

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

**BEFORE SHRI KULDIP SINGH, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

**ITA No:- 9530/Del/2019
(Assessment Year: 2009-10)**

RBJ Infratech Pvt. Ltd., New Delhi.	Vs.	ITO, Ward-20(3), New Delhi.
PAN No: AAECR0664G		
APPELLANT		RESPONDENT

Assessee by : Shri Rajesh Jain, CA
Revenue by : Smt. Sushma Singh, CIT(DR)

ORDER

PER ANADEE NATH MISSHRA, AM

This appeal by Assessee is filed against the order of Learned Commissioner of Income Tax (Appeals)-7, New Delhi, ["Ld. CIT(A)", for short], dated 20.11.2019 for Assessment Year 2009-10, on the following grounds:

"1. The CIT(A) erred in upholding penalty, on the facts and circumstances of the case and as per law, u/s 271(l)(c) of the Act amounting to Rs 15,45,000 /- imposed by the Assessing Officer without legally initiating the same in Assessment Order and in the show cause notice issued u/s 274 of the Act annexed with the Assessment Order.

2. The Ld. CIT(A) dismissed the Appeal without adjudicating Grounds of Appeal on merit. The Order passed u/s 271(l)(c) of the Act is illegal, arbitrary being

passed in utter violation of natural justice as the appellant was not given show cause notice u/s 274 of the Act specifying the exact charge / limb under which the A.O. initiated Penalty u/s 271(l)(c) of the Act.

3. That otherwise also, the CIT(A) erred in upholding Order u/s 271(l)(c) of the Act passed by the Assessing Officer levying Penalty on furnishing inaccurate particulars of income, whereas the appellant did not furnish any document(s), submissions and explanations which were inaccurate. Order passed by the CIT(A) is against binding judicial precedents.

4. That the CIT(A) erred in upholding Order u/s 271(1)(c) of the Act, passed by the Assessing Officer imposing penalty of Rs. 15,45,000/- without supplying copy of statement of third party who have been searched u/s 132(1) of the Act and without providing opportunity of cross examination of witness of the Revenue. The Appellant, in response to show cause notice u/s 274 of the Act, requested the Assessing Officer to supply the same.

5. That the appellant craves permission to file additional grounds of appeal and case laws in support of its contention at the time of hearing."

(B) The Assessee filed its return of income on 25.09.2009 declaring an income at Rs. 920/-. The Assessment order dated 21.12.2016 was passed by the Assessing Officer ("AO", for short) under Section 147/143(3) of the Income Tax Act, 1961 ("I.T. Act", for short) wherein assessee's income was assessed at Rs. 50,00,920/- after making an addition of Rs. 50,00,000/-. Thereafter, penalty under Section 271(1)(c) of the I.T. Act was levied by the AO vide order dated 28.03.2019, amounting to Rs. 15,45,000/- which was minimum penalty @100% of tax sought to be evaded, for furnishing inaccurate particulars of income. The assessee's appeal before Ld. CIT(A) was dismissed vide aforesaid impugned appellate order dated 20.11.2019 of Ld. CIT(A). The present appeal before Income Tax Appellate Tribunal ("ITAT", for short) has been filed by the Assessee against the aforesaid impugned appellate order dated 20.11.2019 wherein the Ld. CIT(A) dismissed the assessee's appeal. At the time of hearing before us, the Ld. Authorized

Representative ("AR", for short) for the assessee submitted that vide order dated 22.12.2020 of Co-ordinate Bench of ITAT, Delhi; the quantum addition of the aforesaid amount of Rs. 50,00,000/- has already been deleted in ITA No. 3152/Del/2018. He also filed a copy of the aforesaid order dated 22.12.2020 in ITA No. 3152/Del/2018. 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 learned Commissioner of Income Tax (Departmental Representative) ["Ld. CIT(DR)", for short] appearing for Revenue did not dispute the fact claimed by the Ld. AR of the assessee that the quantum addition of Rs. 50,00,000/- in respect of which the penalty was levied by the Assessing Officer under Section 271(1)(c) of I.T. Act; and which is disputed in the present appeal) has already been deleted by ITAT. However, she relied on the orders of the authorities below.

(B.1) After hearing both sides, we are of the view that penalty U/s 271(1)(c) of I.T Act 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 22.12.2020 when 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 is no basis at all at present for sustaining the penalty U/s 271(1)(c) of I.T.

Act , and therefore, in such a case, such penalty cannot survive 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. 22.12.2020 in ITA No.- 3152/Del/2018) is hereby cancelled. Accordingly, appeal filed by the assessee is allowed.

Order was already orally pronounced in the open court on 25/03/2021 after conclusion of the hearing in the presence of representatives of both sides. Now this order in writing is signed today on 30/03/21.

Sd/-

(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-

(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Dated: 30/03/21

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	