

**IN THE INCOME TAX APPELLATE TRIBUNAL, 'C' BENCH
MUMBAI**

**BEFORE: SHRI AMIT SHUKLA, JUDICIAL MEMBER
&
SHRI GIRISH AGARWAL, ACCOUNTANT MEMBER**

**ITA No. 4011/Mum/2024
(Assessment Year : 2013-14)**

M/s. Presario Properties Limited 81, 8 th Floor, Maker Chambers - III, 223, Nariman Point, Mumbai - 400021.	Private	Vs.	Deputy Commissioner of Income Tax, Circle 3(2)(1), Mumbai 6 th Floor, Aayakar Bhavan, M. K. Road, Mumbai - 400020.
PAN/GIR No. AAACP4425D			
(Appellant)		..	(Respondent)

Assessee by	Shri. Tarang Mehta
Revenue by	Shri. Krishna Kumar (Sr. DR)
Date of Hearing	30/10/2024
Date of Pronouncement	07/11/2024

आदेश / O R D E R

PER AMIT SHUKLA (J.M):

The aforesaid appeal has been filed by the assessee against order dated 21/06/2024 by NFAC, Delhi in relation to the penalty proceedings u/s.271(1)(c) for the A.Y.2013-14.

2. The assessee is merely aggrieved by levy of penalty of Rs.15,52,965/- on disallowance of depreciation. Besides this assessee has also challenged the validity of notice u/s.271(1)(c)

on the ground that in the notice, ld. AO has not specified the charge.

3. The brief facts are that in the profit and loss account, assessee had shown revenue from operation at 'Nil', i.e., no business income was shown during the year and only interest on term deposit with bank and other expenses were claimed. Assessee has also shown claim of depreciation of fixed assets of Rs.50,25,575/- which ld. AO had disallowed on the ground that huge depreciation had been claimed against such had meager 'other income' and there is no income from business. The assessee withdrew the claim of depreciation during the course of assessment proceedings. However, the ld. AO initiated penalty u/s.271(1)(c) for filing inaccurate particulars of income. Accordingly, he has also levied penalty of Rs.15,52,965/- of disallowance of depreciation of Rs.50,25,575/- holding that assessee has furnished inaccurate particulars of income and thereby concealed its income within the meaning of Section 271(1)(c). The ld. CIT(A) too has confirmed the said penalty.

4. We have heard both the parties and also perused the relevant material placed on record. It is seen that the assessee claimed depreciation on the fixed assets and claimed depreciation of property which was treated as fixed asset in the balance sheet. Since assessee did not have any business income therefore, ld. AO has disallowed the said depreciation. Even if assessee has made a claim which was bonafide as the property was classified as 'fixed asset' and has claimed depreciation in

accordance with the rules in the earlier years also and this year, it cannot be said that assessee has furnished any inaccurate particulars of income and merely the claim has been disallowed, it does not lead to an inference that assessee has furnished any inaccurate particulars of income. Thus, following the principle laid down by the Hon'ble Jurisdictional High Court in the case of Reliance Utilities and Power Ltd., reported in 313 ITR 340, no penalty can be levied by the ld. AO merely assessee has made a claim of depreciation on fixed asset, which has been disallowed merely on the ground that there was no business income in this year. Accordingly penalty is deleted. Since, we have deleted the penalty on merits, we are not going into the issue of quashing the penalty notice on the ground that ld. AO has not struck off the relevant charge in the notice.

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

Order pronounced on 7th November, 2024.

Sd/-
(GIRISH AGARWAL)
ACCOUNTANT MEMBER

Sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Mumbai; Dated 07/11/2024
KARUNA, sr.ps

Copy of the Order forwarded to :

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

//True Copy//

BY ORDER,

(Asstt. Registrar)
ITAT, Mumbai