

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI
BEFORE SHRI H.S.SIDHU, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER**

ITA No.6507/Del/2013
(Assessment Year: 2007-08)

DCIT, Circle-3(1), New Delhi	Vs.	Control & Switchgear Contractors Ltd, 222, Okhla Indl. Estate, New Delhi PAN:AABCC3734B
(Appellant)		(Respondent)

CO No. 69/Del/2015
ITA No.6507/Del/2013
(Assessment Year: 2007-08)

Control & Switchgear Contractors Ltd, 222, Okhla Indl. Estate, New Delhi PAN:AABCC3734B	Vs.	DCIT, Circle-3(1), New Delhi
(Appellant)		(Respondent)

Assessee by :	Sh. Anil Bhalla, CA
Revenue by:	Sh. Umesh Chand Dubey, Sr. DR
Date of Hearing	08/11/2016
Date of pronouncement	30/01/2017

ORDER

PER PRASHANT MAHARISHI, A. M.

1. These are appeals filed by the revenue and cross objection filed by the assessee against the order dated 20.09.2013 of the Id CIT(A)-VI, New Delhi for the Assessment Year 2007-08.
2. The revenue has raised the following grounds of appeal:
 - "1. The Id CIT(A) has erred in law and on the facts in holding that the depreciation on building is allowable to the assessee ignoring that:-
 - i. Depreciation is allowable w.r.t as asset only when it is put to use during the relevant period and in the case under consideration, there has been no business activity during the year or in the subsequent year and as such the asset cannot be said to have put to use during the period.
 - ii. The case laws relied by the assessee including Bharat Alunimum co. Ltd., Ganga Properties Ltd are not applicable, as these cases, the assets which were not put to business use were part of block of assets which in the case under consideration, the whole block itself has not been put to business use."

3. The assessee has raised the following grounds of appeal:-

"1. *The learned Commissioner of Income Tax (Appeals) was not justified in confirming the levy of penalty u/s 271(1)(c) of the Act in respect of claim of repairs and maintenance expenses of Rs. 186745/- which was added back by the Assessing Officer.*"

4. The assessee is a company engaged in the business of manufacturing of control gear and switch gear products. For AY 2007-08 it filed its return of income on 15.1.2007 declaring income of Rs. 90690210/- and assessment was made u/ 143(3) of the Act on 30.12.2009 at a total income of Rs. 125328740/- . The additions were contested up to the level of tribunal vide order dated 20.04.2010 the issue was decided by coordinate bench. Meanwhile, the Id Assessing Officer initiated penalty proceedings and passed penalty order with respect to disallowance of Rs. 25173015/- sustained. The various expenditure on which the penalty is initiated and levied are as under:-

Disallowed renovation/ additional construction expenses amounting to Rs. 186745/-	Decision by the Hon'ble ITAT against the appellant in IT Appeal No. 511/Del/2011 (AY 2007-08) dated 20.04.2012 (page 17-20)
Disallowed foreign travelling expenses amounting to Rs. 1964672/-	Decided by the CIT(A)-VI, new Delhi in favour of the assessee in quantum appeal in Appeal No. 306/096-10 dated 08.12.2010 (page 06-08)
Disallowed additional depreciation amounting to Rs. 3570062/- claimed by the assessee	The matter has been restored back to the file of AO by the Hon'ble ITAT in IT Appeal No. 511/Del/2011 (AY 2007-08) dated 20.04.2012
Disallowed depreciation on goodwill amounting to Rs. 713672/-	Depreciation on goodwill is allowable in view of the decisions of Hon'ble Delhi High Court in Areva T&D India Ltd. Vs. DCIT (2012 TIOL-234 HD-Del-IT) and Hon'ble Supreme Court in Cit Vs. Smiffs Securities Ltd. (2012-TIOL-53-HON'BLE SUPREME COURT -IT)
Disallowed the claimed of the assessee u/s 10B of Rs. 20702536/-	The matter has been restored back to the file of AO, by the Hon'ble ITAT in IT Appeal No. 511/Del./2011 (AY 2007-08) dated 20.04.2012.

5. The revenue is in appeal on the grounds raised before us whereas, the assessee has contested the confirmation of the penalty on disallowance of claim of repairs and maintenance expenses of Rs. 186745/- confirmed by the Id CIT(A). We first take up the appeal of the assessee.

6. A sum of Rs. 186745/- is disallowed by the Id Assessing Officer holding that the expenses are in the nature of major renovation or additional construction

expenses and therefore, it was disallowed holding as capital expenditure. On appeal before the Tribunal, the disallowance was confirmed therefore, penalty was levied on the same. The disallowance confirmed by the Id CIT(A) was for the reason that expenditure are relates to flooring, grow cutting etc and assessee could not produce any evidence to substantiate that amount is incurred for revenue expenditure as current repairs. On appeal before the ITAT, the disallowance was confirmed as raw material purchased and labour expenditure incurred shows that it was not the change in the identity of the existing asset but it is the new asset coming into existence therefore penalty was levied. The Id CIT(A) also confirmed penalty on same relying upon the decision of Hon'ble Supreme Court UOI Vs. Dharmendra Textile Processors 306 ITR 277 (S.C.). Therefore the assessee is in appeal before us.

