

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND DR.
BRR KUMAR, ACCOUNTANT MEMBER**

ITA No.4118/Del/2017
Assessment Year: 2009-10

Sunrays Properties & Investment Co. Pvt. Ltd., 414/1,4 th Floor, DDA Comm. Complex, District Centre, Janakpuri, New Delhi- 11100 58	Vs.	ITO, Ward-9(3), New Delhi.
PAN :AAACS3655C		
(Appellant)		(Respondent)

Appellant by	Manu K. Giri, Adv.
Respondent by	Ms. Sarojini Xess, SR DR

Date of hearing	17.03.2022
Date of pronouncement	11.04.2022

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the assessee against order dated 30.03.2017 of learned Commissioner of Income-Tax (Appeals)-8, New Delhi, confirming the penalty imposed under Section 271(1)(c) of the Income-Tax Act,1961 for an amount of Rs.62,18,697 for the assessment year 2009-10.

2. Briefly, the facts are that the assessee is a resident company engaged in the business of trading in shares and financing.
3. For the assessment year under appeal, assessee filed its return of income declaring loss of Rs.1,67,25,373.
4. In course of assessment proceedings, the assessing officer noticed that the assessee, though, has earned exempt income by way of dividend amounting to Rs.1,53,62,695, however, assessee has disallowed an amount of Rs.15,22,277 only. Therefore, he called upon the assessee to explain why disallowance should not be made in terms of section 14A read with Rule 8D. Though, the assessee objected to the proposed disallowance, however, the assessing officer rejecting the submissions of the assessee proceeded to make a net disallowance of Rs.1,82,95,666 comprising of interest expenditure of Rs.1,79,95,358 and administrative expenditure of Rs.17,30,222. Though, the assessee contested the aforesaid disallowance before learned First Appellate Authority, however, he was not successful.
5. In further appeal, the Tribunal, partly allowed the appeal with a direction to the assessing officer to restrict the disallowance to the exempt income earned during the year. In the meanwhile, based on the

disallowance made in the assessment order, the assessing officer initiated proceedings for imposition of penalty under Section 271(1)(c) of the Income-Tax Act,1961 alleging furnishing of inaccurate particulars of income. Ultimately, the assessing officer passed an order imposing penalty under Section 271(1)(c) of the Act on the disallowance made of Rs.1,82,95,666. While deciding assessee's appeal on the issue, learned Commissioner of Income-Tax (Appeals) though upheld the decision of the assessing officer imposing penalty, however, he directed the assessing officer to recompute the penalty on the addition sustained by the Tribunal.

6. We have considered rival submissions and perused the material on record. The addition which formed the basis for imposition of penalty under Section 271(1)(c) of the Act is the disallowance of expenditure under Section 14A read with Rule 8D.

7. Undisputedly, on the exempt income earned during the year under appeal, assessing officer made disallowance at Rs.1.82 crores which was subsequently scaled down to the extent of exempt income earned by the assessee. It is further evident, the assessing officer has initiated proceeding for imposition of penalty under Section 271(1)(c)

of the Act alleging furnishing of inaccurate particulars of income and has also imposed the penalty under the said limb. However, facts on record clearly reveal that not only the assessee furnished full particulars of the exempt income earned during the year but the assessee itself has voluntarily computed disallowance of expenditure attributable to the exempt income. It is not a case where the assessee did not furnish particulars of either the exempt income earned or did not disallow any expenditure at all. The assessee computed the disallowance of expenditure in a manner which was not acceptable to the Revenue. That, by itself, cannot lead to the conclusion that the assessee has furnished inaccurate particulars of income. In any case of the matter, disallowance under Section 14A read with Rule 8D is a statutory disallowance which has to be made on a notional basis by applying the methodology prescribed under Rule 8D. In the aforesaid scenario, only because some disallowance has been made on notional basis, it cannot be held that the assessee has furnished inaccurate particulars of income. Therefore, in our considered opinion, it is not a fit case for imposition of penalty under Section 271(1)(c) of the Act. Accordingly, we delete the penalty imposed. Grounds are allowed.

8. In the result, appeal is allowed.

Order pronounced in the open court on 11th April, 2022

**Sd/-
(DR. BRR KUMAR)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 11th April, 2022.

Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi

Sl. No.	Particulars	Date
1.	Date of dictation (Order drafted through Dragon software):	25.03.2022
2.	Date on which the draft of order is placed before the Dictating Member:	25.03.2022
3.	Date on which the draft of order is placed before the other Member:	25.03.2022
4.	Date on which the approved draft of order comes to the Sr. PS/PS:	25.03.2022
5.	Date of which the fair order is placed before the Dictating Member for pronouncement:	
6.	Date on which the final order received after having been singed/pronounced by the Members:	11.04.2022
7.	Date on which the final order is uploaded on the website of ITAT:	
8.	Date on which the file goes to the Bench Clerk	11.04.2022
9.	Date on which files goes to the Head Clerk:	
10.	Date on which file goes to the Assistant Registrar for signature on the order:	
11.	Date of dispatch of order:	