

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : F : NEW DELHI

BEFORE SHRI R.S. SYAL, VICE PRESIDENT
AND
SMT BEENA PILLAI, JUDICIAL MEMBER

ITA No.6158/Del/2015
Assessment Year: 2007-08

DCIT,
Circle-17(1),
New Delhi.

Vs. Morgan Securities & Credit (P) Ltd.,
A-38, 1st Floor, Mohan Co-operative
Incl. Estate, Main Mathura Road,
New Delhi.

PAN: AACCM7937R

(Appellant)

(Respondent)

Assessee By : None
Department By : Shri Atiq Ahmad, Sr. DR

Date of Hearing : 15.11.2017
Date of Pronouncement : 16.11.2017

ORDER

PER R.S. SYAL, VP:

This appeal filed by the Revenue is directed against the order passed by the CIT(A) on 15.09.2015 deleting the penalty of Rs.23,61,909/- imposed by the Assessing Officer u/s 271(1)(c) of the

Income-tax Act, 1961 (hereinafter also called 'the Act') in relation to the assessment year 2007-08.

2. We have heard the ld. DR and gone through the necessary records. There is no appearance from the side of the assessee despite notice. As such, we are proceeding to dispose off the appeal *ex parte qua* the assessee. Penalty in this case was imposed with reference to the disallowance made u/s 14A read with Rule 8D.

3. Adverting to the facts of the instant case, it is seen that the disallowance u/s 14A of the Act was made by the Assessing Officer in terms of Rule 8D. The Hon'ble Bombay High Court in *Godrej & Boyce Manufacturing Company Ltd. vs. DCIT, 318 ITR 81 (Bom)*, has held that the provisions of Rule 8D are applicable only from the assessment year 2008-09 onwards. The assessment year under consideration is 2007-08. In view of the foregoing discussion, it is clear that the very basis for making disallowance u/s 14A by applying Rule 8D, is itself under the shadow of doubt. By no standard, such a disallowance can be construed

as a case of concealment of income or furnishing of inaccurate particulars of income so as to warrant penalty u/s 271(1)(c) of the Act.

4. The Hon'ble Supreme Court in the case *CIT Vs. Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (SC)* has held that simply for the reason that the Assessing Officer did not find the claim of the assessee to be sustainable in law up to a certain extent, cannot be a case for penalty u/s. 271(1)(c), more so, when the particulars furnished by the assessee were not inaccurate. *Ratio decidendi* of the judgment is fully applicable to the instant case as well. In view of the foregoing discussion, we uphold the impugned order deleting the penalty imposed u/s 271(1)(c) of the Act.

5. In the result, the appeal is dismissed.

Order pronounced in the open court on 16th November, 2017.

Sd/-

[BEENA PILLAI]
JUDICIAL MEMBER

Dated, 16th November, 2017.

dk

Sd/-

[R.S. SYAL]
VICE PRESIDENT

Copy forwarded to:

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

AR, ITAT, NEW DELHI.