आयकर अपीलीय अधिकरण, मुंबई न्यायपीठ 'जी' मुंबई ।

IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI

सर्वश्री जी.ई.वीरभद्रप्पा, अध्यक्ष, एवं श्री अमित शुक्ला, न्या.स. के समक्ष ।

BEFORE SHRI G.E. VEERABHADRAPPA, HON'BLE PRESIDENT AND SHRI AMIT SHUKLA, JUDICIAL MEMBER

आयकर अपील सं./ **ITA No.7743/Mum/2010**.

(**निर्धारण वर्ष /** Assessment Year: 2004-2005)

Global Fintch P. Ltd., Flat No.102 & 103, 1st Floor, Arihant Bldg. Opp. Dara House, 15th Rd, Bandra (W)., Mumbai-400 050.	Vs.	DCIT 9(1), Mumbai
स्थायी लेखा सं./जीआइआर सं./PAN No. AACG 1389 B		
(अपीलार्थी **/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

एवं/ AND

आयकर अपील सं./ **ITA No.7755/Mum/2010**

(**निर्धारण वर्ष /** Assessment Year: 2004-2005)

DCIT 9(1), Mumbai	Vs.	Global Fintch P. Ltd., Flat No.102 & 103, 1st Floor, Arihant Bldg. Opp. Dara House, 15th Rd, Bandra (W)., Mumbai-400 050.
स्थायी लेखा सं./जीआइआर सं./PAN No. AACG 1389 B		
(अपीलार्थी **/Appellant**)	:	(प्रत्यर्थी / **Respondent**)

निर्धारिती की ओर से / Assessee by	:	Mr. Arun Sathe & Mr. Kalpesh Turalkar
राजस्व की ओर से/ Revenue by	:	Mr. Parthsarathi Naik
सुनवाई की तारीख **/ Date of Hearing**	:	21st June 2012
घोषणा की तारीख /**Date of Pronouncement**	:	**6th** July, 2012

आदेश / **O R D E R**

PER AMIT SHUKLA (J.M.) :

These are the cross appeals filed by the assessee as well as the department against the order dated 19-8-2010, passed by the CIT (A)-

19, Mumbai in relation to penalty proceedings under Section 271(1)(c) for the assessment year 2004-2005. Since the common issues are involved in both the appeals, therefore, for the sake of convenience, both the appeals are being disposed off by this consolidated order.

2. For the quantum of assessment passed under Section 143(3) vide order dated 20-10-2006, following additions/disallowances were made :-

i)	Loss on sale of flats and expenses on sale	61,65,800
ii)	Disallowance under s.14A	27,77,355
iii)	Out of travelling and conveyance	19,63,982
iv)	Out of Misc. expenses	7,73,028

The said disallowance/additions were also confirmed by the CIT(A) vide order dated 5-10-2007. The Assessing Officer initiated the penalty proceedings under Section 271(1)(c) for concealment of income/furnishing of inaccurate particulars of income on the ground that the entire disallowance/additions have been confirmed by the CIT(A). It was submitted before the Assessing Officer by the assessee that the matter is still pending before the ITAT and, therefore, requested the Assessing Officer to keep the penalty proceedings in abeyance till disposal of the appeal by the ITAT. The Assessing Officer held that since no explanation or information have been furnished, he levied the penalty of ₹.41,78,420/- on the entire additions.

3. In the first appeal, the Ld. CIT(A) confirmed the penalty and additions of ₹.61,65,800/- on account of loss on sale of flats and expenses on sale. However, with regard to disallowance made under Section 14A, travelling and conveyance and miscellaneous expenses, he deleted the penalty. Against this, both the assessee and the department have come in appeal before us.

4. At the outset, learned counsel on behalf of the assessee submitted that in the quantum proceedings, the matter was set aside and restored back to the file of the Assessing Officer vide order dated 24-11-2010 passed in ITA No.149/Mum/2008. He further brought to our notice that in pursuance of the ITAT's order, the assessment order has already been passed vide order dated 30-5-2011, wherein relief on account of loss on sale of flats and expenses on sale and disallowance under Section 14A has been given and the entire additions stands deleted by the Assessing Officer himself in set aside proceedings. Thus, the impugned penalty proceedings have become infructuous. On the other hand, learned DR did not dispute this fact.

5. We have carefully considered the rival submissions and also perused the ITAT's order in the quantum proceedings and also the assessment order passed in pursuance of ITAT's order. So far as the issue of loss on sale of flats and expenses on sale and disallowance under Section 14A, the same stands deleted in the assessment order dated 30-5-2011, passed under Section 143(3) r.w.s.254. Therefore, the penalty on these amounts do not survive, hence, the same is deleted.

6. As regards the expenses on account of travelling and conveyance and other miscellaneous expenses, it is seen that the same has been made on ad hoc basis by estimation. The CIT(A) in the impugned order has held that these expenses have been disallowed merely on estimated/ad hoc basis, therefore, penalty under Section 271(1)(c) for concealment of income is not leviable. In view of these facts, we do not find any infirmity in such a finding as no penalty can be levied on additions made on ad hoc basis. Accordingly the entire penalty stands deleted.

7. In the result, the appeal of the assessee is allowed and appeal that of the revenue is dismissed.

परिणामतः निर्धारिती की अपील स्वीकृत की जाती है एवं राजस्व की अपील खारिज की जाती है ।

Order pronounced in the open court on 6th July, 2012 .

आदेश की धोषणा खुले न्यायालय में दिनांकः 6th July,2012 को की गई ।

Sd/-	Sd/-
(जी.ई.वीरभद्रप्पा)	(अमित शुक्ला)
(**G.E. VEERABHADRAPPA)**	(**AMIT SHUKLA)**
अध्यक्ष / PRESIDENT	न्यायिक सदस्य/JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated 06 / July /2012
प्र.कु.मि/pkm.नि.स./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**