

**आयकर अपीलीय अधिकरण, रायपुर न्यायपीठ, रायपुर**  
**IN THE INCOME TAX APPELLATE TRIBUNAL RAIPUR BENCH,**  
**RAIPUR**

श्री रविश सूद, न्यायिक सदस्य एवं श्री अरुण खोड़पिया, लेखा सदस्य के समक्ष ।  
BEFORE SHRI RAVISH SOOD, JM & SHRI ARUN KHODPIA, AM

**आयकर अपील सं./ITA No.196/RPR/2023**

**निर्धारण वर्ष /Assessment Year: 2017-18**

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|---|----|--|
| Vakrangee Foundation<br>103, 1st Floor, Golden Park, VIP<br>Estate, Vidhan Sabha Road,<br>Raipur (CG) | Vs | Assessing Officer,<br>Exemption Circle,<br>Raipur (CG) |
| <b>PAN: AAAAV8441K</b>  |    |  |
| (अपीलार्थी /Appellant)  | .. | (प्रत्यर्थी / Respondent)                              |
| निर्धारिती की ओर से /Assessee by  | :  | Shri G.S.Agarwal, CA                                   |
| राजस्व की ओर से /Revenue by   | :  | Shri Satya Parakash Sharma, Sr.DR                      |
| सुनवाई की तारीख / <b>Date of Hearing</b>  | :  | 08/09/2023   |
| घोषणा की तारीख/ <b>Date of Pronouncement</b>  | :  | 12/09/2023   |

**आदेश / O R D E R**

**Per Arun Khodpia, AM :**

The captioned appeal is directed against the order of Ld Commissioner of Income Tax (Appeals), National Faceless Centre (NFAC), Delhi u/s 250 of the Income Tax Act, 1961 dated 22/02/2023 for the AY 2017-18, passed in the appeal instituted against the penalty order u/s 271B of the Act issued by Ld Assessing Officer, NFAC, Delhi, dated 06/09/2021.

The grounds of appeal submitted by the assessee are as under: -

1. That under the facts and the law, the learned CIT (Appeals), NFAC, Delhi erred in confirming the penalty levied by the learned **AO u/s 271B** at

Rs.1,50,000/- for not getting the audit u/s 44AB, though, the appellant is a Charitable Trust and income is not taxable and provisions of section 44AB for getting Audit u/s 44AB are not applicable to charitable institutions. Prayed to delete the penalty.

2. That under the facts and the law, the learned CIT (Appeals), NFAC, Delhi erred in confirming the levy of penalty u/s 271 B at Rs. 1,50,000/- by the learned AO for the reason that addition of Rs.8,00,000/- (added Rs. 10 lakh, subsequently rectified to Rs. 8 lakh) is not from education but from business. The observation is not as per the facts and law. Prayed that income is not from business. The penalty levied u/s 271B kindly be cancelled.

2. At the outset the registry pointed out that the appeal filed is delayed by 29 days. Ld AR on behalf of the assessee submitted that the Smt. Bhavna Bohra, President was fall on the ground, keeping unwell, had back pain and was unable to work. Supporting affidavit from the President of the assessee institute along with doctor's prescription advising 3 months rest are submitted. It was also the submission of the Ld AR that the Counsel of the assessee foundation CA Dipesh Sancheti's mother was also suffering with cancer and was under hospitalization during the period from 28.03.2023 to 25.04.2023 and thus, he was unable to pay attention in filing of the appeal within the stipulated time. Ld AR requested that under such compelling situation the assessee was prevented by sufficient cause in not filing the appeal in time, therefore, the condonation for delay may kindly be granted. We have considered the request of the assessee and found it appropriate to condone the delay on which the revenue also have not shown any objection to. Resultantly the delay in filing the appeal is directed to be condoned and the matter is being permitted and taken up for hearing.

3. Brief facts of the case are that the assessee is a society registered under Chhattisgarh Firms & Societies Act on 31.07.2010, running a school under the name "Academic World School" which is situated in Lolesara district Bemtara, Chhattisgarh. Return of income was e-filed on 15.03.2018 for the relevant AY 2017-18. For the year under consideration assessee society has a receipt of Rs. 12,13,08,840/-, therefore it was the view of the Ld AO that assessee is liable for Tax Audit u/s 44AB. During the assessment proceedings assessee submitted that it is a educational institution running a CBSE Affiliated school since inception and imparting education is an activity for charitable purpose under section 2(15) of the Act therefore provision of section 44AB which relates to persons carrying on Business will not be apply in assessee's case. Therefore, no penalty u/s 271B will be initiated and levied on the assessee. However, Ld AO had not found the explanation of the assessee satisfactory who believed that the assessee is earning profit, registration u/s 12AA of the Act was granted to the assessee from AY 2018-19, therefore provision of section 2(15) of Act as claimed by the assessee is not applicable during the year under consideration. Ld AO with such observation, imposed penalty u/s 271B of the Act on the assessee. Aggrieved with the penalty order assessee preferred an appeal before the Ld CIT(A), but with no success the appeal of the assessee was dismissed by the Ld CIT(A) accepting the findings of the Ld AO.

4. Dissatisfied with the order of Ld CIT(A), the assessee has filed this appeal before the ITAT.

5. Starting the argument, Ld AR submitted that the assessee trust/society had applied for the registration u/s 12AA which was granted to it on 18.12.2017 effective from AY 2018-19. Assessment of the assessee trust for the AY 2018-19 was completed on 10/02/2021 u/s 143(3) r.w.s. 143(3A) & 143(3B) and exemption under the provisions of section 11 were allowed. That the appellant society is affiliated with CBSE and registered with registrar of societies Chhattisgarh. Constitution of the society is also place in the Assessee's paper book. Assessee had shown its income for the relevant year 2017-18 under the head Income from Other Sources as the assessee was granted with registration u/s 12AA effective from AY 2018-19. The same was treated as business income by the AO which was incorrect since the assessee was involved in educational activities, having involved in no other activities. It was the submission that under such a situation provisions of section 44AB cannot be applied in the case of assessee, thus, the penalty imposed u/s 271B was bad in law and subject to deletion.

6. Ld Sr Dr on the other hand strongly supported the order of revenue authorities.

7. We have considered the rival submissions, perused the material available on record and orders of the authorities below. Assessee's contention that the assessee is an educational institution since beginning. This contention of the assessee is fortified by the documents like registration of the assessee under registrar of societies, Chhatisgarh and registration with CBSE, however certain conduct of the assessee in filing of return in form ITR5, showing itself as an AOP/BOI, offering the surplus of Rs. 80,751/- as taxable income. It is also a fact that the assessee was in position of registration u/s 12AA dated 18/12/2017 when the return for AY 2017-18 was filed on 15-03-2018. Further an addition proposed by the Ld AO u/s 37(1) was accepted by the assessee, which was further agreed to when a rectification application u/s 154 for mistake in figure of addition was sought by the assessee and the same was rectified by the AO u/s 154. Ld Ao had categorically observed that the assessee trust has a certificate u/s 12AA but the same is effective from AY 2018-19, also the assessee had not claimed any exemption u/s 11 and 12 of the Act. Therefore, the case of the assessee for the year under consideration is treated as business case. Such conduct of the assessee shows that the contention of Ld AO in treating the income of the assessee as income from business which was not appealed against by the assessee rather have requested for correction of the amount of addition made u/s 37(1), was agreed by the assessee. During the hearing before us when it was queried whether the assessee which has receipt of more than Rs. 12.00 crores whether the assessee has got its accounts audited under the provisions of income tax act applicable

on charitable organization and report in form 10B was furnished, Ld AR answered that the assessee was not having 12AA for the relevant year thus such audit was not conducted. Under such circumstances, we agree with the observations of Ld CIT(A) that the addition of Rs. 10.00 Lac made by the Ld AO u/s 37(1) was accepted by the appellant, thus, also accepted the fact that the assessee has income from business and profession. Moreover, to fit into the definition of 'Charitable purpose' as per section 2(15) of the Act, the appellant was required to fulfill certain prescribed conditions. The appellant was failed in establishing during the penalty proceedings before AO, as well as before the Ld CIT(A). We therefore are of the considered opinion that Ld CIT(A) had correctly appreciated the facts of the case in confirming the penalty imposed by the Ld AO u/s 44AB. Since, we have not found any infirmity in the order of Ld CIT(A), we do not see any reason to interfere with the same, accordingly we uphold the order of Ld CIT(A), in terms of our observations herein above. Thus, ground 1 and 2 of the assessee on the sole issue pertaining to levy of penalty u/s 271B are dismissed.

7. In the result appeal of the assessee is dismissed in terms of our observations herein above.

Order pronounced in the court on 12/09/2023.

**Sd/-**  
**(RAVISH SOOD)**  
न्यायिक सदस्य / JUDICIAL  
MEMBER

**Sd/-**  
**(ARUN KHODPIA)**  
लेखा सदस्य / ACCOUNTANT  
MEMBER

रायपुर/Raipur; दिनांक Dated 12/09/2023

SB

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant-
2. प्रत्यर्थी / The Respondent-
3. आयकर आयुक्त(अपील) / The CIT(A),
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण,  
रायपुर/ DR, ITAT, Raipur
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY  
ORDER,

(Assistant Registrar)

आयकर अपीलीय अधिकरण,  
रायपुर/ITAT, Raipur