

**IN THE INCOME TAX APPELLATE TRIBUNAL
“DELHI” ‘E’ BENCH, DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
& SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.2472/DEL/2017)
(निर्धारण वर्ष / Assessment Year: 2011-12)

Mamraj Chuni Lal, 5183, Lohri Gate, Delhi.	बनाम/ Vs.	Income Tax Officer, Ward 46(1), Drum Shape Building, I.P. Estate, New Delhi.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AA AFM9668A		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से /Appellant by :	Sh. K.L. Aneja, Adv.
प्रत्यर्थी की ओर से/Respondent by :	Ms. Princy Singla, Sr. DR

सुनवाई की तारीख / Date of Hearing	02/12/2021
घोषणा की तारीख /Date of Pronouncement	21/12/2021

आदेश/ORDER

PER PRADIP KUMAR KEDIA - AM:

The appeal of the assessee in the instant case arises from the order of the CIT(A) dated 30.03.2017 arising from the penalty order dated 26.08.2014 passed u/s 271(1)(c) of the Act.

2. As per its grounds of appeal the assessee has challenged the imposition of penalty on account of additions/disallowances made in the assessment order in respect of following issues: -

- (i) Rs. 3,351/- on account of difference in Ahrat Commission.
- (ii) Rs. 4,207/- towards interest.
- (iii) Disallowance of Rs. 3,12,941/- claimed on account of additional depreciation u/s 32(1)(iia).

3. We have carefully considered the rival submissions on the penalty in dispute. The Ahrat Commission difference has arisen mainly due to difference in calculation as done by the other party qua the claim made by the assessee. The difference is stated to be on account of different methods adopted by different parties. Hence, such difference does not *tantamount* to any concealment of fact or furnishing wrong particulars *per se*. In our view no penalty can be imposed in the facts where such minor difference is neither concealment of facts nor furnishing of inaccurate particulars. We, thus, direct the AO to delete the penalty on this score.

4. For the same reasoning and having regard to the smallness of the amount and in the absence of any *malafide* shown in the variation on account of interest attributable to reconciliation difference the penalty on account of interest credited Rs. 4,207/- is also not just and proper. The penalty is thus, deleted on this score as well.

5. The third issue pertains to additional depreciation. The assessee has made additions in the machinery account of Rs. 15,64,702/- and has claimed additional depreciation of Rs. 3,12,941/-. It transpires that the claim of additional depreciation is based on audit report authenticated by a Chartered Accountant. Under the circumstances, while the disallowance of additional depreciation may be plausible, the assessee of an ordinary prudence, should not necessarily suffer on account of the mistake of the Chartered Accountant. Needless to say, penalty under section 271(1)(c) cannot be imposed merely because it is lawful to do so. The circumstances indicates that statutory discretion available to AO ought to have been exercised in favour of the assessee in the absence of any contumacious conduct *per se*. Having regard to the

mitigating circumstances present in the facts of the case, we direct the AO to delete the penalty on this point as well.

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

This Order pronounced in Open Court on 21.12.2021

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER
Delhi: Dated 21/12/2021

Sd/-
(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

True Copy

KAVITA ARORA, SPS

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, DELHI /
DR, ITAT, DELHI
6. गार्ड फाइल / Guard file.

By order,

ASSISTANT REGISTRAR
ITAT, Delhi

Date of dictation	07.12.2021
Date on which the typed draft is placed before the dictating Member	08.12.2021/ 09.12.2021
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	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	23.12.2021
Date on which the file goes to the Bench Clerk	
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	