

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN**

**Before Shri Satbeer Singh Godara, Judicial Member &
Shri Amarjit Singh, Accountant Member**

ITA No.102/Coch/2024 : Asst.Year 2014-2015

The Assistant Commissioner of Income-tax (Exemptions) Ernakulam.	v.	Islamic Learning Mission Trust, Building No.PMC XVII/1637, Seemas Building, Perumbavoor Ernakulam – 683 542. PAN : AAAT18617H.
(Appellant)		(Respondent)

Appellant by : --- None ---
Respondent by : Sri.Sanjit Kumar Das, CIT-DR

Date of Hearing : 14.08.2024	Date of Pronouncement : 14.08.2024
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ORDER

Per Bench :

This Revenue's appeal ITA No.102/Coch/2024 for assessment year 2014-2015 arises against the CIT(A)/NFAC's DIN & Order No.ITBA/NFAC/S/250/2023-24/1058313649(1) dated 29.11.2023, in proceedings u/s.271(1)(c) of the Income-tax Act, 1961; in short "the Act" hereinafter.

Case called twice. None appears at assessee's behest. It is accordingly proceeded *ex parte*.

2. Learned CIT-DR refers the Revenue's following substantive grounds raised in the instant appeal:-

"1. The order of the *id.* CIT (A) is opposed to law on the facts and in the circumstances of the case.

2. The Ld. CIT (A) has erred into interpretation of section 11(1)(d) of Income Tax i.e donation should be voluntary and specific directions should be given that they shall form part of corpus of trust. In the instant case the receipts were not specific, hence disallowance made and penalty levied.

3. The Ld. CIT (A) erred in not agreeing with the penalty order passed by the AO stating (i) disallowance of corpus donation cannot be said as concealment of particulars (ii) penalty u/s. 271(1)(c) is not leviable due to inaccurate depiction of taxable income (iii) AO sought to levy penalty @100% of the tax sought to be evaded on the amount of disallowance.

a. In the instant case, the AO has rightly levied penalty for inaccurate depiction of taxable income as not taxable amount, being the disallowance of corpus donations, as there was no specific direction given by the donor that it should form part of corpus of trust.

4. For these and such other grounds that may be adduced at the time of hearing, it is prayed that the order of the Id. CIT (A) may be reversed and that of the Assessing Officer restored.”

3. We next note that the CIT(A)/NFAC has reversed the Assessing Officer’s action levying impugned penalty on merits as under:-

“7.2 Decision

The facts of the case emanating from the impugned order is that in the assessment in this case was completed u/s. 143(3) of the I, T. Act making disallowance of corpus donation of Rs.4.21,19,133/-, As per the A.O. since the cause of disallowance constituted concealment of particulars of income proceedings u/s. 271 rws 274 of the I. T. Act was initiated by by issue of notice dated 20.12.2016. In response the appellant submitted that the trust is eligible for exemption under section 11(1)(d) of the IT act and that the trust had received corpus donations and the details of the donors and the original certificates were produced for verification during the course of the assessment proceedings. Also, the trust had maintained a general donation receipt book and received general donations as well as specific donations and the trust would affix the 'corpus donation' stamp only on those receipts which are declared by the donors as special donations. It is further submitted by the appellant that the A.O. had not asked for

any confirmation from the donors during the course of assessment proceedings.

7.2.2 This explanation was not found acceptable to the A.O. and proceeded to levy penalty u/s. 271(1)(c) of the I.T.Act at Rs.19,133/- giving the reason that the A.O. has reason to believe that income chargeable to tax has escaped assessment due to inaccurate depiction of taxable income as not taxable amount. Thus minimum penalty of 100% of tax sought to be evaded i.e., on Rs.4,21,19,133/- is levied which worked out to Rs.4,21,19,133/- by the Assessing Officer.

7.2.3 The impugned penalty order along with the written submission made by the appellant during the course of appellate proceedings have been carefully perused and considered. Before going into the merits of the case, it needs to be mentioned that in the penalty order the AO has stated that the cause of disallowance constituted concealment of particulars of income proceedings U/s. 271 r.w.s. 274 of the I.T. Act was initiated by issue of notice dated 20.12.2016. Considering the disallowance of appellant's claim of corpus donation of Rs.4.21,19,133/- it cannot be said that the said addition amounts to concealment of particulars of income. In subsequent paras the A.O. has stated that A.O. "has reason to believe that income chargeable to tax has escaped assessment due to inaccurate depiction of taxable income as not taxable amount". Again penalty u/s. 271(1)(c) of the I.T.Act is not leviable merely on the basis that the A.O. has reason to believe that income chargeable to tax as escaped assessment due to inaccurate depiction of taxable income as not taxable amount. It is further noted that the A.O, sought to levy penalty @100% of the tax sought to be evaded on the amount of disallowance of Rs.4,21,19,133/-. However penalty of Rs.4.21.19.133/- has been levied which is actually the amount of disallowance and not 100% of the tax on the amount of disallowance. Considering these grave lacunas/flaws/shortcomings in the penalty order passed by the A.O., I am of the considered view that the impugned penalty order passed by the A.O. is not in accordance with the provision of law and hence not sustainable.

7.2.4 Without prejudice to the above, even on merits, the impugned penalty levied by the A.O. is not sustainable for the reason that the addition made by the A.O. in the assessment order on account of corpus donation received by the appellant do not amount to concealing the particulars of income or furnishing of inaccurate particulars of income.

7.2.5 *Considering the above facts of the case and in law, I am of the considered view that the penalty levied by the A.O. u/s. 271(1)(c) of the I. T. Act amounting to Rs.4,21,19,133/- is not justified. The A.O. is therefore directed to delete the same. This ground of appeal raised by the appellant is thus allowed.”*

4. Suffice to say, apart from the technical issue of quantum of the impugned penalty raised at the assessee's appeal herein, we find that the Revenue has failed to make out any case on merits once it is clear that the assessee had claimed the quantum figure of Rs.4,21,19,133 as a corpus donation u/s.11 of the Act, which stood disallowed during the course of assessment, meaning thereby that the assessee has raised exemption claim by filing all the relevant details and it could not convince the learned Assessing Authority. That being the case, we are of the considered view that such an instance of quantum disallowance simpliciter could neither be taken as concealment nor furnishing of inaccurate particulars of income going by the decision of the hon'ble apex court in CIT v. Reliance Petroproducts (P) Ltd. (2010) 322 ITR 158 (SC). We accordingly uphold the Learned CIT(A)'s finding deleting the impugned penalty. Ordered accordingly.

5. Thus, the Revenue's appeal is dismissed in above terms.

Order pronounced in the open court on this 14th Day of August, 2024.

Sd/-
(Amarjit Singh)
ACCOUNTANT MEMBER

Sd/-
(Satbeer Singh Godara)
JUDICIAL MEMBER

Cochin ; Dated : 14th August, 2024.
Devadas G*

Copy to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Concerned.
4. The CIT Concerned.
5. The DR, ITAT, Cochin.
6. Guard File.

Asst.Registrar/ITAT, Cochin