

**IN THE INCOME TAX APPELLATE TRIBUNAL  
(DELHI BENCH 'F' : NEW DELHI)**

**BEFORE HON'BLE VICE PRESIDENT, SHRI G.D. AGRAWAL  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.291/Del./2017  
(ASSESSMENT YEAR : 2005-06)**

M/s. Quality Enabled Remote Solutions vs. ACIT,  
(P) Ltd., Central Circle 30,  
515, Tolstoy Marg, New Delhi.  
New Delhi.

**(PAN : AAACQ0881A)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Somil Agarwal, Advocate  
REVENUE BY : Shri Surender Pal, Senior DR

Date of Hearing : 12.06.2019

Date of Order : 13.06.2019

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, M/s. Quality Enabled Remote Solutions (P) Ltd. (hereinafter referred to as 'the assessee') by filing the present appeal, sought to set aside the impugned order dated 15.11.2016 passed by Ld. Commissioner of Income-tax (Appeals)-30, New Delhi qua the Assessment Year 2005-06 confirming the penalty levied u/s 271(1)(c) of the Income-tax Act, 1961 (for short 'the Act') on the grounds inter alia that:-

***“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in imposing penalty of Rs.7,31,850/- and that too without assuming jurisdiction as per law and without considering the facts and circumstances of the case.***

***2. That in any case and in any view of the matter, action of Ld. CIT(A) in confirming the action of Ld. AO in imposing penalty of Rs.7,31,850/- u/s 271(1)(c) is bad in law and against the facts and circumstances of the case.***

***3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in confirming the action of Ld. AO in imposing penalty u/s 271(1)(c) in as much as the impugned reassessment order u/s 147 dated 20.03.2013 is also contrary to law and facts, void ab initio and not sustainable on various legal and factual grounds.”***

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : On the basis of assessment completed under section 147 of the Act, penalty proceedings were initiated in this case on the ground that addition on account of undisclosed income of Rs.20,00,000/- in the garb of share application money/bogus transaction/ gifts through M/s. Geefcee Finance Ltd. was made u/s 68 of the Act and consequently, AO proceeded to initiate penalty proceedings u/s 271(1)(c) of the Act for concealment of income with regard to the bogus share application money stated to have been received by the assessee. Declining the contentions raised by the assessee, AO proceeded to levy

the penalty of Rs.7,31,849/- @ 100% of the tax sought to be evaded u/s 271(1)(c) of the Act.

3. Assessee carried the matter by way of appeal before the Id. CIT (A) who has confirmed the penalty by dismissing the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by way of filing the present appeal.

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. At the very outset, it is brought to our notice by the Id. AR for the assessee that addition made in the case u/s 68 of the Act has since been deleted by the Tribunal in *assessee's own case in ITA No.929/Del/2015 vide order dated 08.09.2016* and as such, penalty levied is not sustainable and brought on record the copy of the order of the Tribunal dated 08.09.2016 (supra).

6. Undisputedly, coordinate Bench of the Tribunal vide order dated 08.09.2016 (supra) deleted the addition made u/s 68 of the Act. In these circumstances, the penalty levied by the AO and confirmed by Id. CIT (A) is not sustainable in view of the law laid down by the Hon'ble Apex Court in case cited as *K.C. Builders & Anr vs. ACIT – 265 ITR 562 (SC)* because “*when the addition made in the assessment order on the basis of which penalty for concealment is levied have been deleted*

*there remains no basis at all for levying the penalty for concealment and in such case, no penalty can survive and the penalty is liable to be cancelled.*” So, in view of the matter, penalty levied by the AO and confirmed by the Id. CIT (A) is ordered to be deleted. Consequently, the appeal filed by the assessee stands allowed.

**Order pronounced in open court on this 13<sup>th</sup> day of June, 2019.**

**Sd/-  
(G.D. AGRAWAL)  
VICE PRESIDENT**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 13<sup>th</sup> day of June, 2019  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-30, New Delhi.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**