IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “A” DELHI

BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER

I.T.A. No.1798/DEL/2022
Assessment Year 2015-16

Begud Beverages Pvt. Ltd., D-73 Basement Nangal Dawat Vasant Kunj, New Delhi.	Vs.	ACIT, Circle-4(2), New Delhi.
TAN/PAN: AADCB8595K		
(Appellant)		(Respondent)

Appellant by:	Shri Ajay Saho, CA Shri Harikishan, AR		
Respondent by:	Shri Kanv Bali, Sr.DR		
Date of hearing:	20	09	2023
Date of pronouncement:	27	09	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) - National Faceless Appeal Centre, Delhi [‘CIT(A)’ in short] dated 03.06.20200 arising from the penalty order dated 26.06.2018 passed by the Assessing Officer (AO) under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. As per the grounds of appeal, the assessee has challenged the imposition of penalty on account of alleging inaccurate particulars of income attributable to disallowance of depreciation of Rs.1,36,59,217/- only.

3. Briefly stated, the assessee is engaged in the business of

manufacturing, sale and purchase of drinking water and soft drink. The assessee-company filed return of income at loss of Rs.3,01,46,652/- for the Assessment Year 2014-15 in question. In the course of scrutiny assessment, the assessee filed revised computation of income along with submission dated 21.11.2017 whereby the assessee-company revised the depreciation *suo motu*. It was stated that the depreciation was wrongly claimed in the return of income at Rs.2,17,88,611/- which is the depreciation as per the Companies Act. The correct depreciation as per the Income Tax Act stands at Rs.81,29,394/-. The assessee thus revised the computation of income whereby the return loss was reduced to the extent of Rs.1,36,59,217/- on account of incorrect claim of depreciation. The Assessing Officer however observed that the assessee was not allowed to revise the computation after the issue of statutory notice under Section 143(2) and thus while scaling down the return loss on account of excess depreciation claimed in the return of income, the Assessing Officer also held that the assessee was guilty of furnishing inaccurate particulars of income by claiming excess depreciation and consequently invoked provisions of Section 271(1)(c) of the Act towards such unfounded excess depreciation claimed.

4. The CIT(A) in the first appeal, confirmed the penalty imposed by the Assessing Officer @100% of tax sought to be evaded on this count.

5. Further aggrieved, the assessee preferred appeal before the Tribunal.

6. We have heard the rival submissions and perused the material available on record.

7. The main plank of the contention of the assessee is summarized as under:

(i) the assessee filed loss return at Rs.3.01 crore and as a result of such wrong claim of depreciation, the loss returned was brought down. Thus, the tax liability remains unaffected by such incorrect claim *per se* and it is only loss carried forward which has been reduced.

(ii) The loss on account of wrong claim of depreciation has never been availed in the subsequent returns. Thus, no benefit has been taken by the assessee from such inadvertent mistake. The assessee committed an inadvertent mistake in adopting depreciation as per Companies Act reflected in the audited financial statement while computing the taxable income as against the correct claim of depreciation as per Section 32 of the Income Tax Act. The mistake is ostensibly *bona fide* and a human error with no *mala fide* intention to claim any tax benefit.

(iii) The assessee himself *suo motu* came forward in the course of the assessment proceedings as soon as it detected the mistake and filed the revised objection as the time for revising the return of income has elapsed. Thus, the assessee has brought such mistake to the notice of the Assessing Officer itself.

8. In the backdrop of the factual matrix noted above, we straightaway refer the judgment of the Hon'ble Delhi High Court in the case of *CIT v. Brahmaputra Consortium Ltd. (2012) 348 ITR 339(Del)* wherein the issue was the levy of penalty on account of inaccurate claim made by the assessee under inadvertence and where the assessee has filed return claiming losses. In the similar factual matrix, the Hon'ble Delhi High Court held that excess claim of

depreciation was not advantageous to the assessee in any manner. The excess claim of depreciation was held an inadvertent error and not a devise. The facts in the instant case are at better footing. In the instant case, the inadvertence is attributable to depreciation allowance duly reported under the Companies Act and wrongly adopted for the purposes of determination of taxable income. It is apparent case of human error without any sign of culpability. Furthermore, the Assessing Officer did not contradict the plea of the assessee that excess claim of depreciation was not an advertent error.

9. We thus see palpable merit in the plea of the assessee for cancellation of penalty. We thus reverse the action of the CIT(A) and direct the Assessing Officer to delete the penalty imposed on this score.

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

Order pronounced in the open Court on 27/09/2023

Sd/-	**Sd/-**
[CHANDRA MOHAN GARG] **JUDICIAL MEMBER**	**[PRADIP KUMAR KEDIA]** **ACCOUNTANT MEMBER**

DATED: **/09/2023**

Prabhat