7. The Id AR submitted that in the case of the assessee for AY 2006-07 in identical circumstances penalty u/s 271(1)(c) levied by the AO is deleted by coordinate bench in ITA No. 1981/Del/2013 dated 04.03.2015, therefore the issue is squarely covered in favour of the assessee.
8. The Id DR relied upon the order of the lower authorities and submitted that as the authorities have upheld the disallowance the penalty is correctly levied.
9. We have carefully considered the rival contentions and also perused the order of the coordinate bench in the case of the assessee which was also levied on disallowance of renovation expenses, foreign travel expense, additional depreciation and claim of exemption u/s 10B of the Act. almost all the issues of penalty in these two appeals were also there in the order cited before us. Vide para No of that order the penalty levied u/s 271(1)(c) of the Act was deleted as under:-

4. We have considered the rival submissions and have perused the order of the AO. With regard to the disallowance of Additional Depreciation and of Exemption u/s 10B of the Act, the matter has been restored to the file of the AO to determine the same afresh in accordance with law as per the directions of the Tribunal and the matter is still pending before the AO. In these facts, we cancel the penalty levied u/s 271(1)(c) of the Act on these two items of disallowance. However, the AO while framing the assessment as per the directions of the Tribunal, may if so warranted initiate the penalty u/s 271(1)(c) of the Act afresh in accordance with law. With regard to the disallowance of Guarantee Commission of Directors, the Tribunal

has already allowed the miscellaneous application preferred by the assessee and following the decision of the Hon'ble Delhi High Court has allowed deduction of Guarantee Commission paid to the Directors and their remain no basis for levy of penalty u/s 271(1)(c) of the Act on this issue and the same is accordingly cancelled. With regard to the other two items of disallowance of Repair and Maintenance Expenses and disallowance out of Foreign Travelling Expenses, we find that part of disallowance has been confirmed in appeal by the appellate authority. However, the disallowance was made on the basis of information and facts made available to the AO by the assessee itself. The fact that assessee has in fact spent the amounts in question, is not in doubt. Moreover, it is a clear case of difference of opinion with regard to the allowability of certain claim of expenditure made by the assessee. The issue that whether Repairs and Maintenance in respect of leased buildings was revenue or capital in nature or whether the part of the Foreign Travelling Expenses were for the business purposes of the assessee is clearly debatable in nature. This is a case where the assessee has disclosed all the material facts necessary for assessment at the time of filing of the return itself. The conduct of the assessee in this case was bonafide. In these facts of the case, we are of the view that it is not a fit case for levy of penalty u/s 271(1)(c) of the Act on these two items of disallowances made by the AO and accordingly the penalty levied u/s 271(1)(c) of the Act on disallowance of Repair and Maintenance Expenses and out of Foreign Travelling Expenses is cancelled."

10. Therefore respectfully following the decision of the coordinate bench we also delete the penalty levied by AO and confirmed by the Id CIT(A) on disallowance of Rs. 186745/- on account of renovation expenditure. In view of this the solitary ground of the appeal of the assessee is allowed.
11. Now we come to the appeal of the revenue.
12. The only ground of the appeal of the revenue is as under:-

- "1. The Id CIT(A) has erred in law and on the facts in holding that the depreciation on building is allowable to the assessee ignoring that:-
 - i. *Depreciation is allowable w.r.t as asset only when it is put to use during the relevant period and in the case under consideration, there has been no business activity during the year or in the subsequent year and as such the asset cannot be said to have put to use during the period.*
 - ii. *The case laws relied by the assessee including Bharat Alunimum co. Ltd., Ganga Properties Ltd are not applicable, as these cases, the assets which were not put to business use were part of block of assets which in the case under consideration, the whole block itself has not been put to business use."*

13. We find that in these grounds there is no challenge to the deletion of the penalty by the 1d CIT(A) on various additions. On query by the bench to the 1d DR he could not justify the grounds raised before us in this appeal. However, in the interest of justice as the penalty deleted by the 1d CIT(A) is also covered by the order of coordinate bench in assessee's own case for AY 2006-07. The penalty levied by the AO are rightly deleted by the 1d CIT(A). The operative part of the order of the coordinate bench is reproduced while deciding cross objection of the assessee, following the same order we also confirm the order of the 1d CIT(A) in deleting the penalty. In the result appeal of the revenue is dismissed.
14. In the result appeal of the revenue is dismissed and cross objection filed by the assessee is allowed.

Order pronounced in the open court on 31/01/2017.

-Sd/-

**(H.S.SIDHU)
JUDICIAL MEMBER**

-Sd/-

**(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER**

Dated: 31/01/2017

A K Keot

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi