

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "G" DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
&
SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

I.T.A. No.1807/DEL/2020
Assessment Year 2016-17

S.P. Associates Management Consultants Private Limited, R-700, New Rajender Nagar, New Delhi.	Vs.	ACIT (OSD), Ward-22(1).
TAN/PAN: AAJCS3349G		
(Appellant)		(Respondent)

Appellant by:	Shri Pavan Tamrakar, CA		
Respondent by:	Shri Jeetandra Kumar, Sr.DR		
Date of hearing:	08	02	2023
Date of pronouncement:	13	02	2023

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-VIII, New Delhi ('CIT(A)' in short) dated 17.08.2020 arising from the penalty order dated 31.05.2019 passed by the Assessing Officer under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2016-17.

2. As per the grounds of appeal, the assessee has challenged the imposition of penalty of Rs.4,77,564/- attributable to reduction of claim of depreciation allowances to Rs.13,61,854/- instead of Rs.29,07,370/- claimed by the assessee.

3. When the matter was called for hearing, the Id. counsel submitted that the assessee company, by mistake, claimed

depreciation on fixed assets on gross block instead of net block of assets in the Assessment Year 2016-17 in question. It was further stated that assessee has adopted the Straight Line Method (SLM) as an accounting policy of the company under Companies Act, 2013 in the above assessment year and the same method of depreciation, by mistake, was adopted for calculation of depreciation on fixed assets for income tax purposes instead of written down value method at the rate prescribed under the Income Tax Act. It was submitted that having realized the mistake, the original and revised depreciation calculation sheet as per Income Tax Act were provided to the Assessing Officer in the quantum proceedings along with notice to accounts showing the accounting policy of depreciation on fixed assets under Companies Act. It was further submitted that depreciation was rightly claimed in the Assessment Years 2017-18 and 2018-19 and it is only an isolated incident of mistake in Assessment Year 2016-17 in question for which no loss of revenue has occurred to the Department. The ld. counsel further supported its case that the assessee has filed a loss return of Rs.34,84,658/- during the year and there being no tax liability arising due to such mistake and thus urged for a benign view be taken insofar as the imposition of penalty is concerned.

4. The ld. DR for the Revenue relied upon the action of the Revenue Authorities.

5. We have carefully considered the rival submissions. We notice at the outset that the assessee has filed a loss return of Rs.34.48 lakh which has been brought down to Rs.19.39 lakh by the Assessing Officer in the quantum proceedings on account of incorrect claim of depreciation allowances. It is also matter of record that assessee has adopted Straight Line Method as an accounting policy under the Companies Act which was also applied for tax purposes. The

assessee has promptly accepted the mistake and claimed the same to be *bona fide*.

6. It is trite that incorrect claim, which is not sustainable in law, by itself, will not tantamount to furnishing inaccurate particulars regarding income of the assessee. It is also trite that penalty should ordinarily not be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of contumacious or dishonest conduct or acted in conscious disregard of its obligations. The penalty under Section 271(1)(c) should not be imposed merely because it is lawful to do so.

7. In the instant case, the assessee demonstrated its *bona fide* and the mistake committed by the assessee has not resulted in any loss to the revenue *per se*. Under the circumstances, we are inclined to agree with the contentions raised on behalf of the assessee towards absence of any culpability and consequent exoneration from the clutches of penalty.

8. The order of the CIT(A) is thus set aside and the Assessing Officer is directed to delete the impugned penalty.

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

Order pronounced in the open Court on 13/02/2023.

Sd/-

**[NARENDER KUMAR CHOUDHRY]
JUDICIAL MEMBER**

DATED: /02/2023

Prabhat

Sd/-

**[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER**