IN THE INCOME TAX APPELLATE TRIBUNAL
"A" Bench, Mumbai

Before Shri D. Manmohan, Vice President
and Shri R.S. Syal, Accountant Member

ITA No. 8414/Mum/2010
(Assessment Year: 2003-04)

Add. CIT (TDS) Range - 1 8th Floor, Room No. 803 Smt. M.B. Mittal Hospital Bldg. Charni Road, Mumbai 400002	Vs.	American School of Bombay Education Trust G-Block, Bandra Kurla Complex Bandra (E), Mumbai 400051 PAN - AAATT 9038 K
Appellant		**Respondent**

CO No. 22/Mum/2012
(Assessment Year: 2003-04)

American School of Bombay Education Trust G-Block, Bandra Kurla Complex Bandra (E), Mumbai 400051 PAN - AAATT 9038 K	Vs.	DCIT (TDS) Range – 1(1) 8th Floor, Room No. 803 Smt. M.B. Mittal Hospital Bldg. Charni Road, Mumbai 400002
Cross Objector		**Appellant in Appeal**

Revenue by: Shri Surinder Jit Singh
Assessee by: Shri Divesh Chawla & Shri Brian Fernandes

Date of Hearing: 28.03.2013
Date of Pronouncement: 28.03.2013

O R D E R

Per D. Manmohan, V.P.

These cross appeals are directed against the order dated 30.09.2010 passed by the CIT(A)-14, Mumbai.

2. Penalty levied by the AO under section 271C of the Income Tax Act, 1961 having been set aside by the CIT(A), Revenue is in appeal before us and the assessee filed a cross objection supporting the stand taken by the CIT(A).

3. We have heard the learned D.R. as well as the learned counsel for the assessee in this regard and carefully perused the record. The facts necessary

for disposal of the appeal are stated in brief. Assessee is running a school in the name and style of "American School of Bombay Education Trust". A survey under section 133A was conducted in the case of the assessee on 24.01.2006 wherein it was found that the assessee failed to deduct tax at source from the salaries paid to the expatriate teachers by South Asia International Educational Services out side India. According to the AO the assessee should be treated as defaulter in terms of section 201(1) and also interest under section 201(1A) should be charged for failure to deduct tax at source under section 194C of the Income Tax Act. Consequently the AO referred the case to the Additional CIT (TDS), Range-1, Mumbai for initiating penalty proceedings under section 271C of the Act.

4. Though the assessee explained the reasons for non-deduction of tax at source the AO proceeded to levy penalty under section 271C and hence the assessee preferred an appeal before the CIT(A) wherein it was contended that the very basis for levy of penalty no longer subsists in the light of the decision of the ITAT "L" Bench Mumbai wherein the proceedings initiated by the DCIT (TDS), Range 1, Mumbai under section 201(1) of the Act was set aside by the Tribunal. Having regard to the circumstances of the case the learned CIT(A) cancelled the penalty by observing in para 6 of his order as under: -

> *"6. I find that the Hon'ble I.T.A.T. vide order dated 8-3-2010 in ITA No. 3628/2007 has set aside the proceedings on the ground of non-initiation of proceedings against the payee and held that the benefit of article 22 will be available to the employees. In the instant order the Hon'ble ITAT has followed its own order for the earlier years and the case of the appellant as well as the decision in the case of Mahendra & Mahendra Ltd. Keeping in view of the fact that the quantum appeal is decided in favour of the appellant, and also taking into account the order of the A.O. giving effect to the ITAT order dated 28.-6-2010. The penalty levied u/s. 271C of the IT Act is deleted."*

5. Further aggrieved, Revenue is in appeal before us. At the time of hearing the learned counsel placed before as an order of the ITAT "L" Bench Mumbai (ITA No. 3628/Mum/2007 dated 08/03/2010) to submit that the order passed by the CIT(A) does not call for any interference since the said order, in turn, is based upon the decision of the ITAT.

6. On the other hand, the learned D.R. supported the stand of the AO.

7. Having regard to the circumstances of the case we do not find any infirmity in the order passed by the CIT(A) and therefore we dismiss the appeal filed by the Revenue. Since the penalty levied by the AO is deleted, the cross objection filed by the assessee becomes infructuous and accordingly dismissed.

8. In the result, appeal of the Revenue and the cross objection of the assessee are dismissed.

Order pronounced in the open court on 28th March, 2013.

Sd/-	Sd/-
(R.S. Syal)	**(D. Manmohan)**
Accountant Member	**Vice President**

Mumbai, Dated: 28th March, 2013

<u>*Copy to:*</u>

1. *The Appellant*
2. *The Respondent*
3. *The CIT(A) – 14, Mumbai*
4. *The CIT– (TDS), Mumbai City*
5. *The DR, "A" Bench, ITAT, Mumbai*

By Order

//True Copy//

Assistant Registrar
ITAT, Mumbai Benches, Mumbai

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