आयकर अपीलीय अधिकरण,चण्डीगढ़ न्यायपीठ, चण्डीगढ़

IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'B', CHANDIGARH

BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No. 516/CHD/2023**
निर्धारण वर्ष / Assessment Year : 2018-19

M/s UFV India Global Education, GGD Sanatan Dharma College, Ector 32-C, Chandigarh (U.T.)	Vs. बनाम	The DCIT Exemption, Circle-1, Chandigarh
स्थायी लेखा सं./PAN No: AABCU7691M		
अपीलार्थी/ APPELLANT		प्रत्यर्थी/ REPSONDENT

(PHYSICAL HEARING)

निर्धारिती की ओर से/Assessee by : Shri Sudhir Sehgal, Advocate
राजस्व की ओर से/ Revenue by : Smt. Kusum Bansal, CIT DR

सुनवाई की तारीख/Date of Hearing : 13.08.2024
उदघोषणा की तारीख/Date of Pronouncement : 20.09.2024

आदेश/Order

Per Krinwant Sahay, A.M.:

The appeal in this case has been filed by the Assessee against the order dated 31.07.2023 of the ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi.

2. Grounds of appeal are as under: -

1. *That the Ld. CIT (Appeal)-NFAC has erred in confirming the penalty levied by the AO under section 270A of the I T Act, 1961.*

2. *That the Ld. CIT (Appeal)-NFAC has erred in not appreciating the fact that the penalty order as passed by the AO was illegal, void and non-speaking order.*

3. *That the Ld. CIT (Appeal)-NFAC in para 6.1.1 of his order has factually erred in observing that the assessee while filing its return of income for the A.Y. 2018-19 on 09.10.2018 had the benefit of the assessment order passed by the AO for the Asstt. Year 2016-17 whereas the said assessment order was passed by the then AO on 03.12.2018.*

4. *That the Ld. CIT (Appeal)-NFAC while confirming the penalty u/s 270A in para 6.1.2 of his order has failed to appreciate that the assessee was engaged in carrying out the education activity and had a valid registration u/s 12A of Act and thus the claim of exemption u/s 11 made by the assessee in its ITR was based on sound legal footing.*

5. *That the Ld. CIT (Appeal)-NFAC has erred in concluding in para 6.1.4 of his order that there has been misrepresentation or suppression of facts by the assessee in terms of section 270A(9) of the Act whereas the claim made by the assessee was evident from its ITR and later voluntary disclosure made during the course of assessment proceedings.*

2. During the proceedings before us, ld. Counsel for the Assessee has filed a brief synopsis bringing out the chronology of events as well as facts considered and findings given by the authorities below, which are as under:-

1. This is a case of a company operating under the name and style of M/s. UFV India Global Education ('UIGE'). The assessee company was incorporated as a not for profit entity u/s 8 of The Companies Act, 2013 vide certificate of Incorporation dated 05.11.2014.

2. The assessee company is affiliated to the University of Fraser Valley, Canada and since its incorporation in year 2014, the assessee is engaged in imparting of academic courses in the field of business, liberal arts, computer information system and management post baccalaureate certificate to its students in India. It is pertinent to mention here that the parent entity is a State University of Fraser Valley which is a Government funded Institution under British Columbia, Canada engaged in imparting education. The assessee company in India works with a vision of providing a world class education at affordable prices to students in India and for such purpose, the assessee has established its set up in the premises of SD College, Chandigarh which is a recognized institution being run by a registered charitable society namely 'Goswami Ganesh Dutta Sanatan Dharma College Society'.

3. The primary objectives of the assessee company are in the field of education and related activities which comes under the ambit of the provisions of section 2(15) of The Income Tax Act, 1961 ('the Act') and hence, the objects of the assessee company is recognized as a charitable activity, hence, the assessee was registered u/s 12AA of the Act vide order dated 08.09.2015 bearing ref no. CIT-(EXEMPTIONS)/CHD/12A/2015-16/3852 passed by the Commissioner of Income Tax (Exemptions), Chandigarh w.e.f. AY 2015-16.

4. The assessee maintains complete set of books of accounts for such activity and the same are audited by the Chartered Accountant and the return of income for Asstt. Year 2018-19 was filed with the Tax Audit Report and the exemption u/s 11 was claimed.

5. For the Assessment Year 2016-17, which was the first year of the scrutiny assessment of the assessee, there was unexpected litigation with the Assessing Officer on account of disallowance of claim of exemption u/s 11 and such assessment was finalized only on 03.12.2018 by the DCIT (Exemptions).

