

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G' NEW DELHI**

**BEFORE SHRI PRADIP KUMAR KEDIA, ACCOUNTANT MEMBER
AND
SHRI N.K. CHOUDHRY, JUDICIAL MEMBER**

**ITA No. 2621/Del/2019
Assessment Year: 2011-12**

Simplex Engineering & Foundry
Works Pvt. Ltd., 1503, Hemkunt
Tower, 98, Nehru Place, New
Delhi.

PAN: AABCS4930P
(Appellant)

Versus DCIT, LTU Circle-1,
New Delhi.

(Respondent)

Appellant by : Sh. M.P. Rastogi, Ld. Adv.

Respondent by : Sh. Jeetandra Kumar Kale, Ld. Sr. DR

Date of hearing: 09.02.2023

Date of order : 17.02.2023

ORDER

PER N.K. CHOUDHRY, J.M.

This appeal has been preferred by the Assessee against the order dated 23.07.2018, impugned herein, passed by the learned Commissioner of Income-tax (Appeals)-22, New Delhi (in short "Ld. Commissioner"), u/s. 250(6) of the Income-tax Act, 1961 (in short 'the Act') for the assessment year 2011-12.

2. In the instant case, the Assessing Officer vide order dated 28.03.2014 u/s. 143(3) of the Act, made the additions of Rs. 29,26,642/- and Rs.1,00,000/- respectively, for the education expenses qua son of one of the directors of the Assessee company and prior period expenses.

Consequently, the penalty proceedings u/s. 271(1)(c) of the Act were also initiated for furnishing inaccurate particulars of income and vide order dated 16.03.2018 passed u/s. 271(1)(c) of the Act, penalty has been levied on the aforesaid additions of Rs.29,26,682/- & Rs.1,00,000/-.

3. The Assessee by filing first appeal before the Id. Commissioner challenged the penalty imposed on the aforesaid additions. The Id. Commissioner vide impugned order, affirmed the penalty levied on the aforesaid additions qua education expenses and prior period expenses. The Assessee, being aggrieved is in appeal before us.

4. Heard the parties and perused the material available on record. Our attention was drawn by the Id. AR Shri M.P. Rastogi, Id. Advocate to the order dated 24.05.2019 passed in Assessee's own cases i.e. ITA Nos. 6078/Del/2014 and 4237/Del/2016 and the CO Nos. 226/Del/2018 & 52/Del/2019 for the assessment years 2010-11 and 2011-12 respectively, wherein while deciding the cross objections in paragraph Nos. 19 to 23 of the order, remanded the issue/disallowance qua education expenses to the tune of Rs.29,26,682/- to the file of the Assessing Officer for decision afresh.

With regard to the prior period expenses, the Assessee claimed that though the expenses pertains to F.Y. 2009-10, however have been crystallized in the year under consideration, but somehow disallowed by the Assessing Officer.

5. The Id. DR though vehemently supported the impugned order, however did not refute the said factual position as narrated by the Assessee.

6. Considering the peculiar facts and circumstances, as the quantum addition of Rs.29,26,682/- with regard to disallowance qua education expenses on the basis of which

also, the penalty was levied, has already been set aside and remanded by the Hon'ble Coordinate Bench to the file of the AO for decision afresh, consequently, the penalty levied on the said addition does not survive.

6.1 Coming to the levy of penalty on prior period expenses, we observe that though the expenses pertains to the prior period, however the same have been crystallized in the year under consideration and therefore in our view, nothing seems to be concealment or filing inaccurate particulars of income and thus the penalty imposed on the basis of such addition, is not sustainable. On the aforesaid peculiar facts and circumstances, the penalty under consideration levied by the Assessing Officer and affirmed by the Id. Commissioner is deleted.

7. However, we clarify that in case in the remand proceedings before the AO, the addition with regard to disallowance qua education expenses, would survive then the Assessing Officer would be at liberty to initiate the penalty proceedings afresh, if necessitates, in accordance with law.

8. In the result, the appeal filed by the Assessee stands allowed.

Order pronounced in the open court on 17/02/2023.

Sd/-

**(PRADIP KUMAR KEDIA)
ACCOUNTANT MEMBER**

Sd/-

**(N.K. CHOUDHRY)
JUDICIAL MEMBER**

*aks/-