

IN THE INCOME TAX APPELLATE TRIBUNAL “G” BENCH, MUMBAI

**BEFORE SHRI OM PRAKASH KANT, AM AND
MS. KAVITHA RAJAGOPAL, JM**

ITA No.1923/Mum/2023
(Assessment Year: 2017-18)

DCIT-15(3)(2) Room No. 480, 4 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020	Vs.	M/s. Sasan Power Ltd. H-Block, 1 st Floor, Dhirubhai Ambani Knowledge City, Thane Belapur Road, Mumbai-400 710
PAN/GIR No. AAKCS 0723 M		
(Revenue)	:	(Assessee)

&

CO No. 95/Mum/2023
(Arising out of ITA No.1923/Mum/2023)
(Assessment Year: 2017-18)

M/s. Sasan Power Ltd. H-Block, 1 st Floor, Dhirubhai Ambani Knowledge City, Thane Belapur Road, Mumbai-400 710	Vs.	DCIT-15(3)(2) Room No. 480, 4 th Floor, Aayakar Bhavan, M. K. Road, Mumbai-400 020
PAN/GIR No. AAKCS 0723 M		
(Assessee)	:	(Revenue)

Assessee by	:	Shri Niraj Seth & Shri Amit Khatiwala
Respondent by	:	Smt. Sujatha P Iyengar

Date of Hearing	:	22.11.2023
Date of Pronouncement	:	22.12.2023

ORDER

Per Kavitha Rajagopal, J M:

This appeal has been filed by the Revenue, challenging the order of the learned Commissioner of Income Tax (Appeals) ('Id.CIT(A) for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'),

pertaining to the Assessment Year ('A.Y.' for short) 2017-18. The assessee has filed a cross objection challenging the order of the Id. CIT(A).

2. The Revenue has challenged the order of the Id. CIT(A) directing the Id. Assessing Officer ('A.O.' for short) to delete the penalty levied u/s. 270A of the Act by holding that the excess claim of depreciation to be a *bona fide* mistake on the part of the assessee without considering the fact that the assessee has disclosed the claim of excess depreciation only during the scrutiny proceeding along with the other corresponding grounds. The assessee has challenged on the ground that the notice issued by the Id. A.O. was without specifying the relevant clause of sub-section (2) of section 270A of the Act and without prejudice has challenged the impugned order that the assessee falls within section 270A(6)(a) instead of section 270A(7) of the Act.

3. The brief facts are that the assessee was engaged in the business of solar power generation and had filed its return of income dated 31.10.2017 and subsequently filed revised return of income dated 30.03.2018, declaring total loss at Rs.(-)1255,55,66,434/-. The assessee's case was selected for complete scrutiny and notice u/s. 143(2) and 142(1) were issued and served upon the assessee.

4. The Id. A.O. sought for the details of any other deduction claimed in the schedule business/profession in the return of income during the assessment proceeding for which the assessee submitted that the deduction claimed was with regard to the insurance claim pertaining to fixed assets of Rs.4,62,00,000/- where the assessee company had received total insurance claim of Rs.21,19,64,301/- from the insurance company in respect of

disposal of plant and machinery – dumper. The assessee while computing the income from business had reduced the amount of profit on disposal of assets of Rs.4,62,00,000/- as being fixed asset and while computing the depreciation it had erroneously not reduced the amount of insurance claim received from the block of assets, thereby claiming higher depreciation on fixed assets. It is observed that the company had then filed revised working of deprecation during the assessment proceeding after duly reducing the claim of insurance from the block of assets where the reduced claim of depreciation was worked out at Rs.3,17,94,645/-. The ld. A.O. disallowed the excess claim of depreciation on fixed assets amounting to Rs.3,17,94,645/- and determined the total income at Rs.(-)1252,37,71,789/- and book profit u/s. 115JB at Rs.(-)95,37,05,064/- and added the same to the total income of the assessee. The ld. A.O. also initiated penalty proceedings u/s. 270A of the Act for under reporting of income. The ld. A.O. then passed the penalty order dated 10.01.2022 u/s. 270A of the Act determining the penalty amount to be Rs.52,56,132/- being 50% of the amount of tax on the under reported income amounting to Rs.3,17,94,645/-.

5. Aggrieved the assessee was in appeal before the ld. CIT(A) who vide order dated 31.03.2023 deleted the impugned penalty for the reason that the assessee's claim of excess depreciation was a *bona fide* mistake and that there was no *mens rea* on the part of the assessee to suppress any material fact for the purpose of avoiding tax. The ld. CIT(A) relied on the decision of the Hon'ble Apex Court in the case of *CIT vs. Reliance Petro Product Ltd.* 322 ITR 158 (SC).

6. The Revenue is in appeal before us challenging the order of the Id. CIT(A) deleting the impugned addition and the assessee is in cross objection challenging the notice of the Id. A.O. on the ground that the Id. A.O. has failed to specify the relevant clause of sub section (2) of section 270A of the Act as to the ground on which the penalty was to be levied. The assessee has also challenged the levy of penalty on the ground that the assessee's case would fall u/s. 270A(6)(a) of the Act and not u/s. 270A(7) of the Act.

7. The learned Departmental Representative ('Id.DR' for short) contended that the assessee has under reported its income by Rs.3.17 crores and had failed to give any proper reason for the same. The Id. DR further contended that only during the assessment proceeding, the assessee came forward to disclose the same which shows malafide intention of the assessee. The Id. DR relied on the order of the Id. A.O.

8. The learned Authorised Representative ('Id. AR' for short) for the assessee contended that the assessee's action on non reduction of insurance claim from the block of assets was not malafide and it was a *bona fide* mistake committed by the assessee while filing the return of income. The Id. AR further contended that the assessee had in its return of income declared loss and that the excess claim of depreciation was in no way beneficial to the assessee and was merely in an inadvertent error. The Id. AR further contended that the assessee was in advantageous position only when it had claimed deprecation @ 25% in the relevant year which would result into higher written down value in the next year while claiming depreciation of a higher amount on higher written down value. The Id. AR stated that the assessee did not intend to under report its income and that penalty u/s. 270A of the Act was not to be levied on the assessee. The Id. AR

relied on the Id. CIT(A)'s order, deleting the impugned penalty levied by the Id. A.O. The Id. AR further contended that the Id. A.O. has failed to specify the relevant clause of section 270A(2) of the Act for which penalty was levied and stated that the assessee's case would fall u/s. 270A(6)(a) of the Act where the Id. CIT(A) being satisfied by the Explanation of the assessee that it was a *bona fide* mistake. The Id. AR relied on the various decisions including the Hon'ble Apex Court decision in the case of *CIT vs. Reliance Petro Products Pvt. Ltd.* [2010] 322 ITR 158 (SC).

9. We have heard the rival submissions and perused the materials available on record. It is observed that the penalty u/s. 270A of the Act was levied on the assessee for the under reporting of income amounting to Rs.3,17,94,645/- by not reducing the insurance claim received by the assessee amounting to Rs.21,19,64,301/- from the block of assets which has in fact resulted in excess claim of depreciation of Rs.3,17,94,645/-. It is also observed that the assessee during the assessment proceeding had given details of the computation of income where the assessee company has reduced the amount on profit of disposal of assets of Rs.4,62,00,000/- as income from business as it pertain to fixed assets. The assessee company has also stated that it had inadvertently not reduced the amount of insurance claim received by the assessee from the block of assets thereby claiming more depreciation on fixed assets. The assessee company then submitted a revised working of depreciation with computation of income after duly reducing the claim of insurance received from the block of assets. The Id. A.O. levied penalty u/s. 270A(7) of the Act for the reason that the assessee has under reported its income. The provision of section 270A(2) of the Act is extracted hereunder for ease of reference:

Penalty for under-reporting and misreporting of income.

270A. (2) A person shall be considered to have under-reported his income, if—

- (a) the income assessed is greater than the income determined in the return processed under clause (a) of sub-section (1) of section 143;
- (b) the income assessed is greater than the maximum amount not chargeable to tax, where no return of income has been furnished⁷⁴ [or where return has been furnished for the first time under section 148];
- (c) the income reassessed is greater than the income assessed or reassessed immediately before such reassessment;
- (d) the amount of deemed total income assessed or reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income determined in the return processed under clause (a) of sub-section (1) of section 143;
- (e) the amount of deemed total income assessed as per the provisions of section 115JB or section 115JC is greater than the maximum amount not chargeable to tax, where⁷⁵ [no return of income has been furnished or where return has been furnished for the first time under section 148];
- (f) the amount of deemed total income reassessed as per the provisions of section 115JB or section 115JC, as the case may be, is greater than the deemed total income assessed or reassessed immediately before such reassessment;
- (g) the income assessed or reassessed has the effect of reducing the loss or converting such loss into income.

10. The Id. A.O. levied a penalty of 50% of the amount of tax payable on underreported income as per clause (7) of section 270A of the Act. The assessee's contention that it was a *bona fide* mistake was not considered by the Id. A.O. The first appellate authority, on the other hand, held the same to be a *bona fide* mistake and deleted the impugned penalty by relying on various decisions cited by the assessee.

11. The moot question here is whether the Id. A.O. was right in levying penalty u/s. 270A of the Act resulting in invoking of section 270A of the Act. The assessee in the present case has stated that it was not in an advantageous position to claim higher depreciation as it was adverse for the assessee in subsequent years and that there was no question of reducing the tax liability where the assessee's return of income declared a huge loss during the year under consideration.

12. The Id. CIT(A) had relied on the decision of the Hon'ble Apex Court in the case of *CIT vs. Reliance Petro Products Pvt. Ltd.*(supra) where it has held that furnishing inaccurate claim of expenditure would not amount to giving inaccurate particulars of such income. The assessee has relied on various other decisions which have reiterated the proposition that the claim of higher depreciation would not amount to concealment of income. It is also observed that the decision of the Hon'ble Jurisdictional High Court in the case of *CIT vs. Somany Evergreen Knits Ltd.* [2013] 35 taxmann.com 529 (Bom) has held that excess claim of depreciation was a *bona fide* mistake on the part of the assessee which attracts no levy of penalty.

13. By respectfully following the above said decision, we deem it fit to hold that there is no infirmity in the order of the Id. CIT(A) in deleting the penalty levied by the Id. A.O. As we have decided the issue on the merits of the case, the legal grounds raised by the assessee in its cross objection becomes academic.

14. In the result, the appeal filed by the Revenue and the cross objection filed by the assessee are dismissed.

Order pronounced in the open court on 22.12.2023

Sd/-

Sd/-

(Om Prakash Kant)
Accountant Member

(Kavitha Rajagopal)
Judicial Member

Mumbai; Dated : 22.12.2023
Roshani, Sr. PS

Copy of the Order forwarded to :

1. The Appellant
2. The Respondent
3. CIT - concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt. Registrar)
ITAT, Mumbai