

आयकर अपीलिय अधिकरण, कोलकाता पीठ 'A', कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH KOLKATA

**Before Shri Sanjay Garg, Judicial Member and
Shri Rakesh Mishra, Accountant Member**

**I.T.A. Nos.1862 & 1863/Kol/2024
Assessment Years: 2012-13 & 2014-15**

Tiriyogi Narayn Singh **Appellant**
C/o, Subash Agarwal & Associates, Advocates,
Siddha Gibson, 1, Gibson Lane, suite-213,
2nd floor, Kolkata-700069.
(PAN: APMPS8395D)

vs.

ACIT, Circle-29, Kolkata **Respondent**

Appearances by:

Shri Siddarth Agarwal, Advocate appeared on behalf of the Appellant
Shri Pradip Kumar Biswas, Addl. CIT appeared on behalf of the Respondent

Date of concluding the hearing: October 17, 2024
Date of pronouncing the order: December 31, 2024

आदेश / ORDER

Per Sanjay Garg, Judicial Member :

Both the captioned appeals have been preferred by the assessee against the separate orders, evenly dated 21.08.2024, of the Ld. Commissioner of Income Tax, (Appeal), National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as the "Ld. CIT(A)"] passed u/s. 250 of the Income-tax Act, 1961 (hereinafter referred to as the "Act") for AYs 2012-13 and 2014-15.

First, we take up ITA No. 1862/Kol/2024:

2. The assessee in this appeal has agitated against the levy/confirmation of penalty of Rs.7,02,187/- u/s. 271(1)(c) of the Act.

3. The brief facts of the case are that the assessee was engaged in the business of transportation. The Assessing Officer (in short "AO") noticed that the assessee had claimed depreciation @ 40% on trucks as against

30% which was applicable in this case. On being asked to explain in this respect, the Ld. AR for the assessee relied on some case laws as per which the assessee was entitled to depreciation @ 40%. However, the AO brought to his notice that the higher rate of depreciation was allowable prior to AY 2006-07. That as per the new Appendix-I (rule 5) applicable rate of depreciation was 30% on motor busses, motor lorries and motor taxis used in the business of running them on hire. The Ld. Counsel for the assessee agreed during the assessment proceedings that the rate of depreciation applicable in his case would be 30% and it was explained that there was some misconception on his part in this respect. The AO accordingly, allowed the depreciation @ 30% and disallowed an amount of Rs.22,72,452/- on account of excess claim of depreciation. He also initiated penalty proceedings u/s. 271(1)(c) of the Act and, thereafter, imposed the impugned penalty. The Ld. CIT(A) confirmed the penalty so levied by the AO.

4. We have heard the rival contentions and gone through the records. In this case, it is coming out from the assessment order itself that there was no mala fide intention on the part of the assessee or his AR to claim depreciation at a higher rate. The depreciation at a higher rate was claimed by the Ld. AR under some misconception relating to old law and when the matter was discussed with him, he agreed that he, due to some misconception on his part, claimed the depreciation at higher rate, which was applicable prior to AY 2006-07. He based his such conception on the basis of certain case laws which, in fact, were related to Assessment Years prior to AY 2006-07. Therefore, in our view, it is not a case of concealment of income or furnishing of inaccurate particulars of income. The impugned penalty thus, is not sustainable and the same is accordingly, ordered to be deleted.

Now, we take up ITA No. 1863/Kol/2024:

5. The assessee in this appeal has agitated against the levy/confirmation of penalty of Rs.6,40,362/- u/s. 271(1)(c) of the Act.

6. Brief facts of the case are that during the assessment proceedings u/s. 143(3) of the Act, the AO made certain disallowances. The assessee preferred appeal against the said disallowances made by the AO before the Ld. CIT(A) and also the matter travelled up to the level of the Tribunal, whereby part relief was given to the assessee by the Tribunal. The detailed chart in this respect is reproduced as under:

Sl. No	Nature of disallowance	Disallowance made by the AO	Allowed by the CIT(A)	Allowed by the ITAT	Disallowance sustained
1.	Depreciation on vehicle which was used for less than 180 days	Rs.29,893/-	Not contested in appeal	Not contested in appeal	Rs.29,893/-
2.	Disallowance u/s. 14A of Act	Rs.10,606/-	Not contested in appeal	Not contested in appeal	Rs.10,606/-
3.	Inadmissible business expenses u/s. 36(1)(va) of the Act	Rs.24,286/-	-	Rs.24,286/-	-
4.	Expenses disallowed which are penal in nature	Rs.2,625/-	-	Rs.2,625/-	-
5.	Unsubstantiated donation and subscription expenses	Rs.35,500/-	-	Rs.35,500/-	-
6.	Disallowance of expenses on account of oil & Fuel, Truck Running, Truck wise, trip wise expenses	Rs.25,36,129/-	-	Rs.20,36,129/-	Rs.5,00,000/-

7. In respect of the disallowances against which the assessee did not prefer appeal and the disallowances which were sustained by the appellate

authorities, the AO levied impugned penalty u/s. 271(1)(c) of the Act in the separately initiated penalty proceeding u/s. 271(1)(c) of the Act. The Ld. CIT(A) confirmed the impugned penalty so levied by the AO.

8. We have heard the rival contentions and gone through the record. The Ld. Counsel for the assessee has demonstrated that the impugned disallowances made by the AO were on debatable issues. Even in respect of the disallowances made of Rs.25,36,129/- on ad hoc basis out of expenses on account of oil and fuel, truck running, truck wise, trip wise etc., the tribunal has sustained the disallowance of Rs. 5,00,000/- only. The two disallowances regarding which the assessee did not contest were of depreciation on vehicle amounting to Rs.29,893/- and disallowance u/s. 14A of Rs.10,606/- only. In respect of the other disallowances, the tribunal has already given relief to the assessee except sustaining of Rs. 5,00,000/- disallowance out of disallowance of Rs.25,36,129/- made by the AO on ad hoc basis. It is not a case of furnishing of inaccurate particulars of income or concealment of income inviting penalty u/s. 271(1)(c) of the Act. Moreover, most of the disallowances have been set aside by the Tribunal. In view of this, the impugned penalty is not sustainable and the same is ordered to be deleted.

9. In the result, both the appeals of the assessee stand allowed.

Order is pronounced in the open court on 31.12.2024.

Sd/-

[Rakesh Mishra]
लेखा सदस्य/Accountant Member

Sd/-

[Sanjay Garg]
न्यायिक सदस्य/Judicial Member

Dated: 31.12.2024.

JD Sr. P.S

Copy of the order forwarded to:

1. **Appellant – Shri Tiriyogi Narayan Singh**
2. **Respondent – ACIT, Circle-29, Kolkata**
3. **CIT(A), NFAC, Delhi**
4. **Pr. CIT**
5. **CIT(DR),**

True Copy

By Order

Assistant Registrar, ITAT, Kolkata