

IN THE INCOME TAX APPELLATE TRIBUNAL "SMC" BENCH KOLKATA

**BEFORE SHRI SONJOY SARMA, JUDICIAL MEMBER
AND SHRI RAKESH MISHRA, ACCOUNTANT MEMBER**

**ITA No. 670/KOL/2024
Assessment Year: 2017-18**

Rishra St Thomas Academy, 21/10, Gandhi Sarak Rishra, P.O- Rishra, Hooghly - 712248 [PAN: AABAR8994E]	Vs	A.O., Ward 23(1), Hooghly, Roopma Mahal, Khadina More, Hooghly - 712102
(Appellant)		(Respondent)

Present for:

Appellant by : Girdhar Dhelia, AR
Respondent by : Archana Gupta, Addl. CIT-DR

Date of Hearing : 04.07.2024
Date of Pronouncement : 23.08.2024

ORDER

Per Rakesh Mishra, Accountant Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2017-18 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short 'the Act') by the National Faceless Appeal Centre (NFAC), Delhi, dated 08.02.2024 arising out of the Assessment Order dated 29.12.2019, passed under Section 144 of the Act.

2. The Assessee has raised the following grounds of appeal:

- 1. That the order passed u/s 250 is bad in law as well as on facts of the case.*
- 2. That the Hon'ble CIT(A) erred in law as well as in facts by confirming the action of the Ld. AO of passing an arbitrary and high-pitched ex-parte order without allowing sufficient and reasonable opportunity of hearing to the appellant assessee.*

3. *That the Hon'ble CIT(A) erred in law as well as in facts by confirming the action of the Ld. Assessing Officer in making an arbitrary addition of Rs. 13,10,500/- which was deposited in the disclosed Bank Account during the F.Y. 2016-17 as unexplained investment u/s 69."*

3. Brief facts of the case are that the assessee is an AOP registered as an educational institution recognized by West Bengal Board of Secondary Education in exercise of the powers vested in it u/s 50(b) of the West Bengal Board of Secondary Education Act, 1963 without receiving any kind of financial assistance from Govt. of West Bengal and subject to fulfilment of various conditions of the authority. The school has been serving the society by providing education to approximately 1,000 students (both boys and girls) since 2011 without any financial assistance from the Govt. of West Bengal. An order u/s 144 of the Act was passed on 29.12.2019 for the A.Y. 2017-18 as the assessee had not filed a return of income despite the issuance of notice u/s 142(1) and the cash was deposited in the Axis Bank, Rishra Branch, W.B. Mukherjee Plaza, 107, Rishra PIN – 712248, Account Nos. 545010100037767 and 911010034332058 for Rs. 6,20,500/- and Rs. 6,90,000/- respectively. The notice u/s 142(1) issued on 12.03.2018 as mentioned in the ex-parte order, is stated to be never received by the assessee nor the show cause notice dated 02.02.2019 was received, probably on account of incorrect e-mail address or any other reason not known to the assessee. It is submitted that the assessee is an educational institution (school) and running its service from its school building in Rishra, West Bengal and it is stated that the notices could have been issued physically instead of sending by e-mail. Aggrieved with the assessment order, the assessee filed an appeal before the Ld. CIT(A) who held that the assessee was provided multiple opportunities of being heard by the Assessing Officer vide notices u/s 142(1) and show cause notice and also noted that the notices were served upon the assessee as well and therefore, it could not be said the appellant had not been provided any opportunity during the course of the

assessment proceedings. It was also noted that the appellant is an AOP registered as an educational institution recognized by the West Bengal Board of Secondary Education and since the appellant is an educational institute providing education to approximately 1000 students since 2001 therefore it cannot be accepted that the computer of the appellant was out of order for more than a year. As regards, the cash deposits the Ld. CIT(A) has held as under:

“6.6 This grounds are regards to additions of Rs. 13,10,500/- being cash deposits which was treated as unexplained investment u/s 69 of the IT Act, 1961.

6.7 During the course of the assessment proceedings, it was noted by the AO that the appellant has deposited cash of Rs. 13,10,500/- into its bank account during the year under consideration. The appellant was asked for furnish the explanation for the sources of cash deposits. However, the appellant was failed to do so. Therefore, the amount of Rs. 13,10,500/- was added by the AO to the total income of the appellant for the year under consideration.

