

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA BENCH: AGRA**

**BEFORE SHRI LALIET KUMAR, JUDICIAL MEMBER, AND
DR. MITHA LAL MEENA, ACCOUNTANT MEMBER**

**I.T.A No.286/Agra/2018
(ASSESSMENT YEAR-2012-13)**

M/s Moon Network Pvt. Ltd., Agra. PAN:AACCM9575D (Appellant)	Vs..	ACIT, (TDS), Kanpur. (Respondent)
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Appellant by	Shri Rajendra Sharma, & Manuj Sharma, Adv.
Assessee by	Shri Waseem Arshad, Sr. DR.

Date of Hearing	29.07.2019
Date of Pronouncement	11.09.2019

ORDER

Per Dr. M. L. Meena, A.M.:

This appeal emanates from the order of the Id. Commissioner of Income Tax (Appeals)-1, Agra [(in short 'the Id. CIT(A)], dated 30.01.2018, for A.Y. 2012-13, challenging the levy of penalty of Rs.39,69,201/- u/s 271C of the IT Act.

2. At the outset the Id. Counsel for the assessee submitted that in the quantum appeal the ITAT, Agra Bench in ITA 110/Agra/2016 dated 26.07.2017 has restored the matter to the file of the AO with the following directions:

“In view of the above, the grievance of the assessee is found to be justified and it is accepted as such. The matter is remitted to the file of the AO, directing him to re-decide the same on verifying the remaining deductees to whom the assessee made payment and from whom the assessee was not able to obtain the required certificates, as to whether they were regular tax payers and had shown the amounts in their income tax returns. The assessee shall be afforded due and adequate opportunity of hearing by the AO and the assessee, no doubt, shall cooperate in the fresh proceedings before the AO. All pleas available to the assessee under the law shall remain so available. Ordered accordingly.”

3. The Id. Counsel submitted that in compliance to ITAT, Agra Bench, Agra the AO passed order ex parte qua the assessee where quantum appeal is pending before the Id. CIT(A). He contended that the AO has passed the ex parte order against the assessee without appreciating the facts holding the assessee in default although the Id. CIT(A) has allowed the appeal of the assessee in the first round of appeal subject to verification of certificate filed before the department. The counsel urged that the issue of consequential penalty levied u/s 271C may be restored to the CIT(A).

4. The Id. DR has no objection to restore the matter of consequential penalty u/s 271C of the Act as the quantum appeal is pending in the second round of appeal before the Id. CIT(A).

5. Accordingly, considering the request of the assessee, the matter is restored to the file of the Id. CIT(A) with the direction to adjudicate the issue of penalty u/s 271C alongwith quantum appeal, after affording due opportunity of being heard to the assessee, with the holistic view, after deciding the quantum appeal.

6. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced in the open court on 11/09/2019.

**Sd/-
(Laliet Kumar)
JUDICIAL MEMBER**

**Sd/-
(Dr. M.L. Meena)
ACCOUNTANT MEMBER**

AKV

Copy forwarded to:

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

**Sr. PRIVATE SECRETARY
ITAT, AGRA**