

**IN THE INCOME TAX APPELLATE TRIBUNAL**

**(DELHI BENCH 'H' : NEW DELHI)**

**BEFORE DR. B.R.R.KUMAR, ACCOUNTANT MEMBER  
AND  
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.836/Del/2020  
(Assessment Year : 2012-13)

ACIT, Circle-27(1) New Delhi	Vs.	M/s. Unitech Holding 6, Community Centre, Saket New Delhi-110017 PAN : AAACU0237C
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Revenue by	Sh. M. Baranwal, Sr. DR
Assessee by	None

Date of hearing:	14.07.2022
Date of Pronouncement:	22.07.2022

**ORDER**

**PER ANUBHAV SHARMA, JM:**

The appeal has been filed by the Revenue against order dated 31.03.2019 in appeal no. CIT(A), Delhi 9/10054/2019-20 in assessment year 2012-13 passed by Commissioner of Income Tax (Appeals)-9, New Delhi (hereinafter referred to as the First Appellate Authority in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order

dated 31/03/2019 u/s 271(1)(c) r.w.s. 274 of the Income Tax Act, 1961 passed by DCIT, Circle – 27(1), New Delhi (hereinafter referred to as the Assessing Officer ‘AO’).

2. The facts in brief are that for the AY 2012-13, the appellant had voluntarily filed its return of income electronically on 31.03.2014, declaring total income of Rs.13,12,15,032/-. Thereafter, assessment proceedings were initiated upon the appellant company. Assessment u/s 143(3) was completed on 27.03.2015 with the following additions / disallowances:

1. Addition on account of notional interest on share application money advanced- Rs. 13,80,08,863/-

2. Disallowance u/s 14A – Rs. 1,40,75,583/-

The aforesaid assessment order was appealed by the appellant before the CIT(A), who gave part relief to the appellant vide order dated 30.03.2017, whereby the disallowance u/s 14A was reduced to Rs.2,89,315/- and, the addition of notional interest on share application money advanced was upheld.

3. In the meantime, the penalty proceedings were initiated by the AO. The appellant filed its response thereto and the AO passed the final order u/s 271(1)(c) on 31.03.2019 levying a penalty of Rs.4,48,70,780/-.

4. Ld. CIT(A) however allowed the appeal of assessee holding ;

*“5.7 While propounding the definition of “Inaccurate Particulars”, the Hon’ble Apex Court had held that a disallowance under Section 14A does not fall within the ambit of being*

*categorized as “inaccurate particulars”, thereby reliving such addition from attracting penalty under Section 271(1)© of the Act. Therefore, that being the case of the appellant, no penalty can be levied on the appellant under Sec. 271(1)(c) and hence, the grounds of appeals are upheld and the penalty is deleted.”*

4. Now the revenue is in appeal raising following grounds :-

*“1. Whether on facts and in the circumstances of the case the Ld. CIT(A) has erred in deleting the penalty of Rs. 4,48,70,780/- imposed u/s 271(1)(c) of the Income Tax Act, 1961.*

*2. The appellant craves, leave or reserving the right to amend, modify, alter, add or forego any grounds of appeal at any time before or during the hearing of the appeal.”*

5. As the case was called for hearing on 14/7/22 none appeared for the assessee/ appellant though notice of date of hearing were issued for today. Heard and perused the record.

6. On behalf of the Revenue it was submitted by the Id. Sr. DR that in the assessment order Ld. AO had given categoric finding that assessee had furnished inaccurate particulars and therefore penalty order was rightly passed and Ld. CIT(A) has failed to take correct view.

7. It can be appreciated from the order of Ld. CIT(A) that it had concluded that disallowance u/s 14A does not fall within the ambit of being categorized as inaccurate particulars for the purpose of Section 271(1)(c) of the Act and for which reliance was rightly placed on the Hon’ble Supreme Court judgment in the case of CIT vs. Reliance Petro Products (P) Ltd.

(2010) 322 ITR 158 (SC). Ld. Sr. DR was unable to cite any proposition of law to the contrary as relied by Ld. CIT(A). No grounds for interference are made out, **the appeal is dismissed.**

**Order pronounced in the open court on 22<sup>nd</sup> July, 2022.**

**Sd/-  
(DR. B.R.R.KUMAR)  
ACCOUNTANT MEMBER**

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

*Date:- 22 .07.2022*

**\*Binita, SR.P.S\***

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI