

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISAKHAPATNAM BENCH, VISAKHAPATNAM**

**BEFORE SHRI V. DURGA RAO, HON'BLE JUDICIAL MEMBER &
SHRI D.S. SUNDER SINGH, HON'BLE ACCOUNTANT MEMBER**

**ITA No. 18/VIZ/2017
(Asst. Year : 2012-13)**

DCIT, Circle-4(1),
Visakhapatnam.

vs.

M/s. Seven Hills Healthcare
Pvt. Ltd., D.No. 11-4-4/A,
Rockdale Layout, Ramnagar,
Visakhapatnam.

(Appellant)

PAN No. AAICS 2229 N
(Respondent)

Assessee by : Shri G.V.N. Hari – Advocate.
Department By : Shri T. Satyanandam – Sr.DR

Date of hearing : 06/03/2018.
Date of pronouncement : 14/03/2018.

ORDER

PER V. DURGA RAO, JUDICIAL MEMBER

This appeal by the Revenue is directed against the order of Commissioner of Income Tax (Appeals)-2, Visakhapatnam, dated 19/10/2016 for the Assessment Year 2012-13.

2. Facts of the case, in brief, are that assessee is a private limited company carrying on the business of healthcare services, filed its return of income for the Assessment Year 2012-13 on 29/12/2012, admitting total loss of Rs. 137,42,79,478/-. The Assessing Officer has completed the assessment under section

143(3) by assessing total loss of Rs. 137,53,16,240 on the ground that depreciation is claimed on the residential building at 10% instead of 5%. Thereafter, the Assessing Officer has initiated penalty proceedings and imposed penalty of Rs. 84,23,772/- under section 271(1)(c) of the Act. During the course of penalty proceedings, assessee has submitted the following explanation:-

*“Depreciation of residential buildings Rs.2,59,63240/- : This disallowance was made on the ground that some of the buildings for which we have claimed depreciation @ 10% are eligible for depreciation @ 5% only. The disallowance was made on the premises that any building used as a residence will not qualify for depreciation @ 10%. However, we have claimed depreciation @10% as we were under the bona-fide belief that these buildings are eligible for depreciation at such rate. These residential buildings are meant for the accommodation of Doctors, Nursing Staff, para-medical staff and for the employees working in the other emergency services. Our hospital, for that matter any hospital, is required to operate 24 hours * 365 days. Once we admit a patient as in-patient we have to extend service all the time he occupies the bed in our hospital. In a place like Mumbai, unless we can provide residential, quarters within the premises of the hospital it would not be possible to extend the emergency services particularly at night time. Therefore, these staff quarters are very essential to maintain the uninterrupted patient services. Therefore, we have claimed depreciation considering these residential quarters as art of the hospital building. However, when the assessing officer proposed the disallowance we have agreed for the disallowance as this disallowance gets naturalized over a period of time and what is disallowed in this year in any case will be allowed as deduction in the subsequent years as the WDV for the subsequent years would increase by the amount of disallowance. Hence, we respectfully submit that with regard to this disallowance we have neither concealed any particulars of our income nor furnished inaccurate particulars. The penalty proposed In respect of the disallowance may kindly be dropped.”*

The Assessing Officer after considering the explanation of the assessee observed that assessee's contention is not acceptable that they are in a *bonafide* belief that the depreciation on residential buildings are provided to the staff are at 10% instead of 5%. The books of account are audited regularly and it is not right to say that they are not aware of the income tax provisions. Accordingly, penalty is levied under section 271(1)(c) of the Act.

3. On appeal, Id. CIT(A) deleted the penalty made by the Assessing Officer by observing as under:-

"7. I have considered the submissions and details on record. I find that the assessee's claim of deprecation at 10% is under the bonafide belief that as the residential quarters were utilized for the hospital purpose and formed part and parcel of hospital premises, the same would be eligible depreciation as hospital building. Further, the assessee has huge loss and therefore there cannot be mala fide intention' to make such excess claim to evade tax. Besides the assessee had not furnished any material Particulars of income which could be said to be inaccurate. It is well settled principle that a mere making of a bonafide claim would not amount to furnishing of inaccurate particulars of income. Therefore, I am of the view that the levy of impugned penalty is not justified. Accordingly, the AO is directed to cancel the impugned penalty."

4. On being aggrieved, revenue carried the matter in appeal before the Tribunal.

5. Id. Departmental Representative strongly supported the penalty order passed by the Assessing Officer and submitted that

the claim made by the assessee is a wrongful claim and therefore, penalty has to be sustained.

6. On the other hand, Id. counsel for the assessee has submitted that the assessee has constructed residential quarters for resident Doctors and is *bonafide* belief that residential quarters are part and parcel of the hospital. Accordingly, the assessee has claimed depreciation at 10% and as it is bonafide claim, section 271(1)(c) is not attracted and prayed that penalty may be deleted.

7. We have heard both the sides, perused the material available on record and orders of the authorities below.

8. The only ground, on which penalty levied by the Assessing Officer in this case is on account of depreciation claimed by the assessee at 10% instead of 5%. The case of the Assessing Officer is that assessee has constructed residential buildings and is entitled only 5% of depreciation. When Assessing Officer called explanation, the assessee was submitted that the residential flats were built for the purpose of full time Doctors and emergency staff whose services are required 24 x 7, hence, it was treated as part and parcel of the hospital and claimed depreciation at 10%. However, the Assessing Officer is not agreed with the explanation given by the assessee and is allowed depreciation at 5% only.

Subsequently, penalty was levied. On appeal, Id. CIT(A) is of the opinion that mere making claim under *bonafide* belief would not amount to furnishing inaccurate particulars of income and cancelled the penalty.

9. We have considered the penalty order and also the order of Id. CIT(A). After considering the entire facts and circumstances of the case, we are of the opinion that the claim of depreciation made by the assessee on residential quarters constructed for resident Doctors at 10%, though eligible at 5%, is only a wrong claim by disclosing all material facts before the Assessing Officer. We find that assessee has constructed the residential quarters within the premises of the hospital and is of the bonafide belief that claim of depreciation at 10% is entitled. Accordingly, claim was made at 10% instead of 5%. In our opinion, the claim made by the assessee is a wrong claim. The Assessing Officer nowhere either in the assessment order or penalty order has stated that assessee either concealed income or filed inaccurate particulars. Therefore, in our opinion, this is not a fit case to impose penalty under section 271(1)(c) of the Act.

10. In this context, the Hon'ble Supreme Court in the case of *CIT vs. Reliance Petroproducts Pvt. Ltd.* (322 ITR 158) has held as under:-

"A mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the Return cannot amount to the inaccurate particulars."

11. In the present case, the assessee neither concealed the income nor filed inaccurate particulars, therefore, respectfully following the above referred to judgment of the Hon'ble Supreme Court in the case of *Reliance Petroproducts Pvt. Ltd.* (supra), we find no infirmity in the order passed by the Id. CIT(A). Thus, this appeal filed by the revenue is dismissed.

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

Order Pronounced in open Court on this 14th day of March, 2018.

Sd/-
(D.S. SUNDER SINGH)
Accountant Member

sd/-
(V. DURGA RAO)
Judicial Member

Dated :14th March, 2018.

vr/-

Copy to:

1. The Assessee - M/s. Seven Hills Healthcare Pvt. Ltd., D.No. 11-4-4/A, Rockdale Layout, Ramnagar, Visakhapatnam.
2. The Revenue - DCIT, Circle-4(1), Visakhapatnam.
3. The CIT-2, Visakhapatnam.
4. The CIT(A)-2, Visakhapatnam.
5. The D.R., Visakhapatnam.
6. Guard file.

By order

(VUKKEM RAMBABU)
Sr. Private Secretary,
ITAT, Visakhapatnam.