

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES: 'D', NEW DELHI

BEFORE SMT. BEENA A PILLAI, JUDICIAL MEMBER  
AND SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER

ITA No. 4759/Del/2015  
AY: 2008-09

Utech Developers Ltd. 305, 3 <sup>rd</sup> Floor Bhanot Corner Pamposh Enclave, G.K.-I New Delhi 110 048  PAN: AAACU8713H	vs.	ITO, Ward 18(1) New Delhi
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(Appellant)

(Respondent)

Assessee by : Sh. M.P.Rastogi, Adv.  
Department by : Smt.Naina Soin Kapil, Sr.DR.

Date of Hearing : 29/01/2019  
Date of Pronouncement: 08/02/2019

ORDER

PER BEENA A PILLAI, JUDICIAL MEMBER

Present penalty appeal has been filed by assessee against order dated 12/06/15 passed by Ld.CIT(A)-22, New Delhi for assessment year 2008-09 on following grounds of appeal:

*"1. That on facts and in the circumstances of law, Lower authorities erred in levying penalty u/s 271(1)(c ) of the I.T.Act, 1961 of Rs.7,93,100/-.*

*2. That on facts and in the circumstances of law, Lower authorities erred in levying penalty on adhoc disallowances made by Ld.Assessing Officer.*

*3. That on facts and in the circumstances of law, Lower authorities erred in concluding that assessee deliberately attempted to evade taxes by making a malafide claim of travelling expenses.*

*4. The Appellant craves leave to add, alter, delete, modify or vary the above grounds of appeal at or before the time of hearing."*

**2. Brief facts of case are as under:**

Assessee filed its return of income on 23/09/08 declaring total income of Rs.17,70,44,900/-. The case was selected for scrutiny and assessment proceedings were initiated by issuing statutory notices. Representatives of assessee appeared before Ld.AO and filed various requisite details as called for. It was observed that Ld.AO passed assessment order by making *ad hoc* addition in respect of travelling expenses claimed by assessee incurred for air travel undertaken by Executive Vice President along with other employees.

**2.1.** Aggrieved by order of Ld. AO, assessee preferred appeal before Ld.CIT(A) who upheld addition.

**2.2.** Accordingly, Ld.AO issued notice under section 271 r.w.s. 271(1)(c) of I.T. Act, 1961 (the Act) for filing of inaccurate particulars/concealment of income. Ld.AO rejected explanation

offered by assessee and passed penalty order on 22/03/13 levying 100% penalty on *ad hoc* disallowance on account of travelling expenses to the extent of Rs.20 Lacs made by Ld.AO.

3. Aggrieved by order of Ld. AO, assessee preferred appeal before Ld. CIT (A) who confirmed penalty.

4. Aggrieved by order of Ld. CIT (A) assessee is in appeal before us now. At the outset assessee has raised additional ground vide application dated 25/01/19 which reads as under:

*" That in the absence of any specific limb/charge in the notice as contemplated u/s 271(1)(c ) of the I.T.Act, 1961, the penalty as imposed by the AO is arbitrary and bad in law."*

5. Ld.AR argued that, at the threshold, initiation of penalty is bad in law, as Assessing Officer in assessment order has not specified as to under which limb penalty needs to be initiated.

5.1. He submitted that case of assessee is squarely covered by decision of *Hon'ble Supreme Court* in case of *CIT vs. SSA's Emerald Meadows* reported in 242 taxman 180.

6. Ld. Sr.DR submitted that assessee has not established its bona fides, and there was no appeal preferred by assessee against disallowance before this Tribunal. She thus supported orders of authorities below.

7. We have perused submissions advanced by both sides in light of records placed before us.

7.1. It goes without saying that for applicability of Section 271(1)(c), conditions stated therein must exist. There can be no dispute that everything would depend upon return filed because

that is only document, where assessee can furnish particulars of his income.

**7.2.** The section 271(1)(c) presents two essentials - 'concealment' and 'furnishing inaccurate particulars of income'. The revenue claims that, by furnishing wrong claim assessee has 'furnished inaccurate particulars of income' that amounts to concealment.

**7.3.** In present case before us, assessee cannot be penalized for making a claim of expenditure, which is not acceptable to Ld. AO. In fact it is found that Ld.A.O. disallowed expenditure on *ad hoc* basis. This itself shows that there is no dispute regarding all particulars being filed by assessee which is disallowed in part by Ld. AO on premise that it has not been incurred exclusively and wholly for purpose of business of assessee. The Ld. AO has not brought on record anything contrary to establish that claim of assessee do not pertain to travelling expenses. From paper book filed before us it is observed that assessee has placed vouchers and invoices raised by airlines in respect of payments made for travel by its officials. Further Assessing Officer has not found fault with explanation offered by assessee in response to notice u/s 274 of the Act. Merely because disallowance has been made which has been confirmed by Ld.CIT(A), he proceeded to levy penalty on *ad hoc* disallowance. As we are deleting penalty levied, we do not wish to venture into expressing our view in respect of additional ground raised by assessee and same is kept open.

7.4. We are therefore inclined to delete penalty for reason that disallowance made was on *ad hoc* basis, without there being any conclusive material on record.

7.5. **Accordingly penalty levied stands deleted.**

8. **In the result appeal filed by assessee stands allowed.**

Order pronounced in the open court on 08<sup>th</sup> February, 2019.

Sd/-  
**( PRASHANT MAHARISHI)**  
**ACCOUNTANT MEMBER**

Sd/-  
**(BEENA A PILLAI)**  
**JUDICIAL MEMBER**

Dt. 08<sup>th</sup> February, 2019

- Gmv

Copy forwarded to: -

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

- TRUE COPY -

By Order,

**ASSISTANT REGISTRAR**  
ITAT Delhi Benches

	Date
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