

\IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH “A” NEW DELHI  
BEFORE SHRI S.V. MEHROTRA : ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA : JUDICIAL MEMBER

ITA no. 1590/Del/2014

Asstt. Yrs: 2009-10

M/s B.L. International,  
50/7, Yusuf Sarai, New Delhi.

Vs. ACIT, Circle 24(1),  
New Delhi.

PAN: AA AF 5312 N

( Appellant )

(Respondent)

Appellant by : Shri Rajesh Arora CA  
Assessee by : Shri S.L. Anuragi DR

Date of hearing : 17/02/2016.

Date of order : 03/03/2016.

**ORDER**

**PER S.V. MEHROTRA, A.M:**

This is assessee's appeal against the order dated 15.01.2014, passed by the Id. CIT(A)-XXIII, New Delhi, relating to A.Y. 2009-10.

2. Brief facts of the case are that during the year under consideration the assessee had shown income from business or profession, income from house property and income from other sources and had filed return declaring income of Rs. 3,27,79,273/-. In course of assessment proceedings the AO noticed that during the year assessee had shown rental income of Rs. 29,26,000/- in respect of property at A-78, Sector 63, Noida. This income

was shown under the head income from house property and 30% deduction thereof had been claimed u/s 24(a) of the I.T. Act. The AO further noticed that this property was appearing in the fixed assets of the assessee's firm and depreciation of Rs. 7,87,734/- had been claimed thereon. This fact, when confronted to assessee, it vide letter dated 13.12.2011, submitted that depreciation had inadvertently been claimed on the same and withdrew the claim. The AO initiated penalty proceedings u/s 271(1)(c). The assessee, in reply to penalty notice, reiterated that depreciation had inadvertently been claimed on the said property, which, on realization by the assessee, was voluntarily offered to be added to the returned income of the assessee. The assessee submitted that the addition made by the AO was instantly agreed by the assessee during the course of assessment because the assessee realized that accounting error had crept in the computation and, therefore, no penalty should be levied. The AO, however, did not accept the assessee's contention based on various case laws and levied a penalty of Rs. 2,67,751/- u/s 271(1)(c), which was the minimum imposable being 100% of the tax sought to be evaded.

3. In appeal, the Id. CIT(A) confirmed the AO's action.
4. Being aggrieved, the assessee is in appeal before us. Sole effective ground taken is as under:

“The Id. CIT(A) has erred in law and facts of the case in confirming penalty of Rs. 2,67,751/- u/s 271(1)(c) of the Income Tax Act, 1961, ignoring the submission and explanations of assessee, which is highly unjustified, arbitrary, bad in law and uncalled for.”

5. Ld. counsel referred to page 2 of the PB, wherein the computation of total income is contained and pointed out that assessee had clearly given details in regard to income from house property and separately considered the depreciation allowable as per section 32. He pointed out that the computation was prepared by a professional and due to inadvertence the depreciation claimed on property in books of a/c was left to be included in the total income, as assessee had already claimed deduction u/s 24(a) while computing income from house property. He relied on the decision of Hon'ble Supreme Court in the case of Price Waterhouse Coopers (P) Ltd. Vs. CIT 348 ITR 306, wherein it has been held that if there was a bona fide and inadvertent error, then the penalty is not leviable.

6. We have considered the rival submissions and have perused the record of the case. Facts are not disputed. Admittedly, when the assessee was confronted with the depreciation being claimed on the property, the income from which had been returned under the head income from house property, it immediately realized its mistake of computation of total income and agreed for the addition to its total income. The mistake was inadvertent, is evident

from the fact that assessee had furnished return of income of Rs. 3,27,79,273/- and, therefore, there was no reason to make a false claim of a petty sum of Rs. 7,87,734/-. The property was appearing in the fixed assets schedule along with other properties, therefore, for all practical purposes, it was treated as a business asset and the depreciation was, accordingly, claimed in the books of account. This aspect is not disputed. It was only at the time of computation of income that the assessee should have made the addition to the profits as per P&L A/c because the income from this property was returned under the head income from house property. Under such circumstances it cannot be disputed that human error could have crept into while making the computation. Thus, it is evident that assessee did not misrepresent the facts at any stage of proceeding.

7. The Hon'ble Supreme Court in the case of Price Waterhouse Coopers (P) Ltd. (supra), under similar circumstances, has observed as under:

*“The contents of the Tax Audit Report suggest that there is no question of the assessee concealing its income. There is also no question of the assessee furnishing any inaccurate particulars. It appears that all that has happened in the present case is that through a bona fide and inadvertent error, the assessee while submitting its return, failed to add the provision for gratuity to its total income. This can only be described as a human error which we are all prone to make. The caliber and expertise of the assessee has little or nothing to do with the inadvertent error. That the assessee should have been careful cannot be doubted, but the absence of due care, in a case such as the*

*present, does not mean that the assessee is guilty of either furnishing inaccurate particulars or attempting to conceal its income.”*

8. In view of above discussion, the penalty levied u/s 271(1)(c) is deleted.

9. In the result, assessee's appeal is allowed.

Order pronouncement in open court on 03/03/2016.

Sd/-  
(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER

Dated: 03/03/2016.

**\*MP\***

Copy of order to:

1. Assessee
2. AO
3. CIT
4. CIT(A)
5. DR, ITAT, New Delhi.

Sd/-  
(S.V. MEHROTRA)  
ACCOUNTANT MEMBER