

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI AMIT SHUKLA, JM &
SHRI M. BALAGANESH, AM**

आयकरअपीलसं./ I.T.A. No. 1389/Mum/2019
(निर्धारणवर्ष / Assessment Year: 2014-15)

M/s Real Team Systems Pvt. Ltd. 1101, Bldg. No. 6, Seawood Estates, NRI Complex, Navi Mumbai- 400 706	बनाम/ Vs.	ITO 15(3)(1) Aayakar Bhavan, M. K. Road, Churchgate, Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN No. AADCR0073Q		
(अपीलार्थी/ Appellant)	:	(प्रत्यर्थी / Respondent)

अपीलार्थीकीओरसे/ Appellant by	:	None
प्रत्यर्थीकीओरसे/ Respondent by	:	Shri Mahita Nayar, Ld. DR
सुनवाईकीतारीख/ Date of Hearing	:	17.08.2022
घोषणाकीतारीख / Date of Pronouncement	:	17.08.2022

आदेश / O R D E R

Per Amit Shukla, Judicial Member:

The aforesaid appeal has been filed by the assessee against the impugned order dated 27.12.2018, passed by Ld. CIT(A), Mumbai in relation to penalty proceedings u/s 271(1)(c) for AY 2014-15.

2. Assessee is aggrieved by levy of penalty of Rs. 9,50,000/- in respect of disallowance of Rs. 27,08,548/- on account of excess claim of depreciation.

3. The facts in brief are that assessee is engaged in the business of IT Enabled services and also BPO services. The return of income declaring total loss of Rs. 2,01,97,785/- was filed on 27.09.2013. The Ld. AO on going through the working of depreciation noted that assessee company had claimed depreciation on higher rates and when the same was confronted, the assessee submitted that there was an error in taking depreciation number which was purely clerical error. The relevant submission reads as under:-

We would like to bring to your notice that the error for depreciation number in. the filing is result of clerical error on the part of the staff of the assessing Chartered Accountant (Letter to the effect has been given by the same).

*So kindly consider this an inadvertent error which is to be corrected. The error persisted because of the extreme fine-print (usage of very small size in the excel sheet records). The number quoted matches exactly with the previous year assessment year number so should be condoned as a one time error since it was not **deliberate** on our part.*

4. The penalty has been levied by the AO on this excess claim of depreciation at Rs. 27,08,548/- which 100% works out to Rs. 9,50,000/-.

5. Ld. CIT(A) after discussing the law relating to penalty and various judgments without any discussion how such judgments are related to the facts has confirmed the penalty.

6. None appeared before us on behalf of assessee despite several notices were served, therefore the matter is being decided on the basis of material available of record and the submission made by Ld. DR.

7. On perusal of the assessment order and the nature of disallowance, we find that there was some inadvertent error while applying the rates of depreciation. First of all, we have to see whether there was any inadvertent mistake or there was deliberate concealment of income or furnishing inaccurate particulars of income. Here in this case, assessee has stated that there was an error in noting, the rate of depreciation from the Schedule and there was no deliberate act on part of the assessee which has been explained vide explanation filed by the assessee. Ld. AO has simply

accepted the explanation and has yet imposed penalty for furnishing inaccurate particulars of income. In such scenario, the judgment and principle laid down by the Hon'ble Supreme Court in the case of **Price Waterhouse Coopers (P) Ltd. Vrs. CIT 348 ITR 306** is squarely applicable wherein it has been held that such bonafide mistakes made by the assessee cannot be the basis for imposition of penalty. Accordingly, penalty u/s 271(1)(c) cannot be imposed in these facts. Thus, the penalty levied by the AO is directed to be deleted.

8. In the net result, the appeal filed by the assessee stands **allowed.**

Orders pronounced in the open court on 17th August, 2022.

Sd/-

(M. Balaganesh)

Accountant Member

मुंबई Mumbai;दिनांक Dated : 17/08/2022

Sr.PS. Dhananjay

Sd/-

(Amit Shukla)

Judicial Member

आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT- concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

आदेशानुसार/ BY ORDER,

उप/सहायकपंजीकार (Dy./Asstt.Registrar)
आयकरअपीलीयअधिकरण, मुंबई/ ITAT, Mumbai