

**IN THE INCOME TAX APPELLATE TRIBUNAL,
KOLKATA-PATNA 'e-COURT', KOLKATA
[Hybrid Court Hearing]**

**Before Shri Rajpal Yadav, Vice-President (KZ)
&
Dr. Manish Borad, Accountant Member**

**I.T.A. No. 283/PAT/2018
Assessment Year: 2009-2010**

***AI-Rabia Memorial Educational
Welfare & Trust,..... Appellant
110, Patliputra Market,
Sabjibagh, Patna
[PAN: AABTA3534C]***

-Vs.-

***Assistant Commissioner of Income Tax,....Respondent
Circle-1, Patna***

Appearances by:

None, appeared on behalf of the assessee

*Shri Sushil Kumar Mishra, JCIT, D.R., appeared on behalf
of the Revenue*

Date of concluding the hearing : May 08, 2024

Date of pronouncing the order : July 05, 2024

O R D E R

Per Rajpal Yadav, Vice-President (KZ):-

The present appeal is directed at the instance of assessee against the order of Id. Commissioner of Income Tax (Appeals), Patna dated 30th August, 2018 passed for A.Y. 2009-10.

2. The assessee has taken six grounds of appeal, out of which Grounds No. 1, 5 & 6 are general grounds of appeal, which do not call for recording of any specific finding because in Ground No. 5, the assessee has challenged initiation of penalty under section 271(1)(c) of the Income Tax Act, but in this quantum appeal, it is a premature ground. The assessee would receive independent show-cause notice for that purpose and would contest in the penalty proceeding. Therefore, these three grounds are rejected.

3. In response to the notice of hearing, Shri Rajiv Kumar, Id. Counsel for the assessee appeared on 22nd March, 2022. Thereafter no one has appeared. With the assistance of Id. D.R., we have gone through the record carefully.

4. In Grounds No. 2 & 3, the assessee has taken a common issue, namely Id. CIT(Appeals) has erred in confirming the addition of Rs.29,64,000/-.

5. First we take this ground of appeal. Brief facts of the case are that the assessee is a Society registered under section 12AA of the Income Tax Act vide letter No. 814-16 dated 25.10.2002. It is running a School under name and style of M/s. Mothers International Academy. The School was found to be registered with Central Board of

Secondary Examination (CBSE), New Delhi. The Department had carried out a survey under section 133A of the Income Tax Act at the premises of the assessee-Society on 25.02.2009. The authorities have not given any background whether any notice under section 143(2) was issued or not; whether the assessee has filed its regular return of income or not. The assessment order straightway commenced from the factum of carrying out a survey upon the premises of the assessee and thereafter reproduced the final survey report submitted to Id. CCIT, Patna. This letter is reproduced from first page of the assessment order till third page and thereafter Id. Assessing Officer went to straightway computed the income.

6. Dissatisfied with this computation, the assessee carried the matter in appeal before the Id. CIT(Appeals). It was submitted by the assessee that the first addition of Rs.61,55,000/- was made by the Id. Assessing Officer *qua* the students appeared through it in the CBSE Board for the years 2007, 2008 & 2009 and these receipts could not be included in this year. The Id. CIT(Appeals) has deleted Rs.61,55,000/- but confirmed rest of the addition. The computation made by the Id. Assessing Officer reads as under:-

“Following additions are made as under:-

(1) Income from Class Xth & XIIth Students who were sent up for board exam from CBSE through Mother International Academy

Total No. of class Xth Students 215 (in year 2(107) + 480 (in year 2008) + 536 (in year 2009) = 1231

Total amount received = 1231 x Rs.5000/- = Rs.61,55,000/-

Total Nd. of class XIIth Students = 247 (in the year 2009)

Total amount received = 247 x Rs.12,000/- Rs.29,64,000/-

(2) TDS on advertisement was not deducted. Accordingly, whole amount of Rs.4,11,508/- is being added back to the total income (as per 40(a)(ia) of the I.T. Act, 1961.

(3) TDS on bus hire charges was not deducted. Accordingly, whole amount of Rs. 1,44,000/- is added back to the total income (as per 40(a)(ia) of the I.T. Act, 1961.

(4) As per final survey report the actual No. of teachers was only 31 as against 70 which was shown to the CBSE. Accordingly, half of the amount shown as salary expenses to the tune of Rs.63,13,794/- i.e., Rs.31,56,897/- is being added back to the total income.

1.	<i>Returned income</i>	<i>Rs. 0</i>
2.	<i>Income from Class Xth & XIIth Students (Rs. 61,55,000/- + Rs. 29,64,000/-)</i>	<i>Rs. 91,19,000/-</i>
3.	<i>advertisement</i>	<i>Rs. 4,11,508/-</i>
4.	<i>Bus hire charges</i>	<i>Rs. 1,44,000/-</i>
5.	<i>Expense on salary</i>	<i>Rs. 31,56,897/-</i>
	<i>Total assessed income</i>	<i>Rs.1,28,31,405/-</i>

Accordingly, assessed u/s 143(3) of the Income Tax Act, 1961 on total income of Rs.1,28,31,405/-. Issue demand notice & Challan”.

7. After going through the assessment order as well as the order of the Id. CIT(Appeals), we are of the view that this assessment order has been framed in a very unusual manner just reproducing the Survey Report submitted to Id. CCIT and Id. AO treated it as a gospel truth. It is not discernible whether this report was ever supplied to the assessee or not. The Id. Assessing Officer has not given

the material alleged to be discovered in the survey on the basis of which this report was prepared. Therefore, in this manner, assessment order ought to have not been framed and it is not sustainable because it is very difficult for the Second Appellate Authority to cross verify the fact considered by the ld. Assessing Officer in the impugned assessment order, which is nothing but just a Survey Report submitted by the Survey Team to the ld. CCIT. Such type of material can never be a gospel truth. It has to be cross verified during the assessment proceeding. Therefore, we set aside both the orders and remit this issue back to the file of ld. Assessing Officer with a direction that ld. Assessing Officer shall first supply the material collected by the Survey Team from the premises of the assessee to the assessee. He should not blindly rely upon the alleged Survey Report, rather he should cross verify the basic documents and provide an opportunity of hearing to the assessee to rebut such report. With the above directions, this appeal is allowed for statistical purposes.

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

Order pronounced in the open Court on 05.07.2024.

Sd/-

Sd/-

(Manish Borad)
Accountant Member

(Rajpal Yadav)
Vice-President

Kolkata, the 5th day of July, 2024

- Copies to :*(1) *AI-Rabia Memorial Educational Welfare & Trust,*
110, Patliputra Market, Sabjibagh, Patna
- (2) *Assistant Commissioner of Income Tax,*
Circle-1, Patna
- (3) *Commissioner of Income Tax (Appeals)-1,*
Patna;
- (4) *CIT-*
- (5) *The Departmental Representative*
- (6) *Guard File*

TRUE COPY

By order

Assistant Registrar,
Income Tax Appellate Tribunal,
Kolkata Benches, Kolkata

Laha/Sr. P.S.