IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH-H : NEW DELHI

BEFORE SHRI SAKTIJIT DEY, VICE PRESIDENT AND
SHRI M. BALAGANESH, ACCOUNTANT MEMBER

ITA Nos.1046/Del/2024 & 1047/Del/2024
Assessment Years : 2014-15 & 2016-17

Assistant Commissioner of Income Tax, Delhi.	**Vs.**	**M/s Vipul Limited, Unit No.201, C-50, Malviya Nagar, New Delhi. PAN : AAACA5396C.**
(Appellant)		(Respondent)

Appellant by : Shri Amit Katoch, Senior DR.
Respondent by : None.

Date of hearing : **21.10.2024**
Date of pronouncement : **23.10.2024**

ORDER

Per Saktijit Dey, Vice President :

Captioned appeals by the Revenue arise out of two separate orders passed by National Faceless Appeal Centre (NFAC), Delhi pertaining to assessment year 2014-15 and 2016-17.

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2. This appeal by the Revenue is against the order of the first appellate authority deleting the penalty imposed under Section 271(1)(c) of the Income-tax Act, 1961 (in short 'the Act').

3. Briefly, the facts are, the assessee is a resident corporate entity. For the assessment year under dispute, the assessee filed its return of income on 29th November, 2014 declaring income of ₹3,96,31,831/-. Assessee's case was selected for scrutiny. In course of assessment proceedings, the Assessing Officer, while verifying the return of income and audited financial

statements, found that the following deductions claimed by the assessee are inadmissible :-

(i) Wealth tax provision - ₹33,700/-.
(ii) Interest expenditure - ₹3,08,27,854/-.
(iii) Wrong MAT credit - ₹44,06,947/-.
(iv) Disallowance for non-deduction of tax at source on processing charges/fees - ₹5,00,000/-.
(v) Prior period expenses - ₹6,87,768/-.
(vi) Disallowance under Section 14A – ₹48,12,384/-.

4. After calling upon the assessee to explain why such deductions claimed should not be disallowed and rejecting assessee's explanation, the Assessing Officer ultimately disallowed above said deductions/expenses. Assessee contested the above said disallowances before the first appellate authority. While deciding assessee's appeal, the first appellate authority deleted the disallowances made under Section 14A of the Act and on account of non-deduction of tax on processing charges of ₹5,00,000/-. However, he confirmed the other disallowances/additions made by the Assessing Officer. Based on the additions/disallowances sustained in appeal, the Assessing Officer proceeded to initiate proceedings for imposition of penalty under Section 271(1)(c) of the Act alleging concealment/furnishing of inaccurate particulars of income. Though, the assessee furnished its explanation against imposition of penalty, however, the Assessing Officer passed an order imposing penalty of ₹1,22,21,586/- under Section 271(1)(c) of the Act.

5. Against the penalty order so passed, assessee preferred an appeal before the first appellate authority. After considering the submissions of the assessee in the context of facts and materials on record, the first appellate authority, being convinced that the additions/disallowances based on which penalty has been imposed, do not establish the charge of concealment of income and furnishing of inaccurate particulars of income, deleted the penalty imposed. Being aggrieved, the Revenue is before us.

6. When the appeals were called out, none appeared on behalf of the assessee despite notice. Therefore, we proceed to dispose of the appeals ex-parte qua the assessee after considering the submissions of learned DR and based on materials available on record.

7. We have heard learned DR and perused materials on record. On a perusal of the assessment order, it is very much clear that during the course of assessment proceedings itself, the assessee had accepted that due to inadvertence, the assessee failed to add back the provision of wealth tax amounting to ₹33,700/-. Further, owning up its mistake, assessee came forward to add back the interest amount of ₹3,08,27,854/- and wrong MAT credit of ₹44,06,947/- and prior period expenses of ₹6,87,768/-. Thus, it is evident, certain deductions claimed by the assessee were on account of inadvertent mistake and not due to any deliberate attempt to conceal its income or furnishing inaccurate particulars of income. In fact, after verifying the facts and evidences on record, the first appellate authority has recorded a clear cut factual finding that the assessee has not deliberately concealed its income or furnished inaccurate particulars of income. That being the factual position on record, in our view, the first appellate authority was justified in deleting the penalty imposed under Section 271(1)(c) of the Act.

8. Even otherwise also, on a perusal of the impugned assessment order, it is observed that the Assessing Officer has initiated proceedings for imposition of penalty for concealment/furnishing of inaccurate particulars of income. In the assessment order, the Assessing Officer has not recorded any clear cut satisfaction as to whether he intends to impose the penalty for concealing the income or furnishing of inaccurate particulars of income or for both. Whereas, in the penalty order, the Assessing Officer has given a clear finding that penalty is being imposed for furnishing inaccurate particulars of income. We have noted, in the submissions made before the first appellate authority, the assessee has categorically submitted that in the show cause notice issued for imposition of penalty under Section 271(1)(c) of the Act, the Assessing Officer has not indicated the specific charge for which he proposed to impose penalty. Thus, the aforesaid facts clearly reveal complete non-

application of mind by the Assessing Officer as regards the specific limb under which the offence, if any, committed by the assessee is covered. Therefore, the initiation of proceedings under Section 271(1)(c) of the Act, being purely mechanical, is unsustainable. Thus, for the aforesaid reasons, we do not intend to interfere with the decision of the first appellate authority in deleting the penalty imposed. Grounds are dismissed.

9. In the result, the appeal is dismissed.

ITA No.1047/Del/2024 – A.Y. 2016-17

10. This appeal relates to quantum proceedings. As discussed earlier, while framing the assessment order, the Assessing Officer made various disallowances including the following :-

(i) Disallowance under Section 14A read with Rule 8D - ₹35,16,998/-.
(ii) Disallowance of ₹1,67,51,045/- under Section 40(a)(ia) due to non-deduction of tax on payment of external development charges to HUDA.

11. Assessee contested these disallowances by filing an appeal before the first appellate authority. While deciding the appeal, the first appellate authority, having found that in the year under consideration the assessee had not earned any exempt income, held that no disallowance under Section 14A read with Rule 8D can be made. As regards the disallowance due to external development charges paid to HUDA, the first appellate authority, following the consistent view expressed by various Benches of the Tribunal in the case of the assessee itself and various other assessees, held that there was no obligation on the assessee to deduct tax at source on payment of external development charges to HUDA.

12. We have heard the learned DR and perused materials on record. As regards the disallowance made under Section 14A of the Act read with Rule 8D, the admitted factual position on record is to the effect that in the year

under consideration, the assessee had not earned any exempt income whatsoever. Therefore, as per the settled legal position, no disallowance under Section 14A read with Rule 8D can be made. Insofar as requirement of deduction of tax at source on payment of external development charges to HUDA, the issue is no more *res integra* in view of various decisions of Coordinate Benches, wherein it has been held that since HUDA does not carry out any work on behalf of the assessee, there is no requirement for deduction of tax at source. Even, as observed by the first appellate authority in assessee's own case for assessment year 2017-18, the Tribunal has decided the issue in favour of the assessee. That being the case, we do not find any valid reason to interfere with the decision of the learned first appellate authority. Grounds are dismissed.

13. In the result, both the appeals of the Revenue are dismissed.

Above decision was pronounced in the open Court on 23rd October, 2024.

Sd/-	Sd/-
(M. BALAGANESH)	**(SAKTIJIT DEY)**
ACCOUNTANT MEMBER	**VICE PRESIDENT**

VK.

Copy forwarded to: -

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

Assistant Registrar