

**IN THE INCOME TAX APPELLATE TRIBUNAL  
“A” BENCH: BANGALORE**

**BEFORE SHRI N.V. VASUDEVAN, VICE PRESIDENT AND  
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER**

ITA No.421/Bang/2020
Assessment Year: 2013-14

JCIT (OSD)(E) Circle-1 Bengaluru  <b>PAN NO : AADCM7259F</b>	<b>Vs.</b>	M/s. Sri Srinivasa Education and Charitable Trust 619/G, 36 <sup>th</sup> Cross Rajajinagar 2 <sup>nd</sup> Block Bengaluru-560 010
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Ms. Neera Malhotra, D.R.
<b>Respondent by</b>	:	Shri Prashanth G.S., A.R.

Date of Hearing	:	11.11.2020
Date of Pronouncement	:	11.11.2020

**ORDER**

**PER CHANDRA POOJARI, ACCOUNTANT MEMBER:**

This appeal by the department is directed against order of the CIT(A)-6 dated 30.10.2019 for the A.Y. 2013-14.

2. The facts of the case are that a search u/s 132 of the Income-tax Act,1961 [‘the Act’ for short] was conducted in the appellant’s case on 18.7.2013. The search assessment was completed u/s 143(3) r.w.s. 153A of the Act on 13.1.2016. After rectification, the total income assessed was Rs.58,09,69,110/- and a demand of Rs.25,26,97,630/- was raised. A penalty notice u/s 271AAB of the Act was also issued by the Assessing Officer (A.O.) on 13.1.2016. During the course of search and seizure operations u/132 on

Page 2 of 4

18.7.2013, several payments made for non-specified purposes in cash to contractors, other related concerns, to promoters etc., were found to the extent of Rs.43,33,00,000/- relevant to the A.Y. 2013-14. During the course of search proceedings, the appellant was asked to clarify the nature and purpose of the above expenses claimed. The appellant claimed that the said expenditure was actually incurred on construction of the college and hospital and recorded in the books of accounts of the trust maintained in the regular course of operations but that it agreed for disallowance of Rs.25 crores for the sake of buying peace with the department. However, since the appellant failed to explain the genuineness of the same with proper bills and vouchers, in the search assessment, the amount of Rs.43.33 crores was treated as expenditure not incurred for the objects of the Trust. The material which was found during the course of the search operations also showed the receipt of money over and above the facts prescribed by the government, for admitting the students under the management quota. The money so collected was paid to persons in violation of the provisions of section 13(1)(c). In view of the above findings, in the search assessment, the claim of exemption u/s 11 of the Act was disallowed and the appellant was treated as an AOP. In the search assessment addition was also made on account of payments unsecured loans Rs.7.03 crores and cash payments Rs.5,54,50,500/- to related parties in violation of the objectives of the trust. The above payments were treated as expenses attracting the provisions of section 13(1)(c) r.w.s. 13(3) of the Act. Though an amount of Rs.7,50,00,000/- had been admitted by the appellant during the course of the search proceedings u/s 132(4), the same was not admitted in the return of income filed on 14.3.2014 in response to the notice issued u/s 153A dated 18.2.2014. This amount was admitted only in the revised computation of total income filed on 14.12.2015 during the course of the assessment proceedings.

Page 3 of 4

In view of the same, the A.O. held that the amounts of Rs.43,33,00,000/- Rs.7,03,00,000/- and Rs.5,54,50,500/- fell under the purview of penalty u/s 271AAB(1) of the Act. Hence penalty @ 30% was levied by on the aggregate amount of Rs.55,90,50,500/-. The penalty so levied amounted to Rs.16,77,15,150/-.

3. On appeal, CIT(A) deleted the penalty. Against this revenue filed an appeal before us. At the time of hearing, both the parties conceded that the above issues were subject matter appeal before this Tribunal in ITA No.712/Bang/2018 and Tribunal deleted the above additions made by lower authorities and allowed the appeal of the assessee vide order dated 4.9.2019. Being so, there was no surveying of quantum additions in this case. Accordingly, levy of penalty is not warranted and the deletion of penalty u/s 271AAB(1) of the Act is confirmed. Appeal of the revenue is dismissed.

4. In the result, the appeal filed by the revenue is dismissed.  
Order pronounced in the open court on 11<sup>th</sup> Nov, 2020.

**Sd/-**  
**(N.V. Vasudevan)**  
**Vice President**

**Sd/-**  
**(Chandra Poojari)**  
**Accountant Member**

Bangalore,  
Dated 11<sup>th</sup> Nov, 2020.  
VG/SPS

**Copy to:**

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore.