

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

**BEFORE SHRI SHAMIM YAHYA, ACCOUNTANT MEMBER**

**ITA No.9008/Del/2019  
(Assessment Year: 2016-17)**

Nitin Education Society,  
C/o Sarvodaya Sr. Sec. School,  
Village Dhidara, Tehsil Tauru,  
Mewat – 122 105 (Haryana).

vs.

ITO, Exemption Ward,  
Faridabad.

**(PAN : AABTN1677P)**

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri R.K. Phalswal, Advocate  
REVENUE BY : Shri Om Prakash, Sr. DR

Date of Hearing : 11.01.2024  
Date of Order : 18.01.2024

**ORDER**

This appeal by the assessee is directed against the order of the Id. CIT (Appeals)-2, Gurgaon dated 28.08.2019 for the assessment year 2016-17.

2. Grounds of appeal taken by the assessee read as under :-

“1. The order of learned AO is unjust illegal and arbitrary. Assessee is a registered society registered with the registrar of Firms and Societies, Mewat (Hr.) w.e.f 31/12/2001. The society is running a school in the name of Sarvodya Sr. Sec. School at Vill. Didhara, Tehsil Tauru, Distt. Mewat (Hr.). Assessee having permission from CSSE for running of school.

1.(a) Rs.330000/- : This amount has wrongly been added by the learned AO in the income of assessee. The CSSE had given proper permission for admission of students in the 11<sup>th</sup> and 12<sup>th</sup> class. Copy of permission letter of CBSE is attached for ready reference. The fine/charged as imposed by Hon'ble High court

is by way of technical fault of the institution. The Hon'ble High court in his order did not say to refund the cost of fees to the students. The Hon'ble High Court taken fine for continuance of study classes for class XIth and XII th. So fine as taken by Hon'ble High Court is allowable expenses which needs to be deleted from the addition as made by learned AO.

2. Rs. 67044 : This amount of Rs.67044/- income over expenditure has wrongly been charged as taxable as same is allowable as exempt u/s 10(23C) (iiiad). Assessee had allowed to run all activities after taking charges on the technical fault. There is not mentioned in the order of Hon'ble High court that activities will remain unlawfull after taking charges. So learned AO has wrongly been charged tax on the surplus amount.

3. Rs.289637/- Expenses of Rs. 289637/- has wrongly been disallowed by learned AO. Proper books of accounts, vouchers, bills and other documentary evidence produced before AO. But learned AO wrongly taken 10% of total expenses from the head of Salary (Teaching Expenses, Non Teaching Expenses, Bus Staff) only to put the burden of tax on the head of assessee. So this amount of addition needs to be allowed.

4. Rs.880000/-: Expenses of Rs.880000/- has correctly been debited in profit and loss account. This expenses is allowable u/s 11 (2) of income tax Act, 1961. Assessee completed all provision of the section 11 (2) of the income tax Act, 1961. So this amount of deduction of Rs.880000/- is allowable. The addition as made by learned AO is needs to be deleted.

5. Rs.10000/- : An amount of Rs. 10000/- was charged deposited against the penalty imposed u/s 271(1)(b) of Income Tax Act, 1961 for NY: 2012-13. Assessee filed an appeal before Hon'ble ITAT, New Delhi against the main order passed u/s 43(3)/271(1)(b)/271(1)(c) which is pending before SMC Bench, Delhi. The next date of hearing of the case for AY: 2012-13 is 26/09/2019. So this amount of addition also needs to be deleted from the income.

6. It is prayed also that recovery of demand may be stayed till the decision of appeal.”

3. Brief facts of the case are that assessee is registered with the Registrar of Firms & Societies, Mewat. During the year under consideration, assessee

is running a school in the name of Sarvodya Sr. Sec. School at Village Didhara, Teh. Tauru, Mewat and showed income from admission fees, tuition fees, bus charges and bank interest etc.. In the income of income, assessee claimed deduction under section 10(23C)(iiiad) of the Income-tax Act, 1961 (for short 'the Act'). In the income & expenditure account, assessee claimed various expenses. AO noted that to verify those expenses, the assessee was given various opportunities but assessee did not provide necessary vouchers and details. However, AO noted that certain information was received from ITBA which was examined. AO proceeded to pass assessment order making following disallowances:-

“3. The assessee has debited a sum of Rs.3,30,000/- on account of court fine. Vide Notice u/s 142(1) dated 28.11.2018, the assessee was required to furnish the details and evidence of this payment. In response the assessee has filed copy of the Punjab & Haryana High Court order dated 27.09.2012 in which the Hon'ble court has levied fine on account of escapement of the illegal activities of the School. The school/institution did not have the proper reorganization/sanction of affiliation for X and XII class from the Competent authority as per statue however the admission was given by concealing the real facts and therefore, the court imposed a fine of Rs.5,50,000/- (Rs.5,000/- per student). During the year under consideration, the assessee has made payment of Rs.3,30,000/-. As the same are in violation of the law, the same is disallowed and added to the income of the assessee.

(Disallowance of Rs.3,30,000/-)

4. As mentioned above, the assessee is doing illegal activities, the deduction claimed u/s 10(23C)(iiiad) of the I. T. Act is not allowed. Accordingly the surplus of Rs.67,044/- is brought to tax. Further the assessee has also not produce the books of accounts/vouchers for verification inspite of various

opportunities, the genuineness of the expenses claimed in the P & L account remained unverified. The assessee has claimed following expenses in its Income and Expenditure account :-

Salary Expenses (Teaching Expenses)	: Rs.16,97,500/-
Salary Expenses (Non Teaching Expenses)	: Rs. 3,78,000/-
Salary Expenses (Bus Staff)	: Rs. 3,84,000/-
Bus running and maintenance expenses	: <u>Rs. 4,36,870/-</u>
Total	: <u>Rs.28,96,870/-</u>

Since the assessee has not produced vouchers for verification. In the absence of the same, the genuineness and reasonableness of the expenses claimed remained unverified. Accordingly, disallowance of Rs.2,89,637/- (1/10<sup>th</sup> of Rs.28,96,370/-) is being made out of abovesaid expenses.

(Disallowance of Rs.2,89,637/- + Rss.67,044/- =  
Rs.3,56,681/-)

5. The assessee has debited a sum of Rs.8,80,000/- as reserve for fixed assets. The same being capital expenditure, is not allowable and hence disallowed.”
4. Against this order, assessee appealed before the ld. CIT (A). Ld. CIT (A) proceeded to confirm the disallowances and dismissed the appeal.
5. Against this order, assessee is in appeal before the ITAT. I have heard both the parties and perused the records.
6. Ld. Counsel of the assessee prayed that the entire addition is not sustainable. He submitted that assessee has provided the details and without considering the same, disallowances have been done.
7. Per contra, ld. DR for the Revenue relied upon the orders of the authorities below.

8. Upon careful consideration, I note that AO has noted in his order that assessee was given various opportunities but he did not produce books of accounts and vouchers. However, AO further said that some information was received through ITBA but the AO did not specify the documents and information which have been given by the assessee. In these facts and circumstances, I am of the considered opinion that interest of justice would be served if the matter is remitted to AO. AO is directed to decide the issue afresh after giving adequate opportunity of being heard to the assessee. Assessee is also directed to cooperate with AO in this regard.

9. In the result, the appeal of the assessee is allowed for statistical purposes.

**Order pronounced in the open court on this 18<sup>th</sup> day of January, 2024.**

**sd/-**

**(SHAMIM YAHYA)  
ACCOUNTANT MEMBER**

**Dated the 18<sup>th</sup> day of January, 2024  
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT (A)-2, Gurgaon.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT  
NEW DELHI.**