

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER  
and  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**(THROUGH VIDEO CONFERENCE)**

**ITA No.1997/Del./2018  
(Assessment Year : 2009-10)**

**ITA No.1999/Del./2018  
(Assessment Year : 2013-14)**

G.D. Educational Society,  
73, Sector 34,  
Noida – 201 301.

vs. CIT (A) – 1,  
Noida.

**(PAN : AAATG0992E)**

**(APPELLANT)**

**(RESPONDENT)**

**ASSESSEE BY : Shri Somil Aggarwal, Advocate  
REVENUE BY : Shri Rajesh Kumar, Senior DR**

Date of Hearing : 02.09.2021

Date of Order : 02.09.2021

**ORDER**

**PER KULDIP SINGH, JUDICIAL MEMBER :**

Appellant, G.D. Education Society (hereinafter referred to as 'the assessee society') by filing the present appeals sought to set aside the impugned orders both dated 25.09.2017 passed by the Commissioner of Income-tax (Appeals)-I, Noida qua the

assessment years 2009-10 & 2013-14 on the identical grounds except the difference in amount inter alia that:-

**“1. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in imposing penalty u/s 271(1)(c) on the enhanced income (Rs.1,59,84,559/- & Rs.3,96,46,053/- for AYs 2009-10 & 2013-14 respectively) and that too without assuming jurisdiction as per law and that too without quantifying the penalty amount and the impugned penalty order being illegal and void ab-initio and without considering the submissions of assessee and without observing the principles of natural justice and in any case is barred by limitation.**

**2. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in imposing penalty U/S 271(1)(c) and that too without recording mandatory "satisfaction" as per law.**

**3. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in imposing the impugned penalty and passing the impugned penalty order and that too without recording the mandatory satisfaction as per law and without issuing/serving valid notice u/s 271(1)(c) and without levying a clear charge whether there was concealment of income or furnishing of inaccurate particulars.**

**4. That having regard to the facts and circumstances of the case, Ld. CIT(A) has erred in law and on facts in passing the impugned penalty order based on incorrect facts that in quantum proceedings the appellant has not filed any appeal before Hon'ble ITAT, whereas an appeal has been preferred before Hon'ble ITAT against the appellate order and this very fact has been conveyed before Ld. CIT(A) vide letter dated 24-08-2017.**

**5. That in any case and in any view of the matter, action of Ld. CIT(A) in imposing penalty U/S 271(1)(c), is bad in law and against the facts and circumstances of the case.”**

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : assessee society being registered under section 12A of the Income-tax Act, 1961 (for short 'the Act') filed return of income for Assessment Years 2009-10 & 2013-14 claiming nil income, however Assessing Officer (AO) after treating

the assessee society as a “commercial entity” has withdrawn the benefit of exemption from incidence of tax as claimed u/s 11 of the Act and has made addition of Rs.2,64,215/- & Rs.9,54,275/- for AYs 2009-10 & 2013-14 respectively. Assessment framed by the AO has been upheld by the Id. CIT (A).

3. Assessee carried the matter before the Tribunal by way of filing the appeals who has accepted the appeals for statistical purposes by remitting the case back to AO to decide afresh.

4. In the meantime, Id. CIT (A) also assumed the jurisdiction to initiate the penalty proceedings against the assessee society u/s 271(1)(c) of the Act and thereby ordered to levy the penalty on the enhanced income on the assumption, recorded in para 3 of the penalty order, that, *“as the assessee has not filed appeal before the Tribunal, the pending penalty proceedings are to be initiated in terms of Section 275 of the Act as the applicable limitation date is 30.09.2017.”*

5. Feeling aggrieved with the penalty order, the assessee society has come up before the Tribunal by way of filing the present appeals.

6. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and

orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

7. Undisputedly, assessee being a society registered u/s 12A of the Act filed return declaring income at Nil for AYs 2009-10 & 2013-14 claiming exemption u/s 11 of the Act in the status of AOP(T), which was subjected to scrutiny. It is also not in dispute that AO denied the benefit of sections 11 & 12 of the Act to the assessee society and thereby framed the assessment at the total income of Rs.6,92,430/- & Rs.81,63,605/- for AYs 2009-10 & 2013-14 respectively. It is also not in dispute that the ld. CIT(A) has enhanced the assessed income of the assessee society to Rs.1,59,84,559/- & Rs.3,96,46,053/- for AYs 2009-10 & 2013-14 respectively.

8. Ld. AR for the assessee challenging the impugned penalty orders passed by the ld. CIT (A) contended that when income for year under assessment has been assessed at nil by the AO in de novo assessment pursuant to the **order passed by the coordinate Bench of the Tribunal vide order dated 30.07.2018 in ITA Nos.3923/Del/2017 & 3925/Del/2017 for AYs 2009-10 & 2013-14** respectively, penalty levied in these cases is not sustainable and placed on record the order dated 30.07.2018 (supra) passed by the Tribunal.

9. However, on the other hand, Id. DR for the Revenue has relied upon the order passed by the Id. CIT (A).

10. When undisputedly assessment has been framed in these cases u/s 143(3) read with section 254 of the Act vide order dated 10.12.2019 at “nil” income for both the years, consequential penalty levied by the Id. CIT (A) is not sustainable, who has assumed the jurisdiction by recording the fact that no appeal before the Tribunal is pending. So, we are of the considered view that when no addition has been made and assessment has been framed at “nil” income for both the years by extending benefit of sections 11 & 12 of the Act, penalty levied in this case is not sustainable in the eyes of law, hence ordered to be deleted. Consequently, both the appeals filed by the assessee are allowed.

**Order pronounced in open court on this 2<sup>nd</sup> day of September, 2021 after the conclusion of the hearing through video conference.**

**Sd/-  
(N.K. BILLAIYA)  
ACCOUNTANT MEMBER**

**sd/-  
(KULDIP SINGH)  
JUDICIAL MEMBER**

**Dated the 2<sup>nd</sup> day of September, 2021  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A)-I, Noida.
- 5.CIT(ITAT), New Delhi.

AR, ITAT  
NEW DELHI.