

**In the Income-Tax Appellate Tribunal,  
Delhi Bench 'G', New Delhi**

**Before : Shri Bhavnesh Saini, Judicial Member And  
Shri L.P. Sahu, Accountant Member**

**ITA No. 542/Del/2015  
Assessment Year: 2006-07**

Soul Space Projects Ltd., E-23/B-1, Extn. MCIE, Mathura Road, New Delhi. PAN-AAJCS 7736F <b>(Appellant)</b>	<b>vs.</b>	DCIT, Central Circle 17, New Delhi.  <b>(Respondent)</b>
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<b>Appellant by</b>	Ms. Saumya Singh & Ms. Ananya Kapoor, Advocates
<b>Respondent by</b>	Sh. S.S. Rana, CIT/DR

<b>Date of Hearing</b>	30.08.2018
<b>Date of Pronouncement</b>	07.09.2018

**ORDER**

**Per L.P. Sahu, A.M.:**

This is an appeal filed by the assessee against the order dated 14.11.2014 of Id. CIT(A)-11, New Delhi for the assessment year 2006-07, challenging the penalty u/s. 271(1)(c) of the Act on the following grounds :

- "1. The notice issued u/s 271 (1) (c) and order of AO imposing penalty and order of CIT(A) upholding it are illegal, bad in law, and without jurisdiction.*
- 2. That the AO has in the facts and circumstances, erred in lawr and on facts in initiating the penalty in haste as the quantum appeal was pending in ITAT, The AO has acted against the principles of natural justice.*

3. *That CIT (A) in view of facts and circumstances erred on facts and in law in upholding penalty of Rs. 16,15,681 in respect of addition of Rs. 48 Lacs on account of deemed dividend u/s 2(22)(e) without appreciating that conditions of invoking provisions of section 2(22)(e) are not satisfied. Further, CIT(A) failed to appreciate that special auditor's report on which additions are based is without jurisdiction, illegal, unjustified, without following the principles of natural justice and without considering the evidences.*
4. *That the CIT(A) erred in facts of the case and in law in not appreciating that unless it can be shown that assessee has consciously concealed the particulars of income or furnished inaccurate particulars of income, the penalty cannot be levied u/s 271(1)(c).*
5. *There is no furnishing of inaccurate particulars of income, hence the penalty order is illegal and bad in law and liable to be quashed.*
6. *That the AO erred on facts and in law in not recording satisfaction before imposing penalty u/s 271(1)(c) and CIT(A) erred in disregarding the same.*
7. *The order passed by AO u/s 271(1)(c) is cryptic and without any reasoning and the same is liable to be quashed.*
8. *That the AO & CIT (A) has failed to appreciate that the mere addition/disallowance does not attract penalty u/s 271(1)(c).*
9. *The addition/disallowance has been made merely on the basis of rejection of explanations of the appellant. Hence no penalty U/s 271(1)(c) could be levied on the basis of such a disallowance.*
10. *That the information filed and the material available on record have not been properly considered and as such the order of AO imposing penalty u/s 271(1)(c) and CIT (A) upholding the same is illegal and bad in law.*

11. *That in any case the penalty imposed is unjust, arbitrary and highly excessive."*

2. The brief facts of the case are that the assessment in this case was completed u/s. 153A/143(3) on 10.08.2010 at an income of Rs.50,16,591/- against the returned income of Rs. Nil. As per Assessing Officer, during the year the company M/s. BL Kashyap & Sons had paid an amount of Rs.48,00,000/- to one Sh. Girija Shankar on behalf of the assessee which attracted the provisions of section 2(22)(e) of the IT Act and accordingly, the amount of Rs.48,00,000/- was added to the income of the assessee as deemed dividend. This addition was sustained by the Id. CIT(A) vide order dated 21.03.2013 in the quantum appeal. The Assessing Officer, therefore, based on this addition imposed a penalty of Rs.16,15,681/- u/s. 271(1)(c) of the Act, representing to 100% of the tax sought to be evaded. The assessee challenged the penalty order in appeal before the Id. CIT(A), who dismissed the appeal of the assessee vide impugned order. Aggrieved, the assessee is in appeal before the Tribunal.

3. We have heard both the parties and have gone through the entire material available on record. The contention of the Id. AR has been that the addition on the basis of which the impugned penalty has been imposed stood deleted by the ITAT in quantum appeal of the assessee bearing No. 3180/Del/2013 vide order dated 16.12.2015 and therefore, now there remains no reason to sustain the impugned penalty. Copy of Tribunal order is placed on record. The Id. DR could not controvert the above contention of the assessee. We, therefore, are of the opinion that once the addition giving rise to the penalty stood deleted in the quantum appeal of the assessee, it cannot be

said that the assessee had furnished inaccurate particulars of income with respect thereto. Accordingly, the very foundation of impugned penalty imposed stands collapsed and, thus, there is no reason to support the impugned order.

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

Order pronounced in the open court on 7<sup>th</sup> September, 2018.

Sd/-

**(Bhavnes Saini)**  
**Judicial member**

Sd/-

**(L.P. Sahu)**  
**Accountant Member**

Dated: 7<sup>th</sup> September, 2018

*\*aks\**

*Copy of order forwarded to:*

(1)	<i>The appellant</i>	(2)	<i>The respondent</i>
(3)	<i>Commissioner</i>	(4)	<i>CIT(A)</i>
(5)	<i>Departmental Representative</i>	(6)	<i>Guard File</i>

*By order*

*Assistant Registrar*  
*Income Tax Appellate Tribunal*  
*Delhi Benches, New Delhi*