

**IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND  
SH. CHANDRA MOHAN GARG, JUDICIAL MEMBER**

ITA No. 6333/Del/2019  
(Assessment Year : 2011-12)

Chowdry Associates 4 <sup>th</sup> Floor, Punjabi Bhawan, 10, Rouse Avenue, New Delhi-110 002	Vs.	ACIT Circle – 6(1) New Delhi
<b>PAN No. AAACC 0387 R</b>		
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Shri M. P. Rastogi, Adv.
Revenue by	Ms. Kirti Sankratyayan, Sr. D.R.

Date of hearing:	20.12.2022
Date of Pronouncement:	26.12.2022

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 29.04.2019 of the Commissioner of Income Tax (Appeals)-2, New Delhi under section 250 of the Income Tax Act for Assessment Year 2011-12.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a Non-Banking Financial Company and is stated to be engaged in the business of sale and purchase of shares and units of various mutual funds. Assessee filed its original return of income declaring total income of Rs.19,71,88,259/- on 28.09.2011. Thereafter, assessee revised its return of income on 26.09.2012 declaring total income at Rs.17,18,54,926/-. The case was selected for scrutiny and thereafter, assessment was framed u/s 143(3) of the Act vide order dated 29.03.2014 and the total income was determined at Rs.18,45,26,616/- *inter alia* by disallowing Rs.17,41,320/- u/s 14A and disallowance u/s 94(7) of the Act of Rs.5,18,286/-. On the aforesaid additions/disallowances made, AO vide penalty order passed on 28.03.2018 levied penalty of Rs.2,10,356/- u/s 271(1)(c) of the Act. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 29.04.2019 in Appeal No.10021/18-19 dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before the Tribunal and has raised the following grounds of appeal:

1. *“That the Ld. CIT(A) and the AO have erred on facts and under law in imposing penalty of Rs.2,10,356/- u/s 271(1)(c) of the Act.*
2. *That the Ld. CIT(A) and the AO have erred in on facts and under the law erred in deciding the appellant guilty of concealment of income and furnishing inaccurate particulars of income u/s 271(1)(c), without passing a speaking order of the wrong doing of the appellant.*
3. *The appellant craves leave to add, alter amend or withdraw any of the grounds of appeal at the time of hearing.”*

4. Before us, at the outset, Learned AR reiterated the submissions made before AO and CIT(A) and further submitted that additions made u/s 14A and 94(7) of the Act cannot be the basis of levy of penalty as the issues on which the penalty has been levied are debatable in the nature. He further submitted that Hon'ble ITAT in the case of Prakash Mangal Jain in ITA No.4747/2012 Mumbai had deleted the penalty levied u/s 271(1)(c) of the Act on the addition made u/s 94(7) of the Act for the reason that the issue of addition u/s 94(7) of the Act was debatable in nature. He also placed reliance on the decision rendered by the Delhi Tribunal in the case of VIC Enterprises Pvt. Ltd. vs ACIT in ITA No.3416, 3417 & 3418/Del/2019 order dated 31.08.2022. He placed on record the copy of the aforesaid decision.

5. As far as the penalty on the disallowance u/s 14A of the Act is concerned, he submitted that various Benches of Tribunal have held that penalty cannot be levied on the addition/disallowance made u/s 14A of the Act as the issue of disallowance u/s 14A is a debatable issue. He thereafter pointed to the assessment order passed by AO and pointed that AO has not recorded a clear cut satisfaction as to whether the penalty u/s 271(1)(c) of the Act has been imposed for furnishing of inaccurate particulars of income or for concealment of particulars of income and that finally in the penalty order the AO has levied penalty for concealment of income. He therefore submitted that in the absence of clear satisfaction recorded by the AO the penalty is not attracted. For

the aforesaid proposition he placed reliance on the decision rendered by the Hon'ble Bombay High Court in the case of CIT vs. Samson Perinchery (2017) 392 ITR 4 (Bom).

6. Learned DR on the other hand supported the order of AO and further submitted that as far as the disallowance u/s 94(7) is concerned, Assessee has accepted the additions made by AO. She therefore submitted that AO was justified in levying the penalty and CIT(A) had rightly upheld the order levying penalty. She thus supported the order of lower authorities.

7. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the levy of penalty u/s 271(1)(c) of the Act. In the present case the penalty u/s 271(1)(c) has been levied on the disallowance made u/s 14A and the additions made u/s 94(7) of the Act. The perusal of the assessment order passed u/s 143(3) of the Act reveals that on the aforesaid additions made AO has recorded the satisfaction in the following words "*I am satisfied that the assessee has concealed the particulars of its income or furnishing inaccurate particulars of such income*". Thereafter, in the penalty order passed u/s 271(1)(c) of the Act on 28.03.2018, AO had levied penalty for concealment of income. It is a settled law that while levying penalty for furnishing of inaccurate particulars of income, the AO has to record satisfaction and thereafter come to a finding in respect of one of the limbs, which is specified under section 271(1)(c) of the Act. The first step is to

record satisfaction while completing the assessment as to whether the assessee had concealed the income or furnished inaccurate particulars of income. Thereafter, notice u/s 274 read with Section 271(l)(c) of the Act is to be issued to the assessee. The Assessing Officer thereafter has to levy penalty under Section 271(l)(c) of the Act for non-satisfaction of either of the limbs. While completing the assessment, the Assessing Officer has to come to a finding as to whether the assessee has concealed the income or furnished inaccurate particulars of income. The Hon'ble Bombay High Court in CIT vs. Samson Perinchery (2017) 392 ITR 4 (Bom) has held that where initiation of penalty is one limb and the levy of penalty is on other limb, then in the absence of proper show cause notice to the assessee, there is no merit in levy of penalty.

8. Considering the facts of the present case in the light of the aforesaid decision of Hon'ble Bombay High Court in the case of Samson Perinchery (supra) we are of the view that in the present case, the basic condition for levy of penalty has not been fulfilled and that the penalty order suffers from non-exercising of jurisdiction power of AO.

9. We further find on the issue of penalty on the additions made u/s 94(7) of the Act, the Co-ordinate Bench of Tribunal in the case of VIC Enterprises Pvt. Ltd. (supra) after relying on the decision of Hon'ble Delhi High Court in the case of PCIT vs. Harish Kumar HUF (2022) 140 taxmann.com 134 (Del) has held

that on additions made under deeming provisions of Section 94(7)/94(8) of the Act would not result into the levy of penalty u/s 271(1)(c) of the Act. Similarly on the issue of levy of penalty u/s 14A of the Act, we find that various Benches of the Tribunal has held that the disallowance u/s 14A would not lead to levy of penalty u/s 271(1)(c) of the Act. Considering the totality of the aforesaid facts, we are of the view that the conditions stipulated u/s 271(1)(c) for the levy of penalty are not attracted in the present case. We therefore, direct its deletion. **The ground of assessee is allowed.**

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

**Order pronounced in the open court on 26.12.2022**

**Sd/-  
(CHANDRA MOHAN GARG)  
JUDICIAL MEMBER**

**Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 26.12.2022

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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI