

**IN THE INCOME TAX APPELLATE TRIBUNAL DELHI  
BENCH 'B', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND SH. KULDIP SINGH, JUDICIAL MEMBER**

(THROUGH VIDEO CONFERENCING)

ITA No. 2076/Del/2018  
(Assessment Year : 2011-12)

Smartspace Infrastructure Pvt. Ltd., 67, Friends Colony (West), New Delhi-110065  PAN No. AAJCS 2713 E <b>(APPELLANT)</b>	Vs.	ITO Ward – 9(1) New Delhi  <b>(RESPONDENT)</b>
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Assessee by	Shri Anil Bhalla, C.A.
Revenue by	Shri Mahesh Thakur, Sr. D.R.

Date of hearing:	28.07.2021
Date of Pronouncement:	02.08.2021

**ORDER**

**PER ANIL CHATURVEDI, AM:**

This appeal filed by the assessee is directed against the order dated 31.01.2018 passed by the Commissioner of Income Tax (Appeals)-23, New Delhi relating to Assessment Year 2011-12.

2. The relevant facts as culled from the material on records are as under :

3. Assessee is a company stated to be engaged in the business of carrying on infrastructure activities. Assessee filed its return of

income for A.Y. 2011-12 on 29.09.2011 declaring loss of Rs.69,547/-. The case was selected for scrutiny and thereafter assessment was framed u/s 143(3) of the Act vide order dated 27.02.2014 and the total income was determined at Rs.56,05,450/- *inter alia* by making addition of Rs.56,75,000/- u/s 68 of the Act being unexplained cash credit. On the aforesaid addition, AO vide order passed u/s 271(1)(c) of the Act dated 29.03.2016 levied penalty of Rs.17,53,575/-. Aggrieved by the order of AO, assessee carried the matter before the CIT(A) who vide order dated 31.01.2018 (Appeal No.116/17-18) dismissed the appeal of the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal before us and has raised the following grounds of appeal :

1. *“The Ld. CIT (A) has erred both on the facts and in law in upholding the jurisdiction and the decision of learned Assessing Officer in levying penalty u/s 271(1)(c) of the Act amounting to Rs.17,53,575/-.*
2. *The Appellant Company craves leave to add, alter or amend the ground of appeal at a later stage.”*

4. Before us, Learned AR submitted that while framing the assessment u/s 143(3), AO had made addition of Rs.56,75,000/- u/s 68, being unexplained cash credit. He submitted that against the order of AO, assessee carried the matter before the CIT(A) who dismissed the appeal of assessee. Thereafter, the matter was carried before the Tribunal. The Tribunal vide order in ITA No.5762/Del/2014 dated 30.05.2018 remanded the matter back to the file of AO for fresh consideration and as per the directions contained therein. He pointed to the aforesaid order of Tribunal

placed in the paper book. He therefore submitted that once the matter has been restored to the file of AO, the penalty levied on such additions needs to be deleted. He therefore submitted that the penalty be deleted.

5. Learned DR on the other hand did not controvert the submission made by Learned AR but however supported the order of lower authorities.

6. We have heard the rival submission and perused the materials available on record. The issue in the present ground is with respect to levy of penalty u/s 271(1)(c) of the Act on the additions made u/s 68 of the Act by the AO. We find that the Coordinate Bench of Tribunal vide order dated 30.05.2018 has remanded the matter pertaining to the addition made u/s 68 of the Act to the file of AO for fresh adjudication as per the directions contained therein. Thus the addition is yet to be finalized. Sub Clause (iii) of Section 271(1)(c) provides mechanism for quantification of penalty. It contemplates that assessee would be directed to pay a sum in addition to taxes, if any, payable by him, which shall not exceed three times the amount sought to be evaded by reason of concealment of income or furnishing of inaccurate particulars of income. In other words, quantification of penalty is dependent upon the additions made to the income of the assessee. Thus until the issue regarding the determination of income is finalized, penalty u/s 271(1)(c) of the Act cannot be imposed upon the assessee. In the present case, the addition to the income is yet to attain finality. In such a situation, there

cannot be any question of levying of the penalty u/s 271(1)(c) of the Act. In such circumstances, we are of the view that the impugned penalty does not survive. We therefore set aside the penalty levied by AO & thus allow the ground of assessee. **Thus the ground of assessee is allowed.**

**7. In the result, appeal of the assessee is allowed.**

**Order pronounced in the open court on 02.08.2021**

**Sd/-**

**(KULDIP SINGH)  
JUDICIAL MEMBER**

**Sd/-**

**(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER**

Date:- 02.08.2021

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**Copy forwarded to:**

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI