

आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ, 'बी', मुंबई।

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

**श्री जोगिन्दर सिंह, न्यायिक सदस्य एवं
श्री राजेश कुमार, लेखा सदस्य, के समक्ष**

**Before Shri Joginder Singh, Judicial Member, and
Shri Rajesh Kumar, Accountant Member**

**ITA No.473/Mum/2013
Assessment Year: 2008-09**

M/s Mahavir Minerals Ltd. Mohanlal Jain & Co. Chartered Accountants, 10, Chartered House, Gr. Floor, Dr. C. H. Street, Marine Lines, Mumbai-400002	बनाम/ Vs.	DCIT-2(2), Aayakar Bhavan, M.K. Road, Mumbai-400020
(निर्धारिती / Assessee)		(राजस्व / Revenue)
PAN. No. AAACM3078K		

निर्धारिती की ओर से / Assessee by	None
राजस्व की ओर से / Revenue by	Ms. Neha Thakur

सुनवाई की तारीख / Date of Hearing :	24/07/2018
आदेश की तारीख / Date of Order:	24/07/2018

आदेश / O R D E R

Per Joginder Singh (Judicial Member)

The assessee is aggrieved by the impugned order dated 05/11/2012 of the Ld. First Appellate Authority, Mumbai, upholding levy of penalty of Rs.5,89,643/- imposed under section 271(1)(C) of the Income Tax Act, 1961 (hereinafter the Act) on the wrong assigned reasons and contrary to the provisions of Income Tax Act and rules.

2. During hearing, nobody was present for the assessee, in spite of the fact that this appeal was filed on 16/01/2013 and thereafter adjourned on various dates. On 12/05/2016, 15/11/2016, 14/11/2017 and 17/07/2018, the appeal was adjourned at the request of the assessee. Today, i.e. 24/07/2018, the assessee again moved application for adjournment on the ground that the senior most partner has gone out of Mumbai and thus the application of the assessee for adjournment was rejected. It seems that the assessee is not interested to pursue the appeal and merely getting adjourned as mentioned earlier. Therefore, we have no option but to proceed ex-parte, qua the assessee and tend to dispose of this appeal on the basis of

material available on record. On the other hand, Ms. Neha Thakur, Ld. Sr. DR, defended the imposition as well as confirmation of penalty by inviting out attention to various paras of this order. Our attention was invited to the finding recorded in the assessment order, penalty order as well as order under appeal. From the penalty order, our attention was invited to the claimed deduction under section 80IB of the Act, disallowance on account of Long Term Capital Gains, Portfolio management service fee paid to ASK Investment Managers, etc, along with submissions made by the assessee. The crux of the argument is that the assessee consciously furnished inaccurate particulars of the income, thus the penalty was rightly levied.

2.1. We have considered the submissions of Ld. DR and perused the material available on record. The facts, in brief, are that the assessee is engaged in mining and manufacturing of minerals and trading, declared income of Rs.70,80,852/- in its return filed on 29/09/2008 which was processed under section 143(1) on 10/10/2009. The case of the assessee was selected for scrutiny, therefore, notices under section 143(2) dated 06/08/2009 (served upon the

assessee on 11/08/2009) and thereafter notice under section 142(1) along with questionnaire and a letter on 23/06/2010 were issued to which the assessee attended the proceedings and filed details. The assessee claimed deduction under section 80IB(10) of the Act. As per the Revenue, the profit, which is eligible for deduction is to be calculated as per the Act and identically is the depreciation. The assessee was asked for justification of the claim made by the assessee. The assessee vide summons dated 22/11/2010 was asked to explain as to why the claimed deduction of Rs.18,76,323/- under section 80IB may not be reworked considering the claimed depreciation. The assessee submitted as under:-

“With regard to your query as to why depreciation claimed as per companies Act of Rs.32,70,895/- for the purposes of claiming 80-IB deduction should not be substituted by the depreciation allowable as per I.T. Act. In this connection please find herewith the revised working as per Ex “A” for your honour’s perusal and consideration.”

From the above reply of the assessee, the Ld. Assessing Officer observed that the assessee himself has accepted the calculation of deduction under section 80IB, considering the depreciation as per I. T. Act instead of companies Act, thus, after setting off of loss of Assessment Year 2007-08, it was

determined at Rs.14,90,027/- in place of 18,76,323/-, claimed by the assessee. The second reason of imposition of penalty is that in its computation of income, the assessee claimed long term capital gain of Rs.75,82,280/-, which was claimed exempt from tax under section 10(38) of the Act. It was found that on the dividend, the assessee has not paid transaction tax. Vide summons dated 22/11/2010, the assessee was asked the same. The submissions of the assessee were considered and the capital gain of Rs.30,70,359/- (Rs.65,70,359/- minus Rs.35 lakh) were treated as long term gain chargeable to tax and was added to the total income. Likewise, disallowance was made of Rs.5,55,831/- with respect to portfolio management service fee paid to ASK Investment Managers on the reasons as stated in the order and wrong calculation as per the provisions of section 115JB of the Act. Likewise, amount of Rs.1,48,431/- was disallowed under section 14A of the Act. The Ld. Assessing Officer initiated penalty under section 271(1)(c) of the Act for furnishing inaccurate particulars of income. On appeal before the Ld. Commissioner of Income Tax (Appeal), the submissions of the assessee were duly

considered and the penalty proceedings were confirmed. On perusal of the assessment order, penalty order and the impugned order and the finding contained in the respective orders clearly indicates that the assessee consciously furnished inaccurate particulars causing loss to the Revenue. It is also noted that such mistakes were accepted by the assessee only on receipt of various notices from the Department and not *suo-moto*, therefore, if the case of the assessee could not have been selected for scrutiny, such claim was expected to be untaxed again causing loss to the Revenue, thus, we find no infirmity in the order of the Ld. First Appellate Authority, it is affirmed, resultantly, the appeal of the assessee is dismissed.

Finally, the appeal of the assessee is dismissed.

This order was pronounced in the open court in the presence of the ld. DR at the conclusion of the hearing on 24/07/2018.

Sd/-

(Rajesh Kumar)

लेखा सदस्य / ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated : 24/07/2018

Sd/-

(Joginder Singh)

न्यायिक सदस्य / JUDICIAL MEMBER

Shekhar, P.SI/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, Mumbai.
4. आयकर आयुक्त / CIT(A)- , Mumbai,
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**