

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

**BEFORE SH. SHAMIM YAHYA, ACCOUNTANT MEMBER**

ITA No.2341/DEL/2023  
(Assessment Year : 2016-17)

<b>Meena Nayyar</b> WZ-215 ST No.12, Shiv Nagar Punjabi Bagh, Delhi - 110 026	Vs.	<b>DCIT</b> Central Circle - 20 New Delhi
<b>PAN No. AAFPN 7914 Q</b>		
<b>(APPELLANT)</b>		<b>(RESPONDENT)</b>

Assessee by	Shri Anil Jain, C.A.
Revenue by	Shri Om Prakash, Sr. D.R.

Date of hearing:	08.01.2024
Date of Pronouncement:	12.01.2024

**PER SHAMIM YAHYA, AM :**

This appeal filed by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals) - 27, New Delhi ('CIT(A) in short') dated 17.07.2023 arising from the assessment order dated 29.12.2018 passed by the Assessing Officer (AO) under section 153A read with section 143(3) of the Income Tax Act, 1961 ('the Act') pertaining to Assessment Year 2016-17.

2. The issue raised by assessee is that the learned CIT(A) has erred in sustaining the penalty of Rs.21,136/- under section 271(1)(c) of the Income-tax Act, 1961 (hereinafter referred to as 'the Act').

3. Brief facts leading to the levy of penalty as noted by Assessing Officer are as under:

*"3.3 On the perusal of the information received from Immigration Department, it was evident that the assessee went abroad 1 time in the F.Y. 2015-16 and stayed overseas 6 days as per the details above. Accordingly, the assessee was show caused that why an amount of*

*Rs.58,500/- considering the average expense of each day stayed in foreign country is 150 USD approx. i.e. Rs.9,750/- (@ Rs 65 per USD) (50 USD for hotel room, 50 USD for diet and 50 USD for other misc.) and average fair of both side is Rs.32,000/- (approx.) for every trip. The assessee has not furnished any satisfactory reply to the show cause issued from this office with regard to the foreign travel expenses. In view of the same an amount of Rs.90,500/- (Rs.58,500/- Rs.32,000/-) is added to the total income of the assessee being unexplained expenditure as per section 69C of the I.T. Act, 1961. Looking at the above facts and circumstances, assessee has failed to discharge his onus.”*

4. Upon assessee’s appeal, learned CIT(A) further granted relief and the addition sustained was Rs.68,400/-. On this amount penalty under section 271(1)(c) of the Act was levied which was sustained by learned CIT(A).

5. Against this order, assessee is in appeal before ITAT.

6. I have heard both the parties and perused the records. I note that penalty has been levied on an addition which is only on an estimate basis. In my considered opinion in these circumstances penalty under section 271(1)(c) of the Act is not leviable. Furthermore, the conduct of the assessee is not found to be contumacious to warrant levy of penalty under section 271(1)(c) of the Act. In these circumstances, I direct that penalty amounting to Rs.21,136/- under section 271(1)(c) of the Act be deleted.

7. In the result, appeal of assessee stands allowed.

**Order pronounced in the open court on 12.01.2024**

**Sd/-**

**(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

Date:- 12.01.2024

Priti Yadav, Sr. PS\*

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	11.01.2024
Date on which the typed draft is placed before the dictating Member	11.01.2024
Date on which the approved draft comes to the Sr.PS/PS	11.01.2024
Date on which the fair order is placed before the Dictating Member for Pronouncement	11.01.2024
Date on which the fair order comes back to the Sr. PS/ PS	12.01.2024
Date on which the final order is uploaded on the website of ITAT	12.01.2024
Date on which the file goes to the Bench Clerk	12.01.2024
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	