

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'D' NEW DELHI**

**BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
&
SHRI K.N. CHARY, JUDICIAL MEMBER**

**ITA No.-6279/Del/2015
(Assessment Year: 2009-10)**

Active Print Pack (P) Ltd. 23/5, Kala Bhawan, Shakti Nagar, New Delhi. AABCT5077A	vs	ACIT Central Circle 5, New Delhi.
Assessee by	Sh. Vinod Kumar Bindal, CA Ms. Sweety Kothari, CA	
Revenue by	Sh. Arun Kumar Yadav, Sr. DR	

Date of Hearing	19.09.2017
Date of Pronouncement	09.10.2017

ORDER

PER SHRI K.N. CHARY, JUDICIAL MEMBER

This appeal of the assessee is challenging the order dated 09.10.2015 in appeal no. 213/15-16 passed by the Ld. Commissioner of Income Tax (Appeals)-23, New Delhi (hereinafter for short called as the "Ld. CIT (A)") on the following grounds:

1. *"That Ld. Appellate Authority erred in law and on facts in confirming the levy of penalty u/s 271(1)(c) of Rs. 2,54,517/- for furnishing inaccurate particulars of the claim of depreciation on assets made for full year, but which was restricted to 180 days in the quantum proceedings, though it*

had been made a bona fide belief. Thus, the penalty should be deleted.

2. The appellant craves the leave to add, substitute, modify, delete or amend all or any ground of appeal either before or at the time of hearing.”

2. Briefly stated facts are that pursuant to the search and seizure operations conducted on 31.07.2008 in Rajdarbar group of cases and notice u/s 153C of the Income Tax Act, 1961 (for short called as the “Act”), assessee filed the return of income on 29.09.2009 declaring a loss of Rs. 26,18,540/- and the assessment u/s 143(3) read with 153C of the Act was completed on 13.12.2010 making an addition of Rs. 7,64,318/- on account of part disallowance of claim of depreciation, on the ground that the plant and machinery was operational w.e.f. January, 2009 only, but the assessee claimed depreciation at full rate showing it to be more than 180 days. It is relevant to note that assessee claims that the trial production was started on 23.07.2008 though the plant has become fully operational in January, 2009. Simultaneously the AO initiated proceedings u/s 271(1)(c) of the Act and concluded them with levy of penalty of Rs. 2,54,600/-. The same was challenged before the Ld. CIT (A) in appeal but the Ld. CIT (A) held that for the purpose of depreciation u/s 32 of the

Act read with Rule 5 of the Rules, the date of the plant being put to use shall be reckoned from the date of full operation of the plant and machinery and there is no evidence to show that there was a trial production on 23.07.2008. Hence, this appeal by the assessee.

3. It is the argument of the Ld. AR that there is a certificate issued by M/s Thermax Ltd. certifying that Thermic Fluid Heater has been successfully commissioned and handed over by commercial production by the Authorized Serviced Franchisee M/s Sunmax Boiler Engineers on 23.07.2008 and there is also a purchase bill dated 13.09.2008 to show that Plastic Sheet Rolls (Plain), was also produced before the authorities below but in spite of the same, instead of reckoning the date of trial production on 23.07.2008 as the date was first put to use, the authorities have reckoned the date of the plant becoming fully operational in January, 2009. He submits that 180 days was completed in the AY 2009-10, as such, the assessee is entitled to the full rate of depreciation. Be that as it may, when all these particulars were produced before the authorities below merely because there was a

debatable issue on the aspect of the date of the first use of the plant machinery no penalty could be fastened. Per contra, Ld. DR vehemently relied on the orders of the authorities below.

4. We have perused the record. There is no dispute in this matter that all the particulars are furnished to the authorities below at the time of filing of the return of income itself. There is nothing that was not produced by the assessee, was unearthed by the Department by way of investigation at the time of filing of return of income or during the assessment proceedings. The entire dispute revolves around the point as to the date of first use of the plant and machinery. Merely because a different view was taken by the authorities below on that aspect, it cannot be said that there is either concealment of income or furnishing of inaccurate particulars thereof. Merely because of some disallowance in, the absence of these two ingredients required u/s 271(1)(c) of the Act no penalty can be imposed. Wrong claim cannot be a basis for penalty. While respectfully following the decision of the Hon'ble Apex Court in *Cit vs. Reliance Petro Products Ltd.* 322 ITR 158 (SC), we hold that the penalty cannot

be sustained. With this view of the matter, we direct the AO to delete the penalty.

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

Order pronounced in the open court on 09.10.2017

Sd/-
(G.D. AGRAWAL)
PRESIDENT

Sd/-
(K.N. CHARY)
JUDICIAL MEMBER

Dated: 09.10.2017

*Kavita Arora

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

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ASSISTANT REGISTRAR
ITAT NEW DELHI