

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'F', NEW DELHI**

**BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
&
SHRI J.S. REDDY, ACCOUNTANT MEMBER**

**ITA No. 1721/Del/2013
Assessment Year: 2007-08**

Poysha Goyal,
8/7, Sire-IV, Indl. Area,
Sahibabad,
Ghaziabad.
AEWPG4566P
(Appellant)

vs.

ACIT,
Circle-2, CGO Complex-II,
Ghaziabad.

(Respondent)

Appellant by : Sh. R.S. Singhavi, CA
Respondent by : Shri Manoj Kumar Chopra, Sr. DR

ORDER

PER DIVA SINGH, J.M.

This is an appeal filed by the assessee against the order dated 08/11/2012 of CIT(A)-Muzaffarnagar pertaining to 2007-08 assessment year on the following grounds:

1. *“On the facts and circumstances of the case and in law, the CIT(A) erred in confirming the action of the AO of imposing penalty of Rs. 284500/- u/s 271(1)(c) of Income Tax Act, 1961.*
2. *On the facts and circumstances of the case and in law, the penalty of Rs. 284500/- levied by the AO and confirmed by CIT(A) is not sustainable and is liable to be cancelled/deleted.”*

2. The relevant facts of the case are that the assessee declared an income of Rs. 3,98,400/- from salary and business loss of current year amounting to Rs. 3,00,64,271/- to be carried forward. The case was

selected for scrutiny after issuance of notice u/s 143(2) along with notice 142(1) and questionnaire etc. As a result of which an addition of Rs. 4,60,160/- was made by the AO . The relevant facts which led to the addition being made are extracted from the assessment order hereunder:

3. *“The assessee is in generation of electricity through wind mills. As per purchase invoices in the name of M/s Om Windfarm, Shiv Windfarm & M/s Gopal Windfarm dated 20.05.2006 in which cases the assessee is the proprietor, having purchased these second hand Wind Mills including cost of land amounting to Rs. 4,83,00,000/-. On the mills she has claimed depreciation, but during verification it was found that sale/purchase deeds do not provide the separate cost of land and actual cost of Wind Mills. So it was found that the assessee was also claimed depreciation on land, which is not allowable. The assessee was asked to furnish the actual cost of land and actual cost of Wind Mills separately. In reply the AR has submitted the separate cost of land and Wind Mills. Accordingly, she accepted the excess depreciation claim of Rs. 4,60,160/- and filed a revised computation. After necessary verification and above submission an amount of Rs. 4,60,160/- is being added to the income of the assessee. Penalty u/s 271(1)(c) is also being initiated in this issue.*

Addition Rs. 4,60,160/-

3. As a result of this penalty proceedings were initiated. The explanation of the assessee that it was a wrong claim and not a false claim as the accountants had prepared the return taking the figures as appearing in the Sale Deed which evidently did not provide the separate cost of land and separate cost of windmills was a bonafide error and accordingly, the claim was not false was not accepted by the AO. Similarly, the argument that all facts were duly disclosed in the return of income and there was no case of furnishing of inaccurate particulars

was also not accepted. The AO in the penalty proceedings held that the assessee had deliberately and wrongly claimed depreciation on the amount of Rs. 4,60,160/- as a result of which penalty u/s 271(1)(c) was imposed.

4. In appeal before the CIT(A) the said action was confirmed. Aggrieved by this the assessee is in appeal before the Tribunal.

5. The Id. AR inviting attention to the specific finding of the AO in the assessment proceedings contended that the claim of depreciation was based on sale deeds which admittedly did not provide separate cost of land and separate cost of Wind Mills. This it was submitted is an admitted fact. Accordingly, it was his submission that the present case cannot be said to be where any inaccurate particulars have been filed or for that matter a false claim has been made as admittedly the accountants have gone by the figure given in the sale deed. It was his submission that a perusal of the assessment order would show that the assessment was concluded allowing the business loss of Rs.2,96,04,111/-. For ready-reference, we reproduce from the assessment order:-

<i>After discussion income of the assessee is computed as under:</i>	
<i>Income from Business/Profession (Loss)</i>	<i>Rs. 3,01,18,683/-</i>
<i>Income from other sources</i>	<i>Rs. 54,412/-</i>
<i>Addition as per para 3</i>	<i>Rs. <u>4,60,160/-</u></i>
<i>Business loss for current year to be carried forward</i>	<i>Rs. 2,96,04,111/-</i>

Income from Salary *Rs. 3,98,400/-*

After discussion assessment is completed on an income of Rs. 3,98,400/- from salary and business loss of current year to be carried forward of Rs. 2,96,04,111/-. Issue notice of demand, challan etc. after allowing credit of prepaid taxes. Charge interest u/s 234 accordingly. Penalty u/s 271(1)(c) is also being initiated in this case.”

5.1. Thus, on account of the above mentioned factual finding it was contended that it cannot be said that the assessee had any motive to make a false claim. The fact that this was the figure appearing in the sale deed it was re-iterated is an admitted fact before the AO. In the penalty proceedings it was contended it has been argued that merely because a wrong claim is made based on the sale deed where admittedly bifurcation for cost of land and Wind Mills was not provided it cannot be said that the assessee made a false claim. This explanation it was contended based on the judicial precedent as considered by the Apex Court in Reliance Petro Products and PWC has wrongly been rejected. Reliance was also placed on the order dated 26th October, 2012 of the coordinate bench in ITA No. 463/Del/2011 in the case of Vasu Dev Pahwa vs. ACIT, wherein more or less considering identical facts relying on CIT vs. Barcardi Martini India Limited, 288 ITR 585 and CIT vs. Reliance Petro Products Pvt. Limited (2010) 322 ITR 158 (SC). Referring to these it was submitted that the penalty order was quashed holding that all necessary facts were disclosed by the assessee as such it could not be said that the assessee

has either concealed any income or furnished inaccurate particulars. It was argued that a wrong claim cannot be treated as a false case in the facts of the present case.

6. Ld. Sr. DR placed heavy reliance upon the orders of the authorities below. Reliance was also placed upon CIT vs. Zoom Communication Pvt. Limited, (2010) TIOL-361-HC-DEL-IT it was his submission that the order deserve to be upheld as had the case not been selected for scrutiny the depreciation claimed would have been allowed.

6.1 We have heard the rival submissions and perused the material available on record. On a consideration thereof, we find that on facts the addition by way of disallowing the depreciation claimed on facts is concerned, the same has rightly been made in the quantum proceedings which fact has been accepted by the assessee by filing a revised return and not agitating the issue further. Considering the explanation offered by the assessee in the penalty proceedings, it is seen that repeatedly it is claimed that the return was finalized on the basis of figures appearing in the Sale Deed. This fact has not been disputed by the department and is found to be supported from the assessment order itself. In the aforementioned peculiar facts and circumstances, considering the fact that even after the said addition the assessee was allowed business loss to be carried forward to the extent of Rs.2.96 crore odd, we have no hesitation in following the judicial precedent relied upon to hold that the explanation

offered is bonafide and deserves to be allowed. It is seen that at best the claim of the assessee can be called a wrong claim and by no stretch of imagination on the facts as they stand can it be called a false claim. We have taken into consideration the order of the coordinate bench relied upon in the case of Vasudev Pahwa vs. ACIT (cites supra) and the principle laid down by the Apex Court in the case of CIT vs. Reliance Petro Products Limited (2010) 322 ITR 158 (SC) which was subsequently followed by the Apex Court in the case of Price Water House Coopers Pvt. Ltd. vs. CIT (2012) 25 Taxmann.com 400 (SC).

7. In view of the above, we hold that the penalty order deserves to be quashed. The ground raised by the assessee accordingly is allowed.

8. In the result, the appeal of the assessee is allowed.

The order is pronounced in the open court on 05th September 2014.

Sd/-

(J.S. REDDY)

ACCOUNTANT MEMBER

Dated: 05.09.2014

*Kavita/Amit Kumar

Copy forwarded to: -

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

Sd/-

(DIVA SINGH)

JUDICIAL MEMBER

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By Order,

ASSISTANT REGISTRAR