

आयकर अपीलिय अधिकरण “फ” न्यायपीठ मुंबई मे ।

**IN THE INCOME TAX APPELLATE TRIBUNAL “F” BENCH, MUMBAI  
BEFORE SRI MAHAVIR SINGH, JM AND SRI G MANJUNATHA, AM**

आयकर अपील सं./ ITA No. 207/Mum/2017

(निर्धारण वर्ष / Assessment Year 2012-13)

M/s. Unicolour Textile P Ltd. 601/349, Business Point, Western Express Highway, Andheri (E), Mumbai-400069	Vs.	ITO, Ward-11(1)(4), Mumbai
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)
PAN No. <b>AABCU0009M</b>		

**Revenue by** : Pooja Swaroop, DR

**Assessee by** : Anuj Kishdwala, AR

**Date of hearing:** 18.06.2018 **Date of pronouncement :** 18-06-2018

**आदेश / ORDER**

**PER MAHAVIR SINGH, JM:**

This appeal by the assessee is arising out of the order of Commissioner of Income Tax (Appeals)-18, Mumbai [in short CIT(A)], in appeal No. CIT(A)-18/IT-296/2013-14. The Assessment was framed by the Income Tax Officer, Ward-11(1)(4), Mumbai for the A.Y. 2012-13 vide order dated 27.02.2015 under section 271(1)(c) of the Income Tax Act, 1961 (hereinafter ‘the Act’).

2. The only issue in this appeal of assessee is against the order of the CIT(A) confirming the levy of penalty by the A.O. for

concealment of income under section 271(1)(c) of the Act on the issue of claim of excessive depreciation of ₹10,67,231/- and mismatch of AIR reconciliation of ₹39,424/-. For this assessee has raised following four grounds:

“1. The learned CIT(A) has erred in law and in facts in confirming the penalty levied by the A.O. under section 271(1)(c) read with section 274 of the Income Tax Act, 1961 (Act) and the consequential order passed under section 250 is bad in law, illegal and void.

2. The learned CIT(A) has erred in law and facts by confirming penalty on excessive depreciation of ₹10,67,231/- inadvertently claimed by the assessee in the Income Tax Return filed and suo moto brought to the notice of the AO by the assessee. The said amount was rightly calculated in the tax audit report and was a bonafide error which has not been considered.

3. The Learned CIT(A) has erred in law and facts by confirming penalty on mismatch offered by the assessee. Also due to voluminous transactions in the AIR, there is a possibility that the assessee was unable to reconcile such a small difference and the same cannot be concluded to be concealment of income.

4. The Learned CIT(A) has erred in law and facts by confirming penalty of ₹4,00,000/- which is higher than 100% of the tax of ₹3,41,956/- on the alleged income sought to be evaded which was in fact suo moto offered by the assessee.”

3. Briefly stated facts are that the assessee is a Private Limited company engaged in the business of textile processing. During the course of assessment proceedings, the A.O. made addition on account of disallowance of excess claim of depreciation at ₹10,67,231/- and mismatch of the AIR information at ₹39,424/- and initiated penalty proceedings for furnishing of inaccurate particulars of income under section 271(1)(c) of the Act. The A.O. levied penalty under section 271(1)(c) of the Act vide order dated



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14.8.2015 on the wrong claim of depreciation of ₹10,67,231/- and also mismatch of the AIR of ₹39,424/-. Before the A.O., the assessee filed explanation stating that the assessee has brought new plant and machinery which was purchased for more than 180 days in a year but was put to use for less than 180 days but due to mistake computed the depreciation for claim for the purpose of calculation of income tax for whole of the year. Accordingly, Ld. Counsel for the assessee before A.O. as well as CIT(A) contended that this is inadvertent claim of depreciation for full year on the said plant and machinery instead of half of the year. He also explained before the A.O. as well as before CIT(A) that depreciation was rightly calculated in the tax audit report and the same was available before the A.O. during the course of assessment proceedings which was also explained before the A.O. and CIT(A) that complete particulars for claim of depreciation were available before the lower authorities. But the A.O. has not accepted the claim of the assessee and levied the penalty by stating that had the assessee's case not been selected for scrutiny, the assessee could have been benefitted by filing inaccurate particulars of income. According to the A.O., the revenue has detected the inaccurate particulars of claim of excess depreciation and hence levied the penalty. In regard to the item of mismatch of AIR, the assessee explained that the difference of ₹14,882/- was due to the rate difference or discount offered to customers and therefore, while filing TDS returns they disclosed the expenses without considering the



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discount offered to them. As regards to the item of ₹24,542/-, the assessee was unable to trace the party appearing in the AIR as assessee being the job workers and the receipts are subjected to TDS. Before A.O., assessee contended for this small amount assessee could not have concealed reason being the assessee's income/loss is more than ₹30 lakhs. The CIT(A) also confirmed the penalty on the same reasoning. Aggrieved, now assessee is in appeal before this Tribunal.

4. Before us, Ld. Counsel for the assessee made submissions that the assessee has brought new plant and machinery in the month of September, 2011 and some parts were purchased even in August, 2011. He referred to the invoices submitted before us in assessee's paper book and shown us the date of purchase. According to the Ld. Counsel, these purchases are made beyond 180 days but the same assets were put to use for less than 180 days. Ld. Counsel also stated that in the tax audit report the assessee has rightly calculated the depreciation making claim at 50% for the reason that the assets were put to use for less than 180 days, whereas the same was purchased for more than 180 days. Under bonafide mistake, the assessee claimed this depreciation for full year on these assets. As regards to the mismatch of AIR, Ld. Counsel for the assessee stated that the first item was regarding rate difference or discount offered to customers



and another was that the party could not be traced and assessee being a job worker, deducted all the TDS on the payments.

5. On the other hand, the Ld. D.R. heavily relied on the penalty order of the A.O.

6. We have heard the rival contentions and gone through the facts and circumstances of the case. We find that the plea of the Ld. Counsel for the assessee is quite reasonable that the assessee was under bonafide belief that the asset was purchased in September or sometime in August. It means that the asset was purchased for more than 180 days. But the same was put to use for less than 180 days. The assessee has simply calculated the depreciation while completing the tax audit report rightly i.e. at 50%. However, while computing the income for tax purposes, the assessee inadvertently and under bonafide belief claimed 100% depreciation on this asset. The same explanation was consistently made by the assessee before us and even before the lower authorities. We find no fault in the explanation submitted by the assessee and hence, according to us, this cannot be subject matter of penalty under section 271(1)(c) of the Act.

7. As regards the another item of mismatch of AIR reconciliation of ₹39,424/-, the assessee's explanation that this is due to rate difference and one party, whom the assessee is doing job work is not traceable. As this explanation is also bonafide and due to smallness of amount also, the penalty cannot be levied.



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8. Accordingly, we delete the penalty and allow the appeal of the assessee.

9. **In the result, the appeal filed by the assessee is allowed.**

Order pronounced in the open court on 18-06-2018.

आदेश की घोषणा खुले में दिनांक 18.06.2018 को की गई ।

Sd/-

(G MANJUNATHA)  
ACCOUNTANT MEMBER

Sd/-

(MAHAVIR SINGH)  
JUDICIAL MEMBER

Mumbai, Dated: 18-06-2018

*Venu Gopal, Sr. PS*

**Copy of the Order forwarded to:**

1. The Appellant
2. The Respondent.
3. The CIT (A), Mumbai.
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

BY ORDER,

Assistant Registrar  
**ITAT, MUMBAI**