

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'C' NEW DELHI**

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

I.T.A. No. 100/Del/2015
Assessment Year: 2010-11

HARISH NARINDER SALVE,
6E & 6F, BHAGWAN DASS ROAD,
NEW DELHI - 11 0001
(PAN: AHFPS7386B)

(ASSESSEE)

VS. ACIT, CIRCLE 37(1),
ROOM NO. 2005,
E-2, CIVIC CENTER,
JL NEHRU MARG,
NEW DELHI - 110002
(RESPONDENT)

Assessee by: SH. SACHIT JOLLY, ADV.

Revenue by: SH. ARUN KUMAR YADAV, SR. DR

ORDER

PER H.S. SIDHU, JM

This appeal is filed by assessee against the Order dated 07.10.2014 passed by the Ld. CIT(A)-XXVIII, New Delhi relating to Assessment Year 2010-11.

2. The grounds raised by the assessee read as under:-

- "1. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming the action of the AO imposing the penalty of Rs. 4,04,635/- under section 271(1)(c) of the Act by alleging that the appellant furnished inaccurate particulars of income thereby resulting into concealment of income.*
2. *That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in confirming penalty under section*

271(1)(c) of the Act as a result of the following additions:

- a) disallowance of depreciation on car and*
- b) inadvertently not adding back a sum of Rs. 1,69,948/- towards loss on fixed assets (which was duly disclosed in the Tax Audit Report) which is a sheer inadvertent error.*

That the above grounds of appeal are without prejudice to each other.

That the appellant reserves its right to add, alter, amend or withdraw any ground of appeal either before or at the time of hearing of this appeal."

3. The brief facts of the case are that the assessee filed his return of income declaring at Rs. 34,74,20,950/- on 14.10.2010. He has also filed a revised return on 31.3.2012 declaring income at Rs. 34,94,15,822/- which was processed under section 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act). The case of the assessee was selected for scrutiny. A notice u/s. 143(2) of the Act was issued and served upon the assessee. In response to the same, the A.R. of the assessee attended the proceedings and filed the necessary details information / documents alongwith the books of accounts and vouchers. The Assessee is an Advocate by profession and derived income from Profession, income from Capital Gain and income from other sources. The assessment in this case was completed u/s. 143(3) of the Act on 12.1.2013 at an income of Rs. 35,10,91,350/- against the revised returned income of Rs. 34,94,15,822/- and following additions / disallowances were made:-

- i) Disallowance of depreciation on Bentley Car of Rs. 11,40,000/-
- ii) Disallowance of loss on fixed assets of Rs. 1,69,498/-.
- iii) Addition on account of reduction in professional receipts of Rs. 3,66,027/-.

3.1 The AO initiated the penalty proceedings u/s. 271(1)(c) of the Act and held that the assessee has concealed his income and has furnished inaccurate particulars by wrongly claimed depreciation on Bentley car and also claimed wrong expenses under the head loss on fixed assets in his return. Considering the above, the AO levied the penalty of Rs. 4,04,635/- u/s. 271(1)(c) of the Act vide order dated 25.7.2013.

3.2 Being aggrieved by the penalty order dated 25.7.2013 passed by the AO of Rs. 4,04,635/- u/s. 271(1)(c) of the I.T. Act, 1961, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 07.10.2014 has confirmed the penalty imposed by the AO.

4. Against the above order of the Ld. CIT(A) dated 07.10.2014, assessee is in appeal before the Tribunal.

5. During the hearing, Ld. Counsel of the assessee has stated that Ld. CIT(A) erred in confirming the penalty of Rs. 4,04,635/- u/s. 271(1)(c) of the Act by alleging that the assessee furnished inaccurate particulars of income which resulting into concealment of income. He further stated that the said penalty was imposed as a result of additions

made on account of disallowance of depreciation on car and inadvertently not adding back a sum of Rs. 1,69,498/- towards loss on fixed assets (which was duly disclosed in the Tax Audit Report) which is a sheer inadvertent error. Ld. Counsel of the assessee has filed two Paper Book dated 30.8.2017 & 11.9.2017. In the first Paper Book dated 30.8.2017 is containing pages 1 to 111 in which the Assessee's counsel has enclosed the copy of the Tax Audit Report alongwith relevant annexures; copy of Computation of Income; Copy of submission dated 16.9.2014 filed before the CIT(A) alongwith the Annexures; copy of submission dated 26.9.2014 filed before Ld. CIT(A) alongwith the Annexures and copy of submission dated 29.9.2014 filed before the Ld. CIT(A) alongwith the Annexures. He also draw our attention towards the page no. 23 to 33 and reiterated the submissions made before the Ld. CIT(A). He further draw our attention towards page no. 87 to 92 and reiterated his submission that the car was used for the assessee's professional pursuits. He further draw our attention towards the page no. 68 & 94 which are the copy of the Motor Insurance Cover Note dated 04.05.2009 and copy of Credit Card statement of Standard Chartered Bank of the assessee. He further draw our attention towards page no. 106, 107, 111, which are the copies of ledger account of the assessee for the period 31.3.2006 to 31.3.2010 showing the date 16.05.2009 on which date a payment of Rs. 22 lacs was debited to Mr. K. Iyer towards part payment of Bentley Car; copy of Bank statement of assessee showing DD dated 16.5.2009 to Mr. PK Iyer of Rs. 22 lacs and page no. 111 is a copy of cash receipt received from Sh.

Harish N. Salve, 42, Purvi Marg, Vasant Vihar, New Delhi – 57 of Rs. 1,52,00,000/- of Draft/Cheque No. 083239 and 002199 and 004606 dated 16.5.2009, 15.10.2009 and 23.11.2009 of Citi Bank in full and final payment towards the Benteley Car RegistrationNo. DL3CBN 3636 of Mr. P.K. Iyer, 36, Sarojini Devi Road, Secunderabad – 500003. In view of the above, Ld. Counsel of the assessee had stated there is no documentary evidence which could support the fact that the assessee owned the car since May, 2009 as the registration of the car in his name was completed in November, 2009 for which part payment was made in May, 2009. He further stated that assessee was personally driving the car and had never maintained any log books in respect of a car which is under his personal use and in order to avoid any suggestion the assessee had made a claim which was not justified and accordingly he advised his accountant not to pursue the matter any further and to withdraw the claim. But unfortunately this has been construed in the order as an admission that the claim itself was false. In the second Paper Book which is containing pages 1 to 140 in which the assessee's counsel has attached the copies of the decisions i.e. Mysore Mineral Ltd. Vs. CIT (SC) (1999) 239 ITR 75, ITO, Ward 15(3), New Delhi vs. M/s Rawalpindi Jewellers Pvt Ltd. ITA Nol. 3855/Del/2007 (AY 2004-05), Dilip Kumar Roy vs. CIT, Poona (1974) 94 ITR 1; CIT, Tamil Nadu-IV, vs. Imperial Automobiles (1983) 14 ITR 60; Kanbay Software India (P) Ltd. Vs. DCIT, Circle 8, Pune (2009) 31 SOT 153; DCIT vs. Royal Metal Printers (P) Ltd (2005) 93 TTJ 119; DCIT vs. M/s Security Printing and Minting Corporation of India Ltd. ITA No.

4871/Del/2013 (SY 2006-07) and Price Waterhouse Coopers Pvt. Ltd. Vs. CIT & Anr. (2012) 348 ITR 306 (SC). However, he especially draw our attention towards page no. 117 to 120 which is decision of the ITAT, Mumbai Bench in the case of CIT vs. Royal Metal Printers (P) Ltd. Passed in ITA No. 3597/Mum/1996 AY 1991-92 dated 8.10.2003 reported in (2005) 93 TTJ (Mumbai) 119 where in the same Judicial Member was the author and on similar facts, it was held penalty under section 271(1)(c) of the Act could not be levied simply because the assessee had withdrawn the claim for depreciation after the survey operation. In view of the above, Ld. Counsel of the assessee has stated that penalty in dispute may be deleted by cancelling the orders of the revenue authorities.

6. On the other Ld. DR relied upon the orders of the authorities below and reiterated the written submission filed in the shape of small Paper Book containing pages 1 to 4. He further submitted that Assessee has made illegal and unjustified claim of expenses on account of depreciation on car and on account of loss on sale of fixed assets. The assessee has understated his taxable income by claiming depreciation at Rs. 11,40,000/- and loss on sale of fixed assets at Rs. 1,69,498/-. The assessee did not voluntarily surrender the claim of depreciation, it was only when a show cause was issued by the Assessing Officer as to basis of claim of depreciation for entire year. Before issuing show cause the assessee was sitting quietly. This shows that this was not mere a bona fide mistake or error. Ld. DR further stated that the assessee was unable

to prove that he had filed the true particulars of his income and expenses during the assessment proceedings. The facts clearly show that though the car was purchased and delivered in November 2009, the assessee had wrongly claimed depreciation for the entire year. He had thus tried to make wrong claim in spite of the fact that these facts were very much in his knowledge. The seller of the car has categorically mentioned that the car has been delivered to the assessee on 23.11.2009. Ld. DR stated that it is thus clear case of reducing the income tax liability and concealing the income. The fact was very much in the knowledge of the assessee and the claim of depreciation and loss on sale of assets is ex facie bogus which attracts penalty u/s 271 (1) (c). In view of the above, he relied upon the following cases laws:-

- i) MAK Data P. Ltd. Vs. CIT (38 Taxmann.com 448) / (2013 358 ITR 593)
- ii) CIT vs. Escorts Finance Ltd. (183 Taxman 453).
- iii) CIT vs. Zoom Communication (P) Ltd. 191 Taxman 179 (Delhi).
- iv) BA Balasubramaniam and Bros. Co. Vs. CIT (1999) 236 ITR 977 (SC).
- v) CIT vs. Reliance Petroproducts (2010) 189 Taxman 322 (SC)
- vi) Union of India vs. Dharmendra Textile Processors (2007) 295 ITR 244.

7. We have heard both the parties and perused the records available with us especially the order passed by the revenue authorities and we

find that the assessee has filed his return of income for the assessment year in dispute on 14.10.2010 declaring total income of Rs. 34,74,20,950/-. Assessee has also filed his revised return of income on 31.3.2012 declaring total income of Rs. 34,94,15,822/- and AO has completed the assessment u/s. 143(3) of the Act on 08.1.2013 at the total income of Rs. 35,10,91,350/- by making the addition of Rs.11,40,000/- on account of depreciation allowance for the first half added back on Bentley Car offered and added to the computation of income to avoid litigation; Loss on fixed assets omitted to be added back due to oversight amounting to Rs. 1,69,498/- and reversal of professional fee offered to tax in earlier years – payments not received amounting to Rs. 3,66,027/-. It is pertinent to mention here that during the assessment proceedings assessee has given his explanation supported by documentary evidences on the addition in dispute, especially on the depreciation issue that he has forgone the benefit of 50% depreciation added back on account of Bentley Car and offered the amount of tax vide his letter dated 20.11.2012 to avoid litigation, which is placed at page no. 34 of the Paper Book filed before us. The contents of the said letter is reproduced below:-

“While going through my records for the financial year 2009-10, I have noticed that the addition of one car of Bentley make was made by me in May, 2009 by making an advance payment of Rs. 22 lacs and another advance payment was made in

October, 2009 for Rs. 40 lacs. However, the balance payment of Rs. 90 lacs was made in November, 2009 when actual transfer documents were signed. There is no documentary proof available with me to confirm that the purchase of car was prior to 30 September and thus eligibility for full year. The Tax Auditor, however, certified claim of depreciation for full year.

In order to avoid any unnecessary tax implications, I, voluntarily on my own motion, have attached a revised computation of my taxable income by disallowing 50% of the depreciation claimed on this addition and has reduced my claim for refund of tax to Rs. 6,87,300/-.

You are requested to take the attached computation of my income and tax liability into consideration while framing the assessment.

For any further information/ clarification, please let me know."

7.2 We further note that during the appellate proceedings, the assessee has filed an affidavit which is placed in Paper Book at page no. 87 to 92 wherein it was stated that assessee has received a copy of

assessment order dated 12.1.2013 in which it was noticed that one of the disallowance relates to depreciation claimed in respect of Bentley Car Number DL3C BN 3636 owned by assessee. At the time of assessment his account asked the assessee for evidence to establish that the assessee was using the car for professional purposes since the day of its acquisition in May, 2009. It was stated in the affidavit that it is obvious that there is no documentary evidence which could support the fact that the assessee owned the car since May, 2009 as the registration of the car in his name was completed in November, 2009 for which part payment was made in May, 2009. He further stated that assessee was personally driving the car and had never maintained any log books in respect of a car which is under his personal use and in order to avoid any suggestion the assessee had made a claim which was not justified and accordingly he advised his accountant not to pursue the matter any further and to withdraw the claim. On perusing the detailed affidavit, it is established that the car was used for his professional pursuits. We have also perused the page no. 68 & 94 of PB which are the copy of the Motor Insurance Cover Note dated 04.05.2009 and copy of Credit Card statement of Standard Chartered Bank of the assessee; the page no. 106, 107, 111, are the copies of ledger account of the assessee for the period 31.3.2006 to 31.3.2010 showing the date 16.05.2009 on which date a payment of Rs. 22 lacs was debited to Mr. K. Iyer towards part payment of Bentley Car; copy of Bank statement of assessee showing DD dated 16.5.2009 to Mr. PK Iyer of Rs. 22 lacs and page no. 111 is a copy of cash receipt received from Sh.

Harish N. Salve, 42, Purvi Marg, Vasant Vihar, New Delhi – 57 of Rs. 1,52,00,000/- of Draft/Cheque No. 083239 and 002199 and 004606 dated 16.5.2009, 15.10.2009 and 23.11.2009 of Citi Bank in full and final payment towards the Benteley Car RegistrationNo. DL3CBN 3636 of Mr. P.K. Iyer, 36, Sarojini Devi Road, Secunderabad – 500003. In view of the above, it is crystal clear that there is no documentary evidence which could support the fact that the assessee owned the car since May, 2009 as the registration of the car in his name was completed in November, 2009 for which part payment was made in May, 2009 after the full payment was made and on completion of custom requirements. Moreover, the claim for depreciation only gets deferred to subsequent Years by claiming it for half year. In our view the deferral of depreciation allowance does not result into any concealment of income or furnishing of furnishing of any inaccurate particulars. However, it was a sheer accounting error in debiting loss incurred on sale of a fixed asset to profit and loss account instead of reducing the sale consideration from wdv of the block under block concept of depreciation. There was a sheer accounting error in debiting loss incurred on sale of a fixed asset to profit & loss account instead of reducing the sale consideration from wdv of the block under block concept of depreciation. There was a separate line item indicated loss on fixed asset of RS.1,69,429/- in the Income & Expenditure Account which was omitted to be added back in the computation. The error went un-noticed by the tax auditor as well as the same was overlooked while certifying the Income & Expenditure Account

and by the tax consultant while preparing the computation of income. Hence, there was no intention to avoid payment of taxes. The quantum of assessee tax payments clearly indicates the assessee intention to be tax compliant. Moreover, the assessee with a returned income of 34.94 crores and tax payment of more than Rs.10.85 crores which does not show any mala fide intention to conceal an income of RS.13.09 lacs (not even 0.4% of returned income) with an intention of evading tax of Rs.4 lacs (not even 0.4% of taxes paid). Therefore, in view of the abovementioned facts and circumstances, the allegation that assessee was having any mala fide intention to conceal his income or for furnishing inaccurate particulars of income is not correct, hence, the penalty in dispute needs to be deleted. We further note that the case laws relied upon by the Ld. DR are distinguishable to the facts of the present case, hence, the same are not applicable in the present case. Whereas the facts and circumstances of the case law cited by the Ld. Counsel of the assessee i.e. decision of the ITAT, Mumbai Bench in the case of CIT vs. Royal Metal Printers (P) Ltd. Passed in ITA No. 3597/Mum/1996 AY 1991-92 dated 8.10.2003 reported in (2005) 93 TTJ (Mumbai) 119 in which the Judicial Member was the Author of decision is similar and identical to the present case, wherein it was held penalty under section 271(1)(c) of the Act could not be levied simply because the assessee had withdrawn the claim for depreciation after the survey operation and penalty was deleted. In the present case, it is also noted that AO has not brought on record any material or

evidence on the basis of which it could be concluded that the assessee had concealed income or furnished inaccurate particulars of income.

8. Keeping in view of the facts and circumstances of the case, we are of the considered view that the assessee's conduct cannot be said to be contumacious so as to warrant levy of penalty. Accordingly, we set aside the orders of the authorities below and delete the levy of penalty in dispute.

9. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced on 21/09/2017.

Sd/-

**[L.P. SAHU]
ACCOUNTANT MEMBER**

Date 21/09/2017

"SRBHATNAGAR"

Copy forwarded to: -

1. Appellant -
2. Respondent -
3. CIT
4. CIT (A)
5. DR, ITAT

TRUE COPY

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

By Order,

Assistant Registrar, ITAT, Delhi Benches