

**आयकर अपीलीय अधिकरण 'ए' न्यायपीठ चेन्नई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**'A' BENCH, CHENNAI**

मजनीय श्री मनोज कुमार अग्रवाल, लेखक सदस्य एवं  
मजनीय श्री मनु कुमार गिरि, न्यायिक सदस्य के समक्ष।  
**BEFORE HON'BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**AND HON'BLE SHRI MANU KUMAR GIRI, JM**

**1. आयकर अपील सं. ITA No.1594/Chny/2023**  
**(निर्धारण वर्ष / Assessment Year: 2011-12)**

<b>M/s. Sanguine Media Limited</b> Plot No.135A, 1 <sup>st</sup> floor, Chandran Nagar Main Road, Chrompet, Chennai-600 044.	<b>बनम/</b> Vs.	<b>ITO</b> <b>Non-Corporate Ward-20(5)</b> Chennai
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AAECS-2217-C</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

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**2. आयकर अपील सं./ ITA No.480/Chny/2024**  
**(निर्धारण वर्ष / Assessment Year: 2011-12)**

<b>ITO</b> <b>Non-Corporate Ward-10(6)</b> Chennai	<b>बनम/</b> Vs.	<b>M/s. Sanguine Media Limited</b> Plot No.135A, 1 <sup>st</sup> floor, Chandran Nagar Main Road, Chrompet, Chennai-600 044.
स्थायी लेखासं./जीआइआरसं./PAN/GIR No. <b>AAECS-2217-C</b>		
(पीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

अपीलार्थी की ओर से/ <b>Assessee by</b>	:	Shri Neeraj Mangla (CA) (Virtual)- Ld.AR
प्रत्यर्थी की ओर से/ <b>Revenue by</b>	:	Shri Nilay Baran Som (CIT)-Ld. DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	10-12-2024
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	09-01-2025

**आदेश / ORDER**

**Manoj Kumar Aggarwal (Accountant Member)**

1.1 Aforesaid cross-appeals arises out of an order passed by Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal

Centre (NFAC), Delhi [CIT(A)] on 15.12.2023 in the matter of penalty levied by Ld. Assessing Officer [AO] u/s. 271(1)(c) of the Act on 31.03.2022. The registry has noted delay of 10 days in the appeal of the revenue which stands condoned.

1.2 The grounds taken by the assessee read as under: -

1. That the penalty order passed by Ld. AO as well as the appellate order passed by Ld. CIT(A) are bad in law and have been passed in contravention of prevailing law as well as facts of the case, therefore liable to be annulled.
2. That the notice issued u/s 274 r.w.s. 271(1)(c) of the Act is void-ab-initio because of issue of notice on dual charge of concealment and furnishing of inaccurate particulars of income.
3. That levy of penalty on disallowance of Rs.4,56,21,227/- made by Ld. AO while completing assessment proceedings u/s 147 of the Act on account of claim of excess depreciation is not tenable under the law as no additions as well as penalty on any additions emanating from the reasons recorded for reopening of assessment proceedings sustained in the appellant proceedings.
4. That levy of penalty on disallowance of Rs.4,56,21,227/- made by Ld. AO is further not tenable under the law as the said disallowance is arising out of clerical error while furnishing the Income Tax return.

1.3 The grounds taken by the revenue read as under: -

1. The order of the Ld.CIT(A) is contrary to the facts and circumstances of the case.
2. The CIT(A) erred in the deleting penalty without appreciating fact that order of the Hon'ble ITAT vide its order in ITA No.882/Chny/2020 dt 31-01-2023 wherein impugned addition was deleted was not accepted by the Department was challenged further before the Hon'ble High Court.

As is evident, the revenue is aggrieved by deletion of penalty on merits which was levied for addition made u/s 68 whereas the assessee assails impugned penalty on legal grounds as well as on merits to the extent the penalty has been sustained in the impugned order.

1.4 The Ld. AR assailed impugned penalty on legal grounds by submitting that no specific charge was framed against the assessee in the show-cause notice and therefore, the penalty is vitiated in law in terms of various judicial decisions. The Ld. AR also made submissions on merits and stated that it was bona-fide clerical mistake on the part of

the assessee to make excess claim of depreciation which do not call for imposition of impugned penalty. The Ld. CIT-DR, on the other hand, submitted that the excess claim was not reversed by the assessee. A wrong claim was made in the return of income which justifies imposition of penalty. The case was put for clarification from time to time which was duly responded to by both the sides. Having heard rival submissions and upon perusal of case records, our adjudication would be as under.

### **Proceedings before lower authorities**

2.1 The assessee being resident corporate assessee was subjected to reassessment proceedings and an assessment was framed u/s 147 r.w.s. 143(3) on 26.12.2018. In the assessment order, Ld. AO made certain addition u/s 68 for Rs.105 Crores and withdrew excess claim of depreciation for Rs.456.21 Lacs as made by the assessee. The first appeal against the quantum addition was dismissed. The assessee carried the issue of addition u/s 68 before Tribunal vide ITA No.882/Chny/2020 order dated 31.01.2023 which was allowed. The assessee did not contest the claim of excess depreciation and the same thus attained finality. At the same time, the quantum addition as made by Ld. AO u/s 68 has not survived as per the decision of Tribunal.

2.2 In the meanwhile, Ld. AO proceeded to levy penalty u/s 271(1)(c) against the assessee for both the additions. Facts qua withdrawal of excess claim of depreciation are that the assessee claimed depreciation of Rs.762.71 Lacs in AY 2010-11 at the rate of 60% on WDV of Rs.1271.19 Lacs. The closing WDV was thus Rs.508.47 Lacs. However, in AY 2011-12, the assessee again reflected opening WDV of Rs.1271.91 Lacs as against Rs.508.47 Lacs and in the process, the assessee claimed excess depreciation of Rs.456.21 Lacs.

2.3 During penalty proceedings, a show-cause notice was issued to the assessee on 02.08.2021 which remained un-responded. Accordingly, another notice was issued on 09.11.2021. The assessee, vide reply dated 15.11.2021, submitted that the show-cause notice did not specify the exact limb under which present proceedings were initiated. Apparently, the proceedings were initiated for both the limbs i.e., for concealment of income as well as for furnishing of inaccurate particulars of income. Therefore, the assessee submitted that penalty proceedings stood vitiated in law in terms of various judicial decisions including the decision of larger bench of Hon'ble Bombay High Court in the case of **Mohd. Farhan A. Shaikh (125 Taxmann.com 253)**. The assessee also made submissions on merits and submitted that excess claim of depreciation was attributable to clerical errors wherein the assessee company erroneously entered the same opening WDV of assets as that of previous year. The same was a bona-fide clerical error and the assessee had no intention to claim the excess depreciation. The assessee incurred losses during the year and therefore, the assessee would not stand to gain by making any excess claim. The same was mere clerical error that occurred while filing of return of income.

2.4 However, Ld. AO held that penalty was initiated in assessment order for concealment of income. It was obligatory on the part of the assessee to disclose all the correct material facts in the return of income. Any act which results in hiding a portion of income is to be regarded as concealing particulars of income. The onus was on assessee to rebut the inference of concealment. The assessee made conscious attempt to evade taxes by concealing particulars of income. The case laws as relied upon by the assessee were held to be distinguishable. It was also noted

by Ld. AO that the first appeal on quantum addition was dismissed by first appellate authority. The assessee filed return with due application of mind and the form of verification had been signed by the assessee. The details provided in the return of income were proved to be not accurate, not exact or correct, not according to truth or erroneous. When the provisions were clear on this aspect, the assessee should have made the disallowance in the return of income filed by it. Had the case not been scrutinized by the department, the evasion of taxes would not have been detected. Explanation-1 to Sec. 271(1)(c) provide that where any person has concealed particulars of his income or had furnished inaccurate particulars of such income, penalty would be levied. The assessee failed to offer any explanation or the explanation furnished by the assessee was found to be false and therefore, penalty could be imposed. Accordingly, Ld. AO levied penalty of Rs.3639.37 Lacs for concealment of income on account of addition made u/s 68 as well as on account of excess claim of depreciation.

2.5 As noted earlier, subsequently the quantum addition u/s 68 stood deleted by Tribunal vide ITA No.882/Chny/2020 order dated 31.01.2023. Considering the same, Ld. CIT(A), vide impugned order dated 15-12-2023, directed Ld. AO to delete the penalty to that extent of addition made u/s 68 since the quantum addition stood deleted by the Tribunal.

2.6 The legal grounds urged by the assessee and reliance placed on various judicial decisions was rejected by Ld. CIT(A) by observing that the assessee did not disclose its true state of affairs in the return of income. It was only when the case was reopened, the assessee admitted the mistake. The assessee could not show as to how it was put to any prejudice or confusion about the intention of the penalty notice

issued by Ld. AO. The assessee did not prefer any appeal on the issue of excess claim of depreciation and therefore, penalty was justified on excess claim of depreciation of Rs.456.21 Lacs. The appeal was thus partly allowed. Pursuant to the same, Ld. AO revised quantum of penalty to Rs.151.54 Lacs vide its order dated 13-02-2024, a copy of which has been placed on record by Ld. CIT-DR. Aggrieved as aforesaid the assessee as well as revenue is in further appeal before us. The revenue assails deletion of penalty on the issue of addition made u/s 68 whereas the assessee assails the penalty as sustained in the impugned order.

### **Our findings and Adjudication**

3. So far as the appeal of the revenue is concerned, the undisputed fact is that quantum addition u/s 68 has already been deleted by Tribunal and therefore, the penalty to that extent would not survive. The impugned order, to that extent, does not require any interference on our part. Nothing has been shown to us that the finding of the Tribunal has been reversed in any manner by any higher judicial authority. Accordingly, the appeal of the revenue stand dismissed.

4. So far as the assessee's appeal is concerned, upon perusal of ITR-6 for AY 2010-11 as filed on 14.10.2010, it could be seen that though the assessee has claimed depreciation under Income Tax for Rs.764.07 Lacs, the supporting depreciation schedule in the form has not been filled in fully and the relevant columns have remained to be filled in properly. Finding the mistake, the assessee rectified the same on 03.02.2012 and computed correct WDV of the fixed assets. For AY 2011-12, the assessee, by mistake, adopted opening WDV of AY 2010-11 instead of closing WDV and in the process claimed excess depreciation of Rs.456.21 Lacs. The Ld. AR has stated that it was a

bona-fide clerical error which has been controverted by Ld. CIT-DR. It has been stated that the assessee continues to claim higher depreciation in subsequent years and has not revised return of income for this year or subsequent years revising the claim of depreciation. Another argument raised by Ld. AR that the assessee was not made aware of the exact charge of penalty. However, it could be seen that the initial notice issued on 02.08.2021 was never responded to by the assessee. Accordingly, another notice was issued on 09.11.2021 wherein the assessee raised issue of specific charge. It is also seen that there is excess claim of depreciation which has been accepted by the assessee after first appeal and the assessee has chosen not to prefer any appeal against the same. Considering all these aspects in mind, we restore the issue of penalty qua excess claim of depreciation to the file of Ld. CIT(A) for fresh adjudication. The issue of bona-fide error and specific charge may be re-examined by Ld. CIT(A). The assessee is directed to substantiate the same. The appeal stand allowed for statistical purposes.

5. The revenue's appeal ITA No.480/Chny/2024 stands dismissed whereas the assessee's appeal ITA No.1594/Chny/2023 stand allowed for statistical purposes.

*Order pronounced on 9<sup>th</sup> January, 2025*

**Sd/-**  
**(MANU KUMAR GIRI)**  
न्यायिक सदस्य / **JUDICIAL MEMBER**

**Sd/-**  
**(MANOJ KUMAR AGGARWAL)**  
लेखक सदस्य / **ACCOUNTANT MEMBER**

चेन्नई Chennai; दिनांक Dated :09-01-2025  
DS

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/Assessee
2. प्रत्यर्थी/Revenue
3. आयकरआयुक्त/CIT Chennai.
4. विभागीयप्रतिनिधि/DR
5. गार्डफाईल/GF