

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E", NEW DELHI
BEFORE SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI K. NARASIMHA CHARY, JUDICIAL MEMBER

	I.T.A. No. 3156/DEL/2014	
	A.Y. : 2007-08	
M/S MORADABAD TOLL ROAD COMPANY LTD., G-5 & G-6, SECTOR-10, DWARKA NEW DELHI - 110 075 C/O RAWLA & CO., CHARTERED ACCOUNTANTS, 504, SURYA KIRAN BUILDING, KASTURBA GANDHI MARG, NEW DELHI - 11 0001 (PAN: AABCM9154B)	VS.	DCIT, CIRCLE 5(1), NEW DELHI
(APPELLANT)		(RESPONDENT)

Assessee by : None
Department by : Ms. Rashmita Jha, Sr. DR.

Date of Hearing : 24.09.2018

Date of Order : 27-09-2018

ORDER

PER K. NARASIMHA CHARY, J.M.

This is an appeal by the Assessee challenging the Order dated 24.01.2014 in Appeal No. 0166/2012-13 for assessment year 2007-08 passed by the Ld. Commissioner of Income Tax (Appeals)-VIII, New Delhi (in Short "Ld.

CIT(A)”) wherein the Ld. CIT(A) has upheld the penalty of Rs. 2,41,56,197/- made by the AO u/s. 271(1)(c) of the Income Tax Act, 1961 (In Short “Act”).

2. The brief facts of the case are that assessment in this case was completed u/s. 143(3) of the Act on 02.12.2009 at loss of (-) Rs. 2,83,53,758/- as against returned loss of (-) Rs. 10,02,63,570/- after making additions of Rs. 7,16,79,068/- on account of depreciation; Rs. 86,224/- on account of internal audit and tax audit fees and Rs. 1,44,510/- on account of licence fee / rent free accommodation to employee. Against the additions the assessee preferred appeal before the Ld. CIT(A) who vide his order dated 28.1.2011 confirmed the addition of Rs. 7,16,79,068/- on account of depreciation and Rs. 86,224/- on account of internal audit and tax audit fees and deleted the addition of Rs. 1,44,510/- on account licence fee/ rent free accommodation. Aggrieved by the decision of the Ld. CIT(A), the assessee appealed before the ITAT who in turn upheld the order of the Ld. CIT(A). Thereafter, penalty proceedings u/s. 271(1)© of the Act were initiated by issuing notice on 04.2.2013. In response thereto, the assessee filed its reply dated 17.10.2012. After considering the response of the assessee, the AO observed that assessee has furnished inaccurate particulars within the meaning of explanation 1 to the sub section (1) of the Section 271(1)(c) of the Income Tax Act, 1961 and held that assessee

deliberately evade the tax on amount of Rs. 7,17,65,292/- (Rs. 7,16,79,068/- + Rs. 86224/) and concealed the particulars of its income and furnishing of inaccurate particulars of its income. Hence, he levied the penalty of Rs. 2,41,56,197/- u/s. 271(1)(c) of the Act vide order dated 25.2.2013.

3. Against the above Penalty Order dated 25.2.2013 passed by the Assessing Officer, assessee appealed before the Ld. First Appellate Authority, who vide impugned order dated 24.1.2014 has held that since the quantum appeal is sub-judice in Delhi High Court, he confirmed the order of the AO.

4. Against the above order of the Ld. CIT(A) dated 24.1.2014, assessee is in appeal before the Tribunal.

5. In this case, Notice of hearing to the assessee was sent by the Registered AD post, in spite of the same, assessee, nor its authorized representative appeared to prosecute the matter in dispute, nor filed any application for adjournment. Keeping in view the facts and circumstances of the present case and the issue involved in the present Appeal, we are of the view that no useful purpose would be served to issue notice again and again to the assessee, therefore, we are deciding the present appeal exparte

qua assessee, after hearing the Ld. DR and perusing the records available.

6. Ld. DR strongly relied upon the orders of the authorities below.

7. On careful consideration of the matter, we find that assessment was completed at loss of Rs. 2,83,53,768/- against the returned loss of Rs. 10,02,63,570/- by disallowing the depreciation to the tune of Rs. 7,16,79,068/- on account of excessive depreciation and Rs. 86224/- on account of internal and tax audit fees for non deduction of TDS u/s. 40(a) of the Act and AO imposed the penalty of Rs. 2,41,56,197/- u/s. 271(1)(c) of the Act. We find that there is only the application of law as to the depreciation and other disallowance on which no penalty should be maintained. We further note that instead of carry forward loss the action of the AO allows the carry forward of the depreciation. Therefore, all the particulars on which the assessee claimed the depreciation were furnished alongwith return of income and it is not the case of the Revenue that any new facts were unearthed during the assessment proceedings so that a reasonable conclusion could be drawn that the assessee either concealed income or furnished inaccurate particulars of income. It is only a question of allowing the depreciation in this year or next year. As a matter of fact if the

depreciation is not allowed this year the same will be carried forward and if depreciation is allowed, the loss will be carried forward. In these circumstances, we are of the considered opinion, that there is no element of concealment of income or furnishing of inaccurate particulars of income and the assessee does not stand the gain by claiming depreciation at a higher rate this year. We further find that as regards furnishing of inaccurate particulars, no information given in the return was found to be incorrect or inaccurate. We further find that section 271(1)(c) postulates imposition of penalty for furnishing of inaccurate particulars and concealment of income. Therefore, the assessee has not at all concealed any particulars of such income and has also not furnished inaccurate particulars of income. To these facts, the decision of the Apex Court in the case of CIT vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR-158 (SC) is directly applicable here wherein, the Hon'ble Supreme Court has held that merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue that by itself would not attract the penalty under section 271 (1)(c).

8. In the background of the aforesaid discussions and respectfully following the precedent, as aforesaid, we are of the considered view that the assessee has neither concealed the income

nor furnished inaccurate particulars of income and there are no findings of the Assessing Officer and the CIT (Appeals) that the details furnished by the assessee in his return are found to be incorrect or erroneous or false. Under these circumstances, in our view the penalty in dispute is totally unwarranted and deserves to be deleted. Accordingly, we delete the penalty of Rs. 2,41,56,197/- made u/s. 271(1)(c) of the I.T. Act and quashed the orders of the authorities below on the issue.

9. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the Open Court on 27/09/2018.

Sd/-

Sd/-

[G.D. AGRAWAL]
PRESIDENT

[K.NARASIMHA CHARY]
JUDICIAL MEMBER

Date 27/09/2018

“SRBHATNAGAR”

Copy forwarded to: -

1. Appellant
2. Respondent
3. CIT
4. CIT (A)
5. DR, ITAT

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Assistant Registrar,
ITAT, Delhi Benches