

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 788 & 789/JPR/2023
निर्धारण वर्ष/Assessment Year : 2017-18 & 2018-19

Jaipur Telecom Private Limited 3, Amrapali Circle, Vaishali Nagar, Jaipur.	बनाम Vs.	DCIT, Circle-1, Jaipur.
स्थायीलेखा सं./जीआईआर सं./PAN/GIR No.:AABCJ0763D		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओरसे / Assessee by : Shri Tarun Mittal (C.A.)
राजस्व की ओरसे / Revenue by : Smt. Monisha Choudhary (Addl. CIT)

सुनवाई की तारीख / Date of Hearing : 14/02/2024
उदघोषणा की तारीख / Date of Pronouncement: 22/04/2024

आदेश / ORDER

PER BENCH:

These two appeals are filed by the assessee and are arising out of the order of the Ld. CIT(A), National Faceless Appeal Centre, Delhi both dated 22.11.2023 [Here in after referred as "Ld.CIT(A)/NFAC"] for the assessment years 2017-18 & 2018-19 respectively, which in turn arise from the order dated 26.11.2019 & 19.04.2021 passed under section 143(3) & 143(3) r.w.s. 144B of the Income Tax Act (here in after "Act"), by the AO.

2.1 In ITA No. 788/JPR/2023 the assessee has raised following grounds:

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"1. On the facts and in the circumstances of the case and in law, Id. CIT(A) has grossly erred in confirming the penalty of Rs. 12,51,906/- imposed by Id. AO u/s 270A of the Income Tax Act, arbitrarily.

2. On the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in confirming the penalty imposed by Id. AO @ 200% in respect of excess claim of depreciation by not considering the submission made by assessee that effect of CIT(A) order in earlier year could not be given due to oversight, as depreciation was charged on the balances of fixed assets brought forward from earlier year (as is normal practice), however subsequently, mistake was rectified and fixed assets register was modified giving effect to explanation 5 to section 43(1). Appellant prays that depreciation was charged as per past prevalent practice under bonafide belief and claim so made by assessee, does not ipso facto amounts to under reporting and by no means same amounts to misreporting of income.

3. On the facts and in the circumstances of the case and in law, Id. CIT(A) has grossly erred in confirming the penalty imposed by Id. AO @ 200% in respect of disallowance of interest on TDS. Appellant prays that the issue of allowability of interest on TDS is debatable and therefore disallowance thereof does not amount to misreporting/underreporting of income.

4. On the facts and in the circumstances of the case and in law, Id. CIT(A) has erred in confirming penalty imposed by Id. AO without recording independent satisfaction before imposing penalty and solely for the reason that assessee has not challenged the additions made in quantum in appeal and thus incorrectly presuming that assessee has conceded with misreporting. Appellant prays that it is the settled legal position that penalty proceedings as separate independent proceedings, therefore conclusion drawn in assessment proceedings through relevant, cannot be solely relied upon for imposing penalty.

5. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal."

2.2 In ITA No. 789/JPR/2023 the assessee has raised following grounds:

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“1. On the facts and in the circumstances of the case and in law, Id. CIT(A) has grossly erred in confirming the penalty of Rs.12,20,518/- imposed by Id.AO u/s 270A of the Income Tax Act, arbitrarily.

2. That Id. CIT(A) has further erred in confirming the penalty imposed by Id.AO u/s 270A by arbitrarily rejecting the application filed by assessee in Form 68 in accordance with section 270AA without affording any opportunity of being heard to the assessee.

2.1 That, Id. CIT(A) has further erred in confirming the rejection of application filed by assessee solely for the reason that the same was filed beyond one month, by grossly ignoring the fact that Hon'ble Apex Court vide its suomoto order has extended the limitation thrice, for filing petitions / applications / suits / appeals / all other quasi proceedings within the period of limitation prescribed under the general law of limitation or under any special laws (both Central and/or State) due to the outbreak of the COVID-19 pandemic, which eventually expired on 28.02.2022. Appellant prays that such action of Id. CIT(A) in not appreciating and accepting the circumstances of delay in filing application u/s 270AA in form 68 is not in accordance with law and order so passed being against the principle of natural justice and deserves to be quashed.

2.2. That, Id.CIT(A) has further erred in confirming the rejection of the Application filed by assessee for immunity from penalty by Id.AO vide order dated 17.09.2021 (as is mentioned in Penalty show cause notice, as the order was not served upon the assessee), which is beyond one month from the end of the month in which application was filed by assessee. Appellant prays that order rejecting the application of assessee seeking immunity u/s 270AA as passed by Id. AO is barred by limitation and accordingly assessee is entitled for immunity provided under the Act from levy of penalty.

3. Ld. CIT(A) has grossly erred in confirming the penalty imposed by Id.AO @ 200% by alleging the excess claim of depreciation is misreporting, whereas penalty proceedings were initiated for underreporting of income as is evident from the order passed u/s 143(3) itself where such satisfaction was recorded. Thus, the penalty order so passed deserves to be held void ab initio and the consequent penalty levied at Rs. 12,20,518/- deserves to be deleted.

Without prejudice to above and in the alternative,

4. That, Id. CIT(A) has further erred in confirming the penalty imposed by Id.AO, by not considering the submission made by assessee during assessment proceedings itself that effect of CIT(A) order in earlier year could not be given due to oversight, as depreciation was charged on the balances of Fixed assets brought forward from earlier year (as is normal practice), however subsequently, mistake was rectified and Fixed Assets Register modified replaced giving effect to explanation 5 to Section 43(1). Appellant prays that depreciation was charged as per past prevalent practice under bonafide belief and claim so made by assessee, does not ipso facto amounts to under reporting and by no means same amounts to misreporting of income. Appellant prays that all the particulars of income were fully disclosed in Return of Income itself, therefore penalty of Rs.12,20,518/- deserve to be deleted.

4.1. That, Id. CIT(A) erred in confirming the penalty imposed by Id.AO without recording independent satisfaction before imposing penalty by grossly ignoring the settled legal position that penalty proceedings are separate independent proceedings, therefore conclusion drawn in assessment proceedings though relevant, cannot be solely relied upon for imposing penalty.

5. That the appellant craves the right to add, delete, amend or abandon any of the grounds of appeal either before or at the time of hearing of appeal.”

3. Since the issue involved in these two appeals of the assessee's are almost identical therefore, were heard together with the agreement the parties and are being disposed off by this consolidated order.

4. At the outset, the Id. AR has submitted that the matter pertaining to A.Y. 2017-18 in ITA no. 788/JPR/2023 may be taken as a lead case for discussions as the issues involved in the lead case are common and inextricably interlinked or in fact interwoven and the facts and circumstances of other cases are identical in other assessment year and

even grounds are also identical except the difference in figure. The Id. DR did not raise any specific objection against taking that case as a lead case. Therefore, for the purpose of the present discussions, the case of ITA No. 788/JPR/2023 is taken as a lead case of each party.

5. Brief facts of this case are that the assessee is a private limited company engaged in the business of lease rentals and real estate development. The return of income in this case was filed on 29.10.2017 declaring a total income of Rs. 2,17,59,670/- The case was selected under Compulsory Selection for scrutiny. Assessment order u/s. 143(3) of the Income Tax Act, 1961 was passed on 26.11.2019 determining total income of Rs. 2,37,85,408/- making disallowance of Rs. 19,59,272/- on account of excess depreciation debited in the P&L account and Rs. 66,466/- on account of disallowance of claim of interest on TDS. During the course of assessment proceedings, penalty proceedings u/s. 270A of the I.T. Act were initiated and accordingly Show cause Notice u/s. 274 r.w.s. 270A of the I.T. Act was issued on 26.11.2029 for under-reporting of income in consequence of misreporting. Further show cause notice u/s. 274 r.w.s. 270A was issued on 26.05.2021 fixing the hearing date on 31.05.2021. In reply to show cause notice dated 26.05.2021, the assessee vide reply uploaded on 31.05.2021. The reply of the assessee has been taken into

consideration but not found to be acceptable. Because the assessee has made excess claim of depreciation on building of Rs. 19,59,272/- which is allowable in view of the explanation 5 to section 43(1) of the Act and accordingly was disallowed and added back to the income of the assessee.

5.1 Further, the assessee has wrongly claimed interest paid of Rs.66,466/- on TDS late payment which is penal in nature and not allowable deduction u/s. 37 of the I.T. Act and accordingly was disallowed and added back to the total income the assessee. In view of the above, it is clear that the assessee has incorrectly and erroneously debited an amount of excess depreciation of Rs. 19,59,272/- and Rs. 66.466/- as wrong claim of interest on late payment of TDS in the Profit & Loss account and Return of Income filed by it. This has consequently led to an error and incorrectness in the particulars of depreciation and interest on TDS claimed by the assessee; thereby leading to under- reporting of income in consequence of misreporting. The assessee has not preferred an appeal against the assessment order u/s. 143(3) dated 26.11.2019 which indicates that in the absence of any valid explanation, the assessee is unable to challenge the addition made in the assessment order and has thus, accepted its under-reporting of income in consequence of misreporting. Thus, the Id. AO noted that the assessee has misreported its income for

the year under consideration i.e. A.Y. 2017-18 Therefore, as per provisions of section 270A(9) of the Act the penalty for under reporting of income in consequence of misreporting of income shall be a sum equal to 200% of the amount of tax payable on misreported income.

6. Aggrieved, from the said order of levy of penalty the assessee has filed an appeal before the Id. CIT(A). The Id. CIT(A) after hearing the contention of the assessee dismissed the appeal of the assessee by giving following findings on the issue:-

“ 7.1 The appellant has raised 7 grounds of appeal, out of which, ground no. 7 is general in nature and, hence, does not require adjudication. The grounds of appeal 1 to 6 are interlinked and in which the appellant has contended the action of AO in levying the penalty u/s.270A of the Act on addition made on account of disallowance of claim of depreciation in assessment proceedings. These grounds are taken up for discussion and adjudication in the subsequent paragraphs of this order.

7.2 Briefly, the case of the appellant was selected for compulsory Scrutiny and the scrutiny assessment was concluded u/s 143(3) of the Act on 26.11.2019 determining total income at Rs.2,37,84,408/- by making disallowance of excess depreciation claimed on building and, while concluding the assessment proceedings, the penalty proceedings u/s 270A of the Act were initiated for under reporting of income in consequence of misreporting of income by issuing notice u/s 274 rws 270A of the Act.

7.3 On perusal of the disputed order, it is observed that consequent to decision of CIT(A)-II, Jaipur in the appellant's own case for AY 2013-14, the AO had worked out allowable depreciation on building at Rs.4,59,572/- instead the appellant has claimed Rs.24,18,844/- in its ITR for the impugned AY 2017-18. Accordingly, while concluding the assessment proceedings the AO had disallowed the excess claim of depreciation i.e., Rs. 19,59,272/- (Rs.24,18,844 Rs.4,59,572) and added it to the returned income. Also, a disallowance of Rs.66,466/- was made u/s.37(1) of the Act, being the interest paid for committing a default in respect of a statutory liability and added to the returned income.

7.4 During the course of penalty proceedings, the appellant had submitted before AO that there was no demand raised by the assessment order for the impugned AY 2017-18 and also the appellant company had not preferred further appeal against the assessment order and accordingly requested to drop the penalty proceedings since there was no malafide intention.

7.4.1 However, the AO had held that the appellant has not preferred an appeal against the assessment order u/s. 143(3) of the Act dated 26.11.2019 and hence, the appellant has no valid explanation and unable to challenge the addition made in the assessment order and has thus, accepted the under-reporting of income in consequence of misreporting. Accordingly, the AO had levied penalty at 200% of the amount of tax payable on under reported income in consequence of misreporting of income u/s 270A(9) of the Act.

7.5 During the course of appellate proceedings, the appellant had made submissions vide e-response in ITBA. The appellant has contended that the penalty was levied on the addition made for excess claim of depreciation which is a bonafide mistake and therefore does not fall under the category of under-reporting or misreporting of income. Further, in respect of disallowance of interest on TDS amounting to Rs.66,466/-, it was submitted that the interest on TDS was paid for the duration for which payment of TDS for delayed, thus the interest paid is compensatory in nature and not penal in nature. In this regard, the appellant has relied on judgements of Hon'ble Apex Court in the case of M/s Price Waterhouse Coopers Pvt Ltd vs. CIT, Kolkata and CIT vs. Reliance Petrochemicals Pvt Ltd., Hon'ble High Court of Delhi in the case of Prem Brothers Infrastructure LLP vs. NFAC, 2022, Hon'ble ITAT Ahmedabad in the case of ACIT vs. M/s Mazda Ltd.

7.6 In the instant case, on perusal of the written submission filed by the appellant, it is observed that in the assessment proceedings in AY 2013-14, the then AO had changed the matter of accounting of rental income from income from house property to business income and accordingly applied the provisions of explanation 5 to Sec. 43(1) of the act and reworked the depreciation on building. Subsequently, the matter went to appeal to CIT(A), whereas the appellant kept on making entries in the books of accounts as was followed previously. Thereafter, the CIT (A) has upheld the order of AO vide order dated 18.09.2017, which was served on the appellant on 11.10.2017.

7.7 Further, the appellant has submitted that the due date for filing ITR for the impugned AY 2017-18 was on 31.10.2017 and the appellant was in the process of seeking advice for filing further appeal on CIT(A)'s order(supra). Accordingly, the appellant had filed ITR for the impugned AY 2017-18 as per previous accounting method. Therefore, the appellant has submitted that the claim of depreciation which was claimed was not deliberate or wilful attempt to evade

taxes. Moreover, the appellant company has contested the action of the department in AY 2013-14 of changing its method of accounting from income from house property to business income and was expecting an order from CIT(A) in its favour. Accordingly, the appellant has submitted that both the depreciation and interest on TDS were claimed as deduction under bona fide belief as there were judicial pronouncements in favour of assessee and that it's not a case of bogus claim of any expenditure.

7.8 The grounds of appeal and written submission filed by the appellant are considered and examined carefully under the light of facts emanating from the disputed order.

7.9 It is undisputable that the CIT(A) has upheld the order of AO for AY 2013-14 vide order dated 18.09.2017, which was served on the appellant on 11.10.2017. Thus, it is clear that the appellant has got more than three weeks before filing ITR within due date i.e., 30.10.2017 for the impugned AY 2017-18 and claim depreciation in consequent to the CIT(A) Order(supra). However, the appellant has filed ITR for the impugned AY 2017-18 on 29.10.2017 by claiming excess depreciation.

7.10 Even otherwise, the appellant did not prefer further appeal on CIT(A)'s order(supra) and the case of the appellant was selected for compulsory scrutiny for the impugned AY 2017-18 vide issue of statutory notice u/s.143(2) of the Act dated 25.09.2018. Therefore, it is pertinent to note that the appellant had reasonable amount of time and could have suo-moto revised its ITR for the year under consideration and could have surrendered the excess claim of depreciation without prior detection from the department, but which was not the case. Thus, it could not have been said that the appellant had no occasion to have claimed eligible depreciation as per the provisions of the Act.

7.11 Further, it is pertinent to note that had the case been not selected for scrutiny, the appellant company would have escaped the tax liability in consequent to suppression of total income by claiming expenses which were not allowable as per the provisions of the Act. Moreover, on perusal of material available on record, the appellant has also claimed excess depreciation even in the AY 2018-19.

7.12 Under the given set of facts, I am of the considered opinion that the reasons accorded by the appellant, in making the excess claim of depreciation & claim of interest expenditure, could not substantiate that the deduction claimed by the appellant is a bonafide mistake. In view of above discussion, I am not inclined to interfere with the findings of the AO and levy of penalty u/s.270A of the Act for under-reporting of income in consequence to misreporting of income. Accordingly, I hereby uphold the order passed by the AO and confirm the penalty

of Rs. 12,51,906/- levied u/s.270A of the Act. Hence, the grounds of appeal on this issue are dismissed.

8.0 In the result, the appeal filed is dismissed.”

7. As the appeal of the assessee was not allowed, aggrieved from the order of the Id. CIT (A) the assessee has preferred the present appeal before this tribunal on the grounds as reiterated in para 2 above. To support the grounds so raised the Id. AR appearing on behalf of the assessee has placed reliance on the written submission which is extracted herein below:-

“Brief facts of the case are that assessee is a private limited company and in engaged in the business of lease rental and real estate development. Return of Income for the year under consideration was filed on 29.10.2017 declaring total income of Rs.2,17,59,670/- (APB 01-04). Case of assessee was selected for scrutiny assessment. Details and information as sought by Id.AO were furnished and assessment was completed after making following additions/disallowances.

1. Disallowance on account of Excess Depreciation	19,59,272/-
2. Disallowance of Interest on TDS	<u>66,466/-</u>
	<u>20,25,738/-</u>

In order to avoid litigation and to buy peace of mind, assessee duly discharged the tax liability arising due to disallowances so made and no appeal was filed. However, penalty proceedings were initiated by Id.AO u/s 270A of the Income Tax Act, for “*misreporting and under reporting of income*”, which were concluded vide order passed u/s 270A dated 24.7.2021, whereby penalty equivalent to 200%, i.e. Rs.12,51,906/- was imposed by holding that assessee has underreported income in consequence to misreporting.

Aggrieved of the penalty so imposed, assessee company preferred an appeal before Id. CIT(A), which was decided vide order dated 22.11.2023 wherein Id. CIT(A) upheld the penalty imposed by Id. AO. Aggrieved of the order so passed by Id. CIT(A), assessee has preferred present appeal.

With this background, groundwise submission is made as under:

Grounds of Appeal Nos. 1 to 4:

In these grounds of appeal, assessee has challenged the action of Id. CIT(A) in confirming the penalty of Rs.12,51,906/- imposed by Id. AO u/s 270A(9) of the Income Tax Act. Since all the grounds of appeal are interconnected, the same are canvassed together for the sake of convenience.

Brief facts pertaining to the grounds of appeal are that penalty has been imposed on disallowance made vide order passed u/s 143(3), Rs.66,466/- on account of interest on TDS and Rs.19,59,722/- on account of depreciation by alleging that both were in the nature of under reporting due to misreporting.

