

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

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER
AND
SHRI M BALAGANESH, ACCOUNTANT MEMBER**

ITA No. 2545/Del/2022
Assessment Year: 2017-18

M/s. Jubilant Securities Pvt. Ltd., Plot No. 1A, Sector 16A, Noida (UP).	Vs.	DCIT, Circle-13(2), Delhi
PAN :AAACH3072J		
(Appellant)		(Respondent)

Appellant by	Shri Gaurav Jain, Adv. & Shri Sudrshan Ray, AR
Assessee by	Shri Anuj Garg, Sr. DR

Date of hearing	08.05.2023
Date of pronouncement	18.05.2023

ORDER

PER SAKTIJIT DEY, JUDICIAL MEMBER:

This is an appeal by the assessee against order dated 26.08.2022 passed by the National Faceless Appeal Centre (NFAC), Delhi confirming the penalty imposed under Section 270A of the Income-Tax Act, 1961 for an amount of Rs.77,020 for the assessment year 2017-18.

2. Briefly, the facts are, assessee is a resident corporate entity. For the assessment year under dispute, the assessee filed its return of income on 31.10.2017 declaring income of Rs.20,05,980. Subsequently, assessee filed a revised return of income on 28.08.2018 declaring income of Rs.18,11,980.

3. In course of assessment proceedings, the Assessing Officer noticed that in the year under consideration, assessee had earned exempt income, whereas, it has disallowed expenses to the tune of Rs.27,250 under Section 14A of the Act. Being of the view that the disallowance made by the assessee is on ad hoc basis and not in accordance with Rule 8D (2), the Assessing Officer proceeded to compute disallowance in term with the said rule and computed the disallowance at Rs.5,25,762. After reducing the suo motu disallowance made by assessee, he made a net disallowance of Rs.4,98,512. The assessee accepted the disallowance without litigating further. Be that as it may, based on the aforesaid disallowance, the Assessing Officer initiated proceedings for imposition of penalty under Section 270A of the Act, alleging under reporting of income by the assessee. Ultimately, the Assessing Officer passed an order

imposed penalty of Rs.77.020 under Section 270A of the Act. Though, the assessee filed an appeal challenging the imposition of penalty, however, the first appellate authority confirmed the penalty imposed.

4. Before us, learned counsel for the assessee submitted that in the year under consideration, the assessee had earned exempt income by way of dividend amounting to Rs.27,250. Therefore, the assessee restricted the disallowance under Section 14A read with Rule 8D to the extent of exempt income earned, by following the ratio laid down in various decisions rendered by Hon'ble High Courts and Tribunal. He submitted, merely because the assessee accepted the disallowance made by the Assessing Officer, it cannot lead to the conclusion that the assessee has under reported its income. Thus, he submitted, penalty imposed should be deleted.

5. Learned Departmental Representative strongly relied upon the observations of the Assessing Officer and learned Commissioner (Appeals).

6. We have considered rival submissions and perused the material on record.

7. Undisputedly, in the year under consideration, assessee has earned exempt income by way of dividend amounting to Rs.27,250. As per the ratio laid down in various judicial precedents, the disallowance under Section 14A read with Rule 8D, cannot exceed the quantum of exempt income earned during a particular assessment year. Following the settled legal position, the assessee had restricted disallowance under Section 14A to the quantum of exempt income earned during the year. Thus, in our view, there was a valid reason available to the assessee for restricting the disallowance under Section 14A of the Act to the extent of exempt income earned. Merely because assessee accepted the disallowance made by the Assessing Officer, it cannot automatically lead to the conclusion that the assessee had under reported its income. In fact, penalty under Section 270A of the Act is not automatic. Sub-section(6) of section 270A carves out exceptions where in certain instances the income assessed cannot be treated as under reported income. In the facts of the present case, in our view, assessee's case will fall within the exception provided under section 270A(6)(a), as, the explanation offered by the assessee with regard to the disallowance made under Section 14A is a valid and

reasonable explanation. Therefore, in our view, the penalty imposed under Section 270A of the Act in the facts of the present case is unsustainable. Accordingly, we delete the penalty imposed.

8. In the result, the appeal is allowed

Order pronounced in the open court on 18th May, 2023.

**Sd/-
(M BALAGANESH)
ACCOUNTANT MEMBER**

**Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER**

Dated: 18th May, 2023
Mohan Lal

Copy forwarded to:

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

Asst. Registrar, ITAT, New Delhi