

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

**BEFORE SHRI BHAVNESH SAINI, JUDICIAL MEMBER  
AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 1762/Del/2017  
(Assessment Year: 2006-07)**

Shree Radhey Technologies Pvt. Ltd.	Vs.	ACIT, C. Circle-14, New Delhi.
<b>PAN No:</b> AAHCS5469H		
<b>APPELLANT</b>		<b>RESPONDENT</b>

**Assessee by** : Shri S.K. Chaturvedi, CA  
**Revenue by** : Shri N.K. Bansal, Sr. Dr

**ORDER**

**PER ANADEE NATH MISSHRA, AM**

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-14, New Delhi, ["Ld. CIT(A)", for short], dated 30.11.2016 for Assessment Year 2006-07, on the following grounds:

- "1. That the Commissioner of Income Tax (Appeals)-14, New Delhi has erred by confirming the penalty imposed by the ACIT, Central Circle-14, New Delhi under Section 271(1)(c) of the Income Tax Act, 1961 at Rs. 41,11,525/-. The same is arbitrary, illegal and against the facts and circumstances of the case.*
- 2. That the appellant craves leave to add/delete/modify the grounds of appeal before or during the hearing of the appeal."*

**(2)** The Assessment order dated 31.03.2009 was passed U/s 153C of the Income Tax Act, 1961 ("I.T. Act", for short) wherein an addition of Rs. 1,22,14,870/- was made by Assessing Officer ("AO", for short). Thereafter, penalty U/s 271(1)(c) was levied by the AO vide order dated 27.03.2015, amounting to Rs. 41,11,525/- which was @100% tax sought to be evaded, in respect of the aforesaid addition of Rs. 1,22,14,870/-. Vide impugned order dated 30.11.2016 of Ld. CIT(A), this penalty was confirmed. The present appeal before Income Tax Appellate Tribunal ("ITAT", for short) has been filed by the Assessee against the aforesaid order dated 30.11.2016 wherein the Ld. CIT(A) confirmed the penalty. At the time of hearing before us, the Ld. Authorized Representative ("AR", for short) for the assessee submitted that vide order dated 06/04/2018, ITAT has already deleted the quantum addition of the aforesaid amount of Rs. 1,22,14,870/- in ITA No. -3228/Del/2013. He also filed a copy of the aforesaid order dated 06/04/2018 in ITA No.- 3228/Del/2013. The Ld. AR of the assessee submitted that the penalty levied U/s 271(1)(c) of I.T. Act should be deleted too, as the corresponding quantum addition has already been deleted by ITAT. The Ld. Sr. Departmental Representative ("Ld. Sr. DR", for short) appearing for Revenue did not dispute the fact claimed by the Ld. AR of the assessee that the quantum addition (corresponding to aforesaid amount of Rs. 41,11,525/- which the penalty was levied by the Assessing Officer, U/s 271(1)(c) of I.T. Act; which is disputed in the present appeal) has already been deleted by ITAT. However, he relied on the orders of the authorities below.

**(2.1)** After hearing both sides, we are of the view that penalty U/s 271(1)(c) of I.T Act of Rs. 41,11,525/- levied by AO has no legs to stand at present, when the corresponding additions made by the AO have already been deleted by ITAT vide its aforesaid order dated 06.04.2018. It has not been disputed by Ld. DR that the aforesaid quantum addition does not survive, the penalty levied U/s 271(1)(C) of I.T. Act on the corresponding quantum addition also cannot survive. We take support from judicial precedent in the case of K.C. Builders vs. ACIT 135 Taxman 461 (SC), in which the Hon'ble Apex Court held that where the additions made in the Assessment Order, on the basis of which penalty for concealment was levied, are deleted, by ITAT or otherwise, the penalty cannot stand by itself and is liable to be cancelled. In such a situation, there remains no basis at all at present for levying the penalty U/s 271(1)(c) of I.T. Act , and therefore, in such a case, no such penalty can remain presently. In view of the foregoing, the penalty levied U/s 271(1)(c) of I.T. Act (in respect of quantum addition already deleted by ITAT in aforesaid order dated. 06.04.2018 in ITA No.- 3228/Del/2013) is hereby cancelled. Accordingly, appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open court on 30<sup>th</sup> day of July, 2019.

Sd/-

**(BHAVNESH SAINI)**  
**JUDICIAL MEMBER**

Sd/-

**(ANADEE NATH MISSHRA)**  
**ACCOUNTANT MEMBER**

Dated: 30.07.2019  
Pooja/-

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	