

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

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER  
AND  
SHRI O.P. KANT, ACCOUNTANT MEMBER  
[Through Video Conferencing]**

ITA No.4522/Del./2017  
Assessment Year: 2012-13

DCIT, Circle-11(1), New Delhi	<b>Vs.</b>	HOTLINE CPT LTD., 52A, OKHLA INDUSTRIAL ESTATE, PHASE-III, NEW DELHI
<b>PAN :AABCH0583M</b>		
<b>(Appellant)</b>		<b>(Respondent)</b>

Appellant by	Shri Gurmeet Singh, Sr.DR
Respondent by	None

Date of hearing	06.01.2021
Date of pronouncement	06.01.2021

**ORDER**

**PER O.P. KANT, AM:**

This appeal by the Revenue is directed against order dated 05/04/2017 passed by the learned Commissioner of Income-tax (Appeals)-22, New Delhi [in short 'the Ld. CIT(A)'] for assessment year 2012-13, in relation to penalty levied by the Assessing Officer in terms of section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act'). The grounds raised in the appeal are reproduced as under:

1. *Whether on the facts and circumstances of case, the ld. CIT(A) is correct in deleting the penalty on disallowance of depreciation on*

*computers and the disallowance of expenses of Rs.42,29,574/- ignoring the fact that no business activity was carried out during the year under consideration.*

2. *Whether on the facts and circumstances of case, the ld. CIT(A) is correct in deleting the penalty on disallowance of depreciation on computer which is not allowable as per provision of section 342 of I.T. Act, 1961, that tantamount to filing of inaccurate particulars of income.*
3. *The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing.*

**2.** Briefly stated facts of the case are that for the year under consideration, the assessee filed return of income on 29/09/2012 declaring loss of ₹ 7,41,35,379/-. The scrutiny assessment in the case was completed on 31/10/2014 at assessed income of ₹ 2,42,91,970/-. The Assessing Officer also issued penalty proceedings under section 271(1)(c) of Income-tax Act, 1961 (in short 'the Act'). The assessee did not prefer any appeal against the assessment order and, therefore, the Assessing Officer issued show-cause notice to the assessee on 07/04/2015 that as to why the penalty under section 271(1)(c) of the Act might not be levied. There was no compliance on the part of the assessee and thus the Assessing Officer levied the penalty in order dated 30/04/2015 @ 100% of the tax sought to be evaded, which was worked out to ₹ 3,34,55,353/-. The penalty levied was in reference to two items of additions/disallowances. The first, disallowance is in respect of expenses of ₹ 3,11,17,710/- out of the expenses of ₹ 3,34,88,530/- claimed in various heads by the assessee in its books of accounts. The second disallowance is in respect of depreciation on computers. According to the Assessing Officer, the company has not carried out any business activities;

therefore, depreciation on proportionate basis on the assets was disallowed.

**2.1** On further appeal, the Ld. CIT(A) deleted the penalty holding that there was no failure on the part of the assessee in disclosing fully and truly all the material facts and issue involved was a debatable issue.

**3.** Before us, none appeared on behalf of the assessee. We have heard submission of the learned DR, who appeared through Video Conferencing facility. The learned DR relied on the order of the Assessing Officer.

**4.** We have heard the submission of the Learned DR and perused the relevant material on record, including orders of the lower authorities. We find that Learned Assessing Officer has levied the penalty invoking Explanation 1 below section 271(1)(c) of the Act. The Assessing Officer has held that contentions of the assessee are not bonafide. The Ld. CIT(A), however, has deleted the penalty observing as under:

*“4. The only issue involved in the appeal is penalty levied u/s 271 (1) (c) in respect of two additions made in the assessment order including the disallowance of depreciation of 6,73,09,336/- on the ground that no business was done by the appellant. The only income of the appellant was interest income from bank deposits/ income tax refund and miscellaneous income of 7,37,960/- against which the return of income of a loss of 7,41,35,079/- was filed. The AO disallowed expenses of 3,11,17,710/- besides depreciation and assessed the total income at Rs. 2,42,91,970/-. The appellant did not file any appeal against the said order. During the present appellate proceedings, the appellant submitted that the appeal against the assessment order was not filed only to save cost as the appellant company was declared sick vide order of BIFR dt. 31st October, 2014. The appellant, however, submitted that addition of 3,11,17,710/- out of expanses amounted to double addition as provision for bad debts of Rs. 2,63,88,136/- was already disallowed by the appellant in the computation income for which an application u/s 154 was also filed before the Assessing Officer. In*

*fact, the loss as per, profit and loss of the appellant is 48 crores. However, most of the expenses were disallowed and the major component of the returned loss of 7.41 crores consisted of unabsorbed depreciation of 6.73 crores. Other major expenses included salaries, wages and other benefits out of which an amount of Rs. 29.86 lakhs has been disallowed by the AO. Out of travelling and conveyance expenses an amount of Rs. 4.26 lakhs has been disallowed. Out of lease rent expenses, an amount of Rs. 4.47 lakhs has been disallowed. Out of rent expenses an amount of Rs. 2.19 lakhs has been disallowed. Other expenses of smaller amounts have also been disallowed. At the assessment stage, the appellant had also relied on two decisions of Hon'ble Delhi High Court in the case of Bharat Aluminum Company Limited and Integrated Technologies Limited for claiming depreciation. The expenses were claimed for running day to day affairs of the company.*

*5. During the present appellate proceedings, the appellant relied on the decision of the Apex Court in the case of Reliance Petro Products Limited reported in 36 DTR 449 and claimed that the mere fact that an expenditure has been disallowed per can not lead to the presumption of concealment.*

*6. The appellant's contention has been examined. It is not a case where full material facts were not disclosed before the Assessing Officer. The Assessing Officer has also made out a case as to why, the appellant's explanation was not bonafide. Since, the issue involved was a debatable issue and full material facts were disclosed by the appellant, the penalty levied is cancelled and the appeal is allowed."*

**4.1** In our opinion, the disallowance of expenses cannot attract penal provisions due to the reason that assessee has claimed the expenses for maintaining the status and structure of the assessee company during the BIFR proceedings and part of which has been disallowed by the Assessing Officer on only estimate basis. Similarly, depreciation claimed on computers, and other assets cannot be disallowed on proportionate basis, when the Assessing Officer has admitted part of the depreciation as allowed. The Ld. CIT(A) has relied on the decision of the Hon'ble Supreme Court in the case of Reliance Petro Product Ltd. (supra) , wherein it is held

that merely rejection of the claim of the assessee cannot invite penalty under section 271(1)(c) of the Act. The Learned Assessing Officer has failed to substantiate any failure on the part of the assessee in disclosing all material facts fully and truly. The Assessing Officer has also failed to substantiate, as how the contention of the assessee was not bona fide. We also noticed that in the grounds raised, the Revenue has only contested penalty in respect of depreciation on computers, whereas there is no separate computation of the depreciation on computers, either in the assessment order or in the penalty order.

**4.2** In our opinion, the finding of the Ld. CIT(A) on the issue in dispute is well reasoned and we do not find any infirmity in the same. Accordingly, we uphold the same. The grounds of the appeal of the Revenue are accordingly dismissed.

**5.** In the result, the appeal of the Revenue is dismissed.

***Order pronounced in the open court.***

***Sd/-***  
**(AMIT SHUKLA)**  
**JUDICIAL MEMBER**

***Sd/-***  
**(O.P. KANT)**  
**ACCOUNTANT MEMBER**

Dated: 6<sup>th</sup> January, 2021.

RK/-(D.T.D.S.)

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi