

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "एकल सदस्यीय", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH 'SMC' CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य
BEFORE: SMT. DIVA SINGH, JM

आयकर अपील सं./ ITA No. 1032/Chd/2019
निर्धारण वर्ष / Assessment Year : 2010-11

M/s Abacus Edutech (P) Ltd., 276, Maya Nagar, Ludhiana.	बनाम	The Commissioner of Income Tax (Appeals)-3, Ludhiana.
स्थायी लेखा सं./PAN NO: AAACQ 0843 N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

आयकर अपील सं./ ITA No. 1033/Chd/2019
निर्धारण वर्ष / Assessment Year : 2010-11

M/s Axis Education Technologies (P) Ltd., 276, Maya Nagar, Ludhiana.	बनाम	The Commissioner of Income Tax (Appeals)-3, Ludhiana.
स्थायी लेखा सं./PAN NO: AAECA 2568 G		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by : Shri Ashwani Kumar, CA
राजस्व की ओर से/ Revenue by : Smt. Meenakshi Vohra, Addl.CIT
सुनवाई की तारीख/Date of Hearing : 05/05/2021
उद्घोषणा की तारीख/Date of Pronouncement : 11/05/2021

Hearing conducted via Webex

आदेश/Order

PER: DIVA SINGH, JUDICIAL MEMBER

These two appeals filed by different Assesseees against separate orders dated 28/05/2019 of Id. CIT(A)-3, Ludhiana for the A.Y. 2010-11 are being decided by a common order for the sake of convenience.

2. In both the appeals, the only grievance of the respective assesseees is the action of the Id. CIT(A) in sustaining the respective penalty orders passed by

the A.O. U/s 271(1)(c) of the Income Tax Act, 1961 (hereinafter referred to as, the Act).

3. During the course of hearing, the Id. Counsel for the assessee at the very outset stated that the assessment order on the basis of which the impugned penalty was levied, had been set aside by this Bench of the ITAT in ITA No. 548 & 549/Chd/2019 for the A.Y. 2010-11 vide order dated 22/04/2021 in assessee's own case. Copy of the said order was furnished which is placed on record.

4. The Id. Sr.DR, although supported the order of the authorities below but could not controvert the aforesaid contention of the Id. Counsel for the assessee.

5. I have considered the submissions of both the parties and perused the material available on record. In the present case, it is noticed that the assessment order dated 11/03/2016 passed by the A.O. U/s 143(3) of the Act in the case of both the assesses which were the very basis for levying penalty U/s 271(1)(c) has been quashed vide the aforesaid common order dated 22/04/2021 in ITA No. 548 & 549/Chd/2019 (supra), therefore, the addition on the basis of which the impugned penalties U/s 271(1)(c) of the Act were levied by the A.O. and sustained by the Id. CIT(A), are not in existence. In view thereof, the impugned penalties levied by the A.O. and sustained by the Id. CIT(A) deserve to be deleted. Support is drawn from the decision of the Hon'ble Apex

Court in the case of K.C. Builders and Anr. Vs ACIT reported in (2004) 265 ITR 562

wherein on a similar issue the Court was pleased to hold:

“Where the additions made in the assessment order on the basis of which penalty for concealment is levied, are deleted, there remains no basis at all for levying penalty for concealment and, therefore, in such a case no penalty can survive and the penalty is liable to be cancelled. Ordinarily, penalty cannot stand if the assessment itself is set aside.”

6. In the present cases, the basis for levying the penalties U/s 271(1)(c) are not in existence, as the assessment itself is set aside, I, therefore, by following the ratio laid down by the Hon'ble Apex Court in the aforesaid case, allow the appeals of the assesseees by quashing the impugned penalties U/s 271(1)(c) of the Act levied by the A.O. and sustained by the Id. CIT(A).

7. In the result, both these appeals of the assesseees are allowed.

(Order pronounced in the open Court on 11/05/2021)

Sd / -

(दिवा सिंह)

(DIVA SINGH)

न्यायिक सदस्य/Judicial Member

Date: 11/05/2021

***Ranjan**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
Assistant Registrar