

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'A' : NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT
AND
SHRI S RIFAUR RAHMAN, ACCOUNTANT MEMBER

ITA No. 1038/Del/2024
Assessment Year : 2015-16

INCOME TAX OFFICER,
DELHI
ROOM NO. 380A, 3RD
FLOOR, C.R. BUILDING,
I.P. ESTATE,
NEW DELHI – 110 002
(PAN: AAFCA7166B)
(Appellant)

Vs. M/S AC INFRASTRUCTURE,
3RD FLOOR, BHANOT CORNER,
PAMPOS ENCLAVE,
GREATER KAILASH,
NEW DELHI - 48

(Respondent)

Appellant by : Shri M.P. Rastogi, Adv.
Respondent by : Shri Kanv Bali, Sr. DR.

Date of hearing : **01.08.2024**
Date of pronouncement : **06.08.2024**

ORDER

PER SAKTIJIT DEY, VP :

This is an appeal by the Revenue against the order dated 27.01.2024 of the National Faceless Appeal Centre (NFAC), Delhi for assessment year 2015-16, deleting the penalty of Rs. 70,81,990/- imposed by the AO u/s. 271(1)(c) of the Income Tax Act, 1961.

2. Briefly stated facts are, the assessee is a resident corporate entity. For the assessment year in dispute the assessee filed its return of income on 22.09.2015 declaring loss of Rs. 2,93,44,537/-. While completing the assessment u/s. 143(3) of the Act, the

Assessing Officer determined loss of Rs. 75,16,864/- after making disallowance of Rs. 2,18,27,673/- u/s. 14A of the Act read with Rule 8D. Though, the Assessee contested the aforesaid disallowance before Ld. First Appellate Authority, however, subsequently, the assessee accepted the disallowance considering the fact that there are no tax implication due to determination of loss.

3. Be that as it may, based on the disallowance made u/s. 14A of the Act read with Rule 8D, the Assessing Officer initiated proceedings for imposition of penalty u/s. 271(1)(c) of the Act and ultimately passed an order imposing penalty of Rs. 70,81,990/- u/s. 271(1)(c) of the Act, alleging concealment of particulars of income. Assessee contested the imposition of penalty before Ld. First Appellate Authority. In course of first appellate proceedings, it was the specific contention of the assessee that in the year under consideration it had not earned any exempt income whatsoever. Therefore, no disallowance u/s. 14A of the Act read with Rule 8D was required to be made. Appreciating the aforesaid factual position, Ld. First Appellate Authority deleted the penalty imposed under section 271(1)(c) of the Act.

4. We have considered rival submissions and perused the materials on record. The fact that the assessee had not earned any exempt income during the year under consideration remains uncontroverted before us. Therefore, in the first place, no disallowance u/s. 14A of the Act read with Rule 8D was required to

be made. Merely because the assessee had accepted the disallowance due to tax neutral position, it cannot alter the position that disallowance u/s. 14A of the Act read with Rule 8D could not have been made. In the aforesaid factual scenario, in our considered opinion, Ld. First Appellate Authority was justified in deleting the penalty imposed u/s. 271(1)(c) of the Act. Accordingly, the Grounds raised by the Revenue are dismissed.

5. In the result, the appeal of the Revenue is dismissed.

Above decision was pronounced in the Open Court on 06th August, 2024.

Sd/-

(S RIFAUH RAHMAN)
ACCOUNTANT MEMBER

SRB

Copy forwarded to: -

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

Sd/-

(SAKTIJIT DEY)
VICE PRESIDENT

Assistant Registrar, ITAT, Delhi
Benches