

IN THE INCOME TAX APPELLATE TRIBUNAL DELHI

(DELHI BENCH 'D' : NEW DELHI)

**BEFORE SH. PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No. 4741/Del./2019, A. Y. : 2011-12

ITA No. 4742/Del./2019, A. Y. : 2012-13

ITA No. 4743/Del./2019, A. Y. : 2013-14

ITA No. 4744/Del./2019, A. Y. : 2014-15

ITA No. 4745/Del./2019, A. Y. : 2015-16

ITA No. 4746/Del./2019, A. Y. : 2016-17

ITA No. 4747/Del./2019, A. Y. : 2017-18

Sharda Educational Trust Plot No. 32-34, Sharda University Knowledge Park-III, Greater Noida PAN No. AAATS5294C	Vs.	JCIT (International Taxation) Noida
(APPELLANT)		(RESPONDENT)

Assessee by	None
Revenue by	Shri Sanjay Kumar, Sr. DR

Date of hearing:	15.06.2022
Date of Pronouncement:	27.06.2022

ORDER

PER BENCH:

The assessee has come in appeal before the Tribunal challenging the appellate order dated 30.01.2019 of Commissioner of income Tax

(Appeals)-2, Noida, by which the appeals of the assessee for the assessment years 2011-12 to 2017-18, against order dated 19.09.2018 of Ld. AO u/s 271C(1)(a) of Income Tax Act, 1961 was sustained.

2. Since identical issues are involved in all these appeals, therefore, these appeals were heard together and are being disposed of by this common order

3. The facts in brief are that a TDS survey u/s 133A of the Act was conducted on 29th March, 2017 at the educational premises of the appellant and it was found that it had remitted abroad amounts under various heads but failed to deduct TDS. The ld. AO observed from the sum spent were under different heads which were taxable in India as per the provisions of the Act and relevant DTAA. The Ld. AO considered it to be a default u/s 201(1) of the Act and the liability for the payment of interest u/s 201(1A) of the Act.

4. Giving opportunity of hearing the ld. AO treated the assessee as assessee in default and also initiated penalty proceedings u/s 271C(1)(a) which were concluded by penalty order dated 19.09.2018. the same was sustained in appeal before Ld. CIT(A) and now the appellant has raised following grounds of appeal :-

“1. Because the Ld. CIT(A) has grossly erred both on facts and in law in confirming the penalty imposed by the Assessing Officer u/s 271C(1)(a) r.w.s. 274 of the I.T. Act.

2. Because the Ld. CIT(A) has erred both on facts and in law and has arbitrarily held that there was no reasonable cause for the appellant for not deducting the tax at source on the payments on which order u/s 201(1)/201(1A) was passed.

3. Because the Ld. CIT(A) has factually and legally erred in rejecting the appellant's specific submission and ground that the payments made were to non-residents and the appellant was legally not entitled to deduct tax at source.

4. Because the Ld. CIT(A) has also erred in deciding the appeal ignoring the undisputed fact that appeal against the

order u/s 201/201(1 A) is pending before the Hon'ble ITAT Delhi.

5. Because under the facts and circumstances of the case and the legal position the Ld. CIT(A) should have deleted the penalty.”

5. Heard and perused the record.

6. As the case was called for hearing, non-appeared for the assessee, however, written submissions have been placed on record. Ld. DR was heard. As a matter of fact it appears from the written submissions that vide ITA Nos. 3377 to 3383 /Del/2018 for Assessment Years 2011-12 to 2017-18, case titled as M/s. Sharda Educational Trust vs. ITO the quantum appeals have been accepted. The appellant has is not found to be an assessee in default u/s 201(1) of the Act and consequentially the interest levied u/s 201(1A) of the Act was also deleted.

7. The Bench is of firm view that the foundation of issuing show cause notice for penalty u/s 271(1)(c) of the Act, being crumbled by a verdict of this Tribunal, by deletion of additions, the penalty order alone cannot stand by its own against the assessee. Reliance in this regard can be placed on the judgement of Hon'ble Delhi High Court in the case of **Principal CIT vs. Fortune Technocomps P.Ltd. vide ITA 313/2016 dated 13th May, 2016** where it has held that once the assessment order of the AO in the quantum proceedings was altered by the Ld.CIT(A), in a significant way, the very basis of initiation of penalty proceedings was nonexistent. The Hon'ble Allahabad High Court in the cases of **Shadiram Balmukand [1972] 84 ITR 183 and Dwarka Prasad Subhas Chandra [1974] 94 ITR 154** and the Hon'ble Gujarat High Court in the case of **Lakkdhir Lalji [1972] 85. ITR 77** have also held that when the original basis of initiation of the penalty

proceeding is altered or modified by the appellate authority, the authority initiating the penalty proceedings has no jurisdiction thereafter to proceed on the basis of the findings of the appellate authority. The Hon'ble Supreme Court in the case of **K.C. Builders vs. ACIT 135 Taxman 461 (SC)**, has made it crystal clear that where the additions made in the Assessment Order, on the basis of which penalty for concealment was levied, are deleted, by ITAT or otherwise, the penalty cannot stand by itself and is liable to be cancelled.

8. Consequently, the appeals before the Bench succeed and the same are allowed.

Order pronounced in the open court on 27th June, 2022.

Sd/-

(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER

Sd/-

(ANUBHAV SHARMA)
JUDICIAL MEMBER

Date:-27.06.2022

Binita, SR.P.S

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI