

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'H' : NEW DELHI)**

**SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
and
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER**

**ITA No.5177/Del./2019
(ASSESSMENT YEAR : 2012-13)**

Shri Jagat Pal Gupta,
C/o Matta & Associates,
877, Aggarwal Cyber Plaza-II,
Netaji Subhash Place, Pitampura,
Delhi – 110 034.

vs. ACIT, Circle 35 (1),
New Delhi.

(PAN : AAAPG3798D)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : None

REVENUE BY : Shri Praveen Rawal, CIT DR

Date of Hearing : 09.06.2022

Date of Order : 23.06.2022

ORDER

PER SHAMIM YAHYA, ACCOUNTANT MEMBER :

This appeal filed by the assessee is directed against the order of the
1d. CIT (Appeals)-12, New Delhi dated 03.05.2019 pertaining to AY
2012-13.

2. The grounds of appeal taken by the assessee read as under :-

“1. That the learned CIT (Appeals) has grossly erred by confirming the action of the Assessing Officer of imposing penalty u/s 271(1)(c) of Income Tax Act.

2. That the learned CIT (Appeals) has further erred by not deleting the whole of the penalty imposed u/s 271(1)(c) of the Income Tax Act, 1961.”

3. Brief facts of the case leading to penalty are that assessee's claim of short term capital gain was treated as business income. Further disallowance u/s 14A of the Income-tax Act, 1961 (for short 'the Act') was made as AO was not satisfied with the disallowance done by the assessee. Further 100% claim of 80G deduction was reduced to 50%. In this background, penalty u/s 271(1)(c) was levied for a sum of Rs.5,86,741/-.

4. Upon assessee's appeal, Id. CIT (A) partly allowed the appeal and held as under :-

“7.11 In the above cited decision the Ld. CIT(A) has treated the disclosure of short term capital gain as business income. She has also upheld the disallowance of expenses against the income which does not form part of total income. Considering the same, I am of the view that the treatment of income from the sale or the shares as short term capital gain by the Assessee was, in fact, not based on the facts of the case. The Assessee had earned dividend income amounting to Rs.37,43,933/- and no expenditure was debited. The CIT(A) agreed with the Assessing Officer and sustained the disallowance of Rs.5,22,036/-. I am also of the view that the provisions of section 14A of the IT Act were required to be invoked against the exempt income. However, I agree with the Appellant that the Assessing Officer's calculation of tax sought to be evaded is not correct, as the Assessee had already paid tax of Rs.2,12,715/- @ 15.45% on the short term capital gain of Rs.13,76,801/-. Hence, the Assessing Officer is directed to recompute the tax sought to be evaded on Rs.13,76,801/-. The other part of the argument of the Appellant is that total claim of expenditure under the business head was Rs.1,59,158/- including depreciation. In my considered view, no disallowance of expenditure can be made which has not been claimed by the Assessee during the year under consideration. Though the CIT (A) has concurred with the view of the Assessing Officer for making the disallowance of Rs.5,22,036/-, this aspect has to be kept in view for the purposes of imposing the penalty u/s 271(1)(c) of the IT Act. Therefore, I direct the Assessing Officer to compute the tax sought to be evaded on the amount of Rs.1,59,158/- only out of Rs.5,22,036/-. With the above observations, the Appellant's appeal is partly allowed. The penalty imposed on the disallowance of claim of deduction u/s 80G needs no interference as the Appellant has accepted the mistake.”

5. Against the above order, the assessee filed an appeal before us. We have heard ld. DR of the Revenue and perused the records. None appeared on behalf of the assessee despite issuance of notice.

6. We note that on the issues aforesaid on which penalty has been sustained, no cogent case has been made out of concealment or furnishing of inaccurate particulars. When all the details are before the Revenue authorities and the claim is not accepted, this fact *ipso facto* cannot lead to levy of penalty u/s 271(1)(c) of the Act. This view is duly expounded by Hon'ble Supreme Court decision in the case of Reliance Petro Products Pvt. Ltd. - 322 ITR 158 (S.C.). In our considered opinion, assessee's claim as aforesaid cannot be said to be ex-facie bogus. Hence, the ratio of Hon'ble Supreme Court in the case of Reliance Petro Products Pvt. Ltd. (supra) is fully applicable. Following the precedent, we set aside the orders of authorities below and decide the issue in favour of assessee.

7. In the result, assessee's appeal is allowed.

Order pronounced in the open court on this 23rd day of June, 2022.

**Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER**

**sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

**Dated the 23rd day of June, 2022
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Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-12, New Delhi
- 5.CIT(ITAT), New Delhi.

AR, ITAT
NEW DELHI.