

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH MUMBAI
BEFORE MS. KAVITHA RAJAGOPAL, JUDICIAL MEMBER
AND
SHRI GIRISH AGRAWAL, ACCOUNTANT MEMBER

ITA No. 4064/MUM/2023
Assessment Year: 2012-13

Mahaonline Ltd., 9 th Floor, Nirmal Building, Nariman Point, Mumbai – 400 021 (PAN : AAGCM6746G)	Vs.	Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi
(Appellant)		(Respondent)

Present for:

Assessee : Shri Manish Kant
Revenue : Smt. Mahita Nair, Sr. DR

Date of Hearing : 27.06.2024
Date of Pronouncement : 28.06.2024

ORDER

PER GIRISH AGRAWAL, ACCOUNTANT MEMBER:

This appeal filed by the assessee is against the order of Ld. CIT(A), National Faceless Appeal Centre, Delhi vide order no. ITBA/NFAC/S/250/2023-24/1056282593(1), dated 19.09.2023 passed against the assessment order by Deputy Commissioner of Income Tax - 4(2)(2), Mumbai, u/s. 143(3) of the Income-tax Act, 1961 (hereinafter referred to as the “Act”), dated 12.03.2015 for AY 2012-13.

2. The solitary issue raised before us in the present appeal is in respect of penalty imposed by the ld. AO of ₹53,000/- under section 271(1)(c) of the Act on the addition made on account of difference in depreciation on biometric device by treating it as part of 'Plant and Machinery' block instead of part of 'Computer' block.

3. Brief facts of the case are that assessee carries on business of development, maintenance and management of Mahaonline portal for providing web-based services by government to citizens, government to business and other portal services of government of Maharashtra. It filed its return of income on 27.09.2012 reporting total income at ₹2,32,41,929/-. Assessment was completed under section 143(3), where in ld. AO had disallowed the depreciation of ₹1,68,600/- claimed on biometric devices, treating the same in the nature of normal plant and machinery and not the computers. Assessee had claimed depreciation @ 60% by considering the biometric device forming part of computer block. However, ld. AO treated the same as plant and machinery eligible for depreciation @ 15%. Thus, disallowance was made by the ld. AO for the difference in rate of depreciation of 45% (i.e. 60% - 15%), amounting to ₹1,68,600/-. Assessee contested this disallowance before the ld. CIT(A), but was sustained. Thereafter, ld. AO imposed a penalty of ₹53,000/- on the said disallowance, so sustained which was confirmed by the ld. CIT(A). Aggrieved, assessee is in appeal before the Tribunal.

4. Before us, ld. Counsel for the assessee submitted that assessee had considered the biometric devices as part of the block of computers for the purpose of computing depreciation under the Act. Thus, assessee claimed depreciation @ 60% as prescribed in Appendix I to Rule 5 of the Income-tax Rules, 1962.

5. Assessing Officer considered the same as part of block of plant and machinery and allowed depreciation @ 15%. He thus submitted that Assessing Officer had initiated penalty proceedings in a mechanical manner on the addition confirmed by the Id. CIT(A). According to him, penalty proceeding cannot be initiated on account of mere disallowance made in the assessment or upheld in the appellate proceedings. He placed strong reliance on the decision of Hon'ble Supreme Court in the case of CIT vs. Reliance Petro Products Pvt. Ltd. [2010] 322 ITR 158 (SC) and pointed out the observations and findings arrived at by the Hon'ble Court on the similar issue addressed by it. The same are noted as under:

1. Mere making of the claim, which is not sustainable in law, by itself, will not amount to furnishing of inaccurate particulars regarding the income of the assessee. Such claims made in the return of income cannot amount to furnishing of inaccurate particulars.
2. Merely because the assessee had claimed the expenditure, which claim was not excepted or was not acceptable to the Revenue, that by itself, would not attract penalty under section 271(1)(c) of the Act.
3. Unless there is a finding that any details supplied by the assessee in its return of income were found to be incorrect or erroneous or false, there is no question of levying penalty under section 271(1)(c).
4. If the contentions of the Revenue are accepted, then in case of every return where claim is not accepted by the Assessing Officer for any reason, the assessee will invite penalty under section 271(1)(c). That is clearly not the intendment of the legislature. The particulars of income as envisaged in section 271(1)(c) pertain to factual details/information of the income and not to subjective areas such as taxability thereof.

5. Ld. Counsel also placed reliance on the decision of Coordinate Bench of ITAT Pune in the case of Kanbay Software India Pvt. Ltd. vs. DCIT 31 SOT 153, wherein it was observed as under:

“The details or information about income deal with the factual details of income and this cannot be extended to areas which are subjective such as the status of taxability of an income, admissibility of a deduction and interpretation of law. The furnishing of inaccurate information does relate to furnishing of factually incorrect details and information about income. In the present case, however, what has been treated as furnishing of inaccurate particulars is making of a claim, which was not admitted by the Assessing Officer, an action not contested by the assessee. The admission or rejection of a claim is a subjective exercise and whether a claim is accepted or rejected has nothing to do with furnishing of inaccurate particular particulars of income.”

5.1. He thus submitted that the penalty so imposed ought to be deleted.

6. Per contra, ld. Sr. DR placed reliance on the orders of the authorities below. She asserted that assessee did furnish inaccurate particulars and intentionally claimed a higher rate of depreciation @ 60% instead of permissible rate of 15% by treating the biometric devices as part of block of computers, instead of block of plant and machinery. According to her, assessee was well within the knowledge that such devices form part of the block of plant and machinery. Despite knowing this, assessee had claimed a higher rate of depreciation@ 60%. Assessing Officer has rightly disallowed the excess depreciation claimed by the assessee, which has not been contested by the assessee in further appeal before the Tribunal. According to her, penalty has been rightly imposed for furnishing of inaccurate particulars of income by the assessee.

7. Having heard both the parties, we note that the sole issue for imposition of penalty is on account of difference in the rate of depreciation claimed by the assessee and as allowed by the Assessing Officer on the biometric devices. It is not a case where the claim is held to be false or bogus or sham. There is no dispute about the asset in question, and the higher rate of depreciation is only a question of interpretation of definition of the computer. It is a case where he had claimed depreciation at certain percentage by treating, the equipment under the block of computers eligible for higher rate of depreciation which has not been found acceptable by the Assessing Officer who has altered its treatment and subjected it to a lower rate of depreciation. Such a non-acceptance of claim of the assessee by the Assessing Officer *per se* does not lead to imposition of penalty. In the present case, when the assessee has disclosed and explained all the relevant facts and details pertaining to the claim of higher depreciation on biometric devices, then we do not find that merely claiming a higher depreciation, which is otherwise supported by various judicial precedents would lead to a conclusion that assessee has furnished inaccurate particulars of income.

8. In the given set of facts before us and considering the observations and findings arrived at by the Hon'ble Supreme Court in the case of Reliance Petro Products Pvt. Ltd (*supra*), we hold that no penalty is impossible on the disallowance made by the Assessing Officer towards the claim of depreciation made by the assessee. We therefore, delete the penalty so imposed and allow the grounds taken by the assessee.

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

Order is pronounced in the open court on 28 June, 2024

Sd/-
(Kavitha Rajagopal)
Judicial Member

Sd/-
(Girish Agrawal)
Accountant Member

Dated: 28 June, 2024

MP, Sr.P.S.

Copy to :

1. The Appellant
2. The Respondent
3. DR, ITAT, Mumbai
4. Guard File
5. CIT

BY ORDER,

(Dy./Asstt.Registrar)
ITAT, Mumbai