

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “A”, MUMBAI**

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER  
AND  
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.563/M/2021  
Assessment Year: 2008-09**

M/s. Landmark Education India, B-206, Bhaveshwar Plaza, L.B.S. Marg, Ghatkopar (W), Mumbai – 400 086 <b>PAN: AAATL0059L</b>	Vs.	ITO (Exemption)-1(4), Piramal Chamber, Lalbaug, Parel, Mumbai - 400012
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Nitesh Joshi, A.R.  
Revenue by : Shri Shailja Rai, D.R.

Date of Hearing : 08.12.2021  
Date of Pronouncement : 14.01.2022

**ORDER**

**Per Kuldip Singh, Judicial Member:**

Assessee by filing present appeal sought to set aside the impugned order dated 07.03.2021 passed by Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] deleting the penalty levied by the Assessing Officer under section 271(1)(c) of the Act on the grounds inter alia that:

*“1. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre ('CIT(A')) erred in not cancelling penalty levied*

*under section 271(1)(c) of the Income Tax Act, 1961 ('the Act') on the appellant.*

2. *The CIT(A) erred in disposing the appeal (being appeal against levy of penalty under section 271(1)(c) of the Act) of the appellant as withdrawn due to Direct Tax Vivad Se Vishwas Act, 2020 ('DTVSVA, 2020') when in fact the appellant has not opted for resolution of the said appeal under DTVSVA, 2020.*

3. *The learned CIT(A) erred in passing the Order by not taking cognizance of the written submissions e-filed as e-processing response to Notice under section 250 of the Act dated 24-12-2020 for Appeal No.: CIT(A) 1, Mumbai/1033/2016-17 bearing DIN: ITBA/NFAC/F/APL-1/2020-21/1029239383(1) by the appellant vide Acknowledgement Number 21012113875175.*

4. *The appellant craves leave to add, alter, amplify, modify and vary the above grounds of appeal."*

2. Briefly stated facts necessary for adjudication for the controversy are that; on the basis of assessment framed at the total income of Rs.2,30,72,774/- under section 143(3) of the Act, Assessing Officer (hereinafter referred to as the AO) initiated the penalty proceedings under section 271(1)(c) of the Act for furnishing inaccurate particulars of income by way of issuance of show cause notice under section 274 read with section 271(1)(c) of the Act. Declining the contentions raised by the assessee, being the penalty not leviable under section 271(1)(c) of the Act, the AO proceeded to levy the penalty to the tune of Rs.91,81,064/- @ 100% of the tax sought to be evaded.

3. Assessee carried the matter before the Ld. CIT(A) by filing the appeal who has deleted the penalty levied by the AO under section 271(1)(c) of the Act by disposing of the appeal as withdrawn on the

ground that the assessee has settled its dispute under “Direct Tax Vivad Se Vishwas Act, 2020” (DTVSVA, 2020).

4. Feeling aggrieved assessee has come up before the Tribunal by way of filing the present appeal.

5. We have heard the Ld. Authorised Representatives of the parties to the appeal, perused the order passed by the Ld. Lower Authorities in the light of the facts and circumstances of the case and case law relied upon.

6. Undisputedly, the Ld. CIT(A) vide impugned order has not disposed of the appeal filed before him challenging the levy of penalty by the AO on merits rather dismissed the same as withdrawn under DTVSVA, 2020. It is also not in dispute that assessee has never opted for resolution of the said appeal under DTVSVA, 2020.

7. In view of the aforesaid undisputed facts we have no option except to remit the case back to the Ld. CIT(A) to dispose of de-novo in accordance with law, because, assessee has never opted for resolution of the said appeal under DTVSVA, 2020. Needless to say that Ld. CIT(A) would provide opportunity of being heard to the assessee.

8. Resultantly, present appeal filed by the assessee is allowed for statistical purposes.

**Order pronounced in the open court on 14.01.2022.**

**Sd/-  
(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

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

Mumbai, Dated: 14.01.2022.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.