6. The return for Asstt. Year 2018-19 was filed on 09.10.2018 and similarly, return for Asstt. Year 2017-18 was filed on 16.10.2017 after claiming exemption u/s 11 of the Act.

7. It is important to note that no such assessment had been framed prior to the above date of filing the return of income for Asstt. Year 2018-19.

8. The case of assessee company for Asstt. Year 2018-19 was selected for scrutiny on account of 'foreign travel expenses' and, not on account of incorrect claim of exemption u/s 11 and, as such, no doubt at that time was pointed out with regard to claim of exemption u/s 11 claimed by the assessee, on the date of filing the return of income.

9. The assessment for Asstt. Year 2016-17 denying the claim of exemption u/s 11 of the Act was finalized on 03.12.2018 i.e. after the return for Asstt. Year 2018-19 had already been filed on 09.10.2018 and the assessee could not have foreseen the fate of assessment for Asstt. Year 2016-17, wherein, the claim of exemption u/s 11 has been disallowed.

10. In the meanwhile, when the appeal for Asstt. Year 2016-17 and 2017-18 were pending before the CIT(A), the assessee in order to buy peace of mind decided to end all pending litigations and opted for Vivad Se Vishwas Scheme (VSV) of the department for Asstt. Years 2016-17 & 2017-18 and by virtue of that, paid substantial amount of tax.

11 Not only on account of this, the assessee revised the return for Asstt. Year 2019-20, withdrawing its claim of exemption u/s 11 of the Act for the said year and also for Asstt. Year 2018-19.

12. The Assessee not revise the return of Income for Asstt. Year 2018-19 because the time to revise the return had elapsed as assessment order for Asstt. Year 2016-17 u/s 143(3), where, for the first time, the claim u/s 11 was withdrawn on 03.12.2018.

13. The Assessing Officer while framing the assessment has not doubted anything but has reproduced a letter filed before him surrendering the claim u/s 11 during the course of assessment proceedings and only reason for initiation of penalty u/s 270A(9) were initiated as per para 4.3 of the order of Assessing Officer that the claim of exemption u/s 11 was surrendered only after notice u/s 143(2) was issued. It is important to mention here that the notice u/s 143(2) was only intimation for taking the case under scrutiny and nothing was asked for.

14. During the course of penalty proceedings, the Assessee filed detailed reply based on the case laws that both penalty proceedings and assessment proceedings are distinct and separate proceedings and further, the object of the society regarding providing education have not been doubted at all and there was no case of 'misreporting' of income being there. But, however, though, in the penalty

order, it has been mentioned that the reply as filed by the assessee has been considered carefully, but then penalty has been levied by the Assessing Officer @ 200%, without discussing anything.

15. Before the Ld. CIT(A) again, detailed submissions were made alongwith case laws, and the same has been reproduced in the order by the CIT(A). The CIT(A) has incorrectly given the finding in para 6.1.1. that when, the assessee filed the return of income for Asstt. Year 2018-19. claiming exemption u/s 11 then the assessment order for Asstt. Year 2016-17 was available with the assessee, in which, the said exemption u/s 11 had been withdrawn.

16. It is hereby submitted that we have already filed the Brief Synopsis and in those Brief Synopsis, the chronological sequence is as under:-

Event	**Date of event**
Filing of Income Tax Return for the AY 2016-17 declaring Nil Income	17.10.2016
Receipt of notice u/s 143(2) of the Act for the AY 2016-17	03.07.2017
Filing of Income Tax Return for the AY 2017-18 declaring Nil Income	16.10.2017
Receipt of notice u/s 143(2) of the Act for the AY 2017-18	10.08.2018
Filing of Income Tax Return for the AY 2018-19 declaring Nil Income	09.10.2018
Assessment order passed u/s 143(3) of the Act for the AY 2016-17 denying the claim of	03.12.2018

exemption	
u/s 11 of the Act	
Receipt of notice u/s 143(2) of the Act for the AY 2018-19	22.09.2019
Assessment order passed u/s 143(3) of the Act for the AY 2017-18	27.12.2019
Filing of Form 1 & 2 under the VSV Scheme for the AY 2016-17 and AY 2017-18	18.05.2020
Revision of Income Tax Return for the AY 2019-20	30.09.2020
Voluntary surrender of the exemption u/s 11 by the assessee along with payment of taxes for AY 2018-19	26.10.2020
Receipt of notice u/s 142(1) of the Act w.r.t. the assessment for AY 2018-19	14.12.2020
Passing of Assessment order for AY 2018-19 u/s 143(3) of the Act.	28.09.2021
Receipt of Show Cause Notice u/s 270A of the Act for AY 2018-19	20.12.2021
Detailed reply filed in response to the SCN u/s 270A of the Act for AY 2018-19	28.12.2021
Passing of Penalty Order u/s 270A of the Act.	19.03.2022

17. The Ld. CIT(A) had given a incorrect finding while passing the order in that the order for Asstt. Year 2016-17 was available with the assessee before filing the return for Asstt. Year 2018-19, which is totally incorrect finding, as since, at that time', the assessment order for Asstt. Year 2016-17 had not been passed and the same was finalized

by the Assessing Officer on 03.12.2018, i.e., after the return for Asstt. Year 2018-19, which had been filed on 09.10.2018.

18. The assessee could not have foreseen that its exemption u/s 11 would be disallowed by the Assessing Officer, rather the assessee was under a bonafide belief that the exemption u/s 11 would be allowed in Asstt. Year 2016-17.

19. Further, the notice u/s 143(2) had been issued on 22.09.2019 is only intimation about the case having been taken under scrutiny and the reason for selection of case under scrutiny was 'expenditure for such charitable and religious purpose' as per notice attached. It was only on 04.12.2020 that by way of notice u/s 142(1), certain general details were asked for and by that time, the assessee had already availed the benefit of the sheme of the department Vivad Se Vishwas for Asstt. Year 2016-17 & 2017-18 on 18.05.2020 and surrendered its claim of exemption u/s 11 vide letter dated 26.10.2020 as per chart reproduced above. Thus, the very basis of initiation of 143(2) proceedings loses its significance, since nothing was asked for by way of that notice.

20. Reliance is being placed on the judgment of Jurisdictional Bench of the ITAT Chandigarh Bench in the case of Smt. Neelu Garg in ITA No. 1472/Chd/2018, wherein, the surrender was made by the assessee by filing the revised

statement of net assessable income and tax was deposited after the of notice u/s 142(1), where certain „ details were asked for on account of long term capital gain and, thereafter, the assessee surrendered an amount of Rs. 37 lacs and the paid the tax and interest.

21. It was held by the Chandigarh Bench of the ITAT as per finding given in para 10 as under:-

"Therefore, from the facts of the present case, it is clear that the assessee suo moto surrendered an amount of Rs.37 lacs before any of the authorities of the Income Tax pointed out any undisclosed income of the assessee. It is noticed that the assessee informed the D.D.I.(Investigation-ll), Ludhiana vide letter dated 12.10.2015 (in response to the summon u/s 131(1 A) of the Act dated 29.9.2015) that a re-computation of taxable income was filed, wherein an amount of Rs.37 lacs was surrendered under the head 'miscellaneous income", which is evident from page Nos.9 to 11 of the assessee's Paper Book, which are the copies of the reply, computation income and copy of challan in respect of tax and interest amounting to Rs. 12,55,871/- deposited on 12.10.2015."

22. The Hon'ble Bench relied upon on the judgment of Hon'ble Punjab & Haryana High Court in the case of CIT Vs. Rajiv Garg, reported in 313 ITR, page 256 and judgment of ITAT, Chandigarh Bench, and, in para 11 and 12 given

the finding and the said penalty u/s 271 (1)(c) was deleted.

3. The ld. DR, on the other hand, argued vehemently on the line of findings given by the ld. CIT(A) in his appeal order.

4. We have considered the findings given by the ld. CIT(A) in his appeal order. We find that the order for A.Y. 2016-17 was passed by the Assessing Officer on 03.12.2018 while the return for A.Y. 2018-19 was already filed on 9.10.2018, therefore, while the Assessee was filing its return of income of for A.Y. 2018-19, it had no benefit of information or knowledge as to what the Assessing Officer is giving his findings in order for assessment year 2016-17. Therefore, to that extent, the ld. CIT(A)'s findings on this issue, as mentioned in his appeal order is not correct. Further, the ld. counsel of the Assessee has rightly brought on record that no fact was suppressed from the Department so even if the claim made by the Assessee was not acceptable to the Department and it was rejected by the Assessing Officer, it could not attract penalty u/s 270A of the Income Tax Act, 1961 (in short 'the Act').

5. We have also considered the order of the coordinate Chandigarh Bench of the ITAT in the case of 'Smt Neelu Garg vