

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI “E” BENCH: NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER &
SHRI SUDHIR PAREEK, JUDICIAL MEMBER**

**ITA No.5158/Del/2024
[Assessment Year : 2017-18]**

| | | |
|---|---|-----------------------|
| Olympia Builders Pvt.Ltd. 1010, 10 th Floor, Mercantile House, 15 Kasturba Gandhi Marg, New Delhi-110001 PAN-AAACO0792L | vs | CIT(A) NFAC, Delhi |
| APPELLANT | | RESPONDENT |
| Appellant by | Shri S.Krishnan, Adv. & Shri Harshit Chauhan, Adv. | |
| Respondent by | Shri Amit Katoch, Sr. DR | |
| Date of Hearing | 27.02.2025 | |
| Date of Pronouncement | 02.05.2025 | |

ORDER

PER PRADIP KUMAR KEDIA, AM :

The captioned appeal has been filed at the instance of the assessee seeking to assail the First Appellate order dated 10.09.2024 passed by Commissioner of Income Tax (A), National Faceless Appeal Centre (“NFAC”), Delhi [“CIT(A)”] under s. 250 of the Income Tax Act, 1961 [“the Act”] arising from the assessment order dated 11.06.2021 passed under s. 270A of the Act pertaining to assessment year 2017-18.

2. As per the grounds of appeal, the assessee has challenged the imposition of penalty of INR 1,23,535/- under s. 270A of the Act alleging under-reporting of income to the extent of INR 7,99,580/- attributable to additions under s. 14A r.w. Rule 8D of the Income Tax Rules, 1962.

3. The assessee is engaged in the business of real estate for AY 2017-18 in question. The assessee filed return of income at INR 23,76,310/-. The assessment under s. 143(3) of the Act was framed wherein additions of INR 7,99,580/- were made under s. 14A of the Act on account of estimated expenditure supposedly incurred in relation to earning of exempt dividend

income. The assessee has stately incurred aggregate expenditure of INR 8,97,477/- comprising of bank charges, printing and stationary etc. during Financial Year which were claimed to be necessary for survival of the business and has no connection with exempt income *per se* and hence, there is neither under-reporting nor mis-reporting of any income *per se*. The AO has invoked the provision of s.270A as an automatic consequence on mere disallowance of expenditure in stereo-typed manner merely on the grounds of resultant increase in taxable income. The AO has not pin pointed any expenditure actually incurred in relation to the exempt income in the quantum proceedings. The AO has merely disallowed estimated expenditure owing to exempt income reported. The CIT(A) has confirmed the action of the AO and hence, this appeal.

4. We straightway note that in order to attract penalty under s. 270A of the Act, it is necessary that there must be under-reporting of income by the assessee. The disallowance of certain expenditure on estimated basis cannot be equated with under-reporting or mis-reporting of income *per se*.

5. The assessee, in the instant case, has offered an explanation for non-application of s. 14A of the Act which appears plausible. Needless to say, to invoke Section 270A, the entirety of circumstances must reasonably point to the conclusion that the disputed amount represents income and the assessee has under-reporting the same. The Revenue in the instant case has computed an estimated disallowance under Section 14A solely due to existence of exempt income. It is not the case of the Revenue Authorities that assessee has, in fact, incurred any expenses to earn the exempt income and suppressed the facts thereon beyond any doubt. The Revenue Authorities have determined the disallowances on the basis of deeming provisions of computation of disallowances provided under Rule 8D of the Income Tax Rules.

6. A conspectus of Section 270A of the Act, makes it clear that the statute visualizes the assessment proceedings and penalty proceedings to be wholly distinct and independent of each other. While the Assessing Officer may be justified in making estimated disallowance in quantum proceedings, such disallowance of expenses and that too on estimated basis could not

automatically fall within the mischief of Section 270A of the Act on the grounds of under-reporting. While the claim towards expenditure may not be found acceptable in quantum proceedings, such disallowance per se cannot invite rigors of penalty. Where all material facts relevant to the issue were placed on record, mitigating circumstances to disprove any culpability of any sort against the assessee is established by implication.

7. In *CIT vs. Liquid Investment & Trading Co., ITA No.240/2009* judgment dated 05.10.2010, the Hon'ble Delhi High Court observed that issue of disallowance under Section 14A is a debatable issue. In the instant case, the disallowance of INR 7,99,580/- out of total expenses incurred INR 8,97,477/- itself appears susceptible.

8. In view of the aforesaid deliberations, the impugned order of the CIT(A) is set aside and the Assessing Officer is directed to delete the penalty in question.

9. In the result, the appeal of the assessee is allowed.

Order pronounced in the open Court on 02nd May, 2025.

Sd/-

**(SUDHIR PAREEK)
JUDICIAL MEMBER**

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Amit Kumar, Sr.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI