

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

**BEFORE SH. G.D.AGRAWAL, HON'BLE PRESIDENT
AND
SH.K.N.CHARRY, JUDICIAL MEMBER**

**ITA No. 5832/Del/2015
(ASSESSMENT YEAR: 2002-03)**

Tosha International Ltd., E-34, 2 nd Floor, Connaught Place, New Delhi-110001. PAN-AAACT4528K	vs	ITO, Ward-16(3), New Delhi.
(Appellant)		(Respondent)

Appellant by	None
Respondent by	Sh. Arun Kumar Yadav, Sr.DR
Date of Hearing	20.09.2017
Date of Pronouncement	09.10.2017

ORDER

PER K.N.CHARRY, JUDICIAL MEMBER

This appeal preferred by the assessee challenging the order dated 18.08.2015 in Appeal No. 41/13-14 passing by the Commissioner of Income Tax (Appeal) [in short "CIT(A)"]-9, New Delhi for 2002-03 Assessment Year for levying the penalty u/s 271(1)(c) of the Income Tax Act, 1961 (in short "Act").

2. Briefly stated facts are that the assessee is a sick company engaged in the manufacture of black and white picture tube. For AY 2002-03, while completing the assessment, the Ld.AO disallowed the depreciation of an amount of Rs.24,85,842/- claimed by the assessee on Plant & Machinery on the ground that the assessee was not carrying out any business activity in that year.

3. Ld.AO simultaneously initiated the penalty u/s 271(1)(c) of the Act and levied penalty of Rs.8,87,446/- which the assessee contested before the Ld.CIT(A) arguing that the claim of depreciation of Plant & Machinery in respect of the year for which no business activity was carried out, was a debatable issue and no penalty could be levied on the disallowances made on the basis of such debatable issues. However, the Ld.CIT(A) held that as per law, the assessee can make claim if the asset was used only during the course of business activity and on that ground, Ld.CIT(A) dismissed the appeal of the assessee.

4. It is the arguments of the Ld. AR that in view of the decision of the Hon'ble High Court in the case of *Yamuna Motors India Pvt.Ltd.* and *CIT vs Societex*, allowability of depreciation on the Plant & Machinery in respect of the years in which the Plant & Machinery was not put to use if once the Plant & Machinery was used for the earlier years, is a debatable issue. He submitted that merely because the AO had taken a view that such a claim is not to be allowed, in the absence of any element of concealment of income or furnishing inaccurate particulars thereof, penalty cannot be imposed. Per contra, Ld. DR vehemently relied upon the orders of the authorities below and submitted that the false claim amounts furnishing of inaccurate particulars thereof.

5. We have carefully gone through the record. Absolutely there is no dispute as to whether the assessee furnished the particulars of the claim of depreciation truly and fully in the return of income. However, there is a difference of opinion between the assessee and the AO as to whether such depreciation is allowable or not. There is a difference between "false claim" and "wrong claim". Here in this case merely because the AO thought it fit to disallow the claim of depreciation *per se*, it does not become a false claim or amount to concealment of income or furnishing all

pg. 2

inaccurate particulars thereof. So long as the assessee had furnished all the details relating to the claim of depreciation in the return of income, in the absence of any allegation as to the false claim, invoking to the provisions of section 271(1)(c) of the Act is bad under law. If the assessee prefers a claim for depreciation without installing the Plant & Machinery, it becomes false claim. But if the depreciation is not allowed as deduction, it cannot be a false claim and at the best, it could be a wrong claim. With this view of the matter, while respectfully following the decision of the Hon'ble Apex Court in the decision of *CIT vs Reliance Petroproducts Pvt. Ltd.* [2010] 322 ITR 158 [SC], we hold that every disallowance of any claim for deduction will not automatically lead to the levy of the penalty. We, therefore, find it difficult to sustain the levy of penalty in this matter. We, therefore, direct the AO to delete the penalty for the relevant year.

6. In the result, the appeal filed by the assessee is allowed.

The order is pronounced in the open court on 09th October, 2017.

Sd/-
(G.D.AGRAWAL)
PRESIDENT

Amit Kumar

Date:-09.10.2017

Copy forwarded to:

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

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

ASSISTANT REGISTRAR
ITAT NEW DELHI