

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "A" DELHI**

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.A. No.8158/DEL/2019  
Assessment Year 2015-16

Bhartiya City Developers Pvt. Ltd., E-52, New Mangalpuri, Mandi Road, Mehrauli, South West, New Delhi.	v.	Addl. CIT, Special Range, New Delhi.
TAN/PAN: AAACZ3571A		
(Appellant)		(Respondent)

Appellant by:	Shri Amit Goel, CA, Shri Nipun Mittal, CA		
Respondent by:	Shri Kanav Bali, Sr.D.R		
Date of hearing:	29	06	2022
Date of pronouncement:		07	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)-II, New Delhi ('CIT(A)' in short), dated 09.09.2019 arising from the assessment order dated 12.12.2017 passed by the Assessing Officer (AO) under Section 143(3) of the Income Tax Act, 1961 (the Act) concerning AY 2015-16.

2. As per its grounds of appeal, the assessee has challenged the imposition of penalty of Rs.2,47,724/- on account of disallowance of Rs.8,25,747/- made under Section 14A of the Act.

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

that the disallowance was carried out at Rs.8,25,747/- in the light of the provision of Section 14A r.w. Rule 8D(2)(iii) of the Income Tax Rules which was confirmed by the CIT(A) having regard to exempt income declared by assessee.

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 reasonable point to the conclusion that the disputed amount represents income and the assessee has concealed the particulars or furnished inaccurate particulars thereof. The Revenue in the instant case has computed an estimated disallowance under Section 14A read with Rule 8D(2)(iii) @ 0.5% of average investment. 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*.

7. The Hon'ble Apex Court in the case of *CIT vs. Reliance Petroproducts Pvt. Ltd. as reported in 322 ITR 158 (SC)* 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*. It was observed that in the absence of any finding that any details supplied by the assessee in its return are found to be incorrect or erroneous or false, there is no question of inviting the penalty under Section 271(1)(c) of the Act. It was further observed that a mere making of claim, which is not sustainable in law, by itself will not amount to furnishing inaccurate particulars regarding the income of the assessee. Such a claim made in the return cannot amount to furnishing inaccurate particulars.

8. In *CIT vs. Liquid Investment & Trading Co., ITA*

*No.240/2009 judgment dated 05.10.2010*, the Hon'ble Delhi High Court observed that issue of disallowance under Section 14A is a debatable issue.

9. 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.

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

**Order pronounced in the open Court on 21/07/2022.**

Sd/-

**[KUL BHARAT]  
JUDICIAL MEMBER**

DATED: **21/07/2022**

*Prabhat*

Sd/-

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**