

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "D": NEW DELHI**

**BEFORE
SHRI G.D. AGRAWAL, HON'BLE PRESIDENT
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No.:- 6376/Del/2012
Assessment Year: 2008-09

The Vaish Aggarwal Education Society, CD-Block, Pitampura, New Delhi – 110 034 PAN AAATT0808N	Vs.	ADIT, TC-IV, New Delhi.
(Appellant)		(Respondent)

Appellant by:	Shri Tarandeep Singh, Adv.
Respondent by :	Shri Amit Jain, Sr. DR
Date of Hearing	21/06/2018
Date of pronouncement	25/06/2018

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the assessee against impugned order dated 5.11.2012, passed by Ld. CIT (Appeals)XXI, New Delhi, in relation to the penalty proceedings u/s 271(1)(c) for the assessment year 2008-09. The assessee is mainly aggrieved by levy of penalty of Rs. 9,39,260/- by treating the development fund as a part

of income and expenditure account instead of part of balance sheet as taken by the assessee.

2. At the outset Ld. Counsel for the assessee submitted that assessee's society is not liable penalty for concealment of income, because in the computation made u/s 11, even if the amount of funds amounting to Rs. 2,76,342/- is treated as part of income and expenditure account then same stood utilised by the assessee and hence no income is taxable. That is why Assessing Officer has computed the income at nil. In support he drew our attention to the computation made by the Assessing Officer, wherein the income has been computed as nil. He submitted that, once there is no taxable income, then there cannot any tax which can be said to be evaded by the assessee. On this ground alone the penalty should be deleted. Ld. DR on the other hand relied upon the order of the AO and Ld. CIT (A).

3. After considering the aforesaid submission and on perusal of the assessment order, we find that it is not in dispute that assessee is a society carrying on activities which fall within the ambit of 'charitable purposes' u/s 2(15). The AO noted that the amount of funds received by the assessee for sums amounting to Rs. 27,63,342/- which was from the contribution received from students as development funds has been taken to the balance sheet instead of

routing it through income and expenditure account. AO has confirmed the income and expenditure account in the following manner:-

<i>“Amount of income as per Income & Expenditure account</i>	
<i>Rs.28,585,182/-</i>	
<i>Add:</i>	
<i>Development fund (as per Balance Sheet)</i>	<i>Rs. 27,63,342/-</i>
	<i>Rs. 31,348,524/-</i>
<i>85% to be utilized of Rs. 31,348,524/-</i>	<i>Rs.31,348,524/-</i>
<i>Expenditure as per Income & Expenditure account</i>	<i>Rs.30,511,526/-</i>
<i>Less: Depreciation</i>	<i>Rs.53,77,033/-</i>
<i>Add: Fixed assets purchased</i>	<i>Rs. 47,24,962/-</i>
	<hr/>
<i>Utilized</i>	<i>Rs. 29,859,455/-</i>
<i>Deficit</i>	<i>Rs. 33,13,209/-</i>
<i>Taxable Income</i>	<i>NIL”</i>

4. Thus, even the said amount is treated as part of income and expenditure then looking to the utilisation as per section 11, there is in fact deficit and taxable income is nil. Once there is no tax computed by the AO on the basis of computation made u/s 11, then there is computation of tax liability or could be case of tax sought to be evaded by the assessee so as to warrant any kind of penalty u/s 271(1)(c). Therefore, on this ground alone we delete the penalty of Rs. 9,39,260/-

5. In the result appeal of the assessee is allowed.

Order pronounced in the Open Court on 25th June, 2018.

sd/-
(G.D. AGRAWAL)
PRESIDENT

Dated: 25/06/2018

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1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, New Delhi