

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES: Bench 'D', NEW DELHI**

**BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No. 3326/Del/2015

AY: 2006-07

ITO Ward 12(3), Room No. 420B, C.R. Building, I.P. Estate, New Delhi.	vs.	International Cars & Motors Ltd., Sonalika House, 283, ACGR Enclave, Karkardooma, Delhi. AABC12403D
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(Appellant)

(Respondent)

Appellant by : Smt. Naina Soin Kapila, Sr. DR
Respondent by : Sh. Sumit Kumar Bansal, CA

Date of Hearing : 22/01/2019
Date of Pronouncement: 24/01/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present penalty appeal has been filed by Revenue against order dated 13/03/15, passed by Ld.CIT (A)-4, New Delhi for assessment year 2006-07 on following grounds of appeal:

1. *“Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) has erred in deleting penalty imposed u/s 271(1)(c) for Rs. 61,51,765/-.*
2. *The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of hearing.”*

Brief facts of the case are as under

2. Assessee is a company engaged in manufacturing and assembly of multi-utility vehicles. Ld.AO during assessment proceedings observed that assessee claimed additional depreciation under section 32(1)(iia) on

fixed assets under the head plant and machinery amounting to Rs.27,12,71,521/-. In the assessment order Ld.AO did not allow claim of additional depreciation amounting to Rs.1,82,76,190/-.

3. Aggrieved by addition made by Ld. AO, assessee preferred appeal before Ld. CIT (A) who confirmed the addition it is observed that against order of Ld. CIT(A) assessee preferred appeal before this Tribunal, who upheld order of Ld. AO vide order dated 21/12/12.

4. Ld. AO thereafter issued notice under section 274, for levy of penalty under section 271 (1) (c) of the Act. Assessee in the meanwhile, preferred appeal before *Hon'ble Delhi High Court*, against Tribunal's order on 21/12/12 and *Hon'ble Delhi High Court* admitted the appeal.

5. Against the penalty order passed by Ld.AO assessee preferred appeal before Ld.CIT (A). Ld.CIT (A) deleted penalty by following decision of *Hon'ble Delhi High Court* in case of *CIT vs Raul Mehta* in ITA No. 523/11 and *CIT vs. Liquid Investments Ltd* in ITA No. 240/2009 vide order dated 05/10/10.

6. Aggrieved by order of Ld.CIT (A), revenue is in appeal before us now.

7. Ld.Counsel at the outset submitted that *Hon'ble Delhi High Court* in ITA No. 598/2014 admitted question of law in respect of addition, on which penalty has been confirmed by Ld.CIT(A). He brought to our notice question of law that has been framed by *Hon'ble High Court* which has been reproduced by Ld.CIT (A) in para 5.2 as under:

1. *"whether the income tax appellate tribunal was right in holding that the assessee is not entitled to additional depreciation of @ 15% or 20% under section 32 (1) (ia) of the income tax act, 1961 as it existed prior to 31/03/06 or after 01/04/06 because the machinery was*

acquired before 31st of March, 2006 but was installed after 01/04/06?."

8. Ld.Counsel placed reliance on *order dated 05/10/10* passed by *Hon'ble Delhi High Court* in case of *CIT vs Liquid Investment and Trading Co.*, in *ITA No. 240/2009*, and submitted that, admission of issue on which penalty has been levied would make it apparent that, such addition made is debatable.

9. On contrary, Ld.DR place reliance on orders of authorities below.

10. We have perused submissions advanced by both sides in light of records placed before us.

10.1 It is a case where penalty is levied, on a issue, in respect of which *Hon'ble Delhi High Court* in assessee's own case for relevant assessment year under consideration, has framed substantial question of law. It thus becomes apparent that addition is debatable.

11. We draw support in respect of aforestated view from *order dated 05/10/10* passed by *Hon'ble Delhi High Court* in case of *CIT vs Liquid Investment and Trading Co.*, (supra).

12. We are, therefore, inclined to delete the penalty.

Accordingly grounds raised by revenue stands dismissed.

In the result appeal filed by revenue stands dismissed.

Order pronounced in the open court on 24/01/2019

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Sd/-
(BEENA A PILLAI)
JUDICIAL MEMBER

Dated: 24.01.2019

*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

Date of dictation	22.01.2019
Date on which the typed draft is placed before the dictating Member	23.01.2019
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	24/01
Date on which the fair order comes back to the Sr. PS/PS	24/01
Date on which the final order is uploaded on the website of ITAT	24/01
Date on which the file goes to the Bench Clerk	24/01
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	