

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

Before Shri Chandra Poojari, AM & Shri George George K, JM

ITA No.643/Coch/2019 : Asst.Year 2009-2010

&

SA No.97/Coch/2019 : Asst. Year 2009-2010

M/s.Shalom Charitable Ministries of India, Shalom Residential Public School, Shalom Nagar, Kosathara Chitur, Palakkad-678 101. PAN : AADTS6647Q.	Vs.	The Asst.Commissioner of Income-tax, Circle 1 Palakkad.
(Appellant)		(Respondent)

Appellant by : Sri.Shivadas Chettoor, FCA
Respondent by : Sri.Sudhanshu Shekhar Jha, CIT-DR

Date of Hearing : 05.03.2020	Date of Pronouncement : 05.03.2020
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ORDER

Per George George K, JM :

This appeal at the instance of the assessee is directed against the order of the CIT(A), dated 09.08.2019. The relevant assessment year is 2009-2010. The assessee has also filed stay application seeking to stay the recovery of outstanding tax arrears.

2. The solitary issue that was argued, is whether the CIT(A) is justified in confirming the penalty imposed u/s 271B of the I.T.Act amounting to Rs.1,00,000.

4. The brief facts of the case are as follows :

The assessee is a trust claiming exemption u/s 11 of the I.T.Act. For the assessment year 2009-2010, the claim of exemption u/s 11 of the I.T.Act was denied by the Assessing

Officer in the assessment concluded u/s 143(3) of the I.T.Act. The reasoning of the Assessing Officer to deny the benefit of exemption was that the assessee was engaged in micro financial activities and charging exorbitant interest from the beneficiaries and there is no charitable activities involved in the micro finance activity of the assessee. Hence, the income sought to be exempted u/s 11 of the I.T.Act was brought to tax as business income by the Assessing Officer. The view taken by the A.O. was affirmed by the CIT(A) as well as the ITAT (ITAT's order dated 25.04.2014 in ITA No.80/Coch/2017). The receipts from micro finance was Rs.3,75,42,635 during the year and since the assessee had failed to furnish audit report u/s 44AB of the I.T.Act, the Assessing Officer imposed penalty u/s 271B of the I.T.Act.

5. Aggrieved by the order of the Assessing Officer imposing penalty u/s 271B of the I.T.Act, the assessee preferred an appeal to the first appellate authority. The view taken by the Assessing Officer was affirmed by the CIT(A). The relevant finding of the CIT(A) reads as follow:-

"Since the activity from micro finance has been held as business, the appellant was liable to furnish Audit Report u/s 44AB of the I.T.Act as the receipts from micro finance activity is Rs.3,75,42,635/- during the year. The appellant has not furnished any explanation regarding its failure to get its account audited u/s 44AB of the I.T.Act. In the facts and circumstances of the case, I confirm the penalty imposed by the Assessing Officer."

6. Aggrieved by the order of the CIT(A), the assessee has filed this appeal before the Tribunal. The learned AR reiterated the submissions made before the Income Tax Authorities. The learned Departmental Representative, on the other hand, strongly supported the Assessing Officer's order imposing penalty u/s 271B of the I.T.Act and the CIT(A)'s order confirming the penalty.

7. We have heard the rival submissions and perused the material on record. The assessee was engaged in micro finance activities during the relevant assessment year. The receipts from micro finance activity was Rs.3,75,42,635. The Tribunal for the relevant assessment year in ITA No.80/Coch/2017 (order dated 25.04.2018) had held that the micro finance activity of the assessee is not a charitable activity and confirmed the view taken by the Assessing Officer. Since the activity of micro finance has been held to be business and the receipt from the said activity had exceeded the prescribed limit mentioned in the said section, the assessee was liable to get its accounts audited u/s 44AB of the I.T.Act. The assessee admittedly has not filed the audit report nor has it offered any explanation before the Assessing Officer, why penalty u/s 271B of the I.T.Act cannot be imposed in this case. Therefore, we are of the view that the penalty imposed u/s 271B of the I.T.Act, by the Assessing Officer has been rightly confirmed by the CIT(A). It is ordered accordingly.

8. Since we have disposed of the appeal filed by the assessee, the Stay Application filed by the assessee becomes infructuous and the same is dismissed as such.

9. In the result, the appeal as well as stay application filed by the assessee are dismissed.

Order pronounced on this 05th day of March, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Sd/-
(George George K.)
JUDICIAL MEMBER

Cochin ; Dated : 05th March, 2020.
Devadas G*

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A)-Thrissur.
4. The Pr.CIT, Thrissur.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin