

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'E' BENCH,  
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS. SUCHITRA KAMBLE, JUDICIAL MEMBER

ITA No. 5718/DEL/2016  
[A.Y 2010-11]

The A. C.I.T  
Circle - 19(1),  
New Delhi

Vs.

Oriental bank of Commerce  
Central Account Office  
2<sup>nd</sup> Floor, Plot No. 5,  
Institutional Area, Gurgaon

PAN No: AAACO 0191 M

[Appellant]

[Respondent]

Date of Hearing : 13.06.2019  
Date of Pronouncement : 14.06.2019

Assessee by : Shri K.V.S.R. Krishna, CA  
Revenue by : Ms. Rinku Singh, Sr. DR

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:**

With this appeal, the Revenue has challenged the correctness of the order of the Id. CIT(A) - 36, New Delhi dated 29.09.2016 pertaining to A.Y 2010-11.

2. The solitary grievance of the assessee is that the CIT(A) erred in deleting the penalty imposed u/s 271(1)(c) of the Income-tax Act, 1961 [hereinafter referred to as 'the Act'], amounting to Rs. 1,22,36,400/-.

3. Roots for levy of penalty lie on the assessment order dated 28.03.2013 framed u/s 143(3) of the Act. During the course of scrutiny assessment proceedings, the Assessing Officer noticed that the assessee has shown exempt income of Rs. 15.69 crores. The Assessing Officer found that the assessee has not disallowed any expenditure on earning of exempt income. When the assessee was asked to justify its stand, the assessee explained that there is no expenditure incurred in relation to earning of tax exempt income.

4. Reply of the assessee did not find any favour with the Assessing Officer who was of the firm belief that for earning exempt income, the assessee must have incurred some expenditure. Invoking the provisions of section 14A r.w.r. 8D of the Rules, the Assessing Officer computed the disallowance at Rs. 50.52 crores.

5. The matter was agitated before the first appellate authority and the first appellate authority reduced the disallowance to Rs. 3.96

crores by applying the third limb of Rule 8D at 0.5% average investments. The order of the first appellate authority was confirmed by the Tribunal.

6. The Assessing Officer initiated penalty proceedings u/s 271(1)(c) of the Act on the disallowance confirmed by the appellate authority and levied penalty of Rs. 1,22,36,400/-.

7. The assessee agitated the matter before the CIT(A) and strongly contended that no penalty is leviable on disallowance u/s 14A of the Act, which is a highly debatable issue. It was also brought to the notice of the CIT(A) that though the disallowances u/s 14A of the Act were made in earlier A.Ys also, but no penalty has been levied.

8. After considering the facts and detailed submissions, the Id. CIT(A) held as under:-

I have gone through the penalty order, submission of the assessee and the various case laws quoted by the assessee. The main thrust of the assessee's submissions is that the penalty is not leviable on disallowance u/s. 14A which is a debatable issue. It was also brought to notice that on the issue of disallowance u/s. 14A penalty has been levied only in A.Y. 2010-11 whereas additions have been made in other assessment years also. The various case laws quoted

by the assessee apply to the issue of penalty to be levied on such disallowance. The Delhi High Court has in the case of Liquid Investment and Trading Company vide order 05.10.2010 held as under:

"Both the CIT(A) as well as the ITAT have set aside the penalty imposed by the AO u/s. 271(1)(c) of the I. T Act on the ground that the issue of deduction u/s. 14A of the Act was a debatable issue. We may also note that against the quantum assessment whereunder deduction u/s. 14A of the Act was prescribed to the assessee, the assessee has preferred an appeal in this Court u/s. 260A of the Act which has also been admitted and substantial question of law framed. This itself shows that the issue is debatable. For these reasons, we are of the opinion that no question of law arises in the present case. "

There are a catena of judgements which have ruled that even if the addition is sustainable u/s. 14A r.w.r 8D, the issue does not give a cause for penalty to be levied u/s. 271(1)(c). In some cases it has been decided that penalty cannot be levied as it may at best considered a difference of opinion, in some it has been held that since it is a presumptive assumption, no penalty can be levied unless it has a sound basis of facts. Most of these cases relied on the decision of the Hon'ble Supreme Court in the case of Reliance Petroproducts Pvt. Ltd. (322 ITR 158) which held that there were no details filed which were found inaccurate

and it is up to the authorities to accept the claim made by the assessee or not. Merely not accepting the claim would not attract the penalty u/s. 271(l)(c).

7. In the assessee's case also it is observed that the disallowance u/s. 14A has been calculated using the details given by the assessee in its return of income which were not found to be inaccurate. The cases quoted above squarely applies in the assessee's case. In such cases, whether the disallowance u/s. 14A is finally upheld or not by the higher judicial authorities, it is clear that the penalty will not be leviable as there was no inaccurate details furnished by the assessee (which should be pointed out by the AO). Further, the issue is clearly debatable as held in case law quoted in para 6. The penalty may therefore be deleted.

8. In the result, the appeal of the assessee is Allowed."

9. Aggrieved by this, the Revenue is before us.

10. The ld. DR strongly stated that it is now a well settled position that penalty u/s 271(1)(c) of the Act is a civil liability for which concealment is not an essential ingredient. Reliance was placed on the decision of the Hon'ble Supreme Court in the case of Dharmendra Textiles Processors 295 ITR 244. The ld. DR further stated that with the decision of the Hon'ble Supreme Court in the case of Maxopp

Investment Ltd versus CIT (2018) 91 taxman.com 154 (SC), disallowance u/s 14A is no more a datable issue. It is the say of the ld. DR that facts of the case in hand are different from the facts considered by the Hon'ble Supreme Court in the case of Reliance Petroproducts Ltd 322 ITR 158. The ld. DR prayed for upholding the levy of penalty.

11. Per contra, the ld. AR relying upon the decision of the CIT(A), reiterated what has been stated before the lower authorities.

12. We have given a thoughtful consideration to the orders of the authorities below. There is no dispute that similar disallowances were made in earlier years also where no penalty was levied. It is equally true that res judicata is not applicable to tax proceedings, as held by the Hon'ble Supreme Court in the case of Radha Soami Satsang 193 ITR

13. At the same time, Rule of Consistency cannot be ignored which was also laid down by the Hon'ble Supreme Court in the decision Radha Saomi Satsang [supra].

14. The Hon'ble Jurisdictional High Court of Delhi in the case of Liquid Investment and Trading Company, vide order 5.10.2010 has held

that the issue of deduction u/s 14A of the assessee was a highly debatable issue.

15. The Hon'ble Supreme Court in the case of Reliance Petroproducts has held that there were no details filed which were found inaccurate and it is upto the authorities to accept the claim made by the assessee or not. Merely not accepting the claim would not attract the penalty u/s 271(1)(c) of the Act. Considering the facts of the case in the light of the judicial decisions discussed hereinabove, we do not find any error or infirmity in the finding of the CIT(A).

16. In the result, the appeal of the revenue in ITA No. 5718/DEL/2016 is dismissed.

**The order is pronounced in the open court on 14.06.2019.**

**Sd/-**

**[SUCHITRA KAMBLE]  
JUDICIAL MEMBER**

**Sd/-**

**[N.K. BILLAIYA]  
ACCOUNTANT MEMBER**

Dated: 14<sup>th</sup> June, 2019

VL/

Copy forwarded to:

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

Asst. Registrar  
ITAT, New Delhi

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	
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