

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

**BEFORE SH. N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
SH. YOGESH KUMAR US, JUDICIAL MEMBER**

ITA No.1461/Del/2020
Assessment Year: 2016-17

MDLR Airlines (P) Ltd. Flat No.4, RR Apartment New Delhi-110030 PAN No. AAECM5231C	Vs	DCIT Central Circle-14 New Delhi
(APPELLAN		(RESPONDENT)

Appellant	Sh. Gautam Jain, Advocate Sh. Lalit Mohan, CA
Respondent	Sh. Amit Shukla, Sr. DR

Date of hearing:	03/08/2022
Date of Pronouncement:	05/08/2022

ORDER

PER N.K. BILLAIYA, AM:

This appeal by the assessee is preferred against the order of the CIT(A)-26, New Delhi dated 30.01.2020 pertaining to A.Y.2016-17.

2. The solitary grievance of the assessee is that the CIT(A) erred in upholding the penalty of Rs.1347640/- levied by the AO u/s. 271 (1) (c) of the Act.

3. The roots for the levy of penalty lie in the assessment order dated 21.12.2018 framed u/s. 143 (3) of the Act. The returned loss of Rs.71678656/- was assessed at total loss of Rs.6,73,17,373/-. The returned loss was reduced by disallowing the claim of depreciation of Rs.4361283/- which was disallowed by the AO in view of no activity carried during the year.

4. Penalty proceedings were separately initiated for filing of inaccurate particulars of income.

5. Vide order dated 27.06.2019 the AO levied penalty of Rs.1347640/- for producing inaccurate particulars of income.

6. Representatives of both the sides were heard at length. Case records carefully perused.

7. We find that similar depreciation was claimed by the assessee since A.Y.2012-13 to 2015-16 and the AO was consistently disallowing the claim of depreciation but on none of the earlier assessment years the AO levied penalty u/s. 271 (1) (c) of the Act for filing inaccurate particulars of income.

8. The Hon'ble Supreme Court in the case of Brahmaputra Consortium P. Ltd. 348 ITR 339 has held that inadvertent, bonafide, genuine claim of depreciation/ expenses does not call for levy of penalty u/s. 271 (1) (c) of the Act. Similar view was taken by the Hon'ble Supreme Court in the case of Reliance Petro Products Private Limited 322 ITR 158. The relevant findings of the Hon'ble Supreme Court read as under :-

322 ITR 158 (SC) CIT v. Reliance Petroproducts (P) Ltd.

"9. We are not concerned in the present case with the mensrea. However, **we have to only see as to whether in this case, as a matter of fact, the assessee has given inaccurate particulars.** In Webster's Dictionary, the word "inaccurate" has been defined as:-

"not accurate, not exact or correct: not according to truth; erroneous; as an inaccurate statement, copy or transcript".

We have already seen the meaning of the word "particulars" in the earlier part of this judgment. **Reading the words in conjunction, they must mean the details supplied in the Return, which are not accurate, not exact or correct, not according to truth or erroneous.** We must hasten to add here that in this case, **there is no finding that any details supplied by the assessee in its Return were found to be incorrect or erroneous or false.** Such not being the case, there would be no question of inviting the penalty under Section 271(1)(c) of the Act. **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.** Such claim made in the Return cannot amount to the inaccurate particulars

9. In the light of the above stated decisions and after considering the facts we are of the considered opinion that there is no furnishing of inaccurate particulars of income by the assessee and, therefore, this is not a fit case for levy of penalty u/s. 271 (1) (c) of the Act. We accordingly direct the AO to delete the penalty so levied.

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

Order pronounced in the open court on 05.08.2022.

Sd/-
(YOGESH KUMAR US)
JUDICIAL MEMBER

NEHA, Sr. Private Secretary

Date:- .08.2022

Copy forwarded to:

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

Sd/-
(N. K. BILLAIYA)
ACCOUNTANT MEMBER

ASSISTANT REGISTRAR
ITAT NEW DELHI