

**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.A. No.5583/DEL/2019  
Assessment Year 2011-12

Veera Apartments Pvt. Ltd., New Delhi.	v.	ACIT, Circle-26(1), New Delhi.
TAN/PAN: AAACV0503A		
(Appellant)		(Respondent)

Appellant by:	None		
Respondent by:	Shri Anil Kumar Sharma, Sr. DR		
Date of hearing:	24	08	2022
Date of pronouncement:	22	09	2022

**ORDER**

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

The captioned appeal has been filed by the Assessee against the order of the Commissioner of Income Tax (Appeals)-IX, New Delhi ['CIT(A)' in short] dated 10.05.2019 arising from the penalty order dated 28.09.2018 passed by the Assessing Officer (AO) under Section 271(1)(c) of the Income Tax Act, 1961 (the Act) concerning AY 2011-12.

2. As per its grounds of appeal, the assessee has challenged the imposition of penalty of Rs.6,77,000/- under Section 271(1)(c) of the Act claiming the action of the Revenue to be arbitrary and without jurisdiction.

3. None appeared for the assessee and accordingly the matter was proceeded ex-parte.

4. On perusal of the case records, it is seen that the Assessing Officer in the quantum proceedings has *inter alia* made disallowance of Rs.25,98,569/- towards business promotion expenses which was scaled down by the CIT(A) to Rs.16,14,800/-. The penalty on such disallowance has resulted in the impugned penalty under Section 271(1)(c) of the Act. On perusal of the assessment order in this regard, it is observed that the Assessing Officer disallowed the expenses on the ground of lack of documentation and expenses being personal in nature. The Assessing Officer thereafter recorded 'satisfaction' contemplated under Section 271 (1B) of the Act that the assessee has concealed/furnished inaccurate particulars of its income. Proceeded on such vague satisfaction, the Assessing Officer imposed penalty under Section 271(1)(c) vide order dated 28.09.2018 wherein the Assessing Officer alleged default for furnishing inaccurate particulars of income and also for concealing its income for assessment year in question. The CIT(A) confirm the penalty on the ground that the assessee has failed to demonstrate that the expenditure debited was really meant for its business purposes.

5. In this factual backdrop, we observe that imposition of penalty under Section 271(1)(c) is not justified for more than one reason; the satisfaction drawn in the course of the assessment appears to be vague and general and more importantly the disallowance has been carried out on the basis of judgment taken by Revenue on given facts. The judgment so obtained is in the

realm of subjectivity to a great extent. In this background, the explanation offered by the assessee cannot be wholly discarded when tested on the parameters of *bona fide* on the touch stone of Section 271(1)(c) of the Act. It is trite that imposition of penalty is not justified merely because it is lawful to do so. It is necessary that there must be concealment by the assessee of the particulars of its income or furnishing of inaccurate particulars. The disallowance of certain expenditure on judgment/estimated basis actually incurred on the grounds of lack of commercial expediency is neither concealment of any particulars of income *per se* nor furnishing of inaccurate particulars as such. Needless to say, to impose penalty, entirety of circumstances must reasonably point to the conclusion that the disputed amount represents income and the assessee has concealed the particulars thereof or furnished inaccurate particulars.

6. The Assessing Officer in the instant case has disallowed a portion of sales promotion expenses on the ground that the business expediency of such expenses has not been proved. A conspectus of Explanation-I of Section 271(1)(c) makes it clear that the statute visualized the assessment proceedings and penalty proceedings to be wholly different and independent of each other. While the Assessing Officer may be justified in making disallowance in quantum proceedings on the basis of variety of factors, every disallowance could not automatically fall within mischief of Section 271(1)(c) of the Act. While a claim towards expenditure may not be found acceptable in the quantum proceedings, such disallowance cannot *ipso facto* invite rigors by way of penalty. The disallowance of expense in the instant case has been a matter of inference and thus the claim of expenditure

towards sales promotion may, at best, be taken as erroneous claim by the assessee. Such claim made in a *bona fide* manner cannot lead to imposition of penalty although such claim may not have been found maintainable for the purposes of quantum proceedings. Making incorrect claim towards expense is not at par with the concealment or inaccurate particulars of income. Having regard to the facts noted above, possible over-statement of expenses by itself is not sufficient to allege *mala fide*.

7. Consequently, we reverse the action of the lower authorities and direct the Assessing Officer to delete the penalty imposed under Section 271(1)(c) in question.

8. In the result, the appeal of the assessee is allowed ex-parte.

**Order pronounced in the open Court on 22/09/2022.**

Sd/-  
[CHANDRA MOHAN GARG]  
JUDICIAL MEMBER

DATED: /09/2022

*Prabhat*

Sd/-  
[PRADIP KUMAR KEDIA]  
ACCOUNTANT MEMBER