

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA Nos.6342 & 6343/Del/2014
Assessment Years: 2008-09 & 2009-10**

M/s Hindustan General Industries Ltd., vs Income-tax Officer,
C/o O.P. Sapra & Associates, Ward-12(4), New Delhi.
C-763, New Friends Colony,
New Delhi.

PAN: AAACH0127N

Appellant

Respondent

Assessee by Shri Sanjiv Sapra, FCA

Revenue by Shri Amit Katoch, Sr. DR

Date of Hearing 25.3.2019

Date of Pronouncement 29.3.2019

ORDER

PER K. NARASIMHA CHARY, JM

These two appeals are filed by the assessee against the order dated 22.9.2014 & 31.3.2014 in Appeal Nos.84 & 85/12-13 passed by the Learned Commissioner of Income-tax(Appeals)-XV, New Delhi {"CIT(A)"} for Assessment Year 2008-09 and 2009-10 respectively wherein he confirmed the penalty levied in relation of the addition made by disallowing the depreciation on factory building.

2. Brief facts of the case are that the assessee is a public limited company and for the AY 2008-09 and 2009-10, they have filed their

return of income on 29.9.2008 and 29.9.2009 respectively. Learned AO made certain additions which include the disallowance out of depreciation on the factory building, which had been given on rent. In respect of AY 2008-09, learned AO made another addition on account of disallowance of miscellaneous expenses whereas for the AY 2009-10, the addition u/s 14A read with Rule 8D. In respect of those two additions, apart from other additions, learned AO initiated proceedings u/s 271(1)(c) and concluded them with a levy of penalty.

3. In appeal, learned CIT(A) confirmed the levy of penalty in respect of the depreciation holding that the assessee had filed inaccurate particulars of income by claiming depreciation when the assessee had treated the building as house property and claimed standard deduction thereon. However, learned CIT(A) deleted the penalty relating to the addition on account of disallowance of miscellaneous expenditure for the AY 2008-09 and disallowance u/s 14A read with Rule 8D in respect of AY 2009-10.

4. Challenging the order of the learned CIT(A) sustaining the penalty levied on account of the claim of depreciation on the building given on rent, assessee preferred these appeals. Similar issue is involved for both these years but on different grounds. We shall, therefore, deal with the same year-wise.

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5. In so far as this year is concerned, the contention of the assessee is two-fold. Firstly, according to the assessee though the learned AO in the assessment order dated 30.9.2010 recorded that the assessee concealed

the income of Rs.7,33,463/-, no such satisfaction were recorded in respect of other additions more particularly while adding Rs.13,08,182/- on account of depreciation claimed in respect of the building on rent. It is submitted by the learned DR on this score, in view of the decision of the Hon'ble Allahabad High Court in the case of CIT vs M/s Triveni Engineering & Industries Ltd., Income-tax Appeal No.103 of 2014 by order dated 26.5.2014, no penalty could be levied.

6. Second limb of argument advanced by the assessee is that not only the learned AO omitted to record the satisfaction to initiate the penalty proceedings in respect of this particular addition, even in the notice issued u/s 147 of the Act, he did not clarify under which limb of Section 271(1)(c), viz. either for concealment of income or for furnishing of inaccurate particulars, the assessee is charged to be levied with penalty in respect of this particular claim of depreciation. He placed reliance on the decision of the Hon'ble Karnataka High Court in the case of Manjunatha Cotton and Ginning Factory & Ors. (Kar), 359 ITR 565.

7. On the other hand, learned DR heavily relied on the orders of the authorities below.

8. We have gone through the record. It is no doubt clear that in the assessment order, learned AO made five additions. In respect of the addition of Rs.7,33,463/- on account of rental income declared, learned AO had recorded a finding that the assessee had concealed income of Rs.7,33,463/- and thus he added it back to the income of the assessee as undisclosed income from house property. However, the assessment order is conspicuous. In respect of other additions, no such finding is given.

9. In the case of M/s Triveni Engineering & Industries Ltd (supra), there was an addition of Rs.77,89,965/- towards the interest on Sugar Development Fund (SDF) for the AY 2000-01 but the AO did not record while making such addition where it would be appropriate to initiate any penalty proceedings u/s 271(1)(c) in respect of such head whereas as could be found from the order of the Hon'ble High Court in respect of several other heads, the learned AO did consider it appropriate to initiate penalty proceedings by making an observation to that effect. When the AO levied penalty in respect of the addition made under the head 'SDF', the Hon'ble High Court while referring to the sub section (1B) introduced by way of an amendment by the Finance Act, 2008 with retrospective effect from 1.4.2009 was pleased to hold that this particular omission to record whether it was appropriate to initiate proceedings u/s 271(1)(c) stands in sharp contrast to those item where the learned AO had specifically directed the initiation of penalty proceedings u/s 271(1)(c), penalty cannot be sustained.

10. In the case in hand also, assessment order reveals that the learned AO did not record such a finding in respect of the addition made on account of depreciation and the ratio of the Hon'ble Allahabad High Court in the case of M/s Triveni Engineering & Industries Ltd (supra), is applicable to the facts of the case.

11. Even otherwise also, we have gone through the notice u/s 274 of the Act read with Section 271(1)(c), which is a printed form wherein both the limbs of Section 271(1)(c), viz., the concealment of the particulars of income or the furnishing of inaccurate particulars are there without striking of the proper one apart from another reasons like the

assessee without reasonable cause fail to company with the notice u/s 142(1)/143 of the Act. It does not indicate under which limb of Section 271(1) (c) of the Act, Ld. AO proposed to initiate the penalty proceedings.

12. It is, therefore, clear that viewing from any angle, we do not find it appropriate to sustain the penalty in respect of this depreciation. We, therefore, direct the learned AO to delete the penalty while allowing this appeal.

ITA No.6343/Del/2014:

13. In this case, it is the submission on behalf of the assessee that it is only due to inadvertent error while preparing and filing income-tax return, the claim for depreciation on rented building was preferred but, however, the rent was offered for taxation under the head 'Income from house property' which shows that the mistake is a bonafide one. It is further submitted that irrespective of the fact whether building is let out on rent or used for business purpose, depreciation on factory building is required to be charged while preparing the balance sheet in accordance with the Companies Act but inadvertently the assessee claimed the same in the income-tax return also.

14. Learned DR submitted that in respect of Asstt. Year 2008-09, the assessee claimed depreciation in respect of the factory building, which was given on rent and claimed standard deduction thereon, as such, the claim of depreciation by the assessee is a consistent one but not an inadvertent mistake. It is further submitted by the learned DR that notice

u/s 143(2) was sent to the assessee but in spite of the same waited till 5.8.2011 to voluntary surrender such amount of depreciation.

15. Our attention is drawn to the fact that income tax return filed for this year was filed on 29.9.2009 whereas the assessment for the AY 2008-09 was completed on 13.9.2010. It is, therefore, clear that the return for this year was filed much earlier to the completion of assessment for AY 2008-09. Further it is submitted by the assessee that for the subsequent years, viz., 2010-11 to 2013-14, there was no such claim made by the assessee and such a fact is evident from the copies of Income-tax return for those years placed on record. It is an admitted fact that for this year the assessee offered rent for taxation under the head 'income from house property'.

16. In these circumstances, assessee placed reliance on the decision of the Hon'ble Apex Court in the case of Price Waterhouse Coopers Ltd., 348 ITR 306 and also CIT vs Reliance Petro Products Ltd., 322 ITR 158 to show that a silly mistake has committed by a professional firm like Price Waterhouse Coopers Ltd. can be on account of bona fide and inadvertent error and, therefore, it did not mean that the assessee was guilty of either furnishing inaccurate particulars or attempting to conceal its income. In the case of Reliance Petroproducts (P) Ltd., Hon'ble Supreme Court held that 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 and such a claim made in the return cannot amount to the inaccurate particulars.

17. Next, learned AR placed reliance on the decision of the Hon'ble jurisdictional High Court in the case of CIT vs. SOYTC, 259 ITR 325

wherein the Hon'ble High Court while noticing the decision in the case of Zoom Communications distinguished it holding that no penalty u/s 271(1)(c) could be levied where the assessee had made inadvertent and mechanical claim of depreciation on rental property.

18. Further in M/s B.L. International vs ACIT , ITA No.1590/Del/2014 for the AY 2009-10, a coordinate bench of this Tribunal also dealt with this issue of depreciation being claimed on the property, the income from which was returned under the head 'income from house property' and before the commencement of assessment proceedings, the assessee communicated to the officer for their withdrawing the claim for depreciation. A coordinate bench of this Tribunal while following the decision of the Hon'ble jurisdictional High Court in the case of Powerhouse Coopers ltd. (supra) allowed the appeal.

19. In view of this line of decisions applicable to the facts of this case, we are of the considered opinion that in a case of bonafide mistake which was rectified voluntarily before being detected by the AO, penalty cannot be sustained. We accordingly while accepting the contention of the assessee find it difficult to sustain the penalty and accordingly, directed the learned AO to delete the same.

20. In the result, both the appeals of the assessee are allowed.

Order pronounced in the Open Court on 29th March, 2019.

Sd/-

(N.K. BILLAIYA)
ACCOUNTANT MEMBER
Dated: 29th March, 2019/VJ

sd/-

(K. NARASIMHA CHARY)
JUDICIAL MEMBER

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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