

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

**BEFORE SH. I.C. SUDHIR, JUDICIAL MEMBER  
AND  
SH. O.P. KANT, ACCOUNTANT MEMBER**

ITA No. 5655/Del/2013  
Assessment Year: 2007-08

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| M/s. SPL Industries Ltd., 5/66, KC House, 3 <sup>rd</sup> Floor, Padam Singh Road, Karol Bagh, New Delhi | <b>Vs.</b> | Asstt. Commissioner of Income Tax, Circle-9(1), New Delhi. |
| <b>GIR/PAN : AAACS0343R</b>  |            |  |
| <b>(Appellant)</b>   |            | <b>(Respondent)</b>  |

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| Appellant by  | Dr. Rakesh Gupta & Sh. Somil Aggarwal, Advocates |
| Respondent by | Sh. Syed Nasir, ACIT (DR)                        |

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| Date of hearing       | 19.04.2016 |
| Date of pronouncement | 10.06.2016 |

**ORDER**

**PER O.P. KANT, A.M.:**

This appeal of the assessee is directed against order dated 12/08/2013 of learned Commissioner of Income-tax (Appeals)-XII, New Delhi, for assessment year 2007-08, in respect of penalty levied under section 271(1)(c) of the Act, raising following grounds:

- 1. That having regard to the facts and circumstances of the case, the Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. Assessing officer in levying the penalty of Rs. 69,10,800/- without assuming jurisdiction as per law and the impugned penalty order being illegal and void ab-initio.*
- 2. That having regard to the facts and circumstances of the case, the Id. CIT(A) erred in law and on facts in affirming the impugned penalty order being contrary to law as the assessment order framed under section 143(3) dt. 24- 12-2009 was also illegal, beyond jurisdiction and void ab-initio.*
- 3. That having regard to the facts and circumstances of the case, the Id. CIT(A) erred in law and on facts in confirming the levy of penalty under section 271 (1 )(c) on the addition made in the assessment order under section 143(3) dtd. 24-12-2009 as the*

*same addition is also contrary to law and facts.*

4. *That having regard to the facts and circumstances of the case, Id. CIT(A) erred in law and on facts in confirming the action of the Id. AO in levying penalty u/s 271(1)(c) which is bad in law being beyond jurisdiction and barred by limitation and contrary to the principles of natural justice and has been passed by recording incorrect facts and findings and without giving adequate opportunity to the assessee and the same is not sustainable on various legal and factual grounds.*
5. *That having regard to the facts and circumstances of the case, Id. CIT(A) has erred in law and on facts in confirming the action of the AO in imposing a penalty of Rs. 69,10,800/- that too without recording mandatory "satisfaction" as per law.*
6. *That the appellant company craves leave to add, delete, modify, and amend any grounds of appeal before or at the time of hearing of appeal.*
7. *That above grounds of appeal is without prejudice to each other.*

2. The facts in brief are that assessment under section 143(3) of the Act was completed on 24/12/2009, wherein excess claim of depreciation on plant and machinery under Technology Upgradation Fund Scheme (TUFSS) scheme of Government of India was disallowed. The assessee company made additions to plant and machinery under the TUFSS Scheme and claim depreciation at the rate of 50% on the additions to plant and machinery. According to Assessing Officer, as per new Appendix-1 to the depreciation table effective from assessment year 2006-07 onwards, prescribed at para (6), that the plant and machinery used in weaving, processing and garment sector of textile industry, purchased under TUFSS on or after 01/04/2001 but before 01/04/2004 is entitled to depreciation at the rate of 50% but in the case of the assessee addition to plant and machinery made in the year under consideration, was after 01/04/2004, therefore, the assessee was not eligible for depreciation at the rate of 50% as claimed, as against the depreciation at the rate of 15% available normally on plant and machinery. In the assessment order, the penalty under section 271(1)(c) of the Act was initiated. The addition made on the issue was upheld by the learned Commissioner of Income-tax (Appeals). The Assessing Officer again issued a show cause notice on 01/03/2012 proposing levy of penalty under section 271(1)(c) of the Act. In response the assessee submitted that the excess depreciation claimed was based on its information from a news appeared in

Financial Express and moreover all the factual information was furnished correctly and, therefore, the assessee could not be said to have disclosed inaccurate particulars of income. The Assessing Officer, however, levied penalty under section 271(1)(c) of the Act at the rate of hundred percent of the tax sought to be evaded which amounted to Rs 69,10,800/-. On appeal, the learned Commissioner of Income-tax (Appeals) also confirmed the penalty levied. Aggrieved, the assessee is in appeal before the Tribunal.

3. The grounds no. 1 to 5 raised by the assessee are in respect of the penalty levied of Rs. 69, 10, 800/-.

3.1 At the outset, the ld. Authorized Representative of the assessee submitted that in assessment year 2006-07 also penalty of Rs. 1,91,33,400/- was levied by the AO on account of excess claim of depreciation of Rs. 5,42,93,162/- under TUF Scheme and capital subsidy of Rs. 25,50,000/- which was deleted by the Tribunal Delhi bench in order dated 01/02/2016 in ITA No. 4927/Del/2012 and, therefore, the issue being identical and bonafide mistake on the part of the assessee, the penalty levied by the AO and confirmed by the CIT(A) deserves to be deleted.

3.2 On the other hand, learned Sr. Departmental Representative relying on the order of the authorities below submitted that same mistake was committed by the assessee in assessment year 2006-07, how it was repeated again in assessment year 2007-08 and, thus, it cannot be said that it was a bonafide mistake on the part of the assessee.

3.3 In the rejoinder, the ld. AR submitted that by the time the issue came up in assessment of assessment year 2006-07, the return of income for assessment year 2007-08 was already filed and the period for revising the return was also over and, therefore, there was no malafide intention on the part of the assessee to claim the excess depreciation and it was only bonafide mistake.

3.4 We have heard the rival submissions and perused the material on record including the order of the Tribunal in immediately preceding assessment year where in the penalty levied under section 271(1)(c) of the Act on the issue of excess depreciation claimed in plant and machinery purchased under the TUF Scheme has been deleted. The relevant part of the order of the Tribunal is reproduced as under:

ø9. In the case of ITO Vs. M/s Deshraj [supra] the Tribunal upheld the first appellate order which deleted the penalty on excess claim of depreciation on TUF scheme with the following findings:

ø7. Before us the Ld. D.R. submitted that the assessee has claimed higher depreciation on the machinery purchased for texturizing of yarn. Though it was not entitled to the higher rate of depreciation the assessee has claimed higher depreciation for which the assessee has furnished inaccurate particulars of income and therefore, the penalty was rightly levied by the A.O. He urged that the penalty levied by the A.O. be upheld.

8. On the other hand, the Ld. A.R. submitted that it had purchased the machinery by availing Bank loan under TUF scheme. It was under the bonafide belief that since the machinery was purchased under TUF scheme it was entitled to depreciation @ 50%. It was further submitted that it was not a case of furnishing of inaccurate particulars of income and concealment of income.

9. The Ld. A.R. further placed reliance on the decision of Ahmedabad Tribunal in the case of Eagle Fibres Pvt. Ltd., in ITA No.3003/Ahd/208 & ITA No.3295/Ahd/2008 dated 23-12-2010.

10. We have heard the rival submissions and perused the material on record. The factual position on the basis of assessment orders and submissions that emerges is that assessee had availed loan from bank under TUF Scheme for purchase of machinery. As per Income Tax Rules, Appendix I, Part-III, itemNo.6, machinery and plant used in weaving, processing and garment sector of textile industry, which is purchased under TUFs on or after 1st April, 2001 but before 1st April, 2004 and is put to use before 1st April, 2004 are eligible for depreciation @ 50%. It is an undisputed fact that assessee is in the business of manufacturing of texturised yarn and had purchased machinery by availing loan under TUFs scheme. The assessee was under a bonafide belief that since it has purchased machinery by availing loan from Bank under TUF Scheme, it was eligible for depreciation @ 50% on the machinery purchased. The claim of depreciation was not altogether bogus. The dispute was only with respect to the rate of depreciation. The belief of the assessee is not found to be untrue or false by the A.O. On these facts it cannot be said that assessee has furnished inaccurate particulars and is therefore liable to penalty u/s.271(1)(c). In the case of Eagle Fibres Pvt. Ltd. (supra) the Coordinate Bench, on similar facts had deleted the penalty by holding as under:-

ø5. We have considered the material placed on record. As far as the Revenue's appeal in respect of excess claim of depreciation on machinery is concerned, the

A.O. had made a disallowance of depreciation of Rs. 18,04,688/- primarily on the ground that the depreciation on machinery and plant (TUF Scheme) was allowable @ 25%, however, the assessee had claimed the depreciation at 50%. According to A.O., the eligible depreciation as per the Income tax Rules was only 25%, hence, the same was restricted to that extent only. The excess claim of depreciation was affirmed by the Ld. CIT (A) in first appeal. Consequent thereupon the A.O. has thought it proper to levy the penalty. However, when the question of levy of penalty was challenged, Ld. CIT (A) has noted, as per the paragraph reproduced above, that the machineries were only purchased out of the loan given by the Bank under a TUF Scheme floated by Ministry of Textile. The assessee was under an impression that the claim of depreciation was as per the specific rates prescribed, however, it was found by the A.O. that that specific rate of depreciation was not admissible as per the Income Tax Rules, 1962.

5.1. On due examination of the circumstances, once the claim of depreciation was not altogether bogus or malafides but the dispute was in respect of the correct rate of depreciation, then in our considered view that though the rate of depreciation as per A.O. was correct but assessee's action should not be held as concealment of income or furnishing of inaccurate particulars. It is also evident that still the assessee is harping upon the interpretation of Appendix Annexure to I.T. Rules, 1962 for the purpose of higher depreciation allowance, therefore, this fact itself proves that the correct entitlement of depreciation was a debatable issue. To buttress this view, we place reliance on a latest decision of Honøble Apex Court in the case of CIT vs. Reliance Petroproducts (P) Ltd., reported at (2010) 322 ITR 158 (SC), wherein it was laid down that no penalty could be levied merely on disallowance of a deduction, which was made by taking a different view. Following this decision, we find no force in this ground of the Revenue and affirm the findings of the Ld. CIT (A).

11. Since the facts in the present case are identical to that of Eagle Synthetics Private Limited (supra) and since nothing has been brought on record, to the contrary by the Revenue and relying on the decision of Honøble Apex Court in the case of Reliance Petroproducts (supra) we do find any reason to interfere in the order of the CIT (A).

10. Furthermore, in the case of Piparia Syntex Pvt. Ltd Vs. ITO, the ITAT Ahmedabad Bench deleted the penalty on similar issue of excess claim of depreciation on TUF Scheme with the following findings:

2. Brief facts of the case are that during the course of assessment proceedings AO on verification of details filed by the assessee company observed that assessee has claimed depreciation on plant and machinery used in weaving, processing and garment sector which are purchased under TUFs on or after 18 ITA No. 4927/Del/2012 18 first day of April, 2004 are eligible for 50% depreciation. The assessee did not provide any details as if the machineries claimed to have been purchased during the year under consideration is covered by TUFs. In absence of any evidences/documents it could not be ascertained as if machineries are eligible under TUFs or not. Therefore, AO was of the view that it was established that the assessee-company engaged in the field of texturising the POY which was not

covered by either of the process as covered by the provision of Rule 5 of the Income Tax Rules. Hence, depreciation claimed on plant and machinery at Rs. 48,35,632/- being 50% of WDV at Rs. 96,77,264/- was restricted to the depreciation allowable at normal rate as prescribed for the block of asset under the head "Plant and Machinery" @ 15% on the WDV which comes out at 14,50,690/-. Accordingly, the excess depreciation claimed by the assessee-company which comes out at Rs. 33,84,942/- (being Rs. 48,35,632/- - Rs.14,50,690/-) was disallowed and added to the total income of the assessee.

3. Subsequently AO initiated penalty proceedings u/s. 271(1)(c) of the Act and after giving opportunity of being heard levied penalty of Rs. 63,494/- u/s. 271(1)(c) of the Act for concealment of income. This action of AO was confirmed by Ld. CIT(A).

4. Aggrieved by this order of Ld. CIT(A) now the assessee is before us.

5. At the time of hearing at the outset learned counsel of the assessee submitted that the issue involved in this appeal is covered by the order of Hon'ble Tribunal in the case of ITO vs. Hanuman Filament P. Ltd vide ITA No. 2819/Ahd/2009 dated 17/12/2009 in which on identical facts the Hon'ble Tribunal has deleted the penalty by observing as under:-

¶6.1. The penalty u/s. 271(1)(c) of the Act is leviable if the AO is satisfied in the course of any proceedings under this Act that any person has concealed the particulars of his income or furnished inaccurate particulars of such income. It is well settled that assessment proceedings and penalty proceedings are separate and distinct and as held by Hon'ble Supreme Court in the case of Ananthraman & Co. Vs. CIT- 123 ITR 457, the finding in the assessment proceedings cannot be regarded as conclusive for the purposes of the penalty proceedings. It is, therefore, necessary to re-appreciate and reconsider the matter also as to find out as to whether the addition made in the quantum proceedings actually represents the concealment on the part of the assessee as engaged in sec. 271(1)(c) of the Act and whether it is a fit case to impose the penalty by invoking the said provisions. The issue as to whether or not the assessee is entitled to higher rate of depreciation is highly debatable. In the case under consideration, it is apparent that all the relevant facts have been disclosed by the assessee. The only dispute is on interpretation of item 111(6) of Appendix 1 of the IT Rules, 1962. It is well settled that the criterion and yardsticks for the purpose of imposing penalty u/s. 271(1)(c) are different than those applied for making or confirming the additions. When the assessee has made a particular claim in the return of income and has also furnished all the material facts relevant thereto, the disallowance of such claim automatically lead to the conclusion that there was concealment of particulars of his income by the assessee or furnishing of accurate particulars of such income. What is to be seen is whether the said claim made by the assessee was bon-fide and whether all the material facts relevant thereto have been furnished and once it is so established, the assessee cannot be held liable for concealment penalty u/s. 271(1)(c) of the Act. Since all the material facts relevant to the said claim had been furnished by the assessee, in our opinion it is not a fit case to attract the levy of penalty u/s. 271(1)(c) of the Act. A mere rejection of the claim of the assessee by relying on different interpretations does not amount to

concealment of the particulars of income or furnishing inaccurate particulars of income, by the assessee. When two views, are possible, no penalty can be imposed, is a principle that has been enunciated in the decision in the case of CIT v. P.K. Narayanan [1999] 238 ITR 905 (Ker) Hon'ble Punjab & Haryana High Court in the case of CIT vs. Ajaib Singh & Co. (2001) 170 CTR (P & H) 489; (2002) 253 ITR 630 (P & H) have observed that merely because certain expenses claimed by the assessee are disallowed by an authority, it cannot mean that particulars furnished by the assessee were wrong. It was held that mere disallowance of expenses per se cannot be meant that assessee has furnished inaccurate particulars of its income. In the case under consideration, we find that the assessee had given all the particulars of income and had disclosed all facts to the AO. It is not the case of the AO or the assessee that in reply to the query of the AO, some new facts were discovered or the AO had dug out some information which was not furnished by the assessee. In such circumstances, Hon'ble Delhi High Court held in the case of CIT vs. Bacardi Martini India Ltd, 288 ITR 585 (Del) that no penalty was leviable. No cogent material or evidence was brought to our notice which may prove that the Revenue detected the concealment. In CIT vs. Harshvardhan Chemicals & Minerals Ltd (259 ITR 212) Hon'ble Rajasthan High Court upheld the finding of the Tribunal that when the assessee has claimed some amount though that is debatable in such cases, it cannot be said that the assessee has concealed any income or furnished inaccurate particulars for evasion of the tax. ö

In view of the above and since no contrary binding decision was cited by the revenue, penalty imposed by AO and sustained by Ld. CIT(A) is hereby deleted.ö.

11. In view of the above propositions and since no contrary binding decisions have been cited by the Id. DR to support the case of the Revenue, penalty imposed by the AO cannot be held as sustainable and the first appellate authority rightly deleted the same. Our conclusion also gets support from the landmark judgment of the Hon'ble Supreme Court in the case of CIT Vs. Reliance Petro Products Pvt. Ltd [supra] and judgment of the Hon'ble Jurisdictional High Court of Delhi in the case of CIT Vs. Brahmaputra Consortium Ltd. In ITA No. 1582/Del/2010 wherein it was held that merely because claim of the assessee was not accepted or not found to be acceptable by the Revenue does not amount to concealment of particulars of income or furnishing of inaccurate particulars of income. Thus, we are unable to see any valid reason to interfere with the impugned order and accordingly uphold the same.

3.5 The facts and circumstances of the case being identical to the assessment year 2006-07, respectfully following the above precedent in the case of the assessee itself we hold that no penalty under section 271(1)(c) of the Act can be sustained on the issue of excess depreciation claimed by the assessee on plant and machinery purchased under the TUF scheme and hence same is deleted. Thus, grounds No. 1 to 5 of the appeal are allowed.

4. The grounds no. 6 and 7 being general in nature, not required to adjudicate upon at our end.

6. In the result, appeal of the assessee is allowed.

The decision is pronounced in the open court on 10<sup>th</sup> June, 2016.

Sd/-

**(I.C. SUDHIR)**

**JUDICIAL MEMBER**

Dated: 10<sup>th</sup> June, 2016.

Laptop/-

Copy forwarded to:

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

Sd/-

**(O.P. KANT)**

**ACCOUNTANT MEMBER**

Asst. Registrar, ITAT, New Delhi