

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E' NEW DELHI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER
AND
SHRI VIMAL KUMAR, JUDICIAL MEMBER**

ITA No. 3345/Del/2023
(Assessment Year : 2017-18)

Max Ventures Investment Holdings Pvt. Ltd. Max House, 1, Dr. Jha Marg Okhla Phase-3, New Delhi-110 020 PAN : AAACD 0213 H (Appellant)	Vs.	ITO National Faceless Assessment Centre, Delhi (Respondent)
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Assessee by	Shri Divyanshu Agarwal, Adv. and Shri Anubhav Rastogi, Adv.
Respondent by	Shri Amit Katoch, Sr. D.R.

Date of Hearing	04.02.2025
Date of Pronouncement	04.02.2025

ORDER

PER VIMAL KUMAR, JM:

1. The appeal filed by assessee is against the order dated 09.10.2023 of Learned Commissioner of Income Tax (Appeals)-Income Tax Department, NFAC, Delhi [hereinafter referred to as 'Ld. CIT(A)'] arising out of penalty order dated 16.09.2021 passed by the National Faceless Assessment Centre, Delhi (hereinafter referred as 'Ld. AO') under section 270A of the Income Tax Act, 1961 [hereinafter referred to as "the Act"] for the Assessment Year 2017-18.

2. Brief facts of the case are that appellant/assessee filed return of income on 29.03.2018 declaring an income of Rs.9,88,65,480/- making *suo moto* disallowance of Rs.18,14,783/- under section 14A of the Act. The case was selected for limited scrutiny under CASS and notice under section 143(2) of the Act dated 15.09.2016 was issued. Appellant vide notice under section 142(1) of the Act dated 11.10.2017 asked to submit details along with documentary evidence for the expenses incurred for earning exempt income. Thereafter, assessee offered an addition of Rs.7,62,56,056/- as disallowance under section 14A of the Act in order to avoid protracted litigation and buy peace. In the assessment order dated 24.12.2019 passed under section 143(3) of the Act, learned AO without pointing out any mistake in the original claim of the assessee and on basis of offer of additional disallowance accepted the additional disallowance of Rs.7,62,56,056/-. Penalty proceedings under section 270A read with section 274 of the Act for underreporting of income by initiating notice under section 270A of the Act. Learned AO confirmed penalty @ 50% for underreporting of income.

3. Against order of learned AO penalty order dated 16.09.2021, appellant/assessee preferred appeal before the learned CIT(A) which was dismissed.

4. Being aggrieved, appellant/assessee filed present appeal.

5. Learned Authorized Representative for appellant/assessee submitted that learned CIT(A) while passing impugned order failed to deal with/decide ground nos.1 to 6 regarding mechanically imposing penalty under section 270A of the Act, without appreciating that the provisions are discretionary in nature and levied at the direction of the learned AO. Learned CIT(A) had only dealt with ground nos. 7 to 11. Hon'ble High Court of Delhi in the case of *PCIT vs. Caraf Builders & Constructions Pvt. Ltd. (2019) 101 taxmann.com 167 (Delhi) suo moto* disallowed the expenses in earning exempt income and as such it cannot be inferred that the appellant has underreported the income. So the matter be referred back to the learned CIT(A).

6. Learned Departmental Representative for the Department of Revenue submitted that section 270AA(2) of the Act provides that a definite timeline for any assessee desirous of availing immunity.

7. From examination of record in light of aforesaid rival contentions, it is crystal clear that learned CIT(A) vide order dated 09.10.2023 upheld order dated 16.09.2021 of learned AO. Learned CIT(A) while deciding the appeal had dealt with ground nos.7 to 11 regarding section 270AA of the Act and failed to deal with ground nos.1 to 6 regarding levying penalty under section 270A of the Act. In view of the above material facts and well settled principle of law, in interest of justice, it is considered expedient to restore the matter

to the file of the learned CIT(A) for fresh decision in accordance with law.

8. In the result, appeal filed by assessee is allowed for statistical purposes.

Order pronounced on this day 4th February, 2025

Sd/-

**(SHAMIM YAHYA)
ACCOUNTANT MEMBER**

Dated: 04.02.2025

*Priti Yadav, Sr. PS**

Sd/-

**(VIMAL KUMAR)
JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI