

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

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER  
&  
SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER**

I.T.As. No.3416, 3417, 3418/Del/2019  
Assessment Years 2010-11, 2011-12 & 2013-14

VIC Enterprises Pvt. Ltd., 4 <sup>th</sup> Floor, Punjabi Bhawan, 10, Rouse Avenue, New Delhi.	v.	ACIT, Circle-26(2), New Delhi.
TAN/PAN: AAACV0132B		
(Appellant)		(Respondent)

Appellant by:	Shri M.P. Rastogi CA		
Respondent by:	Shri Ramdhan Meena, Sr.D.R.		
Date of hearing:	29	08	2022
Date of pronouncement:		08	2022

**ORDER**

**PER PRADIP KUMAR KEDIA, A.M.:**

All the three captioned appeals filed by the assessee concerns imposition of penalty under Section 271(1)(c) in pursuance of additions made in the quantum assessment framed under Section 143(3) of the Act. Consequently, the issues being common, all the three appeals have been heard together and disposed of by way of this consolidated order.

2. The penalty has been imposed by the Assessing Officer on various additions in quantum as noted hereunder:

- a) The addition on account of disallowance interest amounting to Rs. 84,737/- (Assessment Year 2010-11); Rs.69,73,346/- (Assessment Year 2011-12); and Rs.16,31,794/- (Assessment Year 2013-14).

- b) Disallowance of loss of Rs.997988 (AY 2010-11) and Rs.59577 (AY 2011-12) with reference to Section 94(7)/94(8) of the Act.
- c) Disallowance of club expenses Rs.694890 (AY 2011-12) and Rs.928880 (AY 2013-14)
- d) Disallowance of Rs.40,79,283/- under Section 14A of the Act.
- e) Addition of Rs.14,250/- in Assessment Year 2013-14 towards computation error.
- f) Quantification of penalty on reduction of claim of 80G by Rs.16,97,924/- in Assessment Year 2013-14.

3. As pointed out on behalf of the assessee, the quantum addition stood deleted by the ITAT in ITAs No.2104, 2105 and 2107/Del/2017 order dated 29.01.2020. The quantum additions having been deleted, the basis for imposition of penalty on account of disallowance interest does not survive. Consequently, the penalty imposed by the Assessing Officer for such disallowance of interest stands deleted in all assessment years as capsulated in para 2 above.

4. The second issue concerns imposition of penalty on account of disallowance of loss under Section 94(7)/94(8) of the Act amounting to Rs.9,97,988/- (Assessment Year 2010-11) and Rs.59,577/- (Assessment Year 2011-12). It is contended on behalf of the assessee that the additions made under Section 94(7)/94(8) was on account of dividend stripping in respect of shares/mutual fund. It was submitted that amount involved is negligible having regard to the volume of business carried on by the assessee and the assessee failed to apply deeming fiction of Section 94(7)/94(8) purely on account of inadvertence. The unintended lapse to

apply deeming fiction was readily accepted in the course of assessment without any demur and the income was offered for taxation. The assessee further contends that all the facts were available before the Assessing Officer and it is only the artificial additions under Section 94(7)/94(8) of the Act which has been overlooked. The assessee further contends that it cannot be the case of the Revenue that the loss reported has not been actually incurred. The loss reported is supported by the documentary evidences but however the dividend stripping is not admissible due to legal fiction of Section 94(7)/94(8) of the Act. The judgment rendered by the Hon'ble Delhi High Court in *Pr.CIT vs. Harish Kumar HUF (2022) 140 taxmann.com 134 (Del)* was adverted in this regard in the similarly placed factual matrix. It was thus urged that owing to peculiar facts, the imposition of penalty for *bona fide* error is not justified.

5. Having regard to the facts noted above and in the light of the judgment rendered by the Hon'ble Jurisdictional High Court, we are of the view that it is a case of a *bona fide* error in failing to apply deeming provisions of Section 94(7)/94(8) of the Act for which the assessee ought not to be visited with onerous penalty susceptible under Section 271(1)(c) of the Act. The imposition of penalty on this score is thus deleted.

6. The next issue concerns imposition of penalty on club expenses incurred Rs.6,94,890/- (Assessment Year 2011-12) and Rs.9,28,880/- (Assessment Year 2013-14) disallowed by the Assessing Officer. The assessee in this regard submits that the assessee is one of the holding company of Dabur India Ltd. The assessee had acquired the membership of a health club namely M/s. Mayor Health Resorts and paid the subscription. The assessing officer disallowed the club expenses on the grounds of uses for personal purposes. The assessee did not file appeal but that does not

mean that the assessee has concealed any income or furnished inaccurate particulars *per se*. It was contended that the club expenses incurred were allowed as revenue expenditure in many cases i.e., 195 ITR 682 (Bombay) *Otis Elevator*; 296 ITR 682 (Delhi) *Nestle India Ltd.*; 180 Taxman 82 (Delhi) *Samtel Colour Ltd.*; 239 ITR 237 (Delhi) *Engineers India Ltd.*; 209 ITR 649 (Gujarat) *Gujarat State Export Ltd.*

7. We find considerable merit in the plea of assessee. In the light of plethora of judicial precedents, the question of allowability of club expenses, in itself, is a debatable issue and varies from case to case. Under the circumstances imposition penalty on such contentious addition/disallowance on account of club expenses is not justified on the touchstone of law interpreted by the Hon'ble Supreme Court in *Reliance Petro Products Pvt. Ltd. (2010) 322 ITR 158 (SC)* and other host of judgments. The penalty imposed on club expenses is thus reversed.

8. Next issue concerns imposition of penalty on disallowances under Section 14A r.w. Rule 8D of the Income Tax Rules amounting to Rs.41,79,283/-. In the quantum appeal, the ITAT has granted relief and directed to restrict the disallowance only in respect of investment yielding exempt income. The assessee contends that Section 14A has many legal facets and disallowance under Section 14A is a highly debatable issue and considerable varies having regard to the facts of the case. The Co-ordinate Bench itself has shown indulgence and directed re-working of such disallowance. In such circumstances, the Co-ordinate Bench of ITAT in the case of *R.L. Steel and Energy Ltd. vs. JCIT* in ITA No.1917/Del/2020 order dated 20.07.2022 has held as under:

“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. As noted, the quantum addition has been confirmed on the premise that the assessee is not eligible for higher rate of depreciation in the facts of the case. It is not the case of the Revenue authorities that the assessee has, in fact, concealed the fact relating to claim of depreciation allowance beyond any doubt. The Revenue Authorities have determined the lower claim of depreciation eligible to assessee on the basis of reappraisal of existing facts.*

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 depreciation allowance, at best, can be taken as erroneous claim by the assessee. The Hon'ble Delhi High Court in the case of CIT (International Taxation) vs. Gracemac Corporation, in ITA No. 47/2022 and C.M. No. 12833/2022 judgment dated 15<sup>th</sup> March, 2022 held that penalty under Section 271(1)(c) is not leviable as a matter of course in the absence of any element 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. A variance in depreciation claim made in the return does not thus tantamount to furnishing inaccurate particulars per se.*

8. *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.*

9. *In the result, the appeal of the assessee is allowed ex parte."*

9. In the light of the decision of Co-ordinate Bench and the peculiar factual matrix of the present case, the action of the Assessing Officer imposing penalty under Section 271(1)(c) on disallowance made under Section 14A appears to be mechanical exercise and thus stands reversed.

10. The other issue involved is computational error of Rs.14,250/- which is not substantial. One needs to bear in mind that a tax payer can be prone to such human error. Having regard to the smallness of the amount involved and in the absence of any falsity in such explanation, the penalty on such error is also reversed.

11. The assessee *inter alia* also pointed out that the Assessing Officer passing penalty order for Assessment Year 2013-14 has also quantified the penalty on account of a sum of Rs.16,97,924/- being the difference in the claim made under Section 80G of the Act and restricted to 10% of total income. It was pointed out that no discussion has taken place on this amount in the body of the penalty order but however the penalty has been quantified on this amount without giving any show cause on the issue.

12. As pointed out on behalf of the assessee, the amount of donation claimed under Section 80G is correct *per se* but however the quantum of deduction eligible under Section 80G is restricted to 10% of the total income in accordance with law. Thus, no allegation of furnishing of inaccurate particulars of income is justified. Coupled with this, the Assessing Officer has not applied his mind towards basis for imposing penalty on the issue. No satisfaction has been reached to invoke provisions of Section 271(1)(c) of the Act. In totality, we find merit in the plea of the assessee for reversal of penalty on this point.

13. In the result, all the issues raised in the captioned appeals are decided

in favour of the assessee.

14. In the result, all the three appeals of the assessee are allowed.

**Order pronounced in the open Court on 31/08/2022.**

Sd/-

Sd/-

**[CHANDAR MOHAN GARG]  
JUDICIAL MEMBER**

**[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER**

DATED: **31/08/2022**  
*Prabhat*

Copy forwarded to:

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

Assistant Registrar

		Date
1.	Draft dictated on	29.08.2022
2.	Draft placed before author	30.08.2022
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4.	Draft discussed/approved by Second Member.	
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10.	Date on which file goes to the AR	
11.	Date on which file goes to the Head Clerk.	
12.	Date of dispatch of Order.	