

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

**BEFORE SH. G.D.AGRAWAL, HON'BLE PRESIDENT  
AND  
SH.K.N.CHARRY, JUDICIAL MEMBER**

**ITA No. 6741/Del/2015  
(ASSESSMENT YEAR: 2011-12)**

Lala Bhagwan Dass Educational Trust, A-52, Jitar Nagar, Opp. Kothi No.299, Gagan Vihar, Delhi-110092. PAN-AAATL1870H	<b>vs</b>	ITO (Exemption), Trust Ward-IV, Delhi.
<b>(Appellant)</b>		<b>(Respondent)</b>

<b>Appellant by</b>	Sh. Ajit Gandhi, CA
<b>Respondent by</b>	Sh. Arun Kumar Yadav, Sr.DR
<b>Date of Hearing</b>	20.09.2017
<b>Date of Pronouncement</b>	09.10.2017

**ORDER**

**PER K.N.CHARRY, JUDICIAL MEMBER**

This appeal preferred by the assessee challenging the order dated 17.11.2015 in Appeal No. 310/2014-15 passing by the Commissioner of Income Tax (Appeal) [in short "CIT(A)"]-40, New Delhi for 2011-12 Assessment Year for levying the penalty u/s 271(1)(c) of the Income Tax Act, 1961 (in short "Act").

2. Briefly stated facts are that the assessee is a society registered under the Societies Registration Act, 1860 and is registered u/s 12AA(1) on 09.02.2001, and is notified u/s 80G(5)(vi) on 26.08.2008 for the period from 01.04.2008 to 31.03.2011. The assessee filed his return of income on 27.09.2011 showing the income as NIL, and during the scrutiny, the AO found that the assessee had received a sum of Rs.62,56,250/- as development fund from the students and the same was transferred to capital account in balance sheet whereas it should be

included in the total receipts. Accordingly the AO added this amount to the total receipt and of the assessee being it is part of fee received from students and made the final assessment order on 19.03.2014. The AO also initiated the penalty proceedings on account of filing of inaccurate particulars of income and imposed the penalty of Rs.19,33,180/- u/s 271(1)(c) of the Act.

3. Appeal preferred by the assessee was dismissed by the Ld.CIT(A) by way of impugned order, holding that by transferring the amount of development fund received from the students to the capital accounts in balance sheets, the assessee furnished inaccurate particulars as such levy of penalty is justified. Hence, this appeal filed by the assessee challenging the levy of penalty.

4. It is an argument of the Ld.AR that there is neither concealment of income nor furnishing of inaccurate particulars inasmuch as the assessee had submitted the full details of the receipts in the return of income and also during the course of the assessment proceedings, as such the AO is not justified to levy the penalty merely because the said amount under the head "development fund" was transferred by the capital account in the balance sheet whereas it should be included in the total receipts. Per Contra, Ld. DR supported the findings of the authorities below and submitted that the act of the assessee in transferring the development fund to the capital account in the balance sheet instead of included the same in the total receipts amounts to furnishing of inaccurate particulars.

5. We have carefully gone through the records in the light of the contentions on other side. There is no dispute as to the furnishing of details by the assessee in the return of income. Only dispute is whether the development fund received by the assessee from the students was not to be transferred to the capital account in the balance sheet but it had to be included in the total receipts. The question is

whether this treatment of account would per se amount to furnishing all inaccurate particulars. So far as all the details are furnished by the assessee in the return of accounts, merely because the AO made an addition of the development fund to the total receipt of the assessee treating it as a part of fee received from the students, in our considered opinion, *per se*, does not amount to furnishing of inaccurate particulars. Further, the assessee filed the return of income showing the total income as NIL and the AO also assessed the income of the assessee as NIL. In *JCIT vs Classic Industries Ltd. [2017] 80 taxmann.com 220 (SC)*, the Hon'ble Apex Court while placing reliance the decision supported in *Virtual Soft Systems Ltd. vs CIT [2007] 159 Taxman 155 (SC)* upheld the judgement and order dated 27.07.2006 passed by the High Court of Gujarat by which the High Court has held that no penalty is leviable u/s 271(1)(c) of the Act, if the income disclosed in the return and the income assessed is NIL. Respectfully following the above decisions, we find it difficult to sustain the penalty levied against the assessee. Hence, we direct the AO to delete the same.

6. In the result, the appeal filed by the assessee is allowed.

**The order is pronounced in the open court on 09<sup>th</sup> October, 2017.**

**Sd/-**  
**(G.D.AGRAWAL)**  
**PRESIDENT**

*\*Amit Kumar\**

*Date:- 09.10.2017*

**Sd/-**  
**(K.N.CHARRY)**  
**JUDICIAL MEMBER**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI