

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E" NEW DELHI**

**BEFORE SHRI CHALLA NAGENDRA PRASAD, JUDICIAL MEMBER
AND
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

आ.अ.सं./I.T.A No.9528/Del/2019
निर्धारणवर्ष/Assessment Year: 2009-10

Maa Sharda Educational Society Ch. No. 206-207, Ansal Satyam, RDC, Raj Nagar, Ghaziabad, Uttar Pradesh.	बनाम Vs.	ITO, Exemption Ward, Ghaziabad, Uttar Pradesh.
PAN No. AABTM9210E		
अपीलार्थी Appellant		प्रत्यर्थी/Respondent

निर्धारितीकीओरसे /Assessee by	Shri Akhilesh Kumar, Adv.
राजस्वकीओरसे /Revenue by	Smt. Rano Mukherjee, CIT DR

सुनवाईकीतारीख/ Date of hearing:	04.07.2022
उद्घोषणाकीतारीख/Pronouncement on	04.07.2022

आदेश /O R D E R

PER C.N. PRASAD, J.M.

This appeal is filed by the assessee against the order of Ld. CIT(Appeals), Ghaziabad dated 26.09.2019 for the AY 2009-10 in sustaining the penalty levied u/s 271(1)(c) of the Act.

2. The Ld. Counsel submits that the penalty was levied by the Assessing Officer on the addition of Rs.63,01,179/- made in the assessment order passed u/s 143(3) read with section 263 on the ground that the donation of Rs.63,01,179/- received by the assessee during the

year is not corpus donation and not eligible for exemption u/s 11(1)(d) in the absence of registration u/s 12AA to the provisions of section 11 & 12 will not apply to the assessee trust or society. The Ld. Counsel submits that the Tribunal by order dated 12.04.2022 in ITA No. 3887/Del/2017 held that the assessee is eligible to claim exemption u/s 11(1)(d) of the Act and in which case the addition of Rs.63,01,179/- made by the Assessing Officer came to be deleted. Therefore, the Ld. Counsel submits that since the addition made in assessment proceedings came to be deleted by the order of the Tribunal in ITA No. 3887/Del/2017 dated 12.04.2022 the penalty levied u/s 271(1)(c) on the basis of such addition has no legs to stand.

3. The Ld. DR fairly agrees with the position as narrated by the Ld. Counsel for the assessee.

4. We have heard the rival submissions, perused the orders of the lower authorities and the order of the Tribunal in quantum proceedings. It is observed from the assessment order that the Assessing Officer denied claim for exemption u/s 11(1)(d) to the assessee in the absence of registration u/s 12AA of the Act to the assessee society for the year under consideration. Since the assessee was not granted registration u/s 12AA of the Act for the AY 2009-10 the Assessing Officer denied the claim and accordingly made addition of Rs.63,01,179/- while completing the assessment u/s 143(3) of the Act.

5. On appeal the Ld.CIT(A) sustained the order of the Assessing Officer. When the matter reached to the Tribunal, the Tribunal by order dated 12.04.2022 in ITA No. 3887/2017 on analyzing the provisions of the Act and the explanatory notes to the provisions of Finance (No.2) Act 2014 and the Circular No. 101/2015 (F.No.142/13/2014-TPL) dated 21.01.2015 held that since registration u/s 12AA was granted to the assessee w.e.f. 28.03.2013 i.e., before completion of assessment proceedings on 30.10.2014 the assessee is eligible to claim exemption u/s 11(1)(d) of the Act. By virtue of this order of the Tribunal the addition made by the Assessing Officer denying the exemption claimed u/s 11(1)(d) came to be deleted. Therefore, since the very basis for levying penalty was altered in appeal proceedings and as the addition was deleted the penalty levied u/s 271(1)(c) of the Act has no legs to stand on its own. Thus, we set aside the order of the Assessing Officer passed u/s 271(1)(c) of the Act and direct the Assessing Officer to delete the penalty levied u/s 271(1)(c) of the Act.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 04/07/2022

Sd/-
(ANADEE NATH MISSHRA)
ACCOUNTANT MEMBER

Sd/-
(C.N. PRASAD)
JUDICIAL MEMBER

Dated: 04/07/2022

**Kavita Arora, Sr. P.S.*

Copy of order sent to- Assessee/AO/Pr. CIT/ CIT (A)/ ITAT (DR)/Guard
file of ITAT.

By order

Assistant Registrar, ITAT: Delhi Benches-Delhi