So far as disallowance on account of depreciation is concerned, it is submitted that assessee was holding certain house properties and rental income therefrom was being shown under the head "Income from house property" till A.Y. 2012-13. W.e.f. Assessment Year 2013-14, assessee started showing rental income as "Business Income" and simultaneously started charging depreciation on such rented buildings. During the course of scrutiny assessment, it was stated by Id.AO that depreciation on buildings was to be charged on Written Down Value as computed in accordance with explanation to section 43(1). On the other hand, assessee on the basis of certain judicial rulings in favour of the assessee on this issue, contended that depreciation was correctly computed in accordance with section 32 and section 43(6) as per rates prescribed. Ld.AO completed the assessment for AY 2013-14 vide orders dt. 28.03.2016 by re-computing depreciation by taking WDV as on 01.04.2012 as Actual Cost. Assessee preferred appeal against the disallowance so made by Id.AO, which was decided by Id. CIT(A)-2, Jaipur, vide order dated 18.9.2017, which was served upon assessee on 11.10.2017 (APB 26-31).

During the course of assessment proceedings for the year under consideration, i.e. A.Y. 2017-18, Id.AO sought revised calculation of depreciation after considering the order passed by Id. CIT(A) for A.Y. 2013-14, which was furnished by assessee. After perusing the same, Id. AO was of the view that assessee has not given effect to the order of Id. CIT(A)-2, Jaipur while computing depreciation in Return of Income and thus disallowed depreciation to the extent of Rs.19,59,272/- and simultaneously initiated the penalty proceedings u/s 270A for "*misreporting and underreporting of income*", which were concluded vide order dated 24.07.2021, whereby penalty of 200% was imposed on account of underreporting in consequence to misreporting.

In this regard, at the outset, it is submitted that depreciation claim of assessee, was based on bona fide belief as the matter was pending before Id. CIT (A) where assessee expected relief. It is also submitted that the order of Id. CIT (A) for AY 2013-14 was passed on 18.09.2017 and dispatched to the assessee only on 11.10.2017 (APB 26-31) and received by the assessee on 13.10.2017, by when books were already finalized and further assessee was in the process of seeking advice for filing further appeal against such order or not, thus while filing the return

of income for the year under appeal which incidentally be fallen due upto 31.10.2017 thus assessee could not modify the claim of depreciation and thereafter the issue skipped the attention of the assessee and meantime case was selected for scrutiny. During the course of assessment proceedings, assessee cooperated with the department and filed the revised calculation of depreciation, giving effect to the order passed by Id.CIT(A) for A.Y. 2013-14, which stood disallowed. It is thus submitted that assessee has duly disclosed all facts in Return of Income and offered the depreciation claimed in excess at the very first opportunity, therefore such act cannot be termed as misreporting by any stretch of imagination more particularly when the issue on which disallowance has been made is debatable.

Further, with regards to disallowance of Interest on TDS amounting to Rs.66,466/- it is submitted that interest on TDS is paid for the duration for which payment of TDS got delayed, thus basically to compensate the cost for delay in payment. It can therefore be said that interest so paid is compensatory in nature and not penal in nature, therefore the same is allowable u/s 37(1) of the Income Tax Act. It is submitted that there is no allegation that assessee suppressed some facts/misrepresented the facts in any manner. In other words, complete facts were duly disclosed by assessee and no new fact was brought on record while making disallowances. Moreover, this claim of assessee was also based on certain judicial pronouncements in favour of assessee at the time of making claim.

It is thus submitted that both the depreciation and Interest on TDS was claimed as deduction under bona fide belief as there were judicial pronouncements in favour of assessee on both the issues and assessee made a genuine claim, which eventually stood disallowed. It is not a case that assessee claimed any bogus/excessive expenses nor it is proved by Id.AO. With regards to the observations of CIT(A) order that assessee was left with three week's time even after service of order and return of income could have been reworked, it is submitted that assessee is private limited company whose books of accounts were got audited on 14.06.2017 under the Companies Act, 2013 and Annual General Meeting was also concluded prior to receipt of CIT(A) order. Thus, to give an effect of Id. CIT(A) order in such short time span was not possible for assessee company.

Hon'ble Supreme Court in the case of CIT vs Reliance Petroproducts P Ltd. 322 ITR 158 (SC) has held that merely on account of disallowance of claim by itself does not amount for furnishing inaccurate particulars of income.

Hon'ble Apex Court in the case of M/s Price Waterhouse Coopers Pvt. Ltd. v/s Commissioner of Income Tax, Kolkata-I reported in 348 ITR 306 dated 25.09.2012 has been held as under:

“17. Having heard learned counsel for the parties, we are of the view that the facts of the case are rather peculiar and somewhat unique. The assessee is undoubtedly a reputed firm and has great expertise available with it.

Notwithstanding this, it is possible that even the assessee could make a "silly" mistake and indeed this has been acknowledged both by the Tribunal as well as by the High Court.

18. *The fact that the Tax Audit Report was filed along with the return and that it unequivocally stated that the provision for payment was not allowable under Section 40A(7) of the Act indicates that the assessee made a computation error in its return of income. Apart from the fact that the assessee did not notice the error, it was not even noticed even by the Assessing Officer who framed the assessment order. In that sense, even the Assessing Officer seems to have made a mistake in overlooking the contents of the Tax Audit Report.*
19. *The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears to us that all that has happened in the present case is that through a bonafide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The calibre and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.*
20. *We are of the opinion, given the peculiar facts of this case, that the imposition of penalty on the assessee is not justified. We are satisfied that the assessee had committed an inadvertent and bona fide error and had not intended to or attempted to either conceal its income or furnish inaccurate particulars.*
21. *Under these circumstances, the appeal is allowed and the order passed by the Calcutta High Court is set aside."*

Here it is submitted that under the old provision of section 271(1)(c), furnishing inaccurate particulars of income is *pari-materi* with the provisions of section 270A dealing with the misreporting of income for which the penalty is levied in the impugned order thus the ratio decided by appellate forums in section 271(1)(c) are also applicable for the penalty levied u/s 270A.

Hon'ble Supreme Court in the case of Hindustan Steel vs. State of Orissa in 83 ITR 26 has held that "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceedings, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised

judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, when there is a technical or venial breach of the provisions of the Act, or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute.
"

It is submitted that, to this extent, provisions of section 270A are *parimateria* with that of section 271(1)(c) as both the sections use the word "may" and not "shall", which itself makes it clear that imposition of penalty is discretionary and not mandatory more particularly when a assessee made a claim on bobafide belief that the same would be allowable and the same is eventually not allowed or claim of assessee is recomputed.

It is further submitted that Id.AO has imposed penalty of 200% on allegation of misreporting as per section 270A(9), however nowhere throughout the process, i.e. in assessment order, in show cause notice (APB 35-39) or even in Penalty order, Id.AO has specified as to under which limb of section 270A(9), i.e. (a) to (f), case of assessee falls. As is evident from the assessment order, Id.AO initiated the penalty for "misreporting and under reporting of income". In other words, Id.AO himself was not clear if the case falls under sub section (1) or sub section (8) of section 270A. In fact, in none of the notices issued u/s 270A it was specified as to under which limb penalty proceedings was sought be levied. In all, three notices were issued to the assessee prior to imposition of penalty, and penalty was proposed to levy for following reasons:

Date	Particulars as mentioned in notice
26.11.2019	Underreporting of Income in consequence to misreporting
24.12.2020	Underreporting of Income in consequence to misreporting
26.5.2021	Why an order imposing penalty u/s 270A should not be passed

It is thus clear that Id.AO at no stage of assessment/penalty proceedings sought explanation/ proved as to how assessee has misreported the particulars of income. It is submitted that provisions of section 270A were brought in by legislature to simplify the penalty scheme with a pre-dominant intent to end highly debated and litigated provision of section 271(1)(c) of the Act. In this context, 'Explanatory Memorandum' to the provisions of Finance Bill, 2016 which explains the objective behind inserting this section 270A vide para 62.1 CBDT Circular 3/2017 (F. No. 370142/20/2016-TPL) is reproduced:

"Under the existing provisions, penalty on account of concealment of particulars of income or furnishing inaccurate particulars of income is leviable under section 271(1)(c) of the Income-tax Act. In order to rationalise and bring objectivity, certainty and clarity in the penalty provisions, it is proposed that section 271 shall not apply to and in relation to any assessment for the assessment year commencing on or after the 1st day of April, 2017 and subsequent assessment years and penalty be levied under the newly inserted section 270A with effect

from 1st April, 2017. The new section 270A provides for levy of penalty in cases of under-reporting and misreporting of income.” (Emphasis supplied)

Also, para 62.10 of the above CBDT’s circular no.3/2017 (supra) makes it explicitly clear that the six clauses (a to f) would indeed form part of sub-section (8) to sec.270A as under :

“62.10 The rate of penalty shall be fifty per cent of the tax payable on under-reported income. However in a case where under reporting of income results from misreporting of income by the assessee, the person shall be liable for penalty at the rate of two hundred per cent of the tax payable on such misreported income. The cases of misreporting of income have been specified as under :

- (i) misrepresentation or suppression of facts;*
- (ii) non-recording of investments in books of account;*
- (iii) claiming of expenditure not substantiated by evidence;*
- (iv) recording of false entry in books of account;*
- (v) failure to record any receipt in books of account having a bearing on total income;*
- (vi) failure to report any international transaction or deemed international transaction under Chapter X of the Income tax Act.”*

It is thus clear that in case, AO alleges the misreporting, he has to specifically mention as to under which of the clauses, case of assessee falls before imposing heavy penalty of 200%.

Hon’ble Rajasthan High Court very recently in the case of Chambal Fertilizers and Chemicals Ltd. vs PCIT [2024] 158 taxmann.com 184 (Rajasthan) has confirmed the requirement of clearly specifying the sub clause of section 270A(9), prior to concluding that assessee has misreported the particulars of income.

INCOME TAX : Where GST Input Credit was mistakenly merged with expenses and same was suomotu surrendered by assessee by revising return, however revenue imposed penalty under section 270A, since revenue wasn't sure whether it was a case of misrepresentation or suppression of facts or claim of expense sub-clauses (a) and (c) of section 270A(9) were not attracted and, thus, assessee was to be granted immunity under section 270AA.

In G R Infraprojects Ltd v. Asstt. CIT [2024] 158 taxmann.com 80 (Raj.) , hon’ble Court, inter alia observed that neither in the assessment order nor in the subsequent show cause notice the Assessing Officer has specified that the assessee is covered by section 270A(9) of the Act. Even in the order imposing penalty it is not specified that which part of sub-section (9) of section 270A is attracted in this case. The Assessing Officer without considering the replies filed by the assessee has passed an order

mechanically. Where the assessee has withdrawn its claim for deduction of education cess voluntarily it is entitled for immunity from imposition of penalty under section 270A of the Act. Further it noted that the assessee has satisfied sub-section (1) and (2) of section 270AA viz.(i) paid tax and interest as per the order of the assessment within the period specified in such notice of demand; and (ii) no appeal has been preferred against the order besides the application for immunity under section 270AA was filed within the prescribed date. Further the Assessing Officer has imposed penalty not within the time prescribed under section 270AA of the Act. Thus, the writ of the assessee was allowed by the Court.

Hon'ble Delhi High Court in the case of Schneider Electric South East Asia (HQ) Pte Ltd v. Asstt. CIT [2022] 443 ITR 186 (Delhi) has observed as under (relevant extracts produced):

- The action of the income-tax authority of denying immunity from penalty initiated under section 270A for misreporting of income was not only erroneous but also arbitrary and bereft of any reason as it was not specified in the penalty notice whether it is the case of 'under-reporting' or 'misreporting' of income in respect of which penalty proceedings had been initiated.
- There was not even a whisper as to which limb of section 270A is attracted and how the ingredient of section 270A(9) was satisfied. In the absence of such particular, the mere reference to the word 'misreporting' in the assessment order to deny immunity from penalty and prosecution makes the impugned order, manifestly arbitrary.

Hon'ble Mumbai bench of ITAT in the case of Alrameez Constrictions (P) Ltd. vs NFAC [2023] 152 taxmann.com 382 (Mumbai - Trib.) has held as under:

Section 270A, read with sections 43CA and 56, of the Income-tax Act, 1961 - Penalty - For under-reporting and misreporting of income (scope of provisions) - Assessment year 2018-19 - Assessee-company filed its return of income - Case of assessee was selected for scrutiny - Assessing Officer made addition under section 43CA read with section 56(2)(x) - By virtue of this addition, penalty proceedings under section 270A was initiated on account of misreporting of income - Whether since additions were being made by virtue of section 43CA r.w.w. 56(2) (x) i.e. deeming provisions, case of assessee did not fall in category of under reporting of income - Held, yes - Whether further since in penalty notice revenue had failed to specify limb "under-reporting" or "misreporting" of income, under which penalty proceedings had been initiated, mere reference to word "misreporting" by revenue in assessment order, for imposition of penalty, made impugned order manifestly arbitrary - Held, yes - Whether further since entire edifice of assessment order framed by Assessing Officer was actually voluntary acceptance by assessee to buy peace and avoid litigation, there was no question of any misreporting - Held, yes [Para 5] [In favour of assessee]

Hon'ble Delhi High Court in the case of Prem Brothers Infrastructure LLP vs NFAC [2022] 142 taxmann.com 38 (Delhi), has held as under (APB 60-63):

Section 270AA, read with sections 270A and 14A, of the Income-tax Act, 1961 - Penalty -Immunity from imposition of (Misreporting of income) - Assessment year 2018-19 - By way of impugned order, penalty was levied on assessee under section 270A alleging misreporting of income - Assessee challenged impugned order and also sought a direction to revenue to grant immunity under section 270AA - It was found that only addition in assessment was in respect of disallowance under section 14A - Assessee had made a disallowance of Rs. 3.20 crores which was recomputed by Assessing Officer at Rs. 6.82 crores - Whether underreporting allegedly done by assessee could not amount to misreporting as assessee had furnished all details of transactions relating to disallowance made under section 14A and Assessing Officer as well as assessee had used same details to arrive at different conclusions i.e. differing quantum of disallowances under section 14A -Held, yes -Whether this by no stretch of imagination could be held to be 'misreporting' - Held, yes - Whether further, in absence of details as to which limb of section 270A was attracted and how ingredient of sub-section (9) of section 270A was satisfied, mere reference to word 'misreporting' by revenue in penalty order to deny immunity from imposition of penalty and prosecution makes impugned order manifestly arbitrary - Held, yes - Whether therefore, impugned penalty order was to be quashed and revenue was to be directed to grant immunity under section 270AA - Held, yes [Paras 7 to 9] [In favour of assessee]

Hon'ble Pune bench of ITAT in the case of KishorDigambarPatil in ITA No.54 & 55/PUN/2023 in decision dated 23.6.2023 has also given the similar findings. Relevant extracts reproduced (APB 40-59)

Per G.D.Padmahshali (Accountant Member)

“14. In the light of aforestated reasoning and discussion, we observed that, the notice initiating the penal proceedings is silent on the circumstance or incidence triggering the very initiation in this case. Further the order of penalty did neither mention the circumstance or incidence nor make a mention of alleged action in reaching the final imposition. In the event respectfully applying similar analogy as laid in aforestated judicial precedents to the case in hand, we find force in the argument of the appellant that, the failure on the part of lower tax authorities to identify and communicate the specific circumstance or incidence from clause (a) to (g) of s/s (2) of section 270A by virtue of which the income of the appellant held as under-reported and further failure on the part of lower tax authorities to showcase which of the specific action of the appellant from clause (a) to (f) of s/s (9) was determinant before imposing the impugned penalty u/s 270A of the Act has rendered the entire proceedings invalid and thus untenable in the eyes of law. Consequently the penalty imposed u/s 270A of the Act being bad in law deserves to be quashed, ergo we order accordingly.

15. In result, both these appeals stands ALLOWED.”

Concurrent order of Sh. Satbeer Singh Godara (Judicial Member):

6.2. Faced with the situation and in light of overwhelming material strongly supporting the assessee's case and going by stricter interpretation as per Commissioner of

Customs (Imports), Mumbai vs. Dilipkumar And Co. & Ors. 2018 (9) SCC 1 (SC) (FB), I am of the view that the above stated judicial precedents regarding the "limb theory" would squarely apply even in case of failure of the Assessing Officer to quote any of the six sub-limbs as well prescribed in sec.270A(9) (a) to (f) of the Act introduced by the legislature in order "to rationalize and bring objectivity, certainty and clarity in the penalty provisions". And that his non compliance to this clinching effect would not only defeat the legislative mandate but also it renders the amending provisions an otiose. I accordingly hold in these peculiar facts and circumstances that both the impugned penalties deserve to be quashed as not sustainable in the eye of law. Ordered accordingly.

7. These assessee's twin appeals are allowed in above terms. A copy of this common order be placed in the respective case files.

It is further submitted that as is evident from the language of section 270A itself, that all the case of misreporting of income involve an intention to evade tax or furnish inaccurate particulars, which implies that "Mens rea" is must. Also, burden lies on the assessing officer that underreporting in consequence to misreporting is "with intent to evade tax". However, during the course of appellate proceedings Id. CIT(A) also without adjudicating on the this matter arbitrarily confirmed the observation of Id.AO in penalty order that "Mens-rea, bad intention is not the pre requisite for levy of penalty....." Which is not correct. In the instant case, since the assessee has always acted *bona fide* and allowances legitimately claimed by assessee were eventually not allowed, that by itself would not attract penalty. Also, as stated above, neither during assessment proceedings, nor during penalty proceedings, Id.AO specified as to under which clause of section 270A(9) assessee is covered and how the case related to mis reporting, it is requested that penalty imposed by Id.AO and confirmed by Id.CIT(A) deserves to be deleted."

8. The Id. AR of the assessee also filed a detailed paper book in support of the contention so raised in the written submission. The index of the document submitted by the Id. AR of the assessee is as under:-

S.N	PARTICULARS	PAGE NOS.
1	Copy of Return of Income and Computation of Total Income filed u/s 139(1) of the Income Tax Act	01-04

2.	Copy of Audited Financial Statements for the year ending 31.3.2017	05-25
3.	Copy of order passed by Id.CIT(A) for A.Y. 2013-14	26-31
4.	Copy of Reply dated 22.11.2019 filed during assessment proceedings furnishing details of Revised Depreciation (as required) in Annexure 2	32-34
5.	Copy of notice dated 26.11.2019 issued u/s 270A of the Income Tax Act	35
6.	Copy of notice dated 24.12.2020 issued u/s 270A of the Income Tax Act	36
7.	Copy of show cause notice dated 26.5.2021 issued u/s 270A of the Income Tax Act	37-39
8.	Copy of Order dated 23.6.2023 passed by Hon'ble Pune bench of ITAT passed in the case of Kishor Diganbar patil in ITA No.54 and	40-59
9.	Copy of order dated 31.5.2022 passed by Hon'ble Delhi High Court in the case of Prem Brothers Infrastructure LLP reported in [2022]142 Taxmann.com 38 (Delhi)	60-63
10.	Copy of Written Submission dated on 26.07.2023 before Id. CIT(A), NFAC	64-71

9. The Id. AR of the assessee relied upon the written submission and paper book filed. The Id. AR of the assessee submitted that in the A. Y. 2013-14 the assessee disputed the disallowance of depreciation and the accounts of the assessee was finalized on 14.06.2017 and were sent to shareholders and order of the Id. CIT(A) could not be given effect as the accounts were finalised and therefore, the contention of the lower authority that the assessee has willingly not filed the correct claim of depreciation. The assessee has paid the taxes relying on the decision of apex court in the case of CIT Vs. Reliance Petroproducts P Ltd., 322 iTR 158(SC) wherein the court held that merely on account of disallowance of claim by itself does not amount for furnishing inaccurate particulars of income. The Id. AR of the assessee also submitted that the Id.AO has imposed

penalty of 200% on allegation of misreporting as per section 270A(9), however nowhere throughout the process, i.e. in assessment order, in show cause notice (APB 35-39) or even in Penalty order, Id.AO has specified as to under which limb of section 270A(9), i.e. (a) to (f), case of assessee falls. As is evident from the assessment order, Id.AO initiated the penalty for “misreporting and under reporting of income”. In other words, Id.AO himself was not clear if the case falls under sub section (1) or sub section (8) of section 270A. In fact, in none of the notices issued u/s 270A it was specified as to under which limb penalty proceedings was sought be levied. In all, three notices were issued to the assessee prior to imposition of penalty, and penalty was proposed to levy for following reasons:

Date	Particulars as mentioned in notice
26.11.2019	Underreporting of Income in consequence to misreporting
24.12.2020	Underreporting of Income in consequence to misreporting
26.5.2021	Why an order imposing penalty u/s 270A should not be passed

Based on these arguments the Id. AR of the assessee prayed for relief.

10. Per contra, the Id. DR supported the orders of the lower authorities and submitted that A.Y. 2013-14 AO changed the charge of depreciation and so the claim in this year needs to be given effect by the assessee and the same were not given. The order for A. Y.

2013-14 was came and the assessee after that order filed the return of income and therefore, the action of the assessee to claim the higher depreciation is misreporting of income of the assessee and even the interest of TDS is also not deductible but the same was claimed so levy of penalty against the assessee was justified. The assessee has not disputed the addition or disallowance further and accepted the finding of the Id.AO. So, the levy of penalty is compulsory and required to be sustained in the hands of the assessee.

11. We have considered the rival contentions, perused the material available on record and gone through findings of the lower authorities recorded in their respective orders as well as gone through the various judicial rulings placed before us to drive home to their respective contentions. The brief facts pertaining to the issue are that the assessee is private limited company engaged in business of lease rental and real estate development. Return of income was filed declaring income of Rs. 2,17,59,670/- and assessment was completed after making disallowance on account of excess claim of depreciation of Rs. 19,59,272/- and disallowance of interest paid on TDS amounting to Rs. 66,466/-. The assessee has contended that with a view to avoid litigation and to buy peace of mind, assessee paid the due tax thereon and no appeal was filed. Thus, the issue was finalized and therefore, Id. AO initiated penalty proceedings u/s 270A for "misreporting and under reporting of income" and consequently passed an order levying penalty @ 200% amounting to Rs. 12,51,906/-. The assessee challenged the levy of

the penalty before the Id. CIT(A) who also uphold the finding of the Id. AO. The assessee has challenged that order of the Id. CIT(A) raising as much as four grounds of appeal in this appeal. The bench noted that addition that was made in the assessment proceeding was disallowance of depreciation, the facts are that in respect of certain house properties, the assessee was showing income under the head "Income from House Property" till A.Y. 2012-13 and w.e.f. A.Y. 2013-14, the assessee started showing rental income as "Business Income" and charged depreciation on such rented building. During the course of assessment proceedings, the Id. AO accepted the claim related to depreciation, however, as regards quantum of depreciation is concerned, he was of the view that depreciation should be charged on WDV as computed in accordance with explanation to section 43(1). The Id. AO thus partly disallowed the claim of depreciation, against which appeal was preferred by the assessee. This appeal for AY 2013-14 was decided by Id. CIT(A)-2, Jaipur vide his order dated 18.09.2017 which was dispatched on 11.10.2017 by speed post and received by assessee on 13.10.2017. By this time, the books of accounts of F.Y. 2016-17 relevant to A.Y. 2017-18 were already finalized and even the same were also got audited on 14.06.2017 as per Companies Act and annual general meeting of the company had also been concluded prior to receipt of the order of the Id. CIT(A). Even the assessee by that time also seeking the advise as to whether the order of the Id. CIT(A) is to be challenged further before the income tax tribunal or not. Based on that pretext the return of income for A.Y. 2017-18 was filed by the

assessee by claiming depreciation as was done in earlier years in normal course on 29.10.2017 before the due date of 31.10.2017 as till then the assessee was not advised and was able to decide the course of action in relation to the issue raised for A.Y. 2013-14 in respect of depreciation disallowed. However, in the scrutiny assessment proceedings for A.Y. 2017-18 i.e. the year under consideration, the revised calculation of depreciation was submitted before Id. AO as per the CIT(A)'s order as by that time it was already finalized for not to agitate the matter of depreciation before the income tax tribunal against the order of Id. CIT(A) of A.Y. 2013-14. Thus, with that back ground as argued by the Id. AR of the assessee that the assessee has disclosed all the facts in return of income and also revised the depreciation claimed at the very first opportunity i.e. during assessment proceedings and therefore this act cannot be treated as "misreporting" by any stretch of imagination, more particularly when the issue on which disallowance has been made was debatable. So far as regard to disallowance of interest paid on TDS amounting to Rs. 66,466/-, it is submitted that interest on TDS is paid for the duration for which payment of TDS is delayed and is thus basically compensatory in nature and not penal in nature and therefore same is allowable u/s 37(1) of I.T. Act, 1961. It was also submitted by the Id. AR that there is no allegation about suppression of some facts or misrepresentation of some facts by the assessee and moreover this claim was also based on certain judicial pronouncements in favour of assessee at the time of making the claim. Thus, the claim of depreciation and interest on TDS was made

accordingly. It is also submitted that it is not the case that the claimed any bogus or excessive or unrelated expenses or has misrepresented the facts. On this issue our attention was invited to the decision of the apex court in the case of CIT Vs. Reliance Petroproducts Pvt. Ltd. and M/s Price Waterhouse Coopers Pvt. Ltd. Vs. CIT (supra), which are though decided in respect of penalty u/s 271(1)(c), but the ratio related to furnishing of inaccurate particulars of income is pari materia with provisions of section 270A dealing with misreporting of income. In addition the Id. AR of the assessee also invited our attention to the the latest case laws related to penalty u/s 270A namely Chambal Fertilizers & Chemicals Ltd. Vs. PCIT (2024) 158 Taxmann.com 184 decided by Hon'ble Rajasthan High Court wherein Hon'ble Court has confirmed the requirement of clearly specifying the sub-clause of section 270A(9) prior to concluding that assessee has misreported the particulars of income. Similarly, in the case of GR Infraproject Ltd. Vs. ACIT (2024) 158 Taxmann.com 80 (Raj.), Hon'ble Court has observed that neither in the assessment order nor in the subsequent show cause notice, the AO has specified that the assessee is covered by section 270A(9) of the Act. Even in the order imposing penalty, it is not specified which part of sub-section (9) of section 270A is attracted in this case. The bench noted from the evidence placed on record that the assessee neither in the show cause notice nor in penalty order, it was specified as to under which particular clause of section 270A(9), the case of assessee is covered. Thus, the levy of penalty for misreporting of income is not justified on the facts as mentioned and

discussed herein above and respectfully following the binding judicial decision.

12. Alternatively as argued even on merits of the case the bench noted that the depreciation on certain house property was claimed by assessee first time in A.Y. 2013-14 on showing the rental income under the head "Business Income" which was hitherto shown under the head "Income from House Property". The Id. AO concurred with the view of assessee that depreciation is admissible however, as regards quantum is concerned, the Id. AO was of view that it is to be given on written down value considering the explanation to section 43(1). This view of the Id. AO was challenged before the Id. CIT(A). The order of the Id. CIT(A) passed on 18.09.2017 and was dispatched on 11.10.2017 which was received by assessee on 13.10.2017. By the time accounts of the assessee company for F.Y. 2016-17 related to A.Y. 2017-18 were already audited and were also presented before the Annual General Meeting. Moreover, the assessee was considering about filing the appeal before the Income Tax Appellate Tribunal against the past disallowance of depreciation. In the meanwhile, the assessee had to file its return for A.Y. 2017-18 and same was filed on 29.10.2017 claiming the depreciation as the prevalent practice. This conduct of the assessee cannot be considered as malafide so as to arrive at the conclusion that assessee misrepresented the facts. It is further seen that during assessment proceedings, the assessee has submitted revised calculation of depreciation for A.Y. 2017-18 as per the CIT(A)'s order for A.Y. 2013-14 and this difference in depreciation was disallowed

by the Id. AO and on the same penalty has been imposed that too considering it to be misreporting of income. Moreover, the Id. AO had not specified anywhere in the penalty order as to under which clause of section 270A (9) the case of the assessee falls. Nor these details were specified in the show cause notice or discussed in the assessment order. Regarding issue of disallowance of interest paid on TDS, on these aspect of the matter there is no allegation of suppression of facts or misrepresentation of the facts. Moreover, Id. AO has not specified in respect of this disallowance also as to under which clause of section 270A(9) the same is covered. We have gone through the decision of Hon'ble Rajasthan High Court on the issue under consideration, in the case of Chambal Fertilizers & Chemicals Ltd. (supra), the Hon'ble Court has held that since revenue was not sure whether it was a case of misrepresentation or suppression of facts or claim of expense under sub-clause (a) and (c) of section 270A(9) were not attracted and thus assessee was to be granted immunity u/s 270AA. Similarly, in the case of GR Infraprojects Ltd. Vs. ACIT (supra), Hon'ble Court has allowed the writ of assessee by observing that neither in the show cause notice nor in the final penalty order, it is specified as to which part of sub section (9) of section 270A is attracted. In the case of Schneider Electric South East Asia (HQ) PTE Ltd., considering that in the penalty order there was no mention about which limb of section 270A is attracted and how ingredients of section 270A(9) are satisfied and in absence of such particulars the mere reference to the word "misreporting" makes the impugned penalty order manifestly arbitrary. Considering

the facts of the case under consideration and the various case laws as discussed as above, we are of the considered view that penalty so imposed by Id. AO does not stand on merits and is therefore directed to be quashed.

In the result the appeal of the assessee in ITA no. 788/JP/2023 is allowed.

11. The fact of the case in ITA No. 789/JPR/2023 is similar to the case in ITA No. 788/JPR/2023 and we have heard both the parties and persuaded the materials available on record. The bench has noticed that the issues raised by the assessee in this appeal No. 789/JPR/2023 is equally similar on set of facts and grounds. Therefore, it is not imperative to repeat the facts and various grounds raised by both the parties. Hence, the bench feels that the decision taken by us in ITA No. 788/JPR/2023 for the Assessment Year 2017-18 shall apply mutatis mutandis in the case of M/s Jaipur Telecom Private Limited in ITA Nos. 789/JPR/2023 for the Assessment Year 2018-19.

In the result the appeal of the assessee in ITA no. 789/JP/2023 is allowed.

Order pronounced in the open court on 22/04/2024.

Sd/-

(डा० एस. सीतालक्ष्मी)

(Dr. S. Seethalakshmi)

न्यायिक सदस्य / Judicial Member

Sd/-

(राठौड़ कमलेश जयन्तभाई)

(Rathod Kamlesh Jayantbhai)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/04/2024

***Santosh**

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. The Appellant- Jaipur Telecom Pvt. Ltd., Jaipur.
2. प्रत्यर्थी / The Respondent- DCIT, Circle-1, Jaipur.
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्डफाईल / Guard File ITA No. 788& 789/JPR/2023)

आदेशानुसार / By order,

सहायक पंजीकार / Asstt. Registrar