

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

**BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER**

**I.T.A. No. 6079/Del/2017**

**Assessment Year: 2008-09**

BHAVYA BUSINESS STRATEGIES PVT. LTD. 306, Vikram Towers, Rajendra Place, New Delhi – 110 008 (PAN: AAACB5307M)	VS.	ITO, WARD 2(4), C.R. BUILDING, NEW DELHI
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**(ASSESSEE)**

**(RESPONDENT)**

**Assessee by:** SH. V.P. GUPTA, ADV. & SH. ANUNAV  
KUMAR, ADV.

**Revenue by:** SH. B.S. ANANT, SR. DR.

**ORDER**

This appeal is filed by assessee against the Order dated 24.5.2017 passed by the Ld. CIT(A)-2, New Delhi relating to Assessment Year 2008-09.

2. The grounds raised read as under:-

*“1. That the ld. CIT(A) erred in upholding penalty u/s. 271(1)(c) of the Income Tax Act, of Rs. 3,26,483/- without appreciating:-*

*a) the facts and the case law submitted by the appellant;*

- b) *that order u/s. 143(3) of the act had earlier been passed accepting returned income and additions have been made only in the order passed subsequently u/s. 263/143(3) of the Act;*
  - c) *That the appellant has been regularly following same accounting practice as regards loss of Rs. 9,49,398/- incurred on share transactions;*
  - d) *That similar addition in respect of loss on shares had been deleted by CIT(A) in appeal for AYT 2007-08;*
  - e) *That disallowance of Rs. 1,02,886/- u/s. 14a with reference to dividend income of Rs. 4,300/- had been wrongly made and upheld by CIT(A).*
  - f) *That in any case the appellant had made full disclosure in respect of additions made by the AO and upheld by CIT(A).*
2. *That the order passed by CIT(A) is bad in law in view of the facts and legal position and, therefore, same deserves to be set aside and penalty needs to be cancelled.*

*That the appellant craves leave to add, alter, amend or modify any of the grounds of appeal at any time hereinafter.*

2. The brief facts of the case are that assessee filed return of income declaring at Rs. 67,780/- on 29.9.2008 which was processed u/s. 143(1) of the Income Tax Act, 1961 (hereinafter referred as the Act). The original assessment was completed u/s. 143(3) of the Act on 29.7.2010 at income of Rs. 67,780/-. Later on, the matter was reviewed by the Ld. CIT, Delhi-I and order u/s. 263 of the Act was passed on 8.1.2013. The assessment order was set aside to be done denovo after taking all the material of facts on record by the AO. The Ld. CIT has observed that the provision of section 14A of the Income Tax Act read with Rule 8D of Income Tax Rules had not been examined properly. He further observed that the expenditure claimed by the assessee of Rs. 9,49,398/- on account of loss on sale of investment should not have been allowed as this was being the capital expenditure. With regard to claim of exemption u/s. 10 of the Act of Rs. 4300/-, he noted that it should not have been allowed as assessee itself surrendered the same for taxation vide his letter dated 14.12.2012. Accordingly, fresh notice was issued to the assessee and finally the case was completed u/s. 143(3)/263 of the Act on 31.1.2014 at an income of Rs. 11,24,364/- by making various additions. In appeal proceedings, the AO observed that since the

assessee has filed the inaccurate particulars, penalty proceedings u/s. 271(1)(c) was also initiated on 31.1.2014. In compliance of the initiation of penalty, neither any reply was filed nor any adjournment letter was filed. Another show cause notice dated 9.7.2014 was also issued to the assessee and asked to compliance by 18.2.2014 u/s. 271(1)(c), but on this date also, no reply was filed by the assessee. Hence, the AO observed that assessee has no explanation to offer for furnishing inaccurate particulars of his income. He further observed that it is a gross or wilful neglect on the part of the assessee in not disclosing the correct income within the meaning of explanation 1 to Section 271(1)(c) of the I.T. Act. Hence, he imposed the penalty of Rs. 3,26,483/- @ 100% vide his order dated 24.7.2014 passed u/s. 271(1)(c) of the Act. Against the penalty order, the assessee appealed before the Ld. CIT(A), who vide his impugned order dated 24.5.2018 has partly allowed the appeal of the assessee. Aggrieved with the impugned order, the assessee is in appeal before the tribunal.

3. Ld. Counsel for the assessee submitted that the order u/s. 143(3) of the Act had earlier been passed accepting returned income and additions have been made only in the order passed subsequently u/s. 263/143(3) of the Act. It was further submitted that the assessee has been regularly following same accounting practice as regards loss of Rs. 9,49,398/- incurred on share transactions; that similar addition in respect of loss on shares had

been deleted by the Ld. CIT(A) in appeal for AY 2007-08 and disallowance of Rs. 102886/- u/s. 14A with reference to dividend income of Rs. 4300/- had been wrongly made and upheld by the Ld. CIT(A) and that the assessee had made full disclosure in respect of additions made by the AO and upheld by the Ld. CIT(A). It was further submitted that since in AY 2007-08, Ld. CIT(A) had upheld the contention of the assessee company that loss was in the nature of business loss where Ld. CIT(A) in AY 2008-09 has held that it was loss on investment, it can be said to be a debatable issue and therefore, penalty cannot be levied. Hence, the penalty in dispute may be deleted.

4. On the other hand, Ld. DR relied upon the orders of the authorities below.

5. I have heard both the parties and perused the records, especially the order of the authorities below. It is not disputed that consistently the company has been considering income / loss from trading activities in the nature of business income or loss. The position as such has already been accepted in assessments prior to AY 2007-08. In AY 2007-08 addition was made by the AO but Ld. CIT(A) has deleted the addition considering the nature of activities as business activities in the case of the company. Similarly, the AO in original assessment order passed in AY 2008-09 had accepted the computation made by the company, as were accepted in earlier years. Accordingly, an order

was subsequently passed u/s. 143(3)/263 of the Act considering the amount as capital loss. I note that Id. CIT(A) in appeal of the assessee on merits for AY 2008-09 has upheld the addition only for the reason that the company had not shown total amount of sale consideration in Profit and Loss account but only net amount has been reflected in the Profit and loss account. She has held that the activities were not in the nature of trading activities. It was also noted that the transactions have been before the AO in earlier years as well as in the year under appeal. The amount of income / loss has been separately and specifically reflected in the P&L accounts. Therefore, it cannot be alleged that company had concealed the particulars of income or furnished inaccurate particulars of income. It is also noted that since AY 2007-08 Ld. CIT(A) had upheld the contention of the assessee that loss was in the nature of business loss where Ld. CIT(A) in AY 2008-09 has held that it was loss on investment, it can be said to be a debatable issue and therefore, penalty cannot be levied. In view of above, AO observed that assessee furnished inaccurate particulars of its income and is liable for penalty u/s 271(1)(c), which did not establish from the facts and circumstances of the case that how the assessee has furnished inaccurate particulars of its income. However, Section 271(1)(c) postulates imposition of penalty for furnishing of inaccurate particulars and concealment of income. In this regard, I draw my support from the decision of the Hon'ble Apex Court in the

case of CIT vs. Reliance Petroproducts Pvt. Ltd. (2010) 322 ITR-158 (SC) wherein the Hon'ble Supreme Court has held that *'where there is no findings that any details supplied by the assessee in its return are found to be incorrect or erroneous or false, there is no question of inviting the penalty u/sec. 271(1)(c) of the Act. A mere making a claim, which is not sustainable in law, by itself, will not amount of furnishing inaccurate particulars regarding the income of the assessee. Such claim made in the return cannot amount to furnishing a inaccurate particulars of income. As the assessee has furnished all the details of its expenditure as well as income in its return, which details, in themselves, were not found to be inaccurate nor could be viewed as the concealment of income on its part. It was up to the authorities to accept its claim in the return or not. Merely, because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the Revenue, that by itself would not, in our opinion, attract the penalty u/sec. 271(1)(c). If we accept the contention of the Revenue then in case of every return where the claim made is not accepted by the Assessing Officer for any reason, the assessee will invite penalty u/sec. 271(1)(c). That is clearly not the intendment of the Legislature'*.

6. In the background of the aforesaid discussions and respectfully following the aforesaid precedent, I am of the considered view that the assessee has not furnished inaccurate particulars of income. Under these circumstances, in my view the penalty in dispute is totally

unwarranted and deserve to be deleted. Accordingly, I delete the penalty in dispute made u/s. 271(1)(c) of the I.T. Act and cancel the orders of the authorities below on the issue in dispute.

7. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced on 16/11/2018.

**Sd/-**  
**[H.S. SIDHU]**  
**JUDICIAL MEMBER**

*Date 16/11/2018*

**“SRBHATNAGAR”**

**Copy forwarded to: -**

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

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By Order,

Assistant Registrar, ITAT, Delhi Benches