

आयकर अपीलीय अधिकरण "एफ" न्यायपीठ मुंबई में।
IN THE INCOME TAX APPELLATE TRIBUNAL
"F" BENCH, MUMBAI

माननीय श्री शक्तिजी दे, न्यायिक सदस्य एवं
माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।
BEFORE HON'BLE SHRI SAKTIJIT DEY, JM AND
HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM
(Hearing Through Video Conferencing Mode)

आयकर अपील सं./ I.T.A. No.6510/Mum/2018
(निर्धारण वर्ष / Assessment Year: 2014-15)

Viva Motors Sports Pvt.Ltd. 1 st Floor, Thakur Arcade Station Road, Virar(W) Thane-401 303.	बनाम/ Vs.	Income tax Officer-Ward 4(5) R.No.5, "A" Wing Ashar I.T. Park Wagle Estate, Thane
PAN/GIR No. AADCV-9814-H		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

Assessee by	:	Shri Mukund Bakshi- Ld. AR
Revenue by	:	Shri Chintamani Dingankar-Ld. Sr.DR

सुनवाई की तारीख/ Date of Hearing	:	26/11/2020
घोषणा की तारीख / Date of Pronouncement	:	26/11/2020

आदेश / ORDER

Manoj Kumar Aggarwal (Accountant Member)

1. By way of this appeal for Assessment Year [AY] 2014-15, the assessee contests penalty u/s 271(1)(c) for Rs.5.95 Lacs as confirmed by Ld. Commissioner of Income Tax (Appeals)-3, Thane [CIT(A)] vide order dated 16/08/2018.
2. Facts leading to the penalty are that the assessee was assessed for year under consideration u/s 143(3) on 02/12/2016 wherein the returned loss of Rs.59.11 Lacs was reduced to Rs.39.83 Lacs. The

assessee claimed rent expenditure from the date of registered leave & license agreement i.e. August, 2013 to March, 2014. But Ld. AO opined that the rent should be calculated from December, 2013 to March, 2014 as per the agreement dated 26/08/2013. Accordingly, excess rent of Rs.19.27 Lacs was disallowed which reduced the returned loss. Consequently, penalty proceedings were initiated u/s 271(1)(c) for filing inaccurate particulars of income and the assessee was saddled with impugned penalty of Rs.5.95 Lacs vide order dated 19/06/2017.

3.1 Before Ld. CIT(A), it was pointed out that the show cause notice was defective since it did not specify the exact limb i.e. concealment of income or furnishing of inaccurate particulars of income for which the penalty was being initiated and hence, the penalty was bad in law. Reliance was placed, *inter-alia*, on the decision of Hon'ble Supreme Court in **CIT V/s SSA's Emerald Meadows** which dismissed the Special Leave Petition filed by the revenue. Reliance was also placed on the decision of jurisdictional High Court in **CIT V/s Shri Samson Perinchery 392 ITR 4**.

3.2 Contesting the penalty on merits, the assessee submitted that the expenditure was claimed on the basis of agreement dated 26/08/2013 and in fact, due TDS was deducted against the same u/s194-I. However, the agreement period was to start from 16/11/2013 excluding fit-out period from 15/10/2013 to 14/11/2013 but the assessee inadvertently took the rent from the date of agreement and booked rent accordingly. The assessee was under bona fide belief that the figures of rent given in the audited Balance Sheet was correct and therefore it deducted TDS against the same and filed return of income claiming rent of Rs.55.27 Lacs as per audited accounts. As the return was belated, the loss was

not to be allowed to be carried forward and therefore, there would be no adverse consequence or any loss to the revenue. It was never the intention to furnish inaccurate particulars of income by claiming excess rent.

3.3 However, the legal arguments as well as grounds on merits could not convince Ld. CIT(A) who chose to confirm the penalty. Aggrieved, the assessee is in further appeal before us with similar grounds.

4. So far as the legal grounds are concerned, the same has rightly been dismissed by Ld. CIT(A) since we find that the penalty was initiated as well as levied for furnishing of inaccurate particular of income and there is no such ambiguity in the orders of Ld. AO. Mere fact that the relevant limb was not ticked in the show-cause not would not vitiate the penalty proceedings particularly when no such objection was taken at the outset before Ld. AO. In fact, the assessee failed to appear during penalty proceedings. The legal grounds thus raised stands dismissed.

5. Nevertheless, the assessee has a case on merits since the return was a loss return filed belatedly and the same would disentitle the assessee to claim carry-forward of the losses. The same is further fortified by the fact that due TDS was deducted against the rent so claimed as per audited books. Therefore, the facts and circumstances would not convince us to confirm the penalty on merits of the case. By deleting the same, we allow ground so raised before us.

6. The appeal stands partly allowed.

Order pronounced on 26th November, 2020.

Sd/-

(Saktijit Dey)

न्यायिक सदस्य / **Judicial Member**

Sd/-

(Manoj Kumar Aggarwal)

लेखा सदस्य / **Accountant Member**

मुंबई Mumbai; दिनांक Dated : 26/11/2020
Sr.PS:-Jaisy Varghese

आदेश की प्रतिलिपि ँ ग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त/ CIT– concerned
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai.**