

## Penalty leviable if assessee didn't add back depreciation charged under Companies Act in computation of income

**Summary – The Mumbai ITAT in a recent case of Khanna Industrial Pipes (P.) Ltd., (the Assessee) held that where assessee-company charged depreciation both under Companies Act and Income-tax Act and failed to add back depreciation charged under Companies Act, same could not be held as mistake not liable to penalty**

### Facts

- The assessee-company filed e-return declaring certain income.
- The Assessing Officer noticed that certain amount was charged as depreciation on windmill under the Companies Act and the assessee had also deducted depreciation on windmill as per the Income-tax Act; however depreciation charged as per the Companies Act was not added back in the final computation of income. When the assessee was asked to explain the discrepancy, the assessee conceded the double claim made and offered to tax the entire sum of depreciation charged as per the Companies Act. The Assessing Officer completed assessment accordingly.
- Thereafter, the Assessing officer levied penalty under section 271(1)(c) observing that the assessee made a conscious attempt to evade taxes by furnishing inaccurate particulars of income.
- On appeal, the Commissioner (Appeals) cancelled the penalty holding that the mistake of adding less amount of depreciation was just a reporting error committed by the tax consultant.
- On revenue's appeal:

### Held

- The assessee filed e-return on 29-9-2008 and the return was processed under section 143(1). Within one year from the date of filing of the return, the assessee can revise its return whereas the assessee did not choose to revise the return. By 2010 the assessee must have filed returns for subsequent years but it claims that it has not noticed this so-called defect. Though the Commissioner (Appeals) recorded that the assessee voluntarily informed the Assessing Officer about the inadvertent mistake and filed a revised return, the fact remains that it cannot be considered as a revised return. It was only upon examination of the return and the Assessing Officer having called upon the assessee to explain the discrepancy, that the assessee came forward to accept the default on its part. Thus, the order passed by the Commissioner (Appeals) was not only cryptic but also based on incorrect facts. He observed that claiming double depreciation was a reporting error committed by the tax consultant whereas the assessee submitted that it was not an error on the part of the tax consultant but it was a *bona fide* error on the part of the assessee-company. There are many other aspects which need to be considered and appreciated properly before appreciating as to whether it can be termed as *bona fide* error or it amounts to furnishing of inaccurate particulars of income. The order passed by the Commissioner (Appeals) deserves to be set aside

because of incorrect appreciation of facts. The Commissioner (Appeals) is directed to reconsider the matter afresh by taking into consideration the facts on record.