

**IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT &
MS PADMAVATHY S, AM**

**I.T.A. No. 2530/Mum/2024
(Assessment Year: 2016-17)**

Mumbai Educational Trust General Arunkumar Vaidya Chowk, Near Lilavati Hospital, Bandra Reclamation, Bandra West, Mumbai-400050. PAN : AAATM0985G	Vs.	DCIT(Exemptions)-2, MTNL Building, Near Jaslok Hospital, Pedder Road, Mumbai-400036.
Appellant)	:	Respondent)

Appellant / Assessee by : Shri Bhupendra Shah, AR

Revenue / Respondent by : Shri R.R. Makwana, Rs. DR

Date of Hearing : 25.11.2024

Date of Pronouncement : 02.12.2024

ORDER

Per Padmavathy S, AM:

This appeal by the assessee is against the order of the Commissioner of Income Tax (Appeals) / National Faceless Appeal Centre (NFAC), Delhi [in short 'the CIT(A)'] dated 30.04.2024 for AY 2016-17. The assessee raised the following grounds of appeal:

1. In the facts and circumstances of the case and in law, the learned CIT(A) NFAC erred in confirming & the Learned AO erred in levying penalty of

271[1][c] of Rs. 3,16,27,259/- in respect of claim of depreciation which was voluntarily withdrawn by the Appellant.

2. In the facts and circumstances of the case and in law, the Assessing Officer erred in levying penalty u/s 271(1)(c) on the basis of notice us 274 r.w.s 271(1)(c) wherein no specific charge of either tiling of inaccurate particulars or concealment of income was mentioned and thereby passing the order of penalty which is to be quashed as per recent judgement of Bombay High Court and Supreme Court.

2. The assessee is a charitable trust registered under section 12A of the Income Tax Act (the Act). The assessee filed the return of income for AY 2016-17 on 12.10.2016 declaring Nil income after claiming exemption under section 11 of the Act. The case was selected for scrutiny and the assessment was completed under section 143(3) of the Act making additions towards notional rental income, disallowance of repairs and maintenance and disallowance of depreciation. The assessee preferred further appeal before the CIT(A) against the additions/disallowances made by the AO. Before the CIT(A) the assessee withdrew the ground raised pertaining to the disallowance of depreciation made by the AO. Subsequently the AO issued a notice under section 271(1)(c) stating that the assessee has furnished inaccurate particulars of income with regard to the claim of depreciation. The assessee submitted that the claim of depreciation that was disallowed by the AO in the order under section 143(3) was not contented by the assessee before the CIT(A) considering the amendment brought in by Finance Act 2 of 2014 by inserting sub section (6) to section 11 of the Act whereby depreciation in respect of an asset the acquisition of which has been claimed as an application of income under this section in the same or any other previous year cannot be claimed as application or deduction. The assessee further submitted that the asset on which depreciation is claimed is already claimed as deduction as

application of funds and therefore, the assessee withdrew the ground on disallowance of depreciation. The assessee accordingly prayed that the voluntary withdrawal of ground cannot be treated as furnishing of inaccurate particulars and the penalty proceedings may be dropped accordingly. However, the AO rejected the submissions of the assessee and proceeded to levy penalty of Rs. 3,16,27,259/- under section 271(1)(c) of the Act.

3. Before the CIT(A) besides contending the issues on merits, the assessee raised a legal ground that the AO in the order levying penalty has not specified under which limb of section 271(1)(c) the penalty is levied i.e. whether furnishing of inaccurate particulars or concealment of income. The CIT(A) adjudicated the legal ground against the assessee stating that the AO in the notice under section 271(1)(c) has specified that the assessee has furnished inaccurate particulars. However the CIT(A) has not given any findings on the merits while upholding the penalty levied by the AO. The assessee is in appeal before the Tribunal against the order of the CIT(A).

4. The ld AR on merits submitted that the voluntary withdrawal of the ground against the disallowance of depreciation before the CIT(A) cannot be reason for levying penalty under section 271(1)(c). The ld AR further submitted that the year under consideration is the first year when subsection (6) to section 11 is inserted and the assessee has inadvertently claimed the depreciation on the asset which has already been allowed as an application. The ld AR also submitted that the assessee realized the error after filing the appeal before the CIT(A) and accordingly withdrew the ground. It is also brought to our attention that the assessee has not claimed any depreciation in the subsequent years. The ld AR accordingly argued that the AO is not correct in levying penalty for a bonafide error committed by the

assessee which was subsequently conceded voluntarily. The ld AR also presented arguments on the legal ground that AO has not specified in the penalty order whether the penalty is levied for filing inaccurate particulars or concealment of income.

5. The ld DR on the other hand argued that the assessee has made a claim which is not admissible under the law and that the AO in the notice under section 271(1)(c) has correctly mentioned that the assessee has filed inaccurate particulars. Accordingly the ld DR supported the orders of the lower authorities.

6. We heard the parties and perused the material on record. Finance (No.2) Act 2014, inserted subsection (6) to section 11 to provide that if the acquisition of an asset is allowed as application of funds then the assessee once again cannot claim depreciation on the same asset as a deduction / application. For the year under consideration the assessee in the return of income has claimed depreciation on the asset the cost of which was already claimed as application. The AO while completing the assessment under section 143(3) has disallowed the depreciation. Though the assessee raised a ground contending the said disallowance before the CIT(A), subsequently withdrew the same. The AO initiated the penalty proceedings under section 271(1)(c) stating in the notice that the assessee has furnished inaccurate particulars. The CIT(A) confirmed the penalty by dismissing only the legal grounds raised by the assessee and without adjudicating the issue on merits. The argument of the ld AR is that the assessee has made an inadvertent mistake of claiming the depreciation, without considering the amendment to section 11 and that once the mistake is realized the assessee withdrew the ground raised against the disallowance of depreciation. Therefore it is contended that there is no intentional furnishing of inaccurate particulars of income on the part of the

assessee. From the perusal of the facts, we notice that the assessee has not deliberately claimed the depreciation with an intention to make an inaccurate claim. This is evidenced by the fact that the assessee has voluntarily conceded that the depreciation is erroneously claimed and accordingly withdrew the ground raised against the said claim before the CIT(A). The Hon'ble Supreme Court in CIT vs. Pricewaterhouse Coopers Pvt. Ltd. [2012] 348 ITR 306 (SC) has held that there would be no s. 271(1)(c) penalty for a "bona fide/ inadvertent/ human error". The below observations of the Hon'ble Supreme Court in the case of Hindustan Steel Ltd. v. State of Orissa [(1972) 83 ITR 26 (SC)] is relevant in this context –

"Penalty is not to be imposed if there is no conscious breach of law. An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged, either acted deliberately in defiance of law or guilty of conduct, contumacious or dishonest, or acted in conscious disregard to 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 bona fide belief that the offender is not liable to act in the manner prescribed by the statute"

7. Considering the fact in assessee's case in our considered view that there is no intention on the part of the assessee to make an incorrect claim which is evidenced by assessee's subsequent actions and the fact that the assessee has not claimed depreciation in the subsequent years. Further the inadvertent error is voluntarily corrected by assessee by accepting the disallowance of depreciation before the CIT(A). In view of these discussions and considering settled position of law laid down in this regard, we hold that AO is not correct in levying penalty under

section 271(1)(c) in assessee's case towards the disallowance of depreciation admitted by the assessee as inadvertently claimed. Since we have deleted the penalty considering the merits of the issue, the legal arguments of ld. AR have become academic not warranting any separate adjudication.

8. In result the appeal of the assessee is partly allowed.

Order pronounced in the open court on 02-12-2024.

Sd/-
(SAKTIJIT DEY)
Vice President

**SK, Sr. PS*

Sd/-
(PADMAVATHY S)
Accountant Member

Copy of the Order forwarded to :

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

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai