IN THE INCOME TAX APPELLATE TRIBUNAL "C" BENCH, MUMBAI
BEFORE SHRI D. KARUNAKARA RAO, ACCOUNTANT MEMBER
AND SHRI AMIT SHUKLA, JUDICIAL MEMBER
I.T.A. No. 6772/M/2013 **(AY: 2009-2010**)

M/s. Parinee Developers Pvt Ltd., Crescenzo, C-38 & 39, G-Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.	बनाम/ Vs.	ACIT, Central Circle 13, Mumbai – 400 020.
स्थायी लेखा सं./PAN : AADCP8343H		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी की ओर से / Appellant by :	Shri Rajan R. Vora, Nikhil Tiwari
प्रत्यर्थी की ओर से/ Respondent by :	Shri Deepkant Prasad, DR

सुनवाई की तारीख /Date of Hearing : 30.07.2015
घोषणा की तारीख /Date of Pronouncement : 11.09.2015

आदेश / O R D E R

PER D. KARUNAKARA RAO, AM:

This appeal filed by the assessee on 22.11.2013 is against the order of the CIT (A)-37, Mumbai dated 27.9.2013 for the assessment year 2009-2010. This appeal relates to the penalty levied u/s 271(1)(c) of the Act by the CIT (A), who made the enhancement in the regular assessment during the appellate proceedings on quantum issues.

2. Briefly stated relevant facts of the case are that the assessee is engaged in the business of construction and undertook a project of constructing a single commercial complex consisting 20 floors on leased plot of land, belonging to MMRDA. The said plot is located at Plot No.C-38 & 39, G Block, Bandra Kurla Complex, Bandra East, Mumbai-51. The project commenced its construction activity in the AY 2007-2008. During the AY 2009-2010, which is the subject matter before us, construction of 5 floors is completed and the 6th floor is in progress. As per the assessee, the project is completed in the AY 2013-14. Thus, the project took five

years time for its completion. The assessee filed the return of income for all the years recognising the income based on percentage completion method. During the year relevant to the AY under consideration, assessee filed the return of income declaring the total income of Rs. 99.04 Crs (rounded-of). After the scrutiny assessment made u/s 143(3) of the Act, assessed income was determined at Rs. 99,10,31,790/-. In the regular assessment made u/s 143(3) of the Act dated 27.12.2011, AO made certain additions on account of disallowance of expenses. Aggrieved with the additions made by the AO, assessee carried the matter in appeal before the first appellate authority.

3. During the first appellate proceedings, assessee made various submissions before the CIT (A)against the additions. However, the CIT (A) examined the entire project of the assessee, which is in progress. On examining the said project, CIT (A) proposed an enhancement of assessment as per the provisions of section 251(2) of the Act and made various additions. The total additions enhanced by the CIT (A) works out to Rs. 120.04 Crs. The break-up of the said enhancement is tabulated as under:

S No	*Additions / Disallowances*	*Amount*
1	*Pre-ponment of sale income Rs. 179.03 Crs, which was offered in subsequent years, due to which income got enhanced*	*Rs. 20.52 Crs*
2	*Change in estimate of total cost of construction*	*Rs. 28.62 Crs*
3	*Change in method of accounting*	*Rs. 63.57 Crs*
4	*Interest income which was offered by appellant as business income to income from other sources*	*Rs. 7,32,06,243/-*

4. The above enhancement was accepted by the assessee for the reason that the above enhancement of Rs. 120.04 Crs is within the limits of the return of income by the assessee for all the 5 AYs. Otherwise, assessee filed the return of income for all the said AYs. The total returned income for all the five AYs upto AY 2012-13, is equal to the income of the project determined by the CIT (A). Therefore, in order to by peace with the Department, the said enhancement was accepted. Thus, the assessee is not in appeal before the Tribunal on the merits of the additions and hence, the assessment has reached finality.

5. Meanwhile, the CIT (A) initiated the penalty proceedings u/s 271(1)(c) of the Act in connection with the above said enhanced assessment and levied the penalty of Rs. 40.80 Crs @ 100% of the tax sought to the evaded vide the order of the CIT (A) dated 27.9.2013. The order of the CIT (A) contains the submissions of the assessee and the facts relevant for such levy of penalty. CIT (A) discussed number of judicial pronouncements relied upon by the assessee in his favour and against the unsustainability of the penalties levied by the CIT (A). Aggrieved with the above order of the CIT (A), assessee is in appeal before us.

6. During the proceedings before us, at the outset, Ld Counsel for the assessee brought to our notice that the said penalty was required to be revised downwards considering the modification order passed by the CIT (A) reducing the quantum of additions from the said amount of Rs. 120.04 Crs. The assessed income as per the CIT (A) after the said enhancement is determined at Rs. 219.02 Crs. After the said amendment u/s 154 of the Act, the revised income has kept at Rs. 214.62 Crs. As per the Ld Counsel for the assessee, if the said reduction in the said assessment is considered, the penalty would be reduced to Rs. 39.29 Crs (rounded-of) from the original penalty of Rs. 40.80 Crs. We find merit in the assessee's point of reference and direct the AO to adopt the correct figures subject to findings of the sustainability of the penalties on the additions mentioned above. We shall now take up the merits of the penalties on each of the 4 grounds of additions.

A. Penalty relating to interest income: Briefly stated relevant facts in this regard include that the assessee received interest income of Rs. 7,32,06,243/- of the fixed deposits with the banks. The said income was set-off in the books of account against the interest and financial charges claimed by the assessee. These fixed deposits were made by the assessee in order to avail bank facilities like secured loans and Over Drafts (OD), which are required to be utilised for the construction of the commercial complex, the core business activity of the assessee. Considering the business nexus, the said interest income was offered as 'business income' of the assessee after netting the business related finance expenses. The assessee relied on various coordinate Bench decision of the Tribunal to support the above treatment. In connection with the **netting of financial charges against the said**

interest income, assessee relied on the Apex Court judgment in the case of **M/s. ACG Associated Capsules Pvt Ltd (343 ITR 89) (SC).** However, in the assessment proceedings, the said claim of the assessee was not approved. Further, the interest income is taxed under the head 'income from other sources' invoking the provisions of section 56 of the Act. As already discussed above, the assessment / addition was accepted by the assessee and thus, it has reached finality. Referring to the penalty proceedings, Ld Counsel for the assessee mentioned that the issue of taxing the 'interest income' offered under the head 'business or profession' or 'income from other sources' is a matter of dispute. Therefore, such addition does not attract penal provisions of section 271(1)(c) of the Act. Ld Counsel for the assessee relied on various binding judgments in this regard and one of such decision is the judgment of the Hon'ble Bombay High Court in the case of Bennet Coleman & co Ltd (259 CTR 383) (Bom). This judgment is relevant for the proposition that the *penalty cannot be levied barely on the change of head of income*. In reply to the above said legal proposition, Ld DR for the Revenue could not demonstrate any other contrary decisions on the issue. Therefore, he relied on the order of the CIT (A).

7. On hearing both the parties and on perusal of the orders of the Revenue Authorities, we find there is no dispute on facts. So far as the offer of interest income under the head 'business income' after netting the said income against the financial charged incurred for the purposes of business, nothing is brought on record that there is any furnishing of inaccurate particulars. It is a case of change of head of income and the CIT (A) attempted to tax it u/s 56 of the Act. In our opinion, the issue is debatable in nature, and there is no default of disclosure or furnishing of inaccurate particulars in this case relating to this issue. We have also perused the cited judgment of the Hon'ble jurisdictional High Court in the case of Bennet Coleman & Co Ltd (supra) and find the said decision supports the arguments of the Ld Counsel for the assessee. Therefore, we are of the considered opinion that this particular addition does not invite levy of any penalty u/s 271(1)(c) of the Act. Accordingly, AO is directed to deleted relatable penalty.

B. Levy of penalty of rs. 179.03 Crs regarding pre-ponment of sales offered in next year: Briefly stated relevant facts of the case are that the assessee sold 1,51,520 sq ft of commercial area for a sum of Rs. 736.55 Crs, but the said area was not completed by the time relevant to the AY under consideration. Basing on the method of accounting followed ie percentage completion method, the assessee offered sum of Rs. 239.27 Crs (ie around 43% of the total sales based on the project) for the year under consideration as the completed area works out to 42.92%. However, assessee reversed the sale to the extent of 36,038 sq ft amounting to Rs. 179.03 Crs for some reasons / developments. This amount of sales was not shown by the assessee in the AY 2009-2010 basing on the percentage completion method. However, the said amount was reflected in the return for the AY 2010-2011 based on the principle of 'pay as you earn'. During the first appellate proceedings ie enhancement of assessment, the whole of the sales made to the Standard Chartered Bank was offered as recognising the income by filing the revised return of income preponing the completion of the project from 2012-2013 to 2009-2010, the AY under consideration. CIT (A) levied the penalty on this sum of sales of Rs. 179.03 Crs which is otherwise offered to tax in the AY 2010-2011.

8. During the proceedings before us, on the above facts, Ld Counsel for the assessee submitted that this is the case of preponement of income, which is otherwise undisputedly offered to tax in the later year in order to end litigation with the Department. Since, it is already offered in the return of income for the AY 2010-2011, there is neither failure on the part of the assessee in matter of disclosure of particulars nor furnishing of any inaccurate particulars. Assessee has followed the principle of 'pay as you earn' ie percentage completion method, whereas the CIT (A) thrust on the assessee his method, which involved the preponement of later years income to the AY under consideration. He has also submitted that there is neither concealment of income nor furnishing of any inaccurate particulars in this case. Assessee has followed a fixed method of accounting. He also demonstrated that the estimated concealment of Rs. 20.52 Crs on account of the above addition of Rs. 179.03 Crs is mere estimation and not based on any facts. Further, he submitted that the whole issue revolves around the preponement and the debatability of the

CIT (A). He also submitted that with the Standard Chartered Bank, thought the agreements were entered the sales were completed as the construction work is incomplete and the relatable money of Rs. 179.03 Crs was never received at this point of time. Therefore, it is the case of the assessee that the preponement of such income, which is not agreed to the assessee is unsustainable in law. Consequently, the levy of penalty on such unsustainable addition is unjustified. He also submitted that the revised return of income was filed, in order to satisfy Revenue Authorities as there is no adverse tax implications, to the assessee, the penalty is unsustainable. Relying on the judgment of the Hon'ble Apex Court in the case of Excel Industries (358 ITR 295), copy of which is placed in page 304 of the paper book, Ld Counsel for the assessee submitted that when there is no tax loss to the Department and the only issue is year of taxability but when the tax rates are the same on facts, it is a settled proposition in law that the Department should not disturb the assessment of income offered in the subsequent assessment years. In this case, Rs. 179.03 Crs was offered as income of the assessee in the AY 2010-2011 and the CIT (A) brought the same to tax in the current year where the tax rates are same in both the AYs. Therefore, on merits, such additions are unsustainable in law considering the above referred judgment of the Hon'ble Supreme Court in the case of Excel Industries (supra).

9. *Per contra,* Ld DR for the Revenue submitted that the assessee did not offer the said income in the year under consideration initially, but for the decision of the CIT (A) to tax the whole of the sale proceeds in the year under consideration. However, on sustainability of the said addition Ld DR has nothing to state except that the above addition was accepted by the assessee and the same has reached finality.

10. On hearing both the parties, we find there is no dispute on the facts that the said sum of Rs. 179.03 Crs is undisputedly offered in the AY 2010-2011 and the same is now taxed in the year under consideration, where the tax rates are identical in both the years. Therefore, the legal question will arises from the above facts is should the addition by way of preponement of the already disclosed income attracts such levy of penalty u/s 271(1)(c) of the Act or not. The assessee offered the said

income in the later assessment year basing on the principle 'pay as you earn'. This principle is upheld by the Hon'ble Supreme Court in the case of Excel Industires (supra) wherein it is held that the *income tax cannot be levied on hypothetical income*. *Income accrued when it becomes due at the same time, it must also be accompanied by corresponding liability of other party to pay the amount. Only then, it can be said for the purpose of taxability that the income is not hypothetical and it has really accrued to the assessee.* In the instant case, the liability to pay by the other parties is crystallized in the AY 2010-2011 not in the AY 2009-2010. But the CIT (A) insists the same would be taxable in the year under consideration. In our opinion, such additions, in principle, are unsustainable in law considering the said binding judgment. If some of the reasons, such additions are accepted by the assessee, the same will not attract penalty u/s 271(1)(c) of the Act as the said amount was already offered to tax by the assessee. In our opinion, there is neither concealment of income nor furnishing of any inaccurate particulars in such matters. The decisions relied upon by the Ld Counsel for the assessee includes the order of the Tribunal in the case of Siddhraj Developers Pvt Ltd (ITA No.185/Ahd/2008), dated 11.5.2010 (Ahd); Goutam Enterprise (ITA No.5847/Mum/2010) dated 10.12.2012 (Ahd); Jain Builders (Vasai) (41 CCH 031) (Mum) and Gurucharan Singh & Co (72 TTJ 774) (Chd). These are relevant for the proposition that no penalty shold be levied on a declared income irrespective of the year of disclosure. Therefore, we are of the opinion that this addition does not attract penalty u/s 271(1)(c) of the Act. Accordingly we order the deletion of penalty on this issue.

C. Levy of penalty on the addition based on the estimated total cost of construction for the project: Briefly stated relevant facts in this regard are that in the enhancement, CIT (A) made addition of Rs. 28.62 Crs on reworking the estimated project cost based on the actual cost incurred up to 31.3.2013. As per the documents filed before the CIT (A), the projected / estimated total cost is Rs. 1939.07 Crs. Till the end of the AY 2009-2010 ie 31.3.2009, the actual cost is Rs. 832.19 Crs which means the balance of Rs. 1106.88 Crs is meant to be spent on the project in the AYs 2010-11; 2011-12 & 2012-13 and as the AY 2012-13 is the year of completion of project. During the proceedings relating to the enhancement of the

assessment, the CIT (A) obtained the data on the actual cost spent till the end of the AY 2012-13 and find actual cost of the project is only 1628.02 Crs. Thus, there is a variation of 311.05 Crs ie difference between 1939.08 Crs minus 1628.02 Crs. For some reasons, the CIT (A) restricted the actual cost of entire project from 1628.02 to Rs. 1425.19 Crs. CIT (A) calculated the relatable income of Rs. 115.59 Crs (ie 214.59 minus the profits of Rs. 99 Crs already disclosed in the books of account for AY 2009-2010). There is no reconciliation as how Rs. 214.59 of profits is arrived at as the difference is works out to 202.83 Crs only. This is matter of statistics and it does not matter as the issue relates to penalty. It is the allegation of the assessee that the CIT (A) vainfully disturbed the method of accounting of the assessee and levied the penalty on the addition of Rs. 28.62 Crs on account of reworking of the estimated project cost. The same is the subject matter of concealment of penalty.

11. During the proceedings before us, Ld Counsel for the assessee explained the above facts and the estimated figures and submitted that the projection of estimated future cost of Rs. 1106.88 Crs is merely based on the estimations given by the architect of the project and the certificate issued by the architect is relied upon in this regard, a copy of which is placed at pages 367 to 374G of the paper book. Therefore, the actual cost figures should be taken into account which was done by the assessee and not the projected estimated figures, which is the basis for the CIT (A) for bringing the said amount of Rs. 28.62 Crs of addition on this ground of difference in the total cost of construction. The details of working for arriving at Rs.28.62 Crs are given in the order of the CIT (A). He further mentioned that the said differences are based on many factors such as interest cost, various permissions from the MMRDA and other indirect attributable cost. Bringing our attention to the table placed at page 25 of the summarized facts sheet, Ld Counsel mentioned that MMRDA payment is increased by Rs. 72.11 Crs and all other heads such as construction cost, overheads and interest cost are in fact reduced. Criticising the CIT (A)'s approach in preponing the expenditure of the later AYs to the AY under consideration, Ld Counsel for the assessee submitted that the manner of preponement done by the CIT (A) is unsustainable in law as the assessee followed

"pay as you earn" basis whereas the CIT (A) thrust on the assessee his own method of accounting, which is *prima facie* invalid on the assessee. Such debatable issues on the additions, if any, relevant to such method of accounting is unsustainable in law. He also mentioned that the exercise undertaken by the CIT (A) is forcibly taxing all the profits of the project in the AY 2009-2010 is incorrect, unsubstantiated as the project was actually completed in the AY 2012-2013. There are plenty of evidences to support assessee's contention that the project was not completed fully in AY 2009-2010 and however, the assessee is asked to pay tax in the AY 2009-2010 on the profits of the entire project, which was actually completed in AY 2012-2013. Ld Counsel for the assessee also mentioned that such attempt of the CIT (A) is not based on the real income concept and it is merely a case of taxing the income, which is never earned in the year under consideration and it is a hypothetical figure generated by the CIT (A). Further, relying on the various decisions, Ld Counsel for the assessee mentioned that it is neither a case of furnishing of inaccurate particulars nor a case of concealment of income. He also submitted that no penalty is levyable merely on change of estimates based on change of method of accounting. Relying on the judgment of the Hon'ble Madras High Court in the case of TPK Ramalingam vs. CIT [1995] 211 ITR 520 (Mad) and the decision of the coordinate Bench in the case of Parsoli Corporation Ltd (41 CCH 370), copies of which are placed at pages 292 to 294 and 297A to 297E of the paper book, Ld Counsel for the assessee demonstrated that such additions are unsustainable in law. He also relied on the judgment of the Hon'ble Gujarat High Court in the case of Pancharatna Hotels P Ltd (313 ITR 398) (Guj) and decision of the ITAT, Mumbai in the case of Kripashankar Chaturvedi (30 SOT 40) (Mum) for identical proposition.

12. On the other hand, Ld DR for the Revenue relied on the order of the CIT (A) and submitted that it is a case of furnishing of inaccurate particulars.

13. We have heard both the parties and perused the orders of the Revenue Authorities on this issue of levy of penalty on the addition of Rs. 28.62 Crs on account of reworking of estimated project cost based on actual cost incurred up to 31.3.2013. We find that there is no dispute on the fact that the total estimated cost of the project is 1628.02 Crs. There is no fact based reasons for the CIT (A) to

adopt the sum of Rs. 1425.19 Crs as an actual expenditure spent on the project till the end of AY 2012-2013, the year of completion of project. Rest of the calculations made by the CIT (A) is directly related to the change in the method of accounting rejecting the assessee's figures and the methods in this regard. What is the better method of accounting is a matter of debate and no concealment of penalty should be attracted to such debatable issues. We find the addition of Rs. 28.62 Crs has the genesis in the estimations on one side and preponement on the other and also on the change of method of accounting. In our opinion, penalty cannot be levied on such additions as they constitute debatable issues. It is an undisputed fact that the said profits of the project are subject to tax in the AY 2009-2010 or in AY 2012-2013. It is a matter of dispute. The above citations were also perused and we find they are relevant for the proposition that change in the method of accounting involving the estimates do not attract the penalty u/s 271(1)(c) of the Act. Therefore, we are of the opinion that the penalty levied by the AO on the said addition of Rs. 28.62 Crs is unsustainable in law.

D. Levy of penalty on the income of the project amounting to Rs. 63.75 Crs, the resultant of the calculations based on change of method of accounting described above. Briefly stated relevant facts in this regard are that that during the enhancement proceedings, CIT (A) rejected the assessee's method of accounting ie 'cost of sales method' and adopted the 'cost allocation method' on the basis of unit sold which is based on percentage completion method. Assessee followed percentage completion method, which is based on the principle of "pay as you earn". Assessee relied on the Accounting Standard (AS)-7 as per the ICAI guidelines in adopting projecting completion method ie revenue is recognized on the basis of work completed. Assessee justified the same as per the discussion given in para 29 of the said summary facts sheet. It is the allegation of the assessee that the CIT (A), while changing the method for recognizing the cost has not touched the method of the assessee for recognizing the income. Therefore, there is a total disparity in the method adopted by the CIT (A) as revenue and cost are recognized by the method, which is in accordance with the AS-7 or ICDS notified by the CBDT. Therefore, the method adopted by the CIT (A) is unsustainable and it should be

rejected. The addition made by the CIT (A) amounting to Rs. 69.57 Crs (which is subsequently brought down to Rs. 59.12 Crs by virtue of modification orders passed u/s 154 of the Act) is unsustainable in law. In this regard, Ld Counsel for the assessee also submitted that no penalty on additions relatable to the change in the method of accounting as they do amount to neither concealment of income nor furnishing of any inaccurate particulars of income. Assessee's failure to contest such unsustainable additions on merits should not come on the way of deciding of penalty proceedings in favour of the assessee. As such, such additions are invalid and filled with lot of debate. For this proposition, Ld Counsel for the assessee relied on the decision of the ITAT, Ahmedabad in the case of ACIT vs. Siddhraj Developers Pvt Ltd (ITA No.185/Ahd/2008) dated 11.5.2010; decision of the ITAT in the case of Jain Developers (Vasai) vs. CIT (41 CCH 031) (Mumbai Tribunal); Gautam Enterprise (ITA No.5847/M/2010) dated 10.12.2012 (Ahd); Gurucharan Sing & Co (72 TTJ 774) (Chd).

14. On the other hand, Ld DR for the Revenue relied on the order of the CIT (A) and submitted that the CIT (A) has adopted one of the available methods of accounting and did not deny the fact of existence of debate on which is a better method of accounting applicable to the facts of the present case.

15. We have heard both the parties and find the penalty in question relates to the addition of Rs. 63.57 Crs. We have already discussed the fact that the addition was revised downwards to Rs. 59.12 Crs by virtue of rectification. The said addition is undisputedly the outcome of the method adopted by the CIT (A). As such there is a problem in applying such method as it is not in tune with AS-7 and ICDS notified by the CBDT. Therefore, such additions are not free from any debate or dispute. In any case, assessee has not contested the additions on merits. That should not come on the way of deciding the penalty proceedings. It is a settled legal issue that the penalty proceedins are different from that of the assessment proceedings or enhancement proceedings. If contested, assessee would have got a relief on this account. Therefore, we have to decide whether the present penalty relatable to the said invalid addition of Rs. 59.12 Crs is justified? Considering one of the methods of accounting for determining the profits of the project adopted by the CIT (A) is not

free from the debate or dispute. It is also a settled issue that when debate is an integral part of any addition, the concealment penalties will not survive. The decisions relied upon by the Ld Counsel for the assessee were also perused and found supporting to his arguments. On such facts, whether the assessee appealed against the additions or not in quantum proceedings, we are of the opinion that the penalty levied by the AO is unsustainable and therefore, we order the AO to delete the penalty accordingly.

16. Further, Ld Counsel for the assessee raised other general arguments common to all the above additions and penalties. In this regard, he brought our attention to a table placed in para 7 of the said summarized facts sheet and analyzed the "profit credited in the returns" filed by the assessee for all the AYs 2009-2010 to 2013-14 and the same is worked out to Rs.624.51 Crs. He also mentioned that the "profits for all the above AYs as per the CIT (A)" worked out to Rs. 624.5 Crs. Thus, he mentioned that there is no change in profits either as per the both the assessee and also as per the CIT (A)'s workings. Comparing the tax on the above profits worked out by the assessee and the CIT (A), Ld Counsel for the assessee demonstrated that tax for all the AYs as per the returns and the tax as per the CIT (A) are Rs. 206.82 Crs and Rs. 206.86 Crs respectively. Further, the tax liabilities of the above, including that of the statutory interests, there is hardly any difference between the assessee's method as well as that of the CIT (A). For the purpose completion of this order, the table placed at para 7 of the summarized facts sheet is extracted as under:

AY	Profit credited as per RoI	Profit credits as per cost allocation (to be booked)	Tax as per ROI	Tax as per cost allocation etc as pr CIT (A)	Differential Liability			
					Tax	234B	234C	Total
9-10	99.02	219.02	33.65	74.44	40.78	2.06	19.57	62.43
10-11	120.63	27.978	41.00	9.50	-31.49	-1.59	-5.66	-38.75
11-12	103.98	55.01	34.54	18.27	-16.26	-0.82	-1.95	-19.04
12-13	114.10	196.09	37.02	63.62	26.60	1.34	3.19	31.14
13-14	186.77	126.38	60.59	41.00	-19.59	-0.99	0	-20.58
Total	624.51	624.5	206.82	206.86	0.04	0.0023	15.15	15.19

17. Further, Ld Counsel for the assessee argued that no penalty can be levied on the quantum additions merely on the ground that the same are accepted by the assessee for buying peace and avoid litigation. For this proposition, he relied on the judgment of the jurisdictional High Court in the case of CIT vs. M/s. Dalmia Dyechem Industries Ltd in Income Tax Appeal No.1396 of 2013, dated 6.7.2015. The Tribunal's order in the case of Bostan Consulting Group (India) P Ltd (7 ITR 417) (Mum)[page 356 of the paper book]; Pune Bench decision in the case of Kanbay Software India (P) Ltd (122 TTJ 721) (Pune) (2009) [page 332 of the paper book] are relevant in this regard.

18. Further also, Ld Counsel for the assessee brought our attention to the penalty notice issued u/s 274 of the Act and submitted that the said notice is ambiguous to the extent for which the penalties are initiated. The said notice does not specify where the present penalty is being levied for concealment of income or for furnishing of inaccurate particulars of income. CIT (A) did not strike of the irrelevant limb mentioned in the notice u/s 274 of the Act. CIT (A) is not clear as to the relevant limb of the provisions of section 271(1)(c) of the Act for which penalty should be levied. Further, bringing our attention to the quantum order u/s 250 of the Act, Ld Counsel for the assessee submitted that the CIT (A) initiated the penalty for assessee's failure in furnishing inaccurate particulars in respect of estimated cost of future expenditure resulted in suppression of income. He also brought our attention to the penalty order of the CIT (A) and mentioned the penalty was levied for 'concealment of particulars of income' in respect of the change in estimated cost. By all these variations, the CIT (A) is not clear as to whether the penalties are levied for "concealment of income" or "furnishing of inaccurate particulars of income". Further, Ld Counsel for the assessee brought our attention to various decisions of the Tribunal to support his argument that the penalty should not be levied when the CIT (A) is not clear in reasons for levying the penalty. Ld Counsel for the assessee also mentioned that the CIT (A) cannot initiate penalty for one reason and levy for other reasons. In this regard, Ld Counsel for the assessee relied on the judgment of the Hon'ble Karnataka High Court in the case of **Manjunatha Cotton & Ginning Factory** (92 DTR 111) (Kar. HC) and the coordinate Bench decision in the case of

Shri Samson Perinchery (ITA Nos. 4625 to 4630/M/2013), dated 11.10.2013, copy of which is placed at page 366 of the paper book, wherein one of us (AM) is a party to the said order of the Tribunal (supra). He also relied on the following decisions viz (i) M/s. Ittina Properties Pvt Ltd (ITA No.36/Bang/2014), dated 21.11.2014 (Bang); (ii) Dharini Developers (ITA No.1848 to 1851/M/2012), dated 7.1.2015 (Mum) and others. All these general arguments relevant for all the 4 segments of the penalties discussed above. *Per contra*, no contrary judgments are brought to our notice by the Ld DR.

19. To summarise, the concealment penalty was levied by the CIT (A) in this case on the issues which are not free from debate. In our opinion, the assessee would have got relief in most of issues relating to additions based on the estimations, change of method of accounting, preponement of taxable income to AY 2009-2010 etc. Taxation of interest receipt with or without netting is under the head "profit and gains from business or profession" or "income from other sources" is also a debatable issue. Therefore, the concealment penalty in the case is not sustainable on such addition / issues. Further, the decision in the case of Manjunatha Cotton & Ginning Factory (supra) helps the assessee considering the lack of clarity in the mind of the CIT (A), at the time when notice u/s 274 was issued. Further also, it is demonstrated beyond doubt that there are no adverse tax implications to the Revenue if the profits are finally taxed in AY 2012-2013, the year of completion. Therefore, we are of the opinion that this is not a fit case for levy of penalty u/s 271(1)(c) of the Act. Accordingly, all Grounds raised by the assessee are allowed.

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

Order pronounced in the open court on 11th September, 2015.

Sd/-	**Sd/-**
(AMIT SHUKLA)	**(D. KARUNAKARA RAO)**
JUDICIAL MEMBER	ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक 11.9.2015

व.नि.स./ *OKK* , Sr. PS

<u>आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to</u> :

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.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)

आयकर अपीलीय अधिकरण, मुंबई **/ ITAT, Mumbai**