IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH 'E' MUMBAI

BEFORE SHRI D.K. AGARWAL, JUDICIAL MEMBER AND SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER

ITA No. 6600/Mum/2011
Assessment Year-2006-07

The ACIT 10(3), Aayakar Bhavan, Mumbai-400 020	Vs.	M/s. Surface Graphics Pvt. Ltd., 180, Raja Industrial Estate, 1st Floor, Nahur, P.K. Road, Mulund (W), Mumbai-400 080 PAN-AAHCS 4043D
(Appellant)		(Respondent)

Appellant by: Shri V.Krishnamoorthy
Respondent by: Ms. Sanjukta Chowdhury

Date of Hearing :3.09.2012
Date of pronouncement: 5.9.2012

O R D E R

PER N.K. BILLAIYA, AM:

This appeal by the Revenue is directed against the order of Ld. CIT(A)-22 Mumbai dt. 15.7.2011 pertaining to assessment year 2006-07.

2. The sole grievance of the Revenue is that the Ld. CIT(A) has erred in deleting penalty levied at Rs. 6,46,404/- u/s. 271(1)(c) of the Act.

3. The facts at the time of the assessment show that the return for the year under consideration was filed on 29.11.2006 declaring total income at Rs. 13,39,046/-. The assessee has claimed deduction u/s. 80IB at Rs. 33,36,578/-. The Book profit was declared at Rs.1,35,39,679/- u/s. 115JB of the Act.

4. During the course of the assessment proceedings, the assessee was asked to furnish the details of business activities at the Silvasa unit on which deduction u/s. 80IB was claimed and whether any other business activities are involved in the consolidated account other than 80IB unit. The assessee filed a detailed reply which is exhibited at pages 2 & 3 of the assessment order.

5. After considering the submission of the assessee, the AO concluded that there is no separate unit of the assessee. The assessee is doing same business in one premise only. The AO further observed that the whole manufacturing activities are also carried out on the same premise. The AO allowed deduction u/s. 80IB at the rate of 30% on the consolidated profit and loss account wherein gross total income was worked out at Rs. 47,50,624/-. As the tax payable on the Book profit was more than the tax payable on the total income, therefore the AO determined the tax payable as the Book profit of the assessee and completed the assessment and initiated the penalty proceedings u/s. 271(1)(c) of the Act.

6. The penalty proceedings were initiated in respect of the disallowance of all expenses debited to the Profit and loss account of non 80IB unit and treating the entire business as one and the same unit. The assessee was show caused as to why penalty should not be levied. After considering the reply filed by the assessee, the AO levied penalty u/s. 271(1)(c) of the Act at the rate of 100% amounting to Rs. 6,46,404/-.

7. The matter was agitated before the Ld. CIT(A). The main contention of the assessee was that the income has been finally computed by the AO u/s. 115JB and not under normal provision. Therefore, no penalty is leviable on the facts of the case. The assessee further relied upon the ratio laid down by the Hon'ble Supreme Court in the case of CIT Vs Reliance Petroproducts Pvt. Ltd. 322 ITR 158. After considering the facts and the submissions of the assessee, Ld. CIT(A) held that the AO was not justified in imposing penalty

u/s. 271(1)(c) of the Act and accordingly directed the AO to delete the penalty so levied.

8. Aggrieved by the findings of Ld. CIT(A), Revenue is in appeal before us.

9. The Ld. Departmental Representative strongly supported the findings of AO at the assessment stage and also at the time of the penal proceedings and submitted that the assessee has willfully and deliberately claimed certain deduction which was legally not permissible. Rebutting the argument of the Ld. DR, the Ld. Counsel for the assessee submitted that this is not a fit case for the levy of penalty for the simple reason that income has not been assessed under normal provisions of Act but the income has been assessed on Book Profit u/s. 115JB of the Act. Therefore, it is not a fit case for levy of penalty. The Ld. Counsel for the assessee relied upon the decision of Hon'ble Delhi High Court in the case of CIT Vs Nalwa Sons Investments Ltd. (2011) 37 ITCL 218. The Ld. Counsel further relied upon the decision of Mumbai Bench in the case of Ruchi Strips and Alloys Ltd. Vs DCIT in ITA No. 6940/M/08.

10. We have heard the rival submissions and perused the orders of lower authorities. After careful consideration of the assessment order, we find that the assessment has been completed on Book Profit u/s. 115JB of the Act. It has been held in the case of CIT Vs Nalwa Sons Investments Ltd. (supra) that when the computation has been made u/s. 115JB of the Act and the income is determined under that Section and the tax is paid on such income assessed u/s. 115JB of the Act, the concealment had no role to play and is totally irrelevant. This decision of the Hon'ble Delhi High Court was taken before the Supreme Court in SLP Appeal (Civil) No. 18564/2011 wherein the Hon'ble Supreme Court has dismissed the SLP filed by the Revenue. The facts of the instant case being identical to the facts of M/s. Nalwa Sons Investments Ltd., respectfully following the decision of the Hon'ble High Court and the Hon'ble

Supreme Court, we do not find any reason to tinker with the findings of the Ld. CIT(A), therefore order of the Ld. CIT(A) is confirmed.

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

Order pronounced on this 5th day of September, 2012

Sd/- ***Sd/-***

(D.K. AGARWAL) (N.K. BILLAIYA)
Judicial Member Accountant Member

Mumbai, Dated 5th September, 2012
Rj

Copy to :
1. *The Appellant*
2. *The Respondent*
3. *The CIT-concerned*
4. *The CIT(A)-concerned*
5. *The DR 'E' Bench*

True Copy

By Order

Asstt. Registrar, I.T.A.T, Mumbai