6.8 It is noted from the submissions furnished the appellant during the course of the appellate proceedings, the appellant has stated that the school receives all fees from students in cash and same is periodically deposited in bank accounts at regular interval of time. However, the appellant has not furnished any documentary evidences to substantiate its claim. Therefore, the explanation filed by the appellant is not satisfactory and tenable. Hence, addition made by the AO of Rs. 13,10,500/- for the year under consideration is upheld.

6.9 Accordingly, Ground No. 4 and 5 are dismissed.”

4. We have heard the rival contentions and also gone through the facts of the case. The Assessing Officer noted deposit of cash of Rs. 13,10,500/-. During the course of the appeal it was ordered that during the year under consideration the gross receipts of the assessee were Rs. 50,04,824/- which consisted of tuition fee from students of Rs. 27,18,560/- session fee from students at Rs. 18,64,440/-, interest on SB Account at Rs. 24,474/- and donation of Rs. 3,97,350/-. After deducting Rs. 49,48,259/-, the excess of income over expenditure was worked out at Rs. 56,565/- and as the income was below the maximum amount not chargeable to tax, neither u/s 139(1) nor under section 139(4C)(e) was it required to file the return of income and as the gross receipts were less than Rs. 1 Crore, the excess of income over expenditure were exempt u/s 10(23C)(iiiad) of the Act. The entire deposits in the bank account was the

receipt of tuition fees, session fees etc. paid by the students in cash. Before us a detailed paper book running into 273 pages was filed along with the financial statement for AY 2017-18 containing, the summary of fee collected during various months in the financial year 2016-17, summary of cash deposit in bank account during 09.11.2016 to 31.12.2016 as per the assessment order, Bank statement of Axis Bank A/c No. 911010034332058 for the period 01.04.2016 to 31.03.2017, Bank Statement of Axis Bank, A/c No. 545010100037767 for the period 01.04.2016 to 31.03.2017 and submission made before the Ld. CIT(A) on 04.08.2022. It was also stated that no penalty notice under section 272A was initiated by the assessing officer in the course of the assessment proceedings. The reason for non-compliance was non-receipt of the notice and non-understanding of the law.

5. The Ld. Sr. DR, on the other hand stated that there was non-compliance before the assessing officer who had issued three show cause notices. The details of deposit in bank account were received along with the list of substantial deposits and the assessee had not filed the return of income. The Ld. Sr. DR relied upon para 6.8 of the assessment order which has been reproduced in the preceding para 3 of this order. It was requested to confirm the order of the Ld. CIT(A).

6. We have heard the rival contentions and also perused the details filed, which we had required the assessee to file in order to substantiate the claim that the gross receipts are below Rs. 1 Crore, the provision of section 10(23C)(iiiad) of the Act were applicable and the income was exempt and there was no requirement of filing the return of income. The fee receipt during the period relevant for AY 2015-16 to AY 2017-18 are as under:

Assessment Year 2015-16 – Rs. 31,38,850/-

Assessment Year 2016-17 – Rs. 38,97,488/-

Assessment Year 2017-18 – Rs. 45,83,000/-

Further, the historical data sheet of number of students and fees deposited in bank as claimed to be submitted before the Ld. CIT(A) on 04.08.2022 is as follows:

RISHRA ST THOMAS ACADEMY F.Y 2014-15						
Sl. No.	Month	Cash deposits in Bank	Fees/Donation Deposit in Bank	Cash Fees Receipt		
				No. of Students	Cash Amount	Total
1	April	16875.00	0.00	756	116095.00	116095.00
2	May	0.00	0.00	756	0.00	0.00
3	June	0.00	0.00	756	174590.00	174590.00
4	July	0.00	0.00	756	234395.00	234395.00
5	August	0.00	0.00	756	80320.00	80320.00
6	September	0.00	0.00	756	76315.00	76315.00
7	October	0.00	0.00	756	81170.00	81170.00
8	November	55000.00	0.00	756	369250.00	369250.00
9	December	845000.00	0.00	756	1256225.00	1256225.00
10	January	123000.00	17550.00	807	505590.00	505590.00
11	February	0.00	4610.00	807	113905.00	113905.00
12	March	0.00	0.00	807	130995.00	130995.00
		1039875.00	22160.00	9225	3138850.00	3138850.00

F.Y 2015-16						
Sl. No.	Month	Cash deposits in Bank	Fees/Donation Deposit in Bank	Cash Income Receipt		
				No. of Students	Cash Amount	Total
1	April	0.00	3600.00	807	93575.00	93575.00
2	May	0.00	0.00	807	86425.00	86425.00
3	June	100000.00	0.00	807	254000.00	254000.00
4	July	0.00	9075.00	807	161795.00	161795.00
5	August	0.00	0.00	807	87755.00	87755.00
6	September	29750.00	0.00	807	102400.00	102400.00
7	October	31800.00	0.00	807	108395.00	108395.00
8	November	200000.00	0.00	807	398005.00	398005.00
9	December	1489000.00	0.00	807	1445723.00	1445723.00
10	January	200000.00	0.00	851	764645.00	764645.00
11	February	0.00	9900.00	851	229970.00	229970.00
12	March	40000.00	3300.00	851	164800.00	164800.00
		2090550.00	25875.00	9816	3897488.00	3897488.00

F.Y 2016-17						
Sl. No.	Month	Cash deposits in Bank	Fees/Donation Deposit in Bank	Cash Income Receipt		
				No. of Students	Cash Amount	Total
1	April	0.00	0.00	851	145800.00	145800.00
2	May	0.00	0.00	851	152100.00	152100.00
3	June	0.00	5800.00	851	177675.00	177675.00
4	July	25000.00	0.00	851	371850.00	371850.00
5	August	0.00	0.00	851	154725.00	154725.00
6	September	0.00	0.00	851	214400.00	214400.00
7	October	0.00	0.00	851	191690.00	191690.00
8	November	131000.00	76900.00	851	519350.00	519350.00
9	December	1164000.00	183150.00	851	1502200.00	1502200.00
10	January	408000.00	93500.00	908	735480.00	735480.00
11	February	0.00	12330.00	908	206670.00	206670.00
12	March	0.00	25670.00	908	211060.00	211060.00
		1728000.00	397350.00	10383	4583000.00	4583000.00

7. It was submitted that the school receives fees from students in cash, the number of students varied from 850 from April 2016 till December 2016 and 908 from January 2017 to March 2017 and cash amount of Rs. 4583000/- was received during the year out of which cash of Rs. 1728000/- was deposited in the bank account. During the FY 2014-15 cash of Rs. 10,39,875/- was deposited in the bank while in FY 2015-16 cash of Rs. 20,90,550/- was deposited. The register of students fees for the period 01.04.2016 to 31.03.2017 was also filed at pages 11 to 256 of the paper book.

8. Having examined the facts and the bank statements and the audited financial statements filed in the course of appeal, the assessee's claim that the cash deposited in the bank account was the fee received from students appears to be justified as the total fee receipt during the FY relevant to the AY 2017-18 was Rs. 45,83,000/- while the cash deposited in the bank accounts was Rs. 17,28,000/- and since the same was less than the fee received in cash from the students, the claim that the fee collected was deposited in the bank account appears to be correct and therefore, the addition of Rs. 13,10,500/- made by the Assessing Officer and confirmed by the Ld. CIT(A) in the absence of any documentary evidence to substantiate the claim, which was produced before us as required by us, is deleted and Ground No. 3 of the appeal is allowed.

9. Ground No. 1, 2 and 4 are general in nature and do not require any separate adjudication.

In the result, appeal of the assessee is allowed.

Kolkata, the 23rd August, 2024.

Sd/-
[Sonjoy Sarma]
Judicial Member

Sd/-
[Rakesh Mishra]
Accountant Member

Dated: 23.08.2024.

AK, PS

Copy to:

1. The Appellant:
2. The Respondent.
3. CIT(A)
4. The CIT,
5. DR, ITAT, Kolkata Bench, Kolkata

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By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata