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

BEFORE HON'BLE SH.R. C. SHARMA, AM& HON'BLE SANDEEP GOSAIN, JM

आयकरअपीलसं./ I.T.A. No. 1984/Mum/2014
(**निर्धारणवर्ष /** Assessment Year: 2008-09)

Shreechand Builders Pvt. Ltd. B-50 Badrinath Appartments Shimpoli Rd., Borivali (west) Mumbai-400 092	**बनाम**/ Vs.	ITO 9(3)(1) I.T. Offices, Aayakar Bhavan, M. K. Road, Churchgate, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No.		AAFCS8512B
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

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आयकरअपीलसं./ I.T.A. No. 1982/Mum/2014
(**निर्धारणवर्ष /** Assessment Year: 2008-09)

Shreechand Builders & Developers Pvt. Ltd. B-50 Badrinath Appartments Shimpoli Rd., Borivali (west) Mumbai-400 092	**बनाम**/ Vs.	ITO 9(3)(1) I.T. Offices, Aayakar Bhavan, M. K. Road, Churchgate, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No.		AAFCS8459R
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

आयकरअपीलसं./ I.T.A. No. 1983/Mum/2014
(**निर्धारणवर्ष /** Assessment Year: 2008-09)

Shreechand Builders & Developers Pvt. Ltd. B-50 Badrinath Appartments Shimpoli Rd., Borivali (west) Mumbai-400 092	**बनाम**/ Vs.	ITO 9(3)(1) I.T. Offices, Aayakar Bhavan, M. K. Road, Churchgate, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAFCS8459R		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

&

आयकरअपीलसं./ I.T.A. No. 1985/Mum/2014
(**निर्धारणवर्ष /** Assessment Year: 2008-09)

Shreechand Builders Pvt. Ltd. B-50 Badrinath Appartments Shimpoli Rd., Borivali (west) Mumbai-400 092	**बनाम**/ Vs.	ITO 9(3)(1) I.T. Offices, Aayakar Bhavan, M. K. Road, Churchgate, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. AAFCS8512B		
(अपीलार्थी/**Appellant**)	:	(प्रत्यर्थी / **Respondent**)

अपीलार्थीकीओरसे/ **Appellant by**	:	Shri Vimal Punamiya, AR
प्रत्यर्थीकीओरसे/**Respondentby**	:	Shri Ashish Kumar Rai, DR
सुनवाईकीतारीख/ **Date of Hearing**	:	26/07/2018
घोषणाकीतारीख / **Date of Pronouncement**	:	26/09/2018

आदेश / O R D E R

Per Sandeep Gosain, Judicial Member:

The present four Appeals filed by the assessee are against the order of Ld. Commissioner of Income Tax (Appeals)-20, Mumbai, dated 07.03.12 & 27.09.12 for AY 2008-09 respectively.

The first two appeals i.e. ITA No. 1984 & 1982/Mum/14 for AY 2008-09 has been filed by the assessee against the order of Ld. CIT (A) in upholding the addition /disallowance and other two appeals i.e. ITA No. 1983 & 1985/Mum/14 for AY 2008-09 has been filed by the assessee against the order of Ld. CIT(A) in upholding penalty against the assessee u/s 271(1)(c) of the I.T. Act.

2. First of all we are taking appeal filed in ITA No. 1984 & 1982/Mum/14 as the issues raised in these two appeals are identical, therefore, for the sake of convenience, these appeals are clubbed, heard and disposed of by this consolidated order.

I.T.A. No. 1984/Mum/2014 (AY 2008-09)

3. First of all we take up assessee's appeal in I.T.A. No. 1984/Mum/2014 (AY 2008-09) on the grounds mentioned herein below:-

> *1. On the facts and in the circumstances of the case and in law, the proceeding initiated by issuance of notice u/s 148 of the Act is invalid and bad in law.*
>
> *2 On the facts and in the circumstances of 1e case and in law, the order passed u/s 143(3) r.w.s. 147 of the Act is invalid and bad in law.*
>
> *3. On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in dismissing the appeal.*
>
> *4. On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in confirming the action of the A.O. in disallowing deduction u/s 801B of the Act.*
>
> *5. On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in enhancing the assessment and that too without appreciating the facts and circumstances of the case fully and properly.*

6. On the facts and in the circumstances of the case and in law, the learned C.I.T. (A) erred in enhancing the assessment and determining the tax liability u/s 11 5JB of the Act.

The appellant craves leave to add, alter, amend or delete any or all of the grounds of appeal at any time.

4. At the very outset, Ld. AR appearing on behalf of the assessee drawn our attention towards application alongwith affidavit dated 04.10.16 which relates to condonation of delay in filing appeal before Hon'ble ITAT. Ld. AR submitted that the present appeal could not be filed within time because of the reasons mentioned in affidavit and thus there was a delay of 670 days in filing the present appeal.

5. On the other hand, Ld. DR requested for dismissal of the said application.

6. We have heard the counsels for both the parties on the application for seeking condonation of delay and while taking into consideration the contents of application filed by the assessee, supporting affidavit, whereby the assessee has

mentioned the reasons in detail for not filing the appeal within limitation, therefore keeping in view the reasons mentioned in the affidavit and following the principles laid down by Hon'ble Supreme Court in case of **"Land Acquisition Collector Vrs. MstKitzi, AIR 1987 S.C. 1353/(1987) 167 ITR 471 (SC),** we condone the delay of 670 days in filing the appeal. Resultantly, this application is **allowed** and appeal is admitted to be ***heard on merits.***

7. The brief facts of the case are that assessee is a private limited company engaged in the development of a housing projects. It filed its return of income on 29.09.2008 declaring NIL income after claiming deduction u/s 801B(10) of Rs.51,40,662/- for A.Y. 2008-09. In the order of assessment, the AO disallowed the deduction claimed u/s 80IB(10) regarding the housing project undertaken by the assessee named "Poonam Sargam" at Shanti VidhyaNagari, Near GCC Club, Village Godbandar, Mira Road East, Thane – 401107.

Against the order of AO, assessee preferred appeal before Ld. CIT(A) and Ld. CIT(A) examined the conditions of section 80IB(10) independently and after dismissed the appeal of the assessee. Book profit and tax liability u/s 115JB was also enhanced.

Against the order of Ld. CIT(A), assessee preferred appeal before us on the grounds mentioned herein above.

Ground No. 1& 2

8. These grounds raised by the assessee have not been pressed, therefore these grounds become infructuous as not pressed.

Ground No. 3

9. This ground raised by the assessee is general in nature, thus requires no specific adjudication.

Ground No. 4

10. This ground raised by the assessee relates to challenging the order of Ld. CIT(A) in confirming the action of the A.O. in disallowing deduction u/s 80IB of the Act.

11. Ld. AR submitted that Ld. CIT (A) disallowed the deduction u/s **80IB(10)** on two grounds i.e. **A)** the project of the assessee was not completed before 31.03.08 and **B)** the plot of the assessee was not more than 1 acre and hence the condition are not satisfied to that extent.

As far as ground **'A'** is concerned, it was submitted that Ld. CIT(A) had denied the exemption by holding that the the Project was not completed before 31.03.2008: The Ld. CIT(A) stated that the appellant failed to submit the completion certificate from the municipal corporation. The completion certificate obtained from the "Architect" was not conclusive. And hence, it was recorded that the condition of completion of

project within the given time frame under the law was not satisfied.

On this ground, Ld. AR submitted that the Municipal Corporation had issued the "**Project Completion Certificate**" **on 25.02.2014** wherein the municipal corporation had clearly mentioned that the project was completed during the year 2007-08. Meaning thereby, the Municipal Corporation had certified that the project was completed on or before **31.03.2008**.

Ld. AR also relied upon the decision of jurisdictional ITAT in the case of **ITO vs. Neeta Enterprise in ITA No. 1652/Mum/2013,** wherein it was held that the condition of furnishing of completion certificate was inserted in the statues w.e.f. 01.04.2005 and hence the same was not applicable to the projects which were approved and commenced before 01.04.2005.

Apart from above Ld. AR also submitted that even otherwise, the assessee had completed the project before 31.03.2008 and able to obtain the completion certificate,

therefore dis-allowance on this condition made by the Ld. CIT(A) also becomes redundant.

As far as ground **‘B’** is concerned, it was submitted that Ld. CIT(A) had wrongly stated that the plot area was not more than 1 acre and hence the condition was not satisfied to that extent.

In this respect, Ld. AR submitted that the assessee had developed the project on the total plot area of 4162.60 Sq. Meter, i.e. equal to 1.02860 Acre [1 Sq. Meter = 0.000247 Acre] which includes free built up area of 3619.64 Sq. Meterand garden area / amenities of 542.96 Sq. Meters, i.e. 0.89443 Acre of free built up area and 0.134168 Acre of garden / amenities.

Ld. AR also relied upon the decision of Hon’ble jurisdictional High Court in the case of **CIT vs. Vandana Properties reported in 353 ITR 36,** wherein it was held that the size of plot of land was not relevant if other conditions stands fulfilled by the assessee and hence dis-allowance on this

condition made by the Ld. CIT(A) was redundant at-least for the "Bombay Jurisdiction".

Apart from that, Ld. AR in order to support his contentions, relied upon the following judgments:-

> *1. 120131 353 ITR 36 CIT vs. Vandana Properties [Bombay HC]Para 27. Moreover, plain reading of Section 801B (10) does not even remotely suggest that the plot of land having minimum area of one acre must be vacant. The said Section allows deduction to a housing project (subject to fulfilling all other conditions) constructed on a plot of land having minimum area of one acre and it is immaterial as to whether any other housing org jects are existing on the said plot of land or not In these circumstances, construing the provisions of Section 801B (10) by adding words to the statute is wholly unwarranted and such a construction which defeats the object with which the Section was enacted must be rejected.*
>
> *Para 29. From the aforesaid letter of CBDT, it is clear that for the purposes of Section 8016 (10) it is not the mandate of the Section that the housing project must be on a vacant plot of land having minimum area of one acre and that where a new housing project is constructed on a plot of land having minimum area of one acre but with existing housing projects would qualify for Section 8018 (10) deduction. Even otherwise, the argument of the Revenue does not stand to reason because. In the city of Mumbai where there is acute space crunch. It is difficult to find a vacant Plot having minimum area of one acre and even if few such plots are existing, it cannot be said that Section 801B*

> *(10) deduction was intended to give benefit only to the undertakings who construct housing projects on those few plots. Therefore, it is clear that on a plot of land having minimum area of one acre, there can be any number of housing projects and so long as those housing projects are approved by the local authority and fulfill the conditions set out under Section 801B (10), the deduction thereunder cannot be denied to all those housing projects. Section 8016 (10) while specifying the size of the plot of land, does not specify the size or the number of housing projects that are required to be undertaken on a plot having minimum area of one acre. As a result. significance of the size of the plot of land is lost and therefore, the assessee subject to fulfilling other conditions becomes entitled to Section 801B (10) deduction on construction of a housing project on a Plot having area of one acre, irrespective of the fact that there exist other housing projects or not. In these circumstances, the decision of the Tribunal in rejecting the contention of the Revenue regarding the size of the plot cannot be faulted.*

12. On the other hand, Ld. DR relied upon the orders passed by revenue authorities.

13. We have heard counsels for both the parties and we have also perused the material placed on record, judgment cited by both the parties as well as orders passed by the revenue authorities. We find that the project of the assessee was approved

by the Municipal Corporation on 23.04.02 in this respect, assessee had relied upon copy of commencement certificate. We have also perused the completion certificate according to which the construction was completed before 31.03.08. We have also considered the **lay out plan** according to which the area of plot is more than 1 acre. Therefore while taking into consideration, the facts of the present case and also keeping in view the principles laid down in the aforementioned judgments(supra) we allow this ground and set aside the disallowance made by AO u/s 80IB of the Act. Resultantly, this ground raised by the assessee is **allowed**.

Ground No. 5 & 6

14. Since both the grounds raised by the assessee are inter connected and inter related and relates to challenging the order of Ld. CIT(A) in enhancing the assessment and determining the tax liability u/s 115JB of the Act, therefore we thought it fit to dispose of the same by this common order.

15. We have heard counsels for both the parties and we have also perused the material placed on record, judgment cited by both the parties as well as orders passed by the revenue authorities.

Before we decide the merits of the case, it is necessary to evaluate the orders passed by Ld. CIT(A). The Ld. CIT(A) has dealt with the above grounds raised by the assessee in its detailed order. The operative portion of the order of Ld. CIT(A) is contained in para no. 11 of its order and the same is reproduced below:-

> ***11Tax Liability u/s 115JB (Enhancement***
>
> *During the course of appellate proceedings, It is observed that the appellant has filed its return of income for A Y 2008-09 declaring total income of Rs. NIL after claiming deduction u/s 80IB(10) of Z.51,40,622/-. Tax on theabove total income of Rs. NIL was calculated and paid for. No book profit u/s 115JB and tax thereon have been calculated. It Is further seen that no discussion in respect of book profit has been taken place in the assessment order as well.*

Therefore, vide this letter nO. CIT(A)20/Notice/2011-12 dated 08.11.2011, the appellant was show caused as under:-

2. It is observed that you have filed your return of income for AY 2008-09 declaring total income at NIL after, claiming deduction u/ 801B(10) at Rs.51,40,622/-. It is further seen that you have computed book profit u/s.115JB at Rs. NIL, therefore, no tax liability thereon has not been determined. It is further seen that in the assessment order u/s 143(3) dated 27.12.10 deduction claimed u/s 80IB(10) has been disallowed however, no discussion has taken place in respect of book profit u/s 115JB and tax thereon.

2. It is pertinent to note that you are a company, thereforeas per provision of section 115JB, book profit and tax thereon needs to be computed, further out of such book profits deduction claimed u/s.80IB(.10) cannot be reduced as the same is not an eligible deduction out of book profits. In this factual background, please submit your explanation as to why your book profit should not be enhanced to Rs.51,40,622/- as against Rs. NIL computed in the return and determined in the order u/s 143(3)".

11.1 In response to the above, appellant vide its letter dated 20.02.12 accepted that book profit remained to be calculated. In view of the admission by the appellant, I calculated book profit as under:-

Book Profit u/s.115JB:

Profit as per Profit & Loss Account Rs. 51,40,622

Tax liability u/s 115JB (10.30% of Rs. 5669933) Rs. 5,29,484.

11.2 The above calculation shall come into effect when the tax liability under normal provision is less than the abovetaxliability. Penalty u/s 271(1)(c) of the Act is initiated for the failure to compute tax liability u/s 115JB on its own while filing the return of income.

After having gone through the orders passed by revenue authorities, we find that assessee could not rebut the contentions contained in the order of Ld. CIT(A). Moreover, no new facts or contrary judgments have been brought on record before us in order to controvert or rebut the findings recorded by the PCIT. Moreover, there are no reasons for us to deviate from the findings

recorded by the Ld. PCIT. Therefore, we are of the considered view that the findings recorded by the Ld. CIT (A) are judicious and are well reasoned. Accordingly, we uphold the same. Resultantly, these grounds raised by the assessee stands **dismissed**.

16. In the net result the appeal filed by the assessee stands **partly allowed**.

ITA No. 1982/Mum/2014 (AY 2008-09)

17. Now we take up assessee's appeal filed in ITA No. 1982/Mum/2014 for AY 2008-09. Since, we have already decided the similar grounds of appeal in ITA No. 1984/Mum/2014 for AY 2008-09 on merits. Therefore, following our own decision in ITA No. 1984/Mum/14, we apply the same findings in the present appeal in order to maintain judicial consistency which is applicable mutatis mutandis.

18. In the net result the appeal filed by the assessee stands **partly allowed**.

I.T.A. No. 1983/Mum/2014 (AY 2008-09)

19. Now we take up assessee's appeal in I.T.A. No. 1983/Mum/2014 (AY 2008-09), which has been filed against the order of levy of penalty on the grounds mentioned herein below:-

> *1. On the facts and in the circumstances of the case and in law, the penalty order passed u/s 271(1)(c) of I.T. Act is invalid and bad in law.*
>
> *2 On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in levying a penalty of Rs. 5,84,300/- u/s 271(1)(c) of I.T. Act and that too without appreciating fully and properly the facts of the case.*
>
> *3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) erred in levying a penalty of Rs. 5,84,300/- u/s 271(1)(c) of I.T. Act although there has been neither any concealment nor furnishing of inaccurate particulars of income.*
>
> *The appellant craves leave to add, alter, amend or delete any or all of the grounds of appeal.*

20. At the very outset, Ld. AR appearing on behalf of the assessee drawn our attention towards application alongwith affidavit dated 04.10.16 which relates to condonation of delay in filing appeal before Hon'ble ITAT.

Ld. AR submitted that the present appeal could not be filed within time because of the reasons mentioned in the application supported by affidavit and thus there was a delay of 482 days in filing the present appeal.

21. On the other hand, Ld. DR requested for dismissal of the said application.

22. We have heard the counsels for both the parties on the application for seeking condonation of delay and while taking into consideration the contents of application filed by the assessee, supporting affidavit, whereby the assessee has mentioned the reasons in detail for not filing the appeal within limitation, therefore keeping in view the reasons mentioned in the affidavit and following the principles laid down by Hon'ble Supreme Court in case of **"Land Acquisition Collector Vrs. MstKitzi, AIR 1987 S.C. 1353/(1987) 167 ITR 471 (SC),** we

condone the delay of 482 days in filing the appeal. Resultantly, this application is **allowed** and appeal is admitted to be ***heard on merits.***

23. The brief facts of the case are that assessee is a company and filed its return of income declaring NIL income while claiming deduction u/s 80IB(10) of the I.T. Act. The AO disallowed the deduction claimed u/s 80IB(10), but did not discuss anything about MAT provision as per section 115JB, however Ld. CIT(A) initiated and levied penalty u/s 271(1)(c) of I.T. Act for non-payment of tax u/s 115JB of the Act.

Against the order of Ld. CIT(A), assessee preferred appeal before us on the grounds mentioned herein above.

Ground No. 1to 3.

24. Since all these grounds raised by the assessee are inter connected and inter related and relates to challenging the order of Ld. CIT(A) in levying the penalty u/s 271(1)(c) of I.T. Act,

therefore we thought it fit to dispose of the same by this common order.

25. Ld. AR submitted before us that Ld. CIT(A) has erred in levying of penalty by wrongly holding that the assessee by offering lower book profit, had furnished 'inaccurate particulars' of facts and 'concealed the income'.

It was also submitted that assessee had furnished all the particulars on record and the entire amounts mentioned by the assessee are correct and only out of that disclosure, Ld. CIT(A) computed the book profit u/s 115JB and initiated penalty proceedings. It was further submitted that Ld. CIT(A) had not brought on record any new findings and the assessee neither furnished 'inaccurate particulars' of income nor 'conceal the income'. It was further submitted that assessee has not suppressed **its real book profit and the profits in the P & L account** have been calculated in accordance with the provisions of the companies Act, 1956. As per section 205 of Companies Act, 1956, company can follow the method approved by the

Central Government. As the block of asset method prescribed under Income Tax Act has already been approved by the Central Government and that method clearly lays down the method of calculating the profit on sale of an asset as per block of asset method. It was also submitted that in accordance with such provisions, the assessee had calculated book profit. Therefore in such circumstances, it was pleaded that there was no mistake on part of the assessee in calculating the profits in the P&L account.

Ld. AR further submitted that the mistake in computation of book profit cannot be liable for penalty u/s 271(1)(c) of I.T. Act and the tax issues are very complicated, therefore human mistakes are not liable for penalty u/s 271(1)(c) of I.T. Act. In this respect, Ld. AR relied upon various judgments in the case of **CIT Vrs. Compro Technologies Pvt. Ltd. (2015) 55 taxmann.com 180 (Delhi), Price Waterhouse Cooper Pvt. Ltd. Vrs. CIT, Kolkata (2012) 25 taxmann.com 400 (SC), M/s B.L. International Vrs. ACIT, ITA No. 1590/Del/2014, Oxford Softech Pvt. Ltd. Vrs. ITO, ITA No. 5100/Del/2011, CIT vrs.**

Shyama A. Bijapurkar, ITA No. 842/2010 (Del HC) and CIT vrs. Smt Rita Malhotra 154 ITR 550 (Del).

It was also submitted by Ld. AR that there was no 'concealment of income' by the assessee as assessee itself offered income for taxation. The penalty u/s 271(1)(c) of I.T. Act can be levied if appellant either 'concealing income' or furnishing 'inaccurate particulars of income'. As per the provision, the penalty cannot be levied on 'estimate addition' and the proceedings u/s 271(1)(c) of I.T. Act are quasi-criminal in nature.

It was submitted that addition made in the book profit are itself wrong as only such items which are specifically mentioned in the explanation to section 115JB need to be excluded or included, as the case is, and nothing more can be brought in. Since the addition itself is invalid, therefore penalty on the same cannot be levied. It was further submitted that the 'concealment of income' had its repercussions only when assessment was done under the normal procedure. If the assessment as per the normal procedure was not acted upon and it was the deemed income

assessed u/s 115JB which became the basis of assessment, the concealment had no role to play and was totally irrelevant as the concealment does not lead to tax evasion at all. In this respect, Ld. AR relied upon the following judgments:-

i) CIT vrs. Nalwa Sons Investment Ltd. (Appeal No. 18564/2011 [sc])
ii) ITO Vrs. Software Element India Pvt. Ltd. (ITA No. 551/Mum/12-ITAT)
iii) Ruchi Strips & Alloys Ltd. Vrs. DCIT (ITA No. 6940/Mum/2008)
iv) CIT Vrs. Central Warehousing Corporation (ITA No. 999/2011 & 1091/2011)

Ld. AR also relied upon Circular No. 25/2015 dated 31st December 2015, wherein it was held that the case prior to AY 2017-18, the penalty u/s 271(1)(c) of the I.T. Act cannot be levied where additions /disallowances made under normal provisions of the I.T. Act, but tax levied under MAT provisions u/s 115JB.

26. On the other hand, Ld. DR relied upon the orders passed by revenue authorities.

27. We have heard counsels for both the parties and we have also perused the material placed on record, judgment cited by both the parties as well as orders passed by the revenue authorities. We find that Circular No. 25/2015 dated 31st Dec. 2015 issue by CBDT clearly directs in the present case as in par no. 5 of the said circular, wherein it has been held as under:-

> *5. Accordingly, in view of the Delhi High Court judgment and substitution of Explanation 4 of section 271 of the Act with prospective effect, it is now a settled position that prior to 1/4/2016, where the income tax payable on the total income as computed under the normal provisions of the Act is less than the tax payable on the book profits u/s 115JB of the Act, then penalty under 271(1)(c) of the Act, is not attracted with reference to additions /disallowances made under normal provisions. It is further clarified that in cases prior to 1.4.2016, if any adjustment is made in the income computed for the purpose of MAT, then the levy*

of penalty u/s 271(1)(c) of the Act, will depend on the nature of adjustment.

Apart from above, we also drawn strength from the order passed by the Coordinate Bench of Hon'ble ITAT in ITA No. 3257/Mum/2009, wherein it has been held as under:-

> *16. The assessee had furnished all the particulars regarding the book profits along with the return and had not concealed anything which is required for computation of the Book Profits. No information filed by the assessee was inaccurate as the Book Profits finally determined is on the basis of figures available in the printed Accounts. Thus the mistake of the assessee in not computing the Book Profits is an inadvertent error. The assessee filing the audited Balance Sheet and P&L account has giving all the particulars for determining the Book profits u/s 115JB. In the circumstances, we accept the explanation of the assessee that failure to compute the book profits is only an inadvertent omission and all the material necessary for computing the same has been filed with the return. In the light of the decision of the Apex Court in the case of* ***Reliance Petroproducts Pvt. Ltd.*** *(supra), we uphold the order of the Ld. CIT(A).*

As per the facts of the present case, the assessee had not suppressed its real book profit. The assessee has calculated the profit on sale of asset as per block of asset method, which has been prescribed under the Income Tax Act and approved by Central Government. Even otherwise mistake in computation of book profit cannot be liable for penalty u/s 271(1)(c) as the tax issues are very complicated and therefore 'human mistake' cannot be liable for penalty. On this proposition, we draw strength from the decision of Hon'ble Supreme Court in the case of **Price Water house Cooper Pvt. Ld. Vrs. CIT (2012) 25 taxman.com 400 (SC), CIT Vrs. Compro Technologies Pvt. Ltd. (2015) 55 taxmann.com 180 (Del).** The assessee had presented all the relevant facts and circumstances. Moreover AO could not bring on record any fresh material to point out any concealment on the part of assessee. The concealment of income has its repercussion only when assessment was done under the normal procedure. If assessment as per the normal procedure was not acted upon and it was the deemed income assessed u/s 115JB

which became the basis of the assessment, then the concealment had no role to play as the concealment did not lead to tax evasion. On this proposition, we draw strength from the decision of Hon'ble Supreme Court in the case of ***i) CIT vrs. Nalwa Sons Investment Ltd. (Appeal No. 18564/2011 [sc]), ii) ITO Vrs. Software Element India Pvt. Ltd. (ITA No. 551/Mum/12-ITAT), iii) Ruchi Strips & Alloys Ltd. Vrs. DCIT (ITA No. 6940/Mum/2008) and iv) CIT Vrs. Central Warehousing Corporation (ITA No. 999/2011 & 1091/2011)***

Therefore, considering the interest of justice and in view of the facts of the present case as well as aforesaid legal proposition, we do not find it to be a case of 'concealment of income' or furnishing of 'inaccurate particulars of income', and thus not fit for levy of penalty. Therefore, penalty levied by the AO is directed to be deleted. Resultantly, these grounds raised by the assessee are **allowed.**

ITA No. 1985/Mum/2014 (AY 2008-09)

28. Now we take up assessee filed in ITA No. 1985/Mum/2014 for AY 2008-09. Since, we have already decided the similar grounds of appeal in ITA No. 1983/Mum/2014 for AY 2008-09 on merits. Therefore, following our own decision in ITA No. 1983/Mum/14, we apply the same findings in the present appeal in order to maintain judicial consistency which is applicable mutatis mutandis. Resultantly, the appeal filed by the assessee stands **allowed**.

29. In the net result, the appeals filed by the assessee in ITA No. 1984 & 1982/Mum/2014 stands **partly allowed** and the appeals filed by the assessee in ITA No. 1983 & 1985/Mum/2014 stands **allowed.**

Order pronounced in the open court on 26th Sept., 2018.

Sd/- Sd/-

(R. C. Sharma) (Sandeep Gosain)
लेखासदस्य / Accountant Member न्यायिकसदस्य / Judicial Member
मुंबई Mumbai;दिनांकDated : 26.09.2018
Sr.PS.Dhananjay

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

.उप/सहायकपंजीकार
(Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ **ITAT, Mumbai**