

आयकर अपीलीय अधिकरण, इंदौर न्यायपीठ, इंदौर
**IN THE INCOME TAX APPELLATE TRIBUNAL
INDORE BENCH, INDORE**

BEFORE SHRI VIJAY PAL RAO, JUDICIAL MEMBER
AND
SHRI B.M. BIYANI, ACCOUNTANT MEMBER

ITA No.552/Ind/2023
(Assessment Year: 2016-17)

The Everest English Education Extension Society 83 Bhagat Singh Marg Meera Bawdi, Dewas	Vs.	ITO Ujjain
(Appellant / Assessee)		(Respondent/ Revenue)
PAN: AABTT4223B		
Assessee by	Shri Manoj Madnis, AR	
Revenue by	Shri Ashish Porwal, Sr. DR	
Date of Hearing	24.06.2024	
Date of Pronouncement	25.06.2024	

O R D E R

Per Vijay Pal Rao, JM :

This appeal by assessee is directed against the order dated 02.11.2023 of the Commissioner of Income Tax (Appeal), National Faceless Appeal Centre, Delhi for A.Y.2016-17. The assessee has raised following grounds of appeal:

“1.That in the facts and circumstances of the case, the order of the Ld. CIT(A) is bad in law for not providing proper and adequate opportunity to the appellant to present the case and has decided the appeal ex-parte the appellant.

2. That in the facts circumstances of the case, the order of the Ld. CIT(A) has erred in confirming the disallowance of depreciation which was withdrawn at the time of the assessment proceedings.

3. That in the facts circumstances of the case, the order of the Ld. CIT(A) has erred in confirming the difference in fees receipt, which was received from students and included in the audited financial statements.”

2. At the time of hearing, Ld. AR of the assessee has submitted that due to change in the management/office bearers of the assessee society the requisite information and details called for by the AO were not produced and consequently the AO has made an addition of Rs.46,53,442/- on account of difference between the amount of school fee shown in the income and expenditure account and total fee receipt shown at Rs.1,12,58,294/-. He has referred to para 5 of the assessment order and submitted that the AO has made the addition of differential amount of Rs.46,53,442/- for want of relevant details. He has further submitted that the CIT(A) has also passed an ex-parte order and confirmed the addition made by the AO. Thus, Ld. AR has pleaded that the assessee has now filed all the relevant details which are required to be verified and examined at the level of the AO. Hence, he has pleaded that the matter may be remanded to the record of the AO for fresh adjudication.

3. On the other hand, Ld. DR has raised no objection if the matter is remanded to the record of the jurisdictional AO for fresh adjudication after verification and examination of the relevant details and record to be filed by the assessee.

4. We have considered the rival submissions as well as relevant material on record. The AO has made an addition of differential amount of school fee shown in the income and expenditure account as well as the total receipt shown by the assessee in para 5 & 5.1 as under:

“5. On perusal of income and expenditure account of A.Y.2015-16, it is found that school fee received is amounting to Rs. 66,04,852/-, whereas during the year under consideration, fee receipt has been shown as Rs. 1,12,58,294/- and there is huge cash balance in cash book as on 31.03.2016. Vide questionnaire dated 23.11.2018, the assessee was asked to submit the comparative number of students with fee structure for F.Y.2014-15 & F.Y.2015-16. However, assessee vide its reply dated 04.12.2018, submitted details about number of students and fee structure for F.Y.2015-16 only and failed to submit comparative figure of number of students with previous year. The assessee vide notice/questionnaire dated 07.12.2018 was again requested to provide the following information :-

“With regard to questionnaire dated 23.11.2018, vide query no. 12. you were requested to submit the details of students and fee structure for F.Y.2014-15 & F.Y.2015-16, however, in your reply you have submitted details for F.Y.2015-16 only. You are once again requested to submit the complete details in the following format:-

<i>Class</i>	<i>No.of students in F.Y.2014-15</i>	<i>Fee structure</i>	<i>No. of students in F.Y.2015-16</i>	<i>Fee structure</i>

1. You are once against requested to subunit reason for high cash in hand balance as on 31.03.2016. Please produce copy of cash book.

2. Please submit copy of documents submitted to educational authorities regarding number of students studying in your school during F.Y.2014-15 & F.Y.2015-16.

3. Please submit copy of enrolment form for new students admitted during F.Y.2015-16.”

5.1. The assessee did not submit any details with reference to above query and thus failed to justify the increase in receipts of the society during the year under consideration. As assessee failed to substantiate its claim, difference of amount of fee receipts for F.Y.2015-16 & F.Y.2016-17 amounting to total of Rs. 46,53,442/- (1,12,58,294- 66,04,852) is hereby disallowed and no exemption u/s 11 is allowed on this amount. Amount of Rs. 46,53,442/- is being taxed at Maximum Marginal Rate as per provisions of section 164(2) of Income Tax Act, 1961. Penalty proceedings u/s 271(1)(c) of Income Tax Act being Initiated separately on this issue.”

5. The assessee has explained the reasons not non-submitting of relevant details and explanation as there was a change of the office bearers/management of the society and therefore, the assessee could not properly participated in the assessment proceedings as well as before the CIT(A). The CIT(A) has dismissed the appeal of the assessee and confirmed the addition of the AO in para 4 to 5.1 as under:

“4. Submissions of the Appellant: During the course of appellate proceedings, various notices of hearing were issued to the appellant. No submission has been made by the appellant, hence the appeal is decided on the basis of material available on record.

5. Decision: In this case, the addition has been made by the Assessing Officer worth Rs. 46,53,442/-. The appellant is a trust and register u/s 12A of the Income Tax Act, 1961. During the course of assessment proceedings the Assessing Officer issued notice to the appellant vide questionnaire dated 07.12.2018 to file various details. Despite various opportunities, no details were filed before the Assessing Officer. Hence the Assessing Officer made the addition.

5.1 Now before me in the appellate proceedings, no submission has been filed despite various opportunities. I have gone through the statement of facts and grounds of appeal filed by the appellant. Nothing has been annexed to challenge the finding of the Assessing Officer. The appellant has asked for early hearing but still has not

bothered to respond to various notices issued by the undersigned. Hence the addition of the Assessing Officer is confirmed and the appeal of the appeal is dismissed.”

6. Thus, both the AO as well as CIT(A) has given finding that the assessee has not filed the requisite details and submissions. Now the assessee has filed the relevant details in the paper book running in 40 pages. The evidence filed by the assessee before the Tribunal is required to be verified and examined at the level of the AO. Accordingly in the facts and circumstances of the case and in the interest of justice the impugned order of the CIT(A) is set aside and the matter is remanded to the record of the jurisdictional AO for fresh adjudication after verification, examination and consideration of the relevant details and evidences filed by the assessee.

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

Order pronounced in the open court on 25 .06.2024.

Sd/-
(B.M. BIYANI)
Accountant Member

Sd/-
(VIJAY PAL RAO)
Judicial Member

Indore, 25 .06.2024

Patel/Sr. PS

Copies to: (1) *The appellant*
(2) *The respondent*
(3) *CIT*
(4) *CIT(A)*
(5) *Departmental Representative*
(6) *Guard File*

By order

Sr. Private Secretary
Income Tax Appellate Tribunal
Indore Bench, Indore