

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'E', NEW DELHI**

**BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER AND
SH. NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER**

ITA No. 5228/Del/2019
(Assessment Year : 2014-15)

Lahoria Education Society C/o. Shri S. K. Jain Adv. 696/8, Ganga Bagh, Hansi Distt. Hisar (Haryana)	Vs.	ITO (Exemptions) Rohtak (Haryana)
PAN No. AAATL 3800 F		
(APPELLANT)		(RESPONDENT)

Assessee by	Shri Navin Gupta, Adv.
Revenue by	Shri Arvind Bansal, Sr. D.R.

Date of hearing:	16.03.2023
Date of Pronouncement:	31.03.2023

ORDER

PER ANIL CHATURVEDI, AM:

This appeal filed by the assessee is directed against the order dated 22.04.2019 passed by the Commissioner of Income Tax (Appeals)-5, Ludhiana relating to Assessment Year 2014-15.

2. Brief facts of the case as culled out from the material on record are as under :-

3. Assessee is a society stated to be running New Lahoria Vidha Mandir Senior Secondary School, Lahoria Chowk, Hisar. It is registered under Section 12AA of the I.T. Act. Assessee filed the return of income for A.Y. 2014-15 on 15.09.2014 disclosing Nil taxable income. The return of income was initially processed u/s 143(1) of the Act, thereafter, the case of the assessee was selected for scrutiny and accordingly notices u/s 143(2) & 142(1) of the Act was issued and served on the assessee. Thereafter, assessment was framed vide order dated 19.12.2016 u/s 144 of the Act and the total income was determined at Rs.78,53,360/-. Aggrieved by the order of AO, assessee carried the matter before CIT(A) who vide order dated 22.04.2019 in Appeal No.134/ROT/IT/CIT(A)-5/LDH/2018-19 granted partial relief to the assessee. Aggrieved by the order of CIT(A), assessee is now in appeal and has raised the following grounds:

“1) That on the facts, in the circumstances of the case and under law Learned Commissioner of Income Tax (Appeals) erred in sustaining addition of Rs. 1,46,000/- legally addition is liable to be deleted because :-

- i) during assessment proceedings inspite of request Learned Assessing Officer has not examined any of the students and/or Smt. Hema Dang Accountant,*
- ii) in impugned assessment order categorical finding has been recorded that tuition fee are recorded in regular books of account*

2) That on the facts, in the circumstances of the case and under law Learned Commissioner of Income Tax (Appeals) and Assessing Officer erred in not allowing the benefit of annual charges at Rs.1,46,000/- under S. 11/12 of the Act.

3) That on the facts, in the circumstances of the case and under law Leamed Commissioner of Income Tax (Appeals) ought to have

quashed the impugned assessment order passed under S. 144 of the Act because Learned Assessing Officer has not invoked provisions of S. 145(3) of the Act.

4) That tax has wrongly been charged and wrongly worked out on income assessed at MMR of 30%

5) That interest under Ss. 234B of Income Tax Act, 1961 has wrongly and illegally been charged and wrongly worked out.

Appellant Assessee craves to reserve to itself the right to add, alter, amend, modify, substitute, withdraw and/or vary any of the ground(s) of appeal on or before the hearing of appeal.”

4. Before us, at the outset, Learned AR submitted that though the assessee has raised various grounds but the sole controversy is with respect to the addition of Rs.1,46,000/-.

5. AO has noted that survey action u/s 133A of the Act was conducted in the case of the assessee on 04.04.2013 and during the course of survey proceedings statement of Smt. Hema Dang, Accountant of the Society was recorded and it was noticed that the annual charges from the 9th and 10th class students have been shown at Rs.2500/- whereas as per Dakhila Fees Vivran Chart it was shown at Rs.2000/- per student. AO noted that there were 141 students of class 9th and 151 students of class 10th. AO noted that during the course of assessment proceedings the difference on account of annual charges mentioned in the statement and chart was confronted to the accountant and the counsel but they could not explain the discrepancy. AO accordingly considered the difference of Rs.500/- from 292

students (141 students of class 9th and 151 students of class 10th) aggregating to Rs.1,46,000/- to be the taxable income of the assessee and accordingly made its additions.

6. Aggrieved by the order of AO assessee carried the matter before CIT(A). Before CIT(A) assessee challenged the addition made by AO and to support its contentions made the submissions. The submissions made by the assessee was not found acceptable to CIT(A). He accordingly upheld the addition made by AO. Aggrieved by the order of CIT(A), assessee is now before Tribunal.

7. Before us, Learned AR reiterated the submissions made before AO and CIT(A) and further submitted that Assessing Officer had made addition of Rs.1,46,000/- by holding that fee was charged at Rs.2500/- from each students but was accounted at Rs.2000/- from each students. He submitted that during the course of proceedings before the authorities, assessee had furnished the class wise list of old and new students, audited income & Expenditure Account, details of Gross receipts from all students, details of admission fee from all students, details of admission fee & annual charges from all students and assessee had also produced the books of accounts for necessary verification. He submitted that despite producing all these evidences, no finding on the verification of documents has been given by CIT(A) and he had simply relied on the statement of the

accountant that was recorded during the course of survey. He further submitted that the addition is only based on the statement of the accountant and was not corroborated by any other evidence. He therefore submitted that in such a situation, the addition made by AO and upheld by CIT(A) was warranted.

8. Learned DR on the other hand supported the order of lower authorities.

9. We have heard the rival submissions and perused the material available on record. The issue in the present ground is with respect to the addition of Rs.1,46,000/-. It is the case of the revenue that from 292 students who were studying in class 9th and 10th, Assessee had charged fees @ Rs.2500/- from each student but had accounted for the fees at Rs.2000/- from each student. To support the addition, AO had relied on the statement of Hema Dang, Accountant of the Society. We find that to support the assessee's contentions that the fee that has been charged to have been accounted for and there is no unaccounted fee, assessee had placed various details before the authorities but we find there is no finding of the authorities on the evidences furnished by the assessee to demonstrate the contention of the assessee being wrong. We find that the addition has been made on the basis of the statement of the accountant recorded u/s 133A of the Act. It is a settled law that statement recorded during the survey operation u/s 133A of the Act may be a relevant material

but in the absence of further materials to substantiate it, the statement recorded u/s 133A of the Act could not be the basis for making addition. Considering the totality of the aforesaid facts, we are of the view that the AO was not justified in making the addition. We therefore direct its deletion. **Thus the ground of assessee is allowed.**

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

Order pronounced in the open court on 31.03.2023

**Sd/-
(NARENDER KUMAR CHOUDHRY)
JUDICIAL MEMBER**

**Sd/-
(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Date:- 31.03.2023

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT NEW DELHI