

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'A' NEW DELHI**

**BEFORE  
SHRI R.K. PANDA, ACCOUNTANT MEMBER  
AND  
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No. 3042/Del/2015  
AY: 2005-06**

**J.R. Enterprises,  
C/o D.B. Jain & Co.,  
Shakahar Bldg.,  
1, Ansari Road,  
Daryaganj,  
Delhi-110002  
(PAN: ADQPG3144E)  
(Appellant)**

**vs**

**DCIT,  
Central Circle 5,  
New Delhi.**

**(Respondent)**

**Assessee by:** Shri Shailesh Gupta, CA  
**Department by :** Shri James Singson, Sr. DR

**Date of hearing: 22.10.2018  
Date of pronouncement: 29.10.2018**

**ORDER**

**PER SUDHANSHU SRIVASTAVA, J.M.**

This appeal has been preferred by the assessee against the order dated 27.02.2015 passed by the Ld. CIT (Appeals)-24, New Delhi for A.Y. 2005-06 wherein vide the impugned order, the Ld. Commissioner of Income Tax (A) has upheld the levy of penalty amounting to Rs. 2,67,390/- imposed u/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter called 'the Act').

2.0 Brief facts of the case are that the return of income was filed declaring an income of Rs. 6,08,810/-. During the course of assessment proceedings, the Assessing Officer observed that the assessee had claimed expenses of Rs. 13,50,273/- against income from hire charges and maintenance charges received by the assessee with respect to its business of maintaining the property D-1/37, Vasant Vihar, New Delhi. The Assessing Officer proceeded to add the entire amount of expenditure of Rs. 13,50,273/-. On appeal, the Ld. Commissioner of Income Tax (A) partly allowed the assessee's appeal by allowing 30% as allowable expenditure and thus allowed an amount of Rs. 5,40,000/- and restricted the disallowance to Rs. 8,10,273/-. Subsequently, penalty proceedings culminated in imposition of penalty of Rs. 2,67,390/- which was upheld by the Ld. Commissioner of Income Tax(A) on appeal.

2.1 Now, the assessee is before the ITAT challenging the upholding of penalty by the Ld. Commissioner of Income Tax (A).

3.0 The Ld. AR submitted that the assessee has been maintaining regular books of accounts with respect to the hire charges and maintenance charges but the Ld. Commissioner of Income Tax (A) had rejected the assessee's plea for admitting

additional evidence as well as examining the books of accounts. It was also submitted that even the Ld. Commissioner of Income Tax (A) had partially sustained the disallowance on an *ad hoc* basis without assigning any cogent reason for sustaining a part of the disallowance. The Ld. AR further submitted that it is settled law that penalty u/s 271(1)(c) of the Act could not be sustained in case of *ad hoc*/estimated disallowances.

4.0 In response, the Ld. Sr. DR placed reliance on the orders of the authorities below and vehemently argued that penalty had been rightly imposed and, therefore deserved to be upheld.

5.0 We have heard the rival submissions and perused the material available on record. The only question for our consideration is whether penalty u/s 271(1)(c) is sustainable with respect to disallowance which has been partially deleted by the Ld. Commissioner of Income Tax(A) on *ad hoc*/estimated basis. It is undisputed in the present appeal that the quantification of the alleged concealment/inaccurate particulars is only an estimate and it is settled law that penalty is not attracted on estimated additions. The Hon'ble Delhi High Court in the case of CIT vs. Aero Traders Pvt. Ltd., reported in 322 ITR 316 (Del), has held that no penalty u/s 271(1)(c) can be imposed when income is

determined on estimate basis. Similar view has been taken by the Hon'ble Punjab & Haryana High Court in the case of Harigopal Singh vs. CIT reported in 258 ITR 85 (P&H) and the Hon'ble Gujarat High Court in the case of CIT vs. Subhash Trading Company reported in 221 ITR 110 (Guj). In view of the foregoing precedents including the one from the Hon'ble Jurisdictional High Court, it is apparent that when the bedrock of instant penalty is estimated disallowance, the same cannot be sustained. Accordingly, we set aside the order of the Ld. CIT (Appeals) and direct the AO to delete the penalty.

6.0 In the result, the appeal of the assessee stands allowed.

**Order pronounced in the open court on 29<sup>th</sup> October, 2018.**

**Sd/-**

**(R.K. PANDA)  
ACCOUNTANT MEMBER**

**Sd/-**

**(SUDHANSHU SRIVASTAVA)  
JUDICIAL MEMBER**

Dated: 29<sup>th</sup> OCTOBER , 2018  
'GS'

Copy forwarded to: -

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

By Order

ASSTT. REGISTRAR

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	1