

**IN THE INCOME TAX APPELLATE TRIBUNAL  
'B' BENCH : BANGALORE**

**BEFORE SMT. BEENA PILLAI, JUDICIAL MEMBER  
AND  
SHRI LAXMI PRASAD SAHU, ACCOUNTANT MEMBER**

<b>ITA No. 1098/Bang/2022</b>
<b>Assessment Year : 2010-11</b>

The Assistant Commissioner of Income Tax (Exemptions), Circle – 1, Mangaluru.	<b>Vs.</b>	M/s. Rastriya Computer Saksharata Samithi, PM IV 1491, Sheikmale Building, Puttur. <b>PAN: AAATR9338J</b>
<b>APPELLANT</b>		<b>RESPONDENT</b>

Assessee by	:	Shri Abhijit S. Bapu, Advocate & Shri Sreehari Kutsa, Advocate
Revenue by	:	Shri Gudimella VP Pavan Kumar, JCIT DR

Date of Hearing	:	05-01-2023
Date of Pronouncement	:	28-02-2023

**ORDER**

**PER BEENA PILLAI, JUDICIAL MEMBER**

Present appeal is filed by revenue against order dated 07/10/2022 passed by National Faceless Appeal Centre (NFAC), Delhi for A.Y. 2010-11 on following grounds of appeal:

*“1) The order of CIT (A) is opposed to the law and facts of the case.*

*2) The CIT(A) is erred in deleting the penalty holding that addition made by the AO has been curtailed and assessed*

*income is substantially reduced when income itself has not been quantified barring on the order of CIT(A) himself.*

*3) When CIT(A) has remitted the issue of determining the net taxable income after verification, the order of CIT(A) deleting the entire penalty is opposed to law and facts of the case.*

*4) The CIT(A) ought to have directed to reduce the penalty proportionately depending on the income quantified in the order giving effect to CIT(A) order.*

*5) The CIT(A) should have considered the fact that the assessee's wrong claim of exemption u/s.10(23C) which has been admitted before CIT(A) while deciding the appeal on penalty.*

*6) The CIT(A) ought to have co-related both the assessment and penalty orders together and thereby should not have deleted the penalty.*

*7) For these and such other grounds it is urged that the order of the Ld.CIT(A), on the above points may be set aside and the order of the Assessing Officer be restored.*

*8) The appellant craves leave to add, alter or amend all or any of the grounds of appeal before or at the time of the hearing of the appeal.”*

## **2. Brief facts of the case are as under:**

2.1 The assessee is a trust carrying on activities of vocational training with regard to computer and technical training. The area of operation was throughout State of Karnataka. The assessee filed the return of income for the Assessment year 2010-11 on 29-07-2010.

2.2 The A.O. processed the return of income u/s 143(1) of the Act, on 10.03.2011. The case has been selected for scrutiny assessment and notice u/s 143(2) of the Act was issued on 21.09.2011. Later on, the A.O. passed the order u/s 144 for the Income Tax Act, 1961.

2.3 The Ld.AO also initiated penalty proceedings u/s. 271(1)(c) of the Act which has been submitted by the assessee before the authorities below that the notices issued by the assessing officer as well as the penalty notice was not served upon the assessee and assessee came to know regarding the levy of penalty much later. Assessee thereafter collected the assessment order and the penalty order and thereafter the appeal was filed before the Ld.CIT(A).

2.4 The Ld.CIT(A) after considering the various submissions of the assessee, condoned the delay, however on merits, it was observed as under:

*7.4 The quantum appeal was decided by CIT-NFAC and stated that:-*

*"7.6 The AO has disallowed the entire gross receipts of Rs. 5,12,41,115/- of the trust stating that the appellant does not qualify for the exemption u/s 10 (23C) (iiiad) of the Act where as the appellant in his written submission stated that:-*

*"3.1 As submitted, the appellant is charitable trust formed with the object of establishing and administering educational institutions and is particularly engaged in imparting computer knowledge in rural hinterlands of the Dakshina Kannada District. The appellant used to set up computer centers where students were given practical knowledge and training in operation of computer and use of software. This activity was being carried out in the rural areas of the District where the knowledge and use of computer was required to be from these charitable activities carried out, the appellant earned only a meager surplus of Rs. 15,475.07 since there was no intention to make any profit. The said surplus earned by the appellant is supported by the Audited Income & Expenditure account that was filed along with the return of income for the year under appeal filed on 29.07.2010, The aforesaid surplus is less than the maximum amount chargeable to tax and hence, there is no tax payable on the income earned by the appellant trust.*

1. 1. However, while filing the return of Income the appellant claimed exemption u/s 10(23C) (iiiad) of the Act on the mistaken belief that the income of educational institutions was exempt under that section. The appellant did not realize that realize that the aforesaid exemption u/s. 10 123Cliriuid] of the Act, was not applicable, since Be that as it may, there was no tax payable on the income returned by the appellant in the return of income filed for the year under appeal."

7.7 A Remand report on the submissions made by the appellant was sought from the AO vide online request with a specific direction for determination of net income of the appellant, after verification of books of accounts, however no response has been received till date. Since, the appeal has already been pending for more than 5 years; the issue is decided based on the submissions of the appellant."

7.8 The appellant accepts that it is not eligible to claim the exemption u/s 10 (23) of the IT Act 1961. However, after the same has been denied to it; the educational institution is to be treated as any other enterprise and the surplus of receipts over expenses only is to be brought to tax by the AO.

7.9 A request for examination of the same was made vide online request dated 22/07/2022 and reminder dated 20/09/2022 to the AO and Range head. However, no report has been received even after a lapse of 2 months. The AO is accordingly directed to bring to tax the net taxable income of the enterprise from the audited financial statements of the trust after allowing expenses claimed as per the IT Act. The AO should pass a speaking order w.r.t expenses found to be not allowable. For statistical purposes this ground is treated as partly allowed."

7.5 Since, the addition made by AO has been curtailed and assessed income for the AY 2010-11 is substantially reduced; the penalty u/s 271 (1) (c) is no longer sustainable. Hence, the appeal is allowed."

2.5 The Ld.AR submitted that there is no denial regarding the claim wrongly made u/s. 10(23)(c)(iiiad). However, there is not tax liability on the income of the assessee. The Ld.AR further

submitted that in the quantum proceedings against the assessment order, passed u/s. 144, the Ld.CIT(A) has directed the Ld.AO to pass a speaking order with respect to the expenses found to be not allowable and subsequently the assessing officer has curtailed the addition substantially and therefore the Ld.CIT(A) while passing the impugned order has recorded that 271(1)(c) is no longer sustainable. He submitted that as the quantum additions stands deleted, the penalty then anyway will not survive.

2.6 On the contrary, the Ld.DR relied on the orders passed by the authorities below.

We have perused the submissions advanced by both sides in the light of records placed before us.

3. We note that the penalty has not been levied for any concealment or furnishing of any inaccurate particulars. The penalty was levied for claiming deduction under a wrong head by the assessee. Further, from the quantum of order passed by the NFAC dated 07/10/2022, against the assessment order passed u/s. 144 of the Act, we note that the addition stands substantially reduced and the penalty cannot be levied as observed by the NFAC. Revenue has not been able to find out or bring on record any documents / evidences to establish the necessary requirement for the levy of penalty u/s. 271(1)(c) which is either furnishing of inaccurate particulars and / concealment of income. Assessee had relied on the decision of *Hon'ble Bombay High Court* in case of *Commissioner of Income-tax-I, Mumbai vs. Bennett Coleman & Co. Ltd.* reported in [2013] 33 *taxmann.com* 227 in which the same ratio has been laid down.

Respectfully following the above, we do not find any merit in the grounds raised by the revenue.

**In the result, the appeal filed by the revenue stands dismissed.**

Order pronounced in the open court on 28<sup>th</sup> February, 2023.

Sd/-  
(LAXMI PRASAD SAHU)  
Accountant Member

Sd/-  
(BEENA PILLAI)  
Judicial Member

Bangalore,  
Dated, the 28<sup>th</sup> February, 2023.  
/MS /

**Copy to:**

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

By order

Assistant Registrar,  
ITAT, Bangalore