(c). If we accept the contention of the revenue then in case of every return where the claim made is not accepted by AO for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the Legislature."*

7. Disallowance of certain claim raised in view of provision u/s 14A r.w. Rule 8D of the Act nowhere attract the penalty. However, mainly the CIT(A) has relied upon the decision passed by the Hon'ble Supreme Court of India in case of tiled as **CIT Vs. Reliance**

Petroproducts (P) Ltd. (2010) 322 ITR 158. Further it also came into notice that the quantum proceeding has been ordered to be set aside by the Hon'ble ITAT for the A.Y. 2004-05 in ITA. No.3889/M/2012 dated 10.11.2017, therefore, no penalty is leviable. The finding is hereby reproduced below.:-

> *"6. We have heard the rival contentions of both the parties. During the course of hearing, the AO was requested to call for the record and we have verified that in case of the assessee the assessment was ITA No.3889/M/2012 M/s. Menz Retail Pvt. Ltd. 5 reopened under section 147 of the Act by AO by issuing notice under section 148 of the Act on 19.01.09. In response to the said notice the assessee vide letter dated 07.03.09 requested the AO to treat the return already filed as it is return in response to the said notice. However, thereafter, the mandatory notice under section 143(2) which was neither issued nor served on the assessee. There was omission on the part of AO to issue said notice. We have verified this fact from the record and it is found that no notice under section 143(2) was issued after reopening of the assessment order. We find that this is a mandatory requirement. As per the decision of Hon'ble Supreme Court in the case of ACIT vs. Hotel Blue Moon 321 ITR 362 (SC) wherein it is held that if the AO for any reason repudiates the return filed by the assessee in response to the notice under section 158BC(a) of the Act relating to block assessment, the AO must necessarily send notice under section 143(2). It was further held that by making the issue of notice mandatory under section 158BC dealing with block assessment, makes such notice very foundation. The requirement of notice under section 143(2) cannot be dispensed with. 7. We find that the AO has completed the assessment under section 147/143 of the Act. We find that similar issue had come up before the Hon'ble Delhi High Court in the case of CIT vs. Mani Kakar 178 Taxman 315 (Del) wherein it was held as under:*
>
> > *"For relevant assessment year, Assessing Officer completed assessment u/s. 147 / 143(3) of the Act. On appeal before Tribunal, assessee contended that since no notice u/s. 148 had been issued / served upon him, all subsequent*

proceedings including framing of reassessment order were liable to be set aside. The Tribunal having examined issue on facts concluded that there was no service of notice on assessee under section 148 and, therefore, impugned assessment was liable to be quashed - On instant appeal, revenue sought to place reliance on provisions of section 292BB which have been introduced with effect from 1-4-2008. The revenue's reliance on provisions of section 292BB was misplaced as said provisions were not applicable to assessment year 2001-02. Since, in instant case, no such notice was served on assessee prior to re-opening of assessment proceedings, the Tribunal was justified in setting aside assessment order passed under section 147/143(3)"

8. Similarly, the Hon'ble Delhi High Court has also considered that on receipt of notice when the assessee participates in proceeding in that case whether section 292BB is applicable or not has been explained by observing as under: "The revenue also submitted that the Tribunal has ignored the provisions of section 292BB which lays down that where an assessee has appeared in any proceedings or co-operated in any inquiry relating to an assessment or reassessment, it shall be deemed that any notice under any provision of this Act, which is required to be served upon him, has been duly served upon him in time and the assessee shall be precluded from taking any objection in any proceedings or inquiry under the Act that notice was not served upon him or was served in an improper manner. In this regard, it may be stated that this provision came to be inserted by the Finance Act, 2008 with effect from 1-9- 2008 and is not applicable to the assessment year in question. However, this provision also substantiates the finding that in the given circumstances as in the instant case, service of notice before assessment could be inferred. The participation by the assessee in the assessment proceedings on receipt of the copy of the notice can be deemed to be service of notice within the ambit of section 148(1). That is what is the legislative intent of 'service of notice' on assessee under this section that no assessment under section 147 can be finalized before the assessee has sufficient notice thereof. [Para 19] Thus, it was held that the Tribunal was not correct on facts and law to annul the assessment framed by the Assessing Officer. [Para 20]"

9. In the instant case, we find that the assessment year is 2004-05, therefore section 292BB is not applicable because the Tribunal in the case of Ghanshyamdas Gems & Jewels vs. DCIT – 36 ITR(T) 381 (Hyd – Trib) wherein it was held that provisions of section 292BB deeming a notice to be valid was inserted by Finance At, 2008 with effect from 01.04.2008 prospectively and, hence, could not be invoked for earlier period. We also find that similar view has been taken by Special Bench in the case of Kuber Tobacco Products (P.) Ltd. vs. DCIT – 117 ITD 273 (Del) (SB) wherein it has been held as under:

> *"Section 292BB, inserted by Finance Act, 2008, has no retrospective effect and is to be construed prospectively. Therefore, up to 31-3-2008 as per section 2921313, assessee is not precluded from taking any objection regarding invalidity of an assessment/reassessment on ground of improper/invalid issuance/service of notice. So far as applicability of section 292BB is concerned, it is not strictly restricted to issue of notice under section 143(2), but it is in respect of other notices relating to any provisions of Act which include notice to initiate re-assessment proceedings and other proceedings also.*
>
> *Summarising our findings we hold as follows:- (i) Section 292BB even if it is procedural it is creating a new disability as it precludes the assessee from taking a plea which could be taken as a right, cannot be construed retrospectively as the same is made applicable by the statute with effect from 01.04.2008. (ii) Section 292BB is applicable to the assessment year 2008-09 and subsequent assessment years. The matter will be placed before the regular Bench to decide the appeals in regular manner."*

10. We also get the support from jurisdictional High Court in the case of ACIT vs. Geno Pharmaceuticals Ltd. – (2013) 214 Taxman 83 (Bom) wherein it is held as under:

> *"5. Apart from that, it is an admitted position that no notice under Section 143(2) had been issued while making assessment under Section 143(3) read with Section 147. The Apex Court in the case of National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383has held that the Tribunal has*

> *discretion to allow or not to allow a new ground to be raised. But in a case where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. The ITAT, after relying on the judgment of the Apex Court in R. Dalmia v. CIT [1999] 236 ITR 480/102 Taxman 702, came to the conclusion that issuance of notice under Section 143(2) was mandatory. The ITAT has taken into consideration the relevant provisions and has also taken into consideration the judgment of the Apex Court and relying on the said judgments, the ITAT has held that notice under Section 143(2) is mandatory and in the absence of such service, the Assessing Officer cannot proceed to make an inquiry on the return filed in compliance with the notice issued under Section 148."*
>
> *11. Respectfully following above decision of the Hon'ble Bombay High Court, we allow the appeal of the assessee.*
>
> *12. As we have disposed the matter on technical ground it is not necessary to dispose rest of the grounds."*

8. Since the quantum has been ordered to be deleted and on merits also the CIT(A) has decided the issue judiciously and correctly which is liable to be interfere with at this appellate stage. Accordingly, we confirmed the finding of the CIT(A) on these issues and dismissed the appeal of the revenue.

9. In the result, the appeal filed by the **revenue is hereby ordered to be dismissed.**

Order pronounced in the open court on 31.05.2018 .

Sd/-	Sd/-
(R. C. SHARMA)	**(AMARJIT SINGH)**
लेखा सदस्य / ACCOUNTANT MEMBER	**न्यायिक सदस्य/JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 31.05.2018
Vijay

<u>आदेश की प्रतिलिपि अग्रेषित</u>/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
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, 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**