

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: "B" NEW DELHI**

**BEFORE SHRI G.S. PANNU, VICE-PRESIDENT
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

**ITA No. 4495/Del/2017
Assessment Years: 2010-11**

**DCIT (Exemption),
Circle, Ghaziabad.**

**vs. City Educational Trust,
Room No. 105, CGO Complex-II
1st Floor, Kamla Nehru Nagar,
Ghaziabad.
PAN- AAATC3605P**

(Appellant)

(Respondent)

**Revenue by: ShriInder Pal Singh, CIT/DR
Assessee by: Shri Ashish Bansal, Advocate**

**Date of Hearing: 04/03/2020
Date of Pronouncement: 04/03/2020**

ORDER

PER K. NARASIMHA CHARY, JM

Challenging the order dated 08.03.2017 passed in appeal No. 68/2016-17 by learned Commissioner of Income Tax (Appeals)-I, Noida ("Ld. CIT(A)"), in the case of City Educational Trust ("the assessee"), Revenue filed this appeal for assessment year 2010-11.

2. Brief facts of the case are that the assessee, being a charitable trust registered u/s. 12A of the Act, received donations of Rs.1,39,02,003/-. The Assessing Officer, however, treated these donations as having been received from anonymous sources and added the same as taxable income of assessee under the provisions of section

115BBC of the Act. The appeal filed by assessee, challenging this addition, stood dismissed by the Id. CIT(A). Thereafter, Id. Assessing Officer initiated penalty proceedings and imposed a penalty of Rs.50,11,700/- u/s. 271(1)(c) of the Act vide order dated 30.03.2016, only stating that the reply filed by assessee is not satisfactory.

3. Aggrieved by such penalty, assessee preferred appeal before the Ld. CIT(A), and contended that the impugned donations were from verifiable sources, which the assessee could not be able to establish before the Assessing Officer for want of reasonable opportunity of being heard given to them. Before CIT(A) the assessee, however, submitted corroborating evidences regarding existence of donors who contributed to the corpus of assessee trust along with their PAN and bank statements. The Id. CIT(A) having considered all the material on record observed that once a particular donor is having PAN and is filing return of income and also maintaining bank account, such donor cannot be held to be anonymous. Therefore, Ld. CIT(A) deleted the penalty imposed against the assessee vide impugned order. Aggrieved, the Revenue is in appeal before us.

4. The Id. DR submits that the assessee was given reasonable opportunity to prove the genuineness of donations received, but he failed to do so. The assessee had attended the assessment proceedings from time to time and furnished the details, as can be seen from the assessment order. Hence, it can hardly be said that the assessee was not given reasonable opportunity to prove its case. It is further submitted that the addition made u/s. 115BBC stood affirmed in quantum appeal before the Id. CIT(A) and therefore, the deletion of penalty is not justified.

5. Per contra, the Id. AR, strongly relying on the findings of Id. CIT(A), submits that since the quantum appeal filed by assessee before ITAT stood allowed and the matter stood remanded to the file of Assessing Officer for verification of sources of transaction and for passing the assessment afresh, the very basis of penalty stands collapsed and as such the penalty cannot be sustained. He further submitted that pursuant to the remand order, learned Assessing Officer passed fresh assessment order, giving rise to fresh penalty proceedings.

6. We have gone through the material on record in the light of submissions made on either side. It is seen that in the quantum appeal of the assessee in respect of impugned addition made u/s. 115BBC of the Act, the Tribunal by order dated 27.04.2018 has set aside the assessment and remitted the matter back to the file of Assessing Officer for making fresh assessment after due verification of the transaction. There is no denial of the fact that subsequent to the remand order, learned Assessing Officer framed a fresh assessment giving rise to fresh penalty proceedings. In view of this, the very basis, on which the impugned penalty is imposed, stands collapsed and accordingly, the penalty imposed cannot be sustained.

7. In the result, the appeal of Revenue is dismissed.

Order pronounced in the Open Court on 4th March, 2020.

**Sd/-
(G.S. PANNU)
VICE PRESIDENT**

**Sd/-
(K.NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 04/03/2020

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