

आयकर अपीलीय अधिकरण, "पटना" न्यायपीठ पटना
IN THE INCOME TAX APPELLATE TRIBUNAL
"PATNA" BENCH, PATNA

(Heard from Kolkata Benches through web-based video conferencing platform)

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
&
DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 208/Pat/2023
Assessment Year: 2019-20

Thakur Uday Shankar M/s. Lakshya Science and Commerce Coaching Centre Kashipur Samastipur - 848104 [PAN : BSGPS0474R]	Vs	DCIT, CC - Muzaffarpur
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Dr. Girish Kumar Thakur, Advocate
Revenue by :	Shri Ashwani Kr. Singal, JCIT, D/R

सुनवाई की तारीख/Date of Hearing : 19/06/2024
घोषणा की तारीख/Date of Pronouncement : 20/06/2024

आदेश/ORDER

PER DR. MANISH BORAD, ACCOUNTANT MEMBER:

The present appeal is preferred by the assessee against the order of the learned Commissioner of Income Tax (Appeals) - 3, Patna (hereinafter the "ld. CIT(A)") dated 28/04/2023, passed u/s 250 of the Income Tax Act, 1961 ("the Act"), for Assessment Year 2019-20.

2. Grievance of the assessee revolves around the addition of Rs.48,09,065/- sustained by the ld. CIT(A) estimating income from receipts from tuitions.

3. Brief facts of the case are that the assessee is an individual and runs a coaching institute named as M/s. Lakshya Science & Commerce Coaching at Samastipur. A survey action was carried out u/s 133A of the Act on 28/11/2018. Income of Rs.44,09,610/- declared in the return for Assessment Year 2019-20 furnished on

30/11/2019. Thereafter return was selected for compulsory scrutiny and notice u/s 143(2) of the Act issued on 28/10/2020 and served upon the assessee through e-mail. Later due to change of jurisdiction, the case records were transferred to another Assessing Officer who thereafter served notice u/s 142(1) of the Act along with questionnaire but on various dates of hearing which mainly fell during the Covid period during 03/08/2021 to 15/09/2021, there was no compliance. The ld. Assessing Officer proceeded with *ex-parte* assessment u/s 144 of the Act. The ld. Assessing Officer observed that during the survey proceedings, cash of Rs.1,10,730/- was found at the business premises. No books of accounts were found nor was any cash book produced during the assessment proceedings. The ld. Assessing Officer firstly made the addition for unexplained cash in hand at Rs. 1,10,730/-. Thereafter ld. Assessing Officer examined the tuition fees income. He observed that the assessee had declared gross receipts of Rs.1,66,47,320/- and after claiming expenses of Rs.1,20,90,655/- has declared net profit. However, the ld. Assessing Officer took the basis of students enrolled during the month of November, 2018, which was 3091 in number and accordingly extrapolated the quantum of fees for the whole year and calculated the gross receipt at Rs.3,12,19,100/- and for arriving at this figure, the ld. Assessing Officer took the tuition fee @ Rs. 800/- per student per month and Rs.500/- as admission fees. The ld. Assessing Officer, however, gave the deduction of expenses claimed in the audit report at Rs.1,20,90,655/- and also gave deduction of the net profit offered by the assessee in the income and expenditure account and the

remaining amount of Rs. 75,33,990/- was added in the hands of the assessee. Income assessed at Rs.1,20,54,330/-.

3.1. Aggrieved the assessee preferred appeal before the ld. CIT(A) wherein the assessee filed the detailed written submission giving reference to the fees collection register and also filed details of all expenses incurred during the year. It was also submitted that the books of account were duly audited and that the actual turnover of the assessee is only Rs.1,66,47,320/-. He stated that the figure on actual turnover has been calculated on the basis of fees register regularly maintained and also stated that, the students are not consistent for the whole year and the ld. Assessing Officer was not justified in only taking the basis of students fees register for the month of November, 2018. It was also submitted that some of the students are given free coaching also and some are charged Nil/subsidized rates. It was also submitted that the working period of coaching centre is 7 to 8 months but the ld. Assessing Officer has taken 12 months and also that as per the Government norms, 25% students are given free of cost of coaching. The ld. CIT(A) concluded the appellate proceedings by coming to a conclusion that ld. Assessing Officer has erred in estimating net profit @ 61.27% of the gross receipts and the same should be restricted to 30%. However, the ld. CIT(A) did not accept the assessee's contentions of the gross receipt being at Rs.1,66,47,320/- and confirmed the gross turnover figure and after calculating the profit @ 30% gave part relief to the assessee and sustain the addition to the tune of Rs. 48,09,065/-.

4. Aggrieved the assessee is now in appeal before this Tribunal.

5. The Id. Counsel for the assessee who has stated to be the father of the assessee and a practicing Advocate submitted that during the course of survey action, attendance/student register were taken by the survey team and at a later stage, assessee has been able to get copy of the same. He submitted that books of accounts are regularly maintained and assessee maintains details of fees receipts and after taking into consideration the total details, the turnover is only Rs. 1,66,47,320/-. He submitted that the Id. Assessing Officer has taken merely the basis of students enrolled for the month of November, 2018 and applied it for 12 months ignoring the facts that coaching institute runs for only 7-8 months in an year and that 25% students are given free education. He, therefore, prayed that opportunity may be granted to the assessee to appear before the jurisdictional Assessing Officer so as to furnish the details of expenditure about the correct amount of gross receipt/total turnover, and also take into consideration the documents which are in possession with the survey team and also the details filed by the assessee.

On the other hand, the Id. D/R, though supported the order of the Id. CIT(A), was fair enough not to oppose the request of the assessee for going before the Id. Assessing Officer since the order was passed *ex-parte* and there was no fair opportunity to the assessee to plead its case.

6. We have heard rival contentions and perused the material placed before us. The addition sustained by the Id. CIT(A) for estimated net profit on coaching business is in dispute before us. The assessee was subjected to survey u/s 133A of the Act. Fees register

was also found and seized. Thereafter, the assessee furnished the return declaring income of Rs.44,09,610/-. The assessee has also furnished the tax audit report along with the return wherein gross receipts are shown at Rs.1,66,47,320/-. The ld. Assessing Officer has not doubted the claim of the expenses of Rs.1,20,90,655/-. However, the assessee did not comply to the notice of hearing issued u/s 142(1) of the Act. The ld. Assessing Officer estimated the gross receipts at Rs.3,12,19,100/-. For arriving at this figure, the ld. Assessing Officer took the basis of 3091 students enrolled during the month of November, 2018 and applying this number for 12 months and taking basis of monthly tuition fees of Rs. 800/- per month and admission fees of Rs. 500/-, alleged gross receipts were calculated. We notice that the assessee, who is getting the books of accounts regularly audited and was issued notice of hearing on 03/08/2021, 18/08/2021 and 15/09/2021. During this period, country was passing through Covid pandemic and there were lot of restrictions for the movement of general public. It clearly indicates that the assessee was not provided fair opportunity of being heard. Further we note that the ld. Assessing Officer has taken the basis of students enrolled for the month of November and applied it on *pro-rata* basis for the rest of the year. For calculating the figure of total gross receipts, the ld. Assessing Officer has ignored the facts that the students are not evenly registered for each month. There are certain months when coaching classes are not running and also when certain students are also awarded free coaching. The ld. Counsel for the assessee has prayed that if an opportunity is provided, he shall provide all the

details of the students and also bring the facts on record that gross receipts of the assessee are only Rs. 1,66,47,320/-.

7. We on considering the facts and circumstances of the case and, in the interest of justice and being fair to both the parties, deem it fit and proper to restore the issues raised before us on merits/quantum addition to the file of the ld. Assessing Officer for carrying out *de-novo* assessment and should consider all the details which are to be filed by the assessee and survey records and then decide in accordance with law. Needless to mention that, the assessee should remain compliant to the notice of hearing and shall not take adjournment and should appear on the very first date of hearing unless otherwise for a *bonafide* cause and furnish the details in support of its grounds. Ld. Assessing Officer should ensure that the assessee is provided with reasonable opportunity of being heard.

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

Order pronounced in the Court on 20th June, 2024 at Kolkata.

Sd/-

(RAJPAL YADAV)
VICE PRESIDENT

Kolkata, Dated 20/06/2024

SC S.P.

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

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

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

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Patna