

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'G' : NEW DELHI)**

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**(THROUGH VIDEO CONFERENCE)**

**ITA No.5405/Del./2017  
(ASSESSMENT YEAR : 2002-03)**

ACIT,  
Central Circle 17,  
New Delhi.

vs. M/s. Spectrum Coal & Power Ltd.,  
18, Rao Tula Ram Marg,  
Vasant Enclave,  
New Delhi – 110 015.

**(PAN : AADCS9860J)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Ms. Ananya Kapoor, Advocate  
REVENUE BY : Shri Prakash Dubey, Senior DR

**Date of Hearing : 24.06.2021**

**Date of Order : 09.07.2021**

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, ACIT, Central Circle 17, New Delhi (hereinafter referred to as 'the Revenue') by filing the present appeal sought to set aside the impugned order dated 05.04.2017 passed by the Commissioner of Income-tax (Appeals)-2, Mumbai affirming the penalty order dated 31.08.2009 passed under section 271(1)(c) of

the Income-tax Act, 1961 (for short 'the Act') qua the assessment year 2002-03 on the grounds inter alia that :-

**“1. The Ld. Commissioner of Income Tax (Appeal) has erred in law in allowing the appeal of the assessee without truly appreciating the factual matrix of the case.**

**2. The Ld. Commissioner of Income Tax (Appeal) has erred in law and on the facts in deleting the penalty of Rs.57,~posed by the AO on account of furnishing inaccurate particulars by the assessee company of its income when it is not covered by the Instruction No.5/2015 which was applicable for A.Y. 2000-01 & 2001-02.”**

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment framed under section 143 (3) read with section 147 of the Act at the loss of Rs.3,30,96,030/-, penalty proceedings have been initiated by the AO under section 271(1)(c) read with section 275(1A) of the Act for claiming a depreciation to the tune of Rs.1,61,10,501/- on the ground that the assessee has furnished inaccurate particulars of income to the extent of Rs.1,61,10,501/-. Declining the contentions raised by the assessee, AO levied penalty to the tune of Rs.57,51,449/- u/s 271(1)(c) of the Act @ 100% of the tax sought to be evaded.

3. Assessee carried the matter before the Id. CIT (A) by way of filing the appeal who has deleted the penalty after allowing the appeal. Feeling aggrieved by the order passed by the Id. CIT (A), the Revenue has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. It is the case of the AO that as against allowable depreciation admissible to the assessee to the tune of Rs.7,14,24,272/-, assessee claimed excess depreciation of Rs.8,75,34,773/- i.e. excess depreciation of Rs.1,61,10,501/-. However, on the other hand, it is the case of the assessee company that it has claimed depreciation as per the Act to the tune of Rs.6,35,84,390/- after making adjustment of gross total income arrived at Rs.11,09,985/-. It is also a fact on record that as per original computation of income, assessee has computed Rs.11,09,985/- under the normal provisions of the Act and claimed depreciation of Rs.6,35,84,390/- on the brought forward unabsorbed depreciation of Rs.10,56,06,113/- whereas the AO allowed depreciation as per the Act at Rs.7,14,24,272/- and carry forward losses arrived at Rs.35780180/- as carry forward

depreciation reduced by the AO has automatically increased to Rs.3,30,96,030/-.

6. In the backdrop of the aforesaid facts and circumstances of the case, order passed by the lower authorities and arguments addressed by the authorized representatives of both the parties, the sole question arises for determination in this case is:-

*“as to whether the assessee has concealed particulars of income or has furnished inaccurate particulars of income during assessment proceedings?”*

7. Ld. CIT (A) deleted the penalty levied by the AO by returning following findings :-

“The AO has levied a penalty of Rs.57,51,449/- on the excess depreciation carried forward of Rs.1,61,10,501/- stating reason that correct depreciation has to be allowed upto Rs.7,14,24,272/- as against carry forward depreciation claimed by the appellant at Rs. 8,75,34,773/- and finally arrived at excess depreciation of Rs. 1,61,10,501/-. Against this the AR of the appellant brought to my notice that page 60 of paper book which is computation of total income for the year ended 31.03.2002. The appellant company claimed depreciation as per income tax at Rs.6,35,84,390/- after making adjustment on gross total income arrived at Rs. 11,09,985 which is as under:

		Amount (Rs.)
Profit as per Profit & Loss account		3,72,19,789
<b>Add:</b>		
Book depreciation considered Separately	13,18,66,096	
Disallowance as per Tax Audit Report Clause no. 21(i)(b)	1,35,128	
Deferred Revenue expenses considered separately	13,78,468	
Preliminary expenses written off	<u>6,63,608</u>	13,40,43,300
<b>Less:</b>		
Depreciation as per Income tax Act	6,35,84,390	
Disallowance u/s. 40(a)(ia) in Previous year now allowed	9,62,601	
Interest on Bank deposits considered separately	11,09,985	6,35,84,390

Income from business	10,56,06,113
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**INCOME FROM OTHER SOURCES**

Interest on Bank deposits considered separately	11,09,985
Less: Brought forward unabsorbed depreciation	(10,56,06,113)
<b>GROSS TOTAL INCOME</b>	<b>11,09,985</b>

Whereas the Ld. AO has allowed the correct depreciation at Rs.7,14,24,272/- in the Assessment order page 5 of the assessment order as under:

<b>"Business Income</b>	
Gross total Income before depreciation	17,03,00,488
Less: Correct Allowable Depreciation	7,14,24,272
Less: Correct set off of losses allowable	
AY 2000-01	4,24,43,864
AY 2001-02	<u>2,33,36,322</u>
	<u>6,57,80,186</u>
<b>Taxable Income</b>	<b>3,30,96,030</b>

Accordingly the AR pleads that excess depreciation allowed by the AO resulted in reduction of carry forward losses which further lead to taxable income arrived by the AO at Rs. 3,30,96,030/- as against income offered by the appellant company at Rs.11,09,985/-

The AR has brought to my notice that while filing return of income as computation of total income, the following is the income arrived u/s. 115JB.

<b>Working of MAT u/s. 115JB</b>	
Net profit as per P & L A/c.	3,72,19,789
Add: Provisions for leave encashment	95,128
Add: Provisions for gratuity	40,000
Book profit u/s. 115JB	3,73,54,917
	=====
Tax payable	28,01,619
Add: surcharge	<u>56,032</u>
Total tax payable	<u>28,57,651</u>

The AR pleads that the while filing of return, appellant has not filed an inaccurate particulars nor any wrong claim, only the Id. AO made some adjustment which is also depreciation allowed In the assessment order, the depreciation allowed by AO is of Rs.7,14,24,272/- whereas depreciation claimed by the appellant is of Rs.6,35,84,390/- as per computation of income and therefore it is not concealment and penalty should be deleted.

I have argument to be verified by the AR and also again computation statement AO of the AO in the original computation of income appellant company has arrived Rs.11,09,985/ - under normal provision of income tax. The appellant company has arrived Rs. 11,09,985/- under normal provision of income tax by claiming depreciation of Rs.6,35,84,390/- on the brought forward unabsorbed depreciation of Rs.10,56,06,113/ - whereas the Id. AO has allowed

depreciation as per income tax Act at Rs.7,14,24,272/- and carry forward losses arrived by made Rs.35,78,0180 as carry forward depreciation has been reduced by learned AO the income has automatically increased to Rs.33096030/- the adjustment of carry forward depreciation under dispute by the appellant which is pending before Hon'ble ITAT. Prima facie I am of the opinion the appellant company furnished all information before the AO only the AO has reworked the carry forward depreciation by allowing more depreciation than claimed by the appellant company and therefore question of concealment may not arise in this case. And I have also gone through the jurisdictional High Court decision in the case of CIT vs. First Data India Ltd., ITA No. 2085 of 2013 dtd. 18.01.2016-wherein it is held that:

"Where assessee had only claimed expenditure which was disallowed by AO and due to which carry forward loss arose. It could not be said that assessee had furnished inaccurate particulars of income by showing carried forward loss as once a loss was shown in e-return, the software suo-moto reflects the returned loss as carried forward loss. Further the fact that the assessee had not claimed carry forward loss in subsequent year was evident of the fact that there was no intent on part of assessee to furnish inaccurate particulars."

Considering the above fact on record, the appellant company has furnished information before the AO, however, the AO suo moto made some objection for the depreciation and carry forward depreciation and also respectfully following the Hon'ble jurisdictional High Court decision in the case of CIT vs First Data India Ltd., I am of the considered opinion this is not fit case of penalty u/s. 271(I)(c) of the Act, therefore, the AO is directed to delete the penalty. Hence this appeal is allowed"

8. We have perused the order passed by the Id. CIT (A) and we are of the considered view that the Id. CIT (A) arrived at the findings that it is not a case of furnishing of inaccurate particulars of income as alleged by AO rather assessee company has furnished all information before the AO. Perusal of the assessment order shows that at the time of recomputing carry forward depreciation, AO reached the conclusion that the assessee has claimed excess depreciation which amounts to furnishing of inaccurate particulars

of income, whereas it is not the case when the working made and examined by the Id. CIT (A) in para 4 of the impugned order. It is the case of some adjustment made by the AO for examining the issue of depreciation whereas exact depreciation claimed by the assessee of Rs.6,35,84,390/- and not the depreciation of Rs.7,14,24,272/- as made by the AO.

9. When the assessee company had furnished all the necessary facts with complete working of the computation of income under the normal provisions of the Act as well as under MAT u/s 115JB of the Act, there is no question of furnishing inaccurate particulars of income.

10. **Coordinate Bench of the Tribunal in ITA No.1295 & 1296/Del/2012 vide order dated 03.08.2017 passed in assessee's own case for AY 2000-01 & 2001-02 respectively** has already decided the issue as to the claim of depreciation of the assessee without deducting the amount of conditional grant received by the assessee from the actual cost from the WDV of the plant and machinery in favour of the assessee.

11. So, in view of the matter, we are of the considered view that it is merely a case of difference arising out of the reworking of the carry forward depreciation by the AO by allowing more depreciation than claimed by the assessee company and not a case

of concealing of income or furnishing of inaccurate of particulars of income. Consequently, finding no illegality or perversity in the impugned order passed by the Id. CIT (A) who has rightly deleted the penalty levied by the AO, the appeal filed by the Revenue is hereby dismissed.

**Order pronounced in open court on this 9<sup>th</sup> day of July, 2021.**

**Sd/-  
(N.K. BILLAIYA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 9<sup>th</sup> day of July, 2021  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Ghaziabad.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**

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