

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

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

**सर्वश्री जोगिन्दर सिंह, न्यायिक सदस्य एवं श्री आर.सी.शर्मा, लेखा सदस्य**

**BEFORE SHRI JOGINDER SINGH, JM  
&  
SHRI R.C.SHARMA, AM**

**आयकर अपील सं./ITA No.6465/Mum/2012**

**(निर्धारण वर्ष / Assessment Year :2007-2008)**

M/s Neelkamal Builders, 418, Maker Chamber-V, Nariman Point, Mumbai-400021	Vs.	ITO-12(1)(2), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : <b>AACFN 2796 C</b>		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

**निर्धारिती की ओर से /Assessee by** : Shri Bhupendra Shah

**राजस्व की ओर से /Revenue by** : Shri M. Rajan

**सुनवाई की तारीख / Date of Hearing :** 5<sup>th</sup> August, 2015

**घोषणा की तारीख/Date of Pronouncement** 30-10-2015

**आदेश / O R D E R**

**Per R.C.Sharma, AM**

This is an appeal filed by the assessee against the order of CIT(A), Mumbai, dated 31-8-2012, for the assessment year 2007-08, in the matter of imposition of penalty u/s.271(1)(c) of the IT Act, amounting to Rs.2,81,323/-.

2. Rival contentions have been heard and record perused. Facts in brief are that the assessee is engaged in the business of real estate development and building construction activities. During the previous year, it had earned rental income from its own properties which have been disclosed as income from house property in its return of income. During the course of assessment proceedings, the income of house property was

computed after disallowing a claim for deduction being interest paid on loan of Rs.8,35,407/-. The AO held that the said interest is not deductible in computing the house property income as the loan was not utilized for the acquisition of the said property. The AO initiated penalty proceedings u/s.271(1)(c) of the Act and imposed a penalty at 100% of the tax sought to be evaded amounting to Rs.2,81,323/-.

3. By the impugned order the CIT(A) confirmed the action of the AO, against which the assessee is in further appeal before us.

4. We have considered rival contentions and carefully gone through the orders of the authorities below. From the record we found that penalty was levied with respect to disallowance of assessee's claim for interest against income from house property. The assessee has incurred interest expenditure and claimed the same while computing the income from house property. The AO found that interest was not pertaining to the amount borrowed for the purpose of purchase of house property, therefore, disallowed assessee's claim while computing income from house property. However, incurring of interest expenditure is not in dispute, merely because it was not allowed while computing income from house property, the same cannot be made a reason for levying penalty u/s.271(1)(c) of the Act. The assessee has furnished all the particulars of income. Merely because assessee's claim has been declined, the same cannot be made reason for imposing penalty as per the decision of Hon'ble Supreme Court in the case of Reliance Petroproducts Ltd., 322 ITR 158. Accordingly, we do not find any merit for imposition of penalty

with regard to disallowance of claim of interest while computing income from house property.

**5. In the result, appeal of the assessee is allowed.**

Order pronounced in the open court on this 30/10/2015.

आदेश की घोषणा खुले न्यायालय में दिनांक: 30/10/2015 को की गई ।

**Sd/-**

(जोगिन्दर सिंह)

**(JOGINDER SINGH)**

न्यायिक सदस्य / JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 30/10/2015

प्र.कु.मि/pkm, नि.स/ 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), Mumbai.
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

**Sd/-**

(आर.सी.शर्मा)

**(R.C.SHARMA)**

लेखा सदस्य / ACCOUNTANT MEMBER

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार

(Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai