

**आयकर अपीलीय अधिकरण "G" न्यायपीठ मुंबई में।**

**IN THE INCOME TAX APPELLATE TRIBUNAL "G" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER  
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.1991/Mum/2017

(निर्धारण वर्ष / Assessment Year : 2006-07)

M/s. S.D. Health & Beauty C/o. S D Construction, Geetanjali CHS Ltd., Plot No. 11, Shastri Nagar, Goregaon (W), Mumbai- 400 104	<b><u>बनाम/</u></b>  v.	DCIT 24(3) 1 <sup>st</sup> floor, C-13 Pratyakshakar Bhavan, BKC, Bandra (E) Mumbai-400051
स्थायी लेखा सं./PAN:ABEFS2856B		
(अपीलार्थी / <b>Appellant</b> )	..	(प्रत्यर्थी / <b>Respondent</b> )
Assessee by:	Shri. Sunil Desai	
Revenue by :	Shri. Chaudhary Arun Kumar Singh	

सुनवाई की तारीख /**Date of Hearing** : 13.11.2018

घोषणा की तारीख /**Date of Pronouncement** : 06.02.2019

**आदेश / ORDER**

**PER RAMIT KOCHAR, Accountant Member:**

This appeal, filed by Assessee, being ITA No. 1991/Mum/2017, is directed against appellate order dated 22.12.2015 passed by learned Commissioner of Income Tax (Appeals)-42, Mumbai (hereinafter called "the CIT(A)"), for assessment year 2006-07, the appellate proceedings had arisen before learned CIT(A) from the penalty order dated 09.03.2012 passed by learned Assessing Officer ( hereinafter called "the AO") u/s 271(1)(c) of the Income-tax Act, 1961 (hereinafter called "the Act") for AY 2006-07.

2. The grounds of appeal raised by Assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called "the tribunal") read as under:-

*" 1. On the basis of facts and in the circumstances of the case, the learned CIT(A) erred in confirming penalty of Rs. 119,731/- u/s. 271(1)(c).*

*2. The appellant craves leave to add, to alter, to amend, to modify or to delete any of the grounds of appeal."*

3. The brief facts of the case are that assessee is a firm and is engaged in the business of Beauty Parlour. The assessee has claimed depreciation on office premises to the tune of Rs. 8,37,906/- which was disallowed to the tune of Rs. 3,63,548/- being excess depreciation claimed by the assessee. Further disallowance was made by the AO of Rs. 27,727/- on account of certain assets which were purchased in the name of M/s S.D. Construction proprietary concern of Shri. Shekhar Dadarkar who is partner in the assessee firm. It all happened that the assessee has shown the value of office premises acquired of Rs. 167.58 lacs , and the value which was assessed by Shri. Shekhar Dadarkar of the said office flats was Rs. 165 lacs . The said asset being portion of Building named 'Dhanlaxmi CHS' in Goregaon , Mumbai was transferred and recorded in the books of the assessee at Rs. 167.58 lakhs during the impugned assessment year. The assessee claimed depreciation @5% on this amount of Rs. 167.58 lakhs but subsequently in the next assessment year , the transfer of the said asset was regularised by registered agreement which was registered with the registration authorities on 05.08.2006 for Rs. 92,29,040/- . The assessee during the course of assessment proceedings revised the depreciation amount to Rs. 4,74,358/- by reducing it by Rs. 3,63,548/- by claiming depreciation on value of Rs. 94,87,163/-, which led to the addition to the income of the assessee declared in the return of income filed with Revenue to the tune of Rs. 3,63,548/- vide assessment framed by the AO.

4. The second issue pertains to certain fixed assets which were purchased by S.D Construction proprietary concern of Shri. Shekhar Dadarkar but however the said assets were transferred to the books of the assessee firm by way of journal entry and the assessee claimed depreciation of Rs. 27,727/-. The depreciation on the said fixed assets was disallowed by the AO and the matter went up to the tribunal and tribunal vide orders dated 29.08.2012 in ITA no. 5402/Mum/2010 for AY 2006-07 was pleased to dismiss the appeal of the assessee against quantum additions and confirm the additions as were made by the AO which was later confirmed by the Ld. CIT(A). Now the AO has invoked penalty provision u/s. 271(1)(c) of the Act and on both the issues penalty was levied by the AO to the tune of Rs. 1,19,731/- being 100% of the tax sought to be evaded by the assessee within the meaning of Section 271(1)(c) of the 1961 Act, vide penalty orders dated 09.03.2012 passed by the AO u/s. 271(1)(c) of the 1961 Act.

5. The matter travelled to Ld. CIT(A) who was also pleased to dismiss the appeal of the assessee .

6. Now the matter has reached tribunal at the behest of the assessee and the Ld. Counsel for the assessee has advanced argument that so far as depreciation on office premises is concerned , it was capitalised at a higher value of Rs. 167.58 lacs in books of accounts of the assessee for the impugned assessment year while later on in the next assessment year , the assessee has entered into an registered agreement for a lower figures of Rs. 92,29,040/- and hence the depreciation was suo-moto revised downward on the registered value of the office premises. So far as other issue is concerned, it was submitted that the assets were purchased by the assessee but the invoices were made by vendors in the name of S.D. Construction as the said concern is very popular in the market. The assets were transferred to the books of the assessee by way of journal entry. Thus, it was submitted that it is only the invoices which were in the name of the S.D. Construction as it was submitted that this concern S

D Construction is a very famous/popular concern and in normal course vendor prepare invoices in the name of S. D. Construction as it is a well known concern in the market. It was submitted that no depreciation was claimed by the said concern S.D Construction. It was submitted that the issue was decided against the assessee in quantum by Ld. CIT(A) as well as by tribunal in ITA no. 5402/Mum/2010, vide orders dated 29.08.2012 on this issue of purchase of fixed assets in the name of concern S D Construction on which depreciation of Rs. 27,727/- was claimed by the assessee .

7. The Ld. DR on the other hand relied upon the appellate order passed by the Ld. CIT(A) .

8. In rejoinder our attention was drawn by Ld. Counsel for the assessee to the Registered Agreement for transfer of office premises which is placed in paper book at page no. 27 to 44 filed by the assessee. Our attention was also drawn to valuation certificate issued by Shri. Shekhar Dadarkar dated 01.12.2005 wherein valuation of the said office premises was done at Rs. 165 lakhs which is placed in paper book at page no 45.

9. We have heard rival contentions and have perused the material on record. We have observed that the assessee is partnership firm engaged in the business of Beauty Parlour. The assessee acquired certain business premises for which value was taken in the books of accounts at Rs. 167.58 lakhs during the impugned assessment year based on the valuation certificate issued by Shri. Shekhar S. Dadarkar which is placed in the paper book at page no. 45. The assessee claimed depreciation of Rs. 8,37,906/- at the rate of 5% on the said valuation of the office flats which was recorded in books of accounts of the assessee. Subsequently on 05.08.2006 the said office premises was registered for Rs. 92,29,040/- vide registered agreement and lower depreciation was claimed on it by revising the depreciation claimed earlier downward which led to reduction of depreciation by

Rs. 3,63,548/- . The assessee on realising its mistake has suo motto revised aforesaid depreciation during assessment proceedings and claimed depreciation on lower value on which the asset was transferred subsequently on 05.08.2006. In our considered view , the assessee had justifiable cause for claiming higher depreciation in the return of income filed with Revenue for impugned assessment year AY 2006-07 as the said office premises was transferred in the books of account of the assessee for value recorded at Rs. 167.58 lakhs during impugned assessment which was based on valuation certificate and it could not be said that the said valuation is without any cause or justification , thus it led the assessee to claim higher depreciation but however for whatever reasons the said assets was transferred vide registered agreement entered into on 05.08.2006 at lower value of Rs. 92.29 lacs which led the assessee to revise its claim of depreciation downward for impugned assessment year by withdrawing claim of depreciation to the tune of Rs. 3,63,548/-. Thus under these circumstances in our considered view , the assessee has come out with bonafide explanation and under these circumstances no penalty is exigible on the assessee u/s 271(1)(c) of the 1961 Act as the assessee case is covered by Explanation 1 to Section 271(1)(c) of the 1961 Act. Thus, we order deletion of penalty levied by the AO on this ground by invoking provisions of Section 271(1)(c) of the 1961 Act. We order accordingly.

So far as second disallowance of depreciation of Rs. 27,727/- is concerned on which penalty was levied by the AO u/s 271(1)(c) of the 1961 Act, the facts are that assessee had purchased certain office assets for which invoices were raised by the vendor in the name of S.D. Construction . It is claimed that the said concern S.D.Construction is very famous concern in market and people know this concern. The vendors had inadvertently made invoices in the name of this concern as it is well known concern in market. It is submitted that the assessee accounted for these purchases in its

books of accounts and these assets were transferred to the assessee books of accounts through journal entries. It is also being averred that no depreciation was claimed by S.D. Construction on these assets. We have also noted that the claim of the assessee for depreciation on these assets did not found favour by the all the authorities concurrently while adjudicating quantum additions till the stage of tribunal and the appeal of the assessee was dismissed by tribunal on this ground in ITA no. 5402/Mum/2010, vide orders dated 29.08.2012 for AY 2006-07. However so far as levability of penalty u/s 271(1)(c) is concerned, we are of considered view that the assessee has indeed brought this asset in its books of accounts by transferring these assets to its books of accounts through journal entries. It is also claimed that the asset was used for business purposes. It could not be refuted by learned DR that the said assets were not used for business purposes of the assessee. The invoices were only drawn by vendor in the name of other concern M/s S.D.Construction and the said concern did not avail depreciation on these assets as is claimed by the assessee. Under these circumstances, we are of the considered view that no penalty u/s 271(1)(c) is exigible on the assessee and we order deletion of penalty as was levied by the AO u/s 271(1)(c) which stood later confirmed by learned CIT(A) on this count. We order accordingly.

10. In the Result, appeal of the assessee in ITA no. 1991/Mum/2017 for AY 2006-07 is allowed as indicated above.

Order pronounced in the open court on 06.02.2019.

आदेश की घोषणा खुले न्यायालय में दिनांक: 06.02.2019 को की गई

Sd/-

(SAKTIJIT DEY)

JUDICIAL MEMBER

Sd/-

(RAMIT KOCHAR)

ACCOUNTANT MEMBER

Mumbai, dated: 06.02.2019

*Nishant Verma*  
*Sr. Private Secretary*

copy to...

1. The appellant
2. The Respondent
3. The CIT(A) – Concerned, Mumbai
4. The CIT- Concerned, Mumbai
5. The DR Bench,
6. Master File

// Tue copy//

BY ORDER

DY/ASSTT. REGISTRAR  
ITAT, MUMBAI