IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER
AND
SHRI BRAJESH KUMAR SINGH, ACCOUNTANT MEMBER

ITA No. 1484/Del/2024
Asstt. Yr: 2017-18

ACIT, Circle-16(1), New Delhi.	Vs	Mahashian Di Hatti Pvt. Ltd., 9/44, Kirti Nagar Industrial Area, New Delhi-110015. PAN: **AAACM 4165 F**
APPELLANT		**RESPONDENT**
Assessee represented by	Shri Vinod Kumar Bindal, CA; Ms. Rinky Sharma, ITP; & Shri Saurabh Sharma, Adv.	
Department represented by	Shri Amit Shukla, Sr. DR	
Date of hearing	08.08.2024	
Date of pronouncement	08.08.2024	

O R D E R

PER KUL BHARAT, JM:

This appeal, by the Revenue, is directed against the order of the National Faceless Appeal Centre (NFAC), Delhi, dated 29.01.2024, deleting the penalty amounting to Rs. 1,13,76,592/- levied by the Assessing Officer u/s 270A of the Income Tax Act, 1961 (the "Act"), pertaining to the assessment year 2017-18. The Revenue has raised following grounds of appeal:

"1. Whether on the facts and in the circumstances of the case the learned CIT(A) has erred in deleting the penalty imposed u/s 270A of Rs. 1,13,76,592/- ignoring the provisions of section 270A are attracted in this case as the assessee has misreported its income by claiming excess depreciation?

2. The appellant craves leave, to add, alter or amend any ground of appeal raised above at the time of the hearing."

2. Facts of the case, in brief, are that for A.Y. 2017-18 the assessee filed its return of income declaring income of Rs.383,45,50,210/-. The case was selected for scrutiny under CASS. During assessment proceedings the AO noticed that there was difference of Rs.1,63,21,921/-in opening written down value (WDV) in the ITR for AY 2017-18 and closing written down value for AY 2016-17. The AO confronted the same u/s 142(1) of the Act. In response the assessee accepted the inadvertent mistake stating that the opening WDV for AY 2017-18 was inadvertently taken as per the book value of the asset rather than the closing WDV for AY 2016-17. Assessee also offered the excess depreciation claimed by it for taxation. Accordingly, the assessment was completed u/s 143(3) on 12/12/2019 assessing total income of Rs. 385,08,72,140/- by adding Rs. 1,63,21,921/- to the returned income of Rs.383,45,50,210/-. The AO also initiated penalty proceedings u/s 271A of the Act for underreporting in consequence of misreporting of income to the extent of Rs. 1,63,21,921/-. In penalty proceedings the Assessing Officer, rejecting the explanation furnished on behalf of the assessee, vide order dated

02.09.2021 levied a penalty of Rs. 1,13,76,592/- @ 200% of the tax payable at Rs. 56,88,296/-. Against it the assessee preferred appeal before the learned First Appellate Authority, who vide impugned order dated 29.01.2024 deleted the penalty. Against it the Revenue is in appeal before this Tribunal.

3. The learned DR relied on the penalty order and submitted that the learned CIT(Appeals) was not justified in deleting the penalty in question.

4. On the other hand, learned counsel for the assessee reiterated the submissions as made before the authorities below and submitted that the difference between the assessed income and the returned income was on account of depreciation, where inadvertently the opening written down value (WDV) of the assets was taken at book value in the audited annual accounts prepared under the Companies Act instead of written down value (WDV) under the Income-tax Act by the auditors in their tax audit report u/s 44AB of the Act. Both the accounts and the said report were submitted with the return of income. Consequently, the assessee also claimed the depreciation in the return of income as computed in the tax audit report by the tax auditors. The said error, as soon as it was noticed, was intimated for correction to the Assessing Officer vide letter dated 29/11/2019 much before completing the assessment proceedings. He submitted that there is no change in the value of the assets purchased during the year and the error just a clerical oversight

in the opening WDV balance as out of the two correct WDVs under the two different Acts, one instead of the other was got picked up due to clerical oversight. He submitted that all material facts were on record before the Assessing Officer. He submitted that assessee had also deposited advance income-tax on the income assessed even after the addition. As per the assessment order itself, the assessee has been granted a refund of Rs 1.88 crores and there was no mala fide intention on the part of the assessee to underreport any income u/s 270A of the Act as the substantial advance-tax had been deposited and even after the addition, still the assessee is entitled to refund. He submitted that the Assessing Officer has levied penalty in question solely on the ground that assessee did not file revised return u/s 139(4) of the Act. Learned counsel relied on the impugned order of learned CIT(Appeals) in deleting the penalty in question.

5. We have heard rival submissions and perused the material available on record. The learned CIT(Appeals) has deleted the penalty levied u/s 270A of the Act, inter alia, by observing as under:

> *"6.1 On the given facts, I find that this is clearly a case of inadvertent mistake on part of the appellant, in as much as an incorrect figure for opening WDV of block of assets has been adopted for the purpose of computing the admissible depreciation. The mistake is purely an oversight. because both the figures i.e. the closing WDV of block of assets as per the Income Tax Act and the closing WDV of block of assets as per the Companies Act, for the immediately preceding year, were available on record; but the incorrect figure was adopted by mistake by the Tax Auditor,*

and the same was relied upon by the appellant while filing its return of income. This oversight resulted in an excess claim of depreciation as per the return for an amount of Rs. 1.63 Crore. The appellant company has a declared Turnover to the tune of Rs. 978 Crore and returned income to the tune of Rs. 383 Crore for the year under consideration. The excess claim of depreciation made, as a result of this oversight, is less than even one percent of the returned income. The appellant company has been declaring returned income of more than Rs. 100 Crore and paying substantial taxes over the years. On considering the totality of facts, I am inclined to concur with the view that this cannot be a case of deliberate under reporting of income on part of the appellant.

6.2 Furthermore, I also note that the appellant has been consistent in offering explanation with regard to the said inadvertent error in computing the depreciation admissible under the provisions of Income Tax Act; in the course of assessment proceedings, penalty proceedings as also during the appellate proceedings. I find that the explanation offered by the appellant, having regard to the nature and quantum of the income alleged to be under reported, is bona fide within the meaning of sub-section (6) of section 270A, and the appellant has disclosed all the material facts to substantiate the said explanation.

6.3 In the present case, AO has levied penalty at a higher rate of 200 percent, under sub-section (8) of section 270A in respect of the under reported income, holding the same to be in consequence of misreporting of income. The instances of misreporting of income have been enumerated under clause (a) to clause (f) of sub-section (9) of section 270A. AO has not specifically mentioned the relevant clause of sub-section (9) of section 270A, which is sought to be invoked in this case. AO has only mentioned that the appellant has committed default of misrepresentation and suppression of facts. However, in view of the facts stated above, I am constrained to disagree with the findings of AO in this regard. The excess claim of depreciation, which is the subject matter of addition, was a result of oversight in adopting an incorrect figure for the opening WDV for block of assets. It has already been brought out in preceding paragraphs that both the figures of opening WDV for block of assets, i.e. as per the Companies Act and as per the Income Tax Act, were clearly available on record (in audited financial statements, the tax audit reports and the return of income). In fact, the correct figure of opening WDV to be adopted for the purpose of claim of depreciation was the closing WDV for the immediately preceding

year; and the same was available in the return of income filed for that year. In other words, the relevant and material fact in respect of the alleged under reporting of income, i.e. the correct figure of opening WDV was available both with the Department and the appellant. Rather, it was not even possible for the appellant to misrepresent or suppress this relevant and material fact. Therefore, I find that by no stretch of imagination this case would fall under clause (a) of sub-section (9) of section 270A, as there was clearly no misrepresentation or suppression of facts. It is further noted that the other clauses, i.e. clause (b) to clause (f) of sub-section (9) of section 270A, are also not applicable to the facts of the present case.

6.4 Hon'ble High Court of Rajasthan in the case of Chambal Fertilizers and Chemicals Ltd. Vs Pr. CIT (2024) (158 taxmann.com 184) (Rajasthan) has held that where during scrutiny assessee realized aspect of merging GST Input Credit with expenses and same was suo-moto surrendered by assessee by revising its return, however revenue imposed penalty under section 270A and thereafter, rejected application of assessee under section 270AA, since revenue wasn't sure whether it was a case of misrepresentation or suppression of facts or claim of expense and application under section 270AA was rejected in a wholly cursory manner indicating that case of assessee was within ambit of clause (a) and (c) of section 270A(9) and without giving any cogent reasons, same could not be sustained.

6.5 Hon'ble ITAT, Mumbai Bench in the case of Alrameez Construction (P.) Ltd. Vs NFAC (2023) (152 taxmann.com 382) (Mumbai Trib.) has held that where Assessing Officer made addition under section 43CA read with section 56(2)(x), case of assessee did not fall in category of under reporting of income and moreover since in penalty notice under section 270A revenue had failed to specify limb "under-reporting" or "misreporting" of income, under which penalty proceedings had been initiated, entire proceeding was not only erroneous but also arbitrary and bereft of any reason.

6.6 Hon'ble Delhi High Court ("the jurisdictional High Court") in the case of Prem Brothers Infrastructure LLP Vs NFAC (2022) (142 taxmann.com 38 (Delhi) has held that where penalty was levied on assessee under section 270A alleging misreporting of income, however, fact that assessee had furnished all details of transactions relating to disallowance made under section 14A and Assessing Officer as well as assessee had used same details to arrive at different quantum of disallowances, this by no stretch of imagination could be held to be 'misreporting' and further, in absence of details as to which limb of section 270A was attracted, impugned

penalty order was to be quashed and revenue was to be directed to grant immunity under section 270AA.

7. In view of the facts and circumstances of the case, and the prevailing position of law, I find that this is a not a case of under-reporting or misreporting of income, within the meaning of section 270A of the Act. The alleged under-reporting by way of excess claim of depreciation was made purely as a result of oversight, for which a bona fide explanation was offered by the appellant. This is not a case of misrepresentation of suppression of facts, as all the relevant and material facts were already on record. Therefore, the action of AO in levying penalty under section 270A (8) at the rate of 200 percent of tax payable on under-reported income is not sustained. The Jurisdictional Assessing Officer (JAO) is directed to delete the penalty of Rs. 1,13,76,592/- levied on this account."

6. The assessee's stand in the case in hand is that the difference between the assessed income and the returned income was on account of depreciation, where inadvertently the opening written down value (WDV) of the assets was taken at book value in the audited annual accounts prepared under the Companies Act instead of written down value (WDV) under the Income-tax Act by the auditors in their tax audit report u/s 44AB of the Act. Both the accounts and the said report were submitted with the return of income. The learned First Appellate Authority in the impugned order has discussed the issue elaborately and in deleting the penalty levied u/s 270A of the Act has relied on the ratio of decision of the Hon'ble Jurisdictional High Court in the case of Prem Brothers Infrastructure LLP Vs NFAC (2022) (142 taxmann.com 38 (Delhi). Learned DR has not been able to prove the case of assessee on different footing. Thus, in the light of binding

precedents we do not see any infirmity. It is well said 'to err is human' a bona fide error cannot be basis of imposition of penalty. Under the peculiarity of the facts of the present case the impugned action of the learned CIT(Appeals) is justified in deleting the impugned penalty, same is hereby affirmed. Grounds taken by the Revenue are dismissed.

7. Appeal of the Revenue is dismissed.

Order pronounced in open court on 14.08.2024.

Sd/-	**Sd/-**
(BRAJESH KUMAR SINGH)	**(KUL BHARAT)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Dated: 14.08.2024.

MP
Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI