

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'E' NEW DELHI**

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

I.T.A. No. 1873/DEL/2020 (A.Y 2014-15)

Metro Tyres Limited 101, Jyoti Bhawan, A-25, 26, 27, Dr. Mukharjee Nagar, Commercial Complex, New Delhi-110009 PAN No. AAACM3394A (APPELLANT)	Vs.	ACIT Central Circle-05 ARA Centre, 3 rd Floor, room No. 361, E-2, Jhandewalan Extension, New Delhi (RESPONDENT)
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Assessee by :	Sh. Salil Kapoor, Adv & Sh. Tarun Chanana, Adv
Department by:	Sh. Anshul, Sr. DR

Date of Hearing	04.07.2024
Date of Pronouncement	24.07.2024

ORDER

PER YOGESH KUMAR U.S., JM

This appeal is filed by the assessee for Assessment Year 2014-15 against the order of the Ld. Commissioner of Income Tax (Appeals)-24, New Delhi dated 18/09/2020.

2. The Grounds of Appeal are as under:-

“1. That in view of the facts and circumstances of the case and in law, the notice issued under section 274 r.w.s

271(1)(c) of the Income Tax Act, 1961 ('the Act') and the penalty order passed under section 271(1)(c) of the Act, imposing penalty on addition of Rs. 21,89,970/-on account of disallowance of depreciation on non-compete fees is illegal, bad in law and without jurisdiction.

2. That in view of the facts and circumstances of the case and in law, the Commissioner of Income Tax (Appeals) ("CIT(A)") has grossly erred in upholding the action of the Assessing Officer ("AO") imposing the penalty of Rs. 7,44,370/- u/s 271(1)(c) of the Act which is illegal, unwarranted and against the facts of the case.

3. That in view of the facts and circumstances of the case and in law, the AO/CIT(A) has grossly erred in not appreciating the fact that the notice initiating the penalty under Section 274 r.w.s 271(1)(c) of the Act is without any specific charge. Hence, the notice issued under section 274 r.w.s 271(1)(c) of the Act is illegal, bad in law and as such the order passed under section 271(1)(c) imposing penalty is liable to be quashed.

4. That in view of the facts and the circumstances of the case, levy of penalty u/s. 271(1)(c) of the Act by the AO as confirmed by the CIT(A) is invalid and bad in law as from the notice issued u/s. 274 r.w.s. 271(1)(c) of the Act it is not discernable as to whether the proceedings were initiated for furnishing of inaccurate particulars or for concealment of income and therefore, the initiation/levy of penalty is illegal and liable to be quashed.

5. That in view of the facts and circumstances of the case and in law. the AO/CIT(A) has grossly erred in not taking into account the judicial precedents cited before it. The satisfaction recorded/charge levied while completing the assessment, and while levying the penalty are different and hence the order passed under section 271(1)(c) of the Act are illegal, bad in law and without jurisdiction.

6. That the levy of penalty is illegal, unjust and not in accordance with law as the mandatory requirements of Section 271(1)(c) have not been met in the instant case.

7. That in view of the facts and circumstances, the AO/CIT(A) has erred in law and on facts in not appreciating that this is a simple case of disallowance made in the assessment due to differences of opinion between the AO and Assessee. Hence, no penalty should be levied in this case.

8. That, in view of the facts and circumstances of the case and in law, no penalty is leviable on account of addition of Rs. 21,89,970/- account of disallowance on depreciation on non-compete fees. Depreciation on non-compete fees is a debatable issue and as such no penalty u/s 271(1)(c) can be levied.

9. In view of the facts and circumstances of the case and in law, the CIT(A) has grossly erred in upholding the action of AO of imposing the penalty on disallowance of depreciation on non-compete fees, ignoring the fact that the claim of depreciation is a bona-fide claim. Hence, as such no penalty u/s 271(1)(c) can be levied.

10. That AO/CIT(A) has grossly erred in upholding the penalty levied on account of depreciation on non-compete fee. As such, AO/CIT(A) has failed to appreciate that there is no concealment of income/furnishing inaccurate particulars and the penalty so imposed is liable to be deleted. AO/CIT(A) and the material available on record has not been properly/judiciously considered and legally interpreted. The penalty imposed cannot be justified by any material on record.

12. That the Appellant craves leave to add, amend, alter and or modify the grounds of appeal of the said appeal.”

3. Brief facts of the case are that, the assessment order came to be passed on 17/05/2016 against the assessee by making disallowance on account of depreciation claimed on non compete fee of Rs. 21,89,970/- and disallowance u/s 14A of the Act of Rs. 7,37,674/-. In the quantum Appeal, the Ld. CIT(A) deleted the disallowance made u/s 14A of the Act and sustained the disallowance of Rs. 21,89,974/- claimed as depreciation on non compete fee. The penalty proceedings have been initiated against the assessee and an order of penalty came to be passed u/s 271(1)(c) of the Act by order dated 31/03/2019.

4. Aggrieved by the penalty order dated 31/03/2019, the assessee preferred an appeal before the Ld.CIT (A). The Ld.CIT (A) vide order dated 18/09/2020 dismissed the appeal filed by the assessee. As against the order of Ld.CIT(A) dated 18/09/2020, the assessee has preferred the present appeal on the grounds mentioned above.

5. The Ld. Counsel for the vehemently submitted that no penalty is leviable on account of addition of Rs. 21,89,970/- on account of disallowance of depreciation on non-compete fees. Depreciation on non-compete fees is a debatable issue and as such no penalty u/s 271(1)(c) can be levied, thus, sought for deletion of the penalty.

6. Per contra, the Ld. DR submitted that the Ld.CIT(A) has adjudicated all the issues involved in the Appeal and relying on the orders of the Lower Authorities sought for dismissal of the Appeal filed by the Assessee.

7. We have heard the parties, perused the material on record and gave our thoughtful consideration. The penalty has been imposed pursuant to the addition of Rs. 21,89,970/- made on account of disallowance of depreciation on non compete fees. In quantum proceedings, the Ld. CIT(A) has relied on the decision of Jurisdictional High Court in the case of Sharp Business System Vs. CIT 254 CTR 233 and the said Judgment is under challenge before the Hon'ble Supreme Court. The Hon'ble Delhi High Court

in the case of PCIT Vs. Pepsico India Holding Pvt. Ltd. ITA No. 167/2023 dated 16/04/2024 allowed the claim of depreciation on non compete fee after considering the Judgment of Delhi High Court in the case of Sharp Business System Vs. CIT.

8. As observed above, there are different views by the Jurisdictional High Court and other High Courts on the issue of allowability of claim of the depreciation on non compete fees which is highly contentious and the *lis* is pending before the Hon'ble Supreme Court. Therefore, in our considered opinion, the provisions of Section 271(1)(c) cannot be attracted against the Assessee. Accordingly, the penalty order dated 31/03/2019 passed by the A.O for Assessment Year 2014-15 is hereby quashed.

9. In the result, Appeal filed by the assessee is allowed.

Order pronounced in the open court on 24th JULY, 2024.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Dated : 24/07/2024

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

*R.N, Sr. PS**

Copy forwarded to :

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

ASSISTANT REGISTRAR
ITAT NEW DELHI