

THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'C' BENCH,
NEW DELHI [THROUGH VIDEO CONFERENCE]

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER

ITA No. 1998/DEL/2018
[Assessment Year: 2010-11]

M/s G.D. Educational Society
73, Sector - 34
Noida

Vs. The C.I.T(A)-1
Noida

PAN: AAATG 0921 E

[Appellant]

[Respondent]

Date of Hearing : 06.04.2021
Date of Pronouncement : 06.04.2021

Assessee by : Shri Somil Agarwal, CA

Revenue by Ms. Kirti Sankratyayan, Sr. DR

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER,

This appeal by the assessee is preferred against the order of the
ld. CIT(A) - 1, Noida dated 25.09.2017 pertaining to Assessment Year
2010-11.

2. The sum and substance of the grievance of the assessee is that the ld. CIT(A) erred in imposing penalty u/s 271(1)(c) of the Income tax Act, 1961 [hereinafter referred to as 'The Act' for short] on the enhanced income of Rs. 2,37,66,767/-.

3. The roots for levy of penalty lie in the order of the ld. CIT(A) dated 30.03.2017 by which the ld. CIT(A) enhanced the assessed income of 3,38,750/- by the Assessing Officer vide order dated 20.03.2013. The assessed income of Rs. 3,38,750/- was enhanced by Rs. 2,37,66,767/-.

4. The order of the ld. CIT(A) in the quantum proceedings was challenged before the Tribunal and the Tribunal in ITA No. 3924/DEL/2017 order dated 30.07.2018 has remitted the matter to the file of the Assessing Officer for fresh adjudication with certain directions.

5. Pursuant to the directions of the Tribunal, the Assessing Officer framed assessment u/s 143(3) r.w.s 254 of the Act vide order dated 10.12.2019 and the income was assessed at Rs. NIL.

6. Sublato Fundamento Cadit Opus, meaning thereby, that in case the foundation is removed, the super structure falls. Since the foundation [addition] has been removed, the super structure i.e. penalty must fall. We, accordingly, direct the ld. CIT(A) to delete the penalty so levied.

7. In the result, the appeal of the assessee in ITA No. 1998/DEL/2018 is allowed.

The order is pronounced in the open court on 06.04.2021 in the presence of both the rival representatives

Sd/-

[SUDHANSHU SRIVASTAVA]
JUDICIAL MEMBER

Sd/-

[N.K. BILLAIYA]
ACCOUNTANT MEMBER

Dated: 06th April, 2021

VL/

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar
ITAT, New Delhi

| | |
|---|--|
| Date of dictation | |
| Date on which the typed draft is placed before the dictating Member | |
| Date on which the typed draft is placed before the Other Member | |
| Date on which the approved draft comes to the Sr.PS/PS | |
| Date on which the fair order is placed before the Dictating Member for pronouncement | |
| Date on which the fair order comes back to the Sr.PS/PS | |
| Date on which the final order is uploaded on the website of ITAT | |
| Date on which the file goes to the Bench Clerk | |
| Date on which the file goes to the Head Clerk | |
| The date on which the file goes to the Assistant Registrar for signature on the order | |
| Date of dispatch of the Order | |