

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “C” DELHI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
&
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.7535/DEL/2019
Assessment Year 2009-10

M/s. Keyman Financial Services Pvt. Ltd., 403, Prabhat Kiran, 17, Rajendra Place, New Delhi.		Deputy Commissioner of Income Tax, Circle-14(2), Delhi.
TAN/PAN: AAACK3453G		
(Appellant)		(Respondent)

Appellant by:	Shri Shri Pulkit Verma, Adv.		
Respondent by:	Ms. Anupama Singla, Sr.DR		
Date of hearing:	02	06	2022
Date of pronouncement:	08	06	2022

ORDER

PER PRADIP KUMAR KEDIA, A.M.:

The captioned appeal has been filed at the instance of the assessee against the order of the Commissioner of Income Tax (Appeals)-V, New Delhi ('CIT(A)' in short) dated 26.04.2019 passed under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2009-10.

2. As per its grounds of appeal, the assessee has challenged the imposition of penalty under Section 271(1)(c) on disallowances sustained under Section 14A to the extent of Rs.10,000/- by the ITAT in quantum proceedings in ITA No.4043/Del/2014 order dated 15.01.2018.

3. On perusal of the orders of the authorities below, we observe

that the disallowance was originally carried out at Rs.37,22,144/- in the light of the provision of Section 14A r.w. Rule 8D of the Income Tax Rules. The ITAT in appeal however restricted the disallowance to Rs.10,000/- as attributable to earning of exempt income. The CIT(A) has therefore confirmed the penalty on the amount of disallowance sustained by the ITAT.

4. We straightway note that in order to attract penalty under Section 271(1)(c) of the Act, it is necessary that there must be concealment by the assessee of particulars of his income or furnishing of inaccurate particulars thereof. The disallowance of certain expenditure on estimated basis on some notional basis is neither the concealment of income particulars of income nor furnishing of inaccurate particulars as such.

5. Needless to say, to invoke Section 271(1)(c), the entirety of circumstances must reasonably point to the conclusion that the disputed amount represents income and the assessee has concealed the particulars or furnished inaccurate particulars thereof. The Coordinate Bench of ITAT in the instant case has restricted the disallowance under Section 14A to the extent of exempt income on the ground that such disallowance cannot exceed the exempt income. It is not the case of the Revenue Authorities that assessee has, in fact, incurred any expenses to earn the exempt income and concealed the facts thereon beyond any doubt. The Revenue Authorities have determined the disallowances on the basis of deeming provisions of computation of disallowances provided under Rule 8D of the Income Tax Rules.

6. A conspectus of Explanation-1 to Section 271(1)(c) of the Act, makes it clear that the statute visualizes the assessment proceedings and penalty proceedings to be wholly distinct and independent of

each other. While the Assessing Officer may be justified in making estimated disallowance in quantum proceedings, such disallowance of expenses and that too on estimated basis and further substantially reduced in the appellate proceedings, could not automatically fall within the mischief of Section 271(1)(c) of the Act on the grounds of concealment etc. While the claim towards expenditure may not be found acceptable in quantum proceedings, such disallowance *per se* cannot invite rigors of penalty. Where all material facts relevant to the issue were placed on record, mitigating circumstances to disprove any culpability of any sort against the assessee is established by implication. The claim of expenditure towards exempt income made, at best, be taken as erroneous claim by the assessee. Such claim, although, may not be maintainable for the purposes of quantum proceedings, however would not invite penalty in the absence of falsity *per se*.

6. The Hon'ble Delhi High Court in the case of *CIT vs. Nokia India Pvt. Ltd. as reported in 343 ITR 434 (Del)* held that penalty under Section 271(1)(c) is not leviable for *ad hoc* disallowance made on estimated basis in the absence of any element of falsity *per se*.

7. In view of the aforesaid deliberations, the impugned order of the CIT(A) is set aside and the Assessing Officer is directed to delete the penalty in question.

8. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 08/06/2022.

Sd/-
[SAKTIJIT DEY]
JUDICIAL MEMBER

DATED: /06/2022

Prabhat

Sd/-
[PRADIP KUMAR KEDIA]
ACCOUNTANT MEMBER