

**आयकर अपीलिय अधिकरण, मुंबई न्यायपीठ , मुंबई ।**

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

**BEFORE SHRI RAJENDRA, ACCOUNTANT MEMBER AND**

**SHRI C.N. PRASAD, JUDICIAL MEMBER**

**आयकर अपील सं /I.TA No.4425/Mum/2012**

**(निर्धारण वर्ष / Assessment Year: 2008-09**

The ITO-2(3)(2), Aayakar Bhavan, Mumbai-400 020	<b>बनाम/</b> Vs.	M/s. S.B. Estate Pvt. Ltd., 4, Buona Casa, 2 <sup>nd</sup> Floor, Sir, P.M. Road, Fort, Mumbai-400 01
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. AAICS 0730J		
<b>(अपीलार्थी /Appellant)</b>	..	<b>(प्रत्यर्थी / Respondent)</b>
अपीलार्थी ओर से/ <b>Appellant by:</b>		Shri R.K. Sahu
प्रत्यर्थी की ओर से/ <b>Respondent by:</b>		ShriKalpesh S. Turalkar

**सुनवाई की तारीख / Date of Hearing :25.07.2016**

**घोषणा की तारीख /Date of Pronouncement :29.07.2016**

**आदेश / O R D E R**

**PER C.N. PRASAD, JM:**

This appeal is filed by the Revenue against the order of the Ld. CIT(A)-6, Mumbai dated 23.4.2012 pertaining to assessment year 2008-09.

2. The Revenue in its appeal challenges the order of the Ld. CIT(A) in deleting the penalty levied u/s. 271(1)(c) of the Act.

3. The Ld. Counsel for the assessee at the outset submits that penalty u/s. 271(1)(c) was levied on the disallowance of deduction

made u/s. 80IB of the Act while computing the normal provisions of the Act. The Ld. Counsel for the assessee submits that the income computed under normal provisions of the Act was less than the income computed u/s. 115JB of the Act, therefore, tax was levied on the Book Profit u/s. 115JB of the Act. The Ld. Counsel for the assessee referring to the recent Circular of the Board No. 25 of 2015 dated 31<sup>st</sup> December 2015 submits that where the additions/disallowances were made under normal provisions of the Act but tax was levied under MAT, provisions u/s. 115JB/115JC for the cases prior to the Assessment Year 2016-17, penalty u/s. 271(1)(c) is not attracted with reference to additions/disallowances made under normal provisions of the Act. Therefore, in its case, since penalty was levied with reference to additions/disallowances made under normal provisions of the Act i.e. disallowance of deduction u/s. 80IB and taxes were levied on the book profits u/s. 115JB of the Act, in view of the CBDT Circular, penalty u/s. 271(1)(c) is not attracted.

4. The Ld. Departmental Representative supports the orders of the authorities below.

5. We have perused the orders the circular of the CBDT No. 25 of 2015 dated 31<sup>st</sup> December, 2015 wherein it is clarified 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 profit u/s. 115JB of the Act, then penalty u/s. 271(1)(c) of the Act is not attracted with reference to additions/disallowances made under normal provisions of the Act. It was also directed all the Revenue authorities henceforth no appeals shall be filed on this ground and appeals already filed if any on this

issue before various Courts/Tribunals may be withdrawn/not pressed upon. In view of the Circular of the CBDT referred to above, we dismiss the appeal of the Revenue.

6. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open court on 29<sup>th</sup> July, 2016.

Sd/-

Sd/-

**(RAJENDRA)**

**(C.N. PRASAD )**

लेखा सदस्य / ACCOUNTANT MEMBER

न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 29<sup>th</sup> July, 2016

व.नि.स./ Rj , Sr. PS

**आदेश की प्रतिलिपि अग्रेषित/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**