

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCHES "E", MUMBAI**

BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND

SHRI RAJESH KUMAR, ACCOUNTANT MEMBER

**ITA No.7503/MUM/2019
Assessment Year: 2012-13**

DCIT, Circle 2 (3(2), Room No. 552, 5 th Floor, Aaykar Bhawan, M.K. Road, Churchgate, Mumbai - 400020	Vs.	M/s Solarfield Energy Pvt. Ltd., 21, 3 rd Floor, Sethi Mansion, Kumtha Street, Ballard Estate, Mumbai - 400038 PAN: AAOCS4380A
(Appellant)		(Respondent)

Revenue by : Shri Vijay Kumar Memon (DR)

Assessee by : Shri Nitesh Joshi (AR)

Date of Hearing: 24/06/2021

Date of Pronouncement: 20/07/2021

O R D E R

PER SAKTIJIT DEY, JM

This is an appeal by the revenue against the order dated 23.09.2019 of learned Commissioner of Income Tax (Appeals)-6, Mumbai deleting the penalty imposed under section 271(1)(c) of the Income Tax Act, 1961 for the assessment year 2012-13.

2. We have heard Shri Vijay Kumar Menon, the learned Departmental Representative and Shri Nitesh Joshi, learned Counsel for the assessee. On perusal of the impugned order of learned Commissioner (Appeals), we find that the reason for which learned Commissioner (Appeals) has deleted the penalty imposed under section 271(1)(c) of the Act is, the addition based on which such penalty was imposed, in the meanwhile, has been deleted by the Tribunal. On perusal of record, we find, certain additions made in the assessment order passed for the impugned assessment year culminated in imposition of penalty under section 271(1)(c) of the Act. However, while deciding assessee's appeal

challenging such additions, the Tribunal in ITA No. 5189 & 5190/Mum/2016 dated 16.07.2019 has deleted the additions. Thus, the uncontroverted factual position emerging from record clearly demonstrates that the additions based on which the Assessing Officer (AO) has imposed penalty under section 271(1)(c) of the Act is no longer in existence as on date by virtue of the order passed by the Tribunal referred to above. That being the case, penalty imposed under section 271(1)(c) of the Act based on such non-existent addition cannot survive. Therefore, we do not find any infirmity in the decision of learned Commissioner (Appeals) in deleting the penalty imposed under section 271(1)(c) of the Act. Grounds are dismissed.

3. In the result, appeal is dismissed.

Order pronounced in the open court on 20th July, 2021.

Sd/-
(RAJESH KUMAR)
ACCOUNTANT MEMBER

Sd/-
(SAKTIJIT DEY)
JUDICIAL MEMBER

मुंबई Mumbai; दिनांक Dated: 20/07/2021
Alindra, PS

आदेश प्रतिलिपि अग्रेषित/ Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त (अपील) / The CIT(A)-
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई /
DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai