



ITA No.2192/Mum/2009  
ITA No.2133/Mum/2012  
M/s. Business Press Private Limited  
Assessment Year :2005-06

**आयकर अपीलीय अधिकरण “बी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“B” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, न्यायिक सदस्य एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, JM AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**

आयकरअपील सं./ I.T.A. No.2192/Mum/2009  
(निर्धारण वर्ष / Assessment Year:2005-06)

<b>M/s. Business Press Pvt. Ltd.</b> Room No. D-46, Plot No.443 Nachiket Housing Society Lt. Sector-4, Charkop Kandivali(W), Mumbai-400 067.	<b>बनाम/ Vs.</b>	<b>DCIT-8(1)</b> Aaykar Bhavan Mumbai.
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No. <b>AAACB-1734-B</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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आयकरअपील सं./ I.T.A. No.2133/Mum/2012  
(निर्धारण वर्ष / Assessment Year:2005-06)

<b>DCIT-8(1)</b> Aaykar Bhavan Mumbai.	<b>बनाम/ Vs.</b>	<b>M/s. Business Press Pvt. Ltd.</b> Room No. D-46, Plot No.443 Nachiket Housing Society Lt. Sector-4, Charkop Kandivali(W), Mumbai-400 067.
स्थायीलेखासं./जी आइ आरसं./PAN/GIR No. <b>AAACB-1734-B</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Madhur Agarwal- Ld. AR
<b>Revenue by</b>	:	Ms. Pooja Swaroop - Ld.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	31/07/2019
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	09/08/2019



## आदेश / O R D E R

### Per Manoj Kumar Aggarwal (Accountant Member)

1. ITA No. 2192/Mum/2009 is assessee's appeal which contest the order of Ld. Commissioner of Income-Tax (Appeals)- VIII, Mumbai, [in short referred to as 'CIT(A)'], *Appeal No. CIT(A)-VIII/DCIT-8(1)/IT-268/2007-08* dated 10/12/2008 *qua* confirmation of certain quantum additions. ITA No. 2133/Mum/2012 is revenue's appeal which contest deletion of penalty u/s 271(1)(c) by Ld. first Appellate Authority. First, we take up assessee's appeal.

2. Although, the assessee has raised 3 effective grounds of appeal, however, ground no. 3 has not been pressed before us in view of the fact that adequate relief has already been granted to the assessee by lower authorities in assessee's rectification application. The remaining grounds, as urged before us, reads as under: -

- 1.a. The Learned Commissioner of Income Tax (Appeals) erred in confirming the addition of notional interest income of Rs. 88,59,117/- to the appellant's returned total income.
- b. The Learned Commissioner of Income Tax (Appeals) grossly erred in confirming the Assessing Officers estimation of interest @ 12% on the balance outstanding from sister concerns as on 31-03-05.
2. a. The Learned Commissioner of Income Tax (Appeals) grossly erred in applying the provisions of Section 50C of the Income Tax Act, 1961 to the sale of land and building by the assessee.
- b. The Learned Commissioner of Income Tax (Appeals) grossly erred in upholding the Assessing Officers view of taking the sale value of land and building at Rs. 2,45,29,000/-, being the value adopted by Stamp Valuation Authority, for computation of capital gains. He failed to appreciate that actual sale consideration for the said property was Rs. 1,50,00,000/-.
- c. He failed to appreciate that the Assessing officer ought to have referred the matter to the valuation officer as contemplated under the provisions of sub-section (2) of section 50C of the Income Tax Act, 1961.



3.1 Facts in brief are that the assessee being resident corporate assessee stated to be engaged in Selling of Books and running Printing Press was assessed for year under consideration u/s 143(3) on 13/12/2007 wherein the income of the assessee was assessed at Rs.216.20 Lacs after certain additions / adjustments / disallowances as against returned loss of Rs.85.84 Lacs filed by the assessee on 31/10/2005. As evident from grounds of appeal, two issues arise under the appeal viz. (i) Addition on account of notional interest income (ii) Application of Section 50C.

3.2 We have heard the rival submissions and perused relevant material on record. Our adjudication on the two issues would be as under: -

(i) Addition on account of notional interest income

During assessment proceedings, it transpired that the assessee had borrowed funds of Rs.1526.90 Lacs and paid interest of Rs.142.38 Lacs. At the same time, the assessee had advanced funds of Rs.738.25 Lacs to its associated concerns, however, no interest was received on those advances. The amount of Rs.344.19 Lacs was advanced to M/s Pan Music and Magazines Pvt. Ltd., an entity in which directors of the assessee were interested whereas amount of Rs.394.06 Lacs was advanced to M/s Perennial Press, which was proprietary concern of one of the directors. The assessee, in defense, drew attention to the fact that interest free advances of Rs.39.54 Lacs was received from the directors. Reliance was placed on the decision of Hon'ble Supreme Court rendered in **S.A. Builders V/s CIT [2006 288 ITR 1]** for the submission that since advances were given out of commercial expediency, no interest



disallowance u/s 36(1)(iii) would be justified. However, the assessee, in the opinion of Ld. AO, could not establish that the loans were advanced out of commercial expediency and also could not establish that the loans were advanced out of interest free funds available with the assessee. Relying upon various judicial decisions including the decision of Hon'ble Madras High Court in **K.Samsundaram & Bros. [238 ITR 939]** & Hon'ble Allahabad High Court in **Surya Sugar Mills Pvt. Ltd. V/s CIT [201 ITR 711]**, Ld. AO reached a conclusion that interest bearing funds were utilized for non-business purposes and interest expenditure could not be considered to have been incurred wholly for the purpose of business. Consequently, applying a rate of 12% on loans / advances of Rs.738.25 Lacs, Ld. AO arrived at interest income of Rs.88.59 Lacs and reduced business loss to that extent.

The Ld. first appellate authority relying upon the appellate order for AY 2004-05 and observing that the assessee failed to prove that the loans were advanced out of commercial expediency and utilized for business of these concerns, upheld the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us.

Upon careful consideration, the undisputed position that emerges is the fact that the assessee has advanced interest free loans to its associated concerns during the year which has substantially been funded out of interest-bearing loans / advances as evident from the observation of Ld. AO at para 5.4 of the quantum assessment order. This fact remains unrebutted before us also. Another undisputed fact is that the assessee has miserably failed before lower authorities to prove that the loans were



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advanced out of commercial expediency. Nothing has been brought on record before us also to establish the fact that loans were advanced out of commercial expediency. Therefore, the cited case law of **S.A. Builders V/s CIT [supra]** has rightly been distinguished and Ld. AO has rightly relied upon cited binding judicial precedents as extracted in the quantum assessment order. Thirdly, nothing on record would rebut the fact that the decision of Ld. first appellate authority rendered in AY 2004-05 squarely applied to the facts of this year also. Nothing has been shown before us to demonstrate that aforesaid decision has been reversed by any higher authority, in any manner. The Ld. AR has advanced arguments to submit that notional interest income could not be added to the income of the assessee. However, upon perusal of computation of income as worked out in para-8 of the quantum assessment order, we find that the impugned interest has been added back to the business income of the assessee and the business loss has been reduced to that extent. Therefore, we find no force in these arguments.

On the above facts and circumstances, we confirm the stated addition as made by lower authorities. Ground No.1 stands dismissed.

(ii) Application of Section 50C.

It was noted that the assessee sold land and building situated at Compartment No.82, Plot No.6, Marol Co-op, Industrial Estate Andheri for sale consideration of Rs.1.50 Crores. However, sale agreement was stamped for a value of Rs.245.29 Lacs. Consequently, Ld. AO proceeded to apply the provisions of Section 50C to the stated



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transaction. The assessee submitted that purchaser paid a sum of Rs.1 Crores towards purchase of land and a further sum of Rs.0.50 Crores towards purchase of building and therefore, bifurcating the sale value in this ratio, it arrived at Long-Term Capital Gains of Rs.60.28 Lacs on sale of land and short-term capital gains of Rs.101.68 Lacs on sale of building. The relevant computations have already been extracted at para 6.2 of the quantum order. Accepting the same, Ld. AO assessed capital gains accordingly.

The Ld. first appellate authority, observing that the assessee failed to submit any evidence that the stamp duty value was higher than the fair market value, upheld the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us.

The Ld. AR, relying upon certain decisions of this Tribunal, has advanced argument to submit that the provisions of Section 50C would not apply to transfer of land and building, being a leasehold property. Our attention has been drawn to deed of assignment dated 31/12/2014 as executed by the assessee in favor of the purchaser. We find some force in the same and also find that these arguments have been taken for the first time before us. Therefore, for proper appreciation of fact, we set aside the order of Ld. first appellate authority on this issue and remit the matter back to the file of Ld. AO for re-consideration of assessee's submissions. The assessee, in turn, is directed to substantiate his claims / submissions as made before us. Needless to add that sufficient opportunity of being heard shall be granted to the assessee. Ground No.2 stands allowed for statistical purposes.



3.3 In result, the assessee' appeal stands partly allowed for statistical purposes in terms of our above order.

### **Revenue's Appeal: ITA No. 2133/Mum/2012**

4.1 The revenue is contesting deletion of penalty u/s 271(1)(c) by Ld. first appellate authority. The penalty arises out of quantum assessment framed by Ld. AO u/s 143(3) dated 13/12/2007. The perusal of penalty order dated 29/03/2010 would reveal that penalty of Rs.111.11 Lacs has been levied @100% of 'tax sought to be evaded' against quantum additions of Rs.78.93 Lacs u/s 43B, interest disallowance of Rs.88.59 Lacs and Capital Gains additions of Rs.161.97 Lacs.

4.2 The penalty on account of addition u/s 43B was deleted by Ld. first appellate authority, *inter-alia*, by observing that the addition of Rs.63.80 Lacs as made by Ld. AO was already made in AY 2004-05 and the said addition was already deleted in rectification order passed u/s 154 on 05/04/2011 (which is after the penalty order dated 29/03/2010) and therefore, the penalty could not be sustained. Another reason to delete the penalty was the decision of Hon'ble Supreme Court rendered in **CIT V/s Reliance Petroproducts Pvt. Ltd. [322 ITR 158]** which held that mere making of incorrect claim in law could not tantamount to furnishing of inaccurate particulars of income and mere making of claim which is not sustainable in law, by itself, would not amount to furnishing of inaccurate particulars of income.

4.3 The penalty against estimated addition of notional interest was deleted by placing reliance on the decision of Ahmedabad Tribunal rendered in **Murlidhar Ginning & Processing V/s ITO [ITA**



**No.2006/Ahd/2010]**, Chandigarh Tribunal in **Dabwali Transport Co. V/s ACIT [3 ITR 785]** coupled with the decision of Hon'ble Punjab & Haryana High Court in **CIT V/s Modi Industrial Corporation**.

4.4 The additions made by applying deeming fiction of Section 50C was deleted by observing that Ld. AO did not question the actual sale consideration and therefore, it was not a case of concealment of income or furnishing of inaccurate particulars of income which would warrant penalty u/s 271(1)(c).

Aggrieved as aforesaid, the revenue is in further appeal before us.

5. Upon careful consideration of factual matrix and upon perusal of impugned order, we are of the considered opinion that Ld. first appellate authority has clinched the issue in the right perspective. The penalty levied on account of addition u/s 43B would not be sustainable since the quantum itself has been deleted by Ld. AO, in rectification order. The additions made for interest disallowance on mere estimations would not automatically entail penalty u/s 271(1)(c) unless there was any concealment of income or furnishing of inaccurate particulars of income by the assessee within the meaning of that Section as held by Hon'ble Supreme Court in **CIT V/s Reliance Petroproducts Pvt. Ltd. [supra]**. Lastly, the issue of capital gains already stood restored by us to the file of Ld. AO for re-adjudication and therefore, the penalty on that count could not be sustained. Nevertheless, we also concur with the reasons given by Ld. first appellate authority in the impugned order to delete the penalty on account of this addition. In result, the appeal stands dismissed.



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## **Conclusion**

6. The assessee's appeal ITA No.2192/Mum/2009 stand partly allowed for statistical purposes whereas the revenue's appeal ITA No.2133/Mum/2012 stand dismissed.

*Order pronounced in the open court on 09<sup>th</sup> August, 2019*

**Sd/-**  
**(Mahavir Singh)**

**Sd/-**  
**(Manoj Kumar Aggarwal)**

न्यायिक सदस्य / **Judicial Member** लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 09.08.2019

*Sr.PS, Jaisy Varghese*

**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/सहायक पंजीकार (Dy./Asstt.Registrar)**  
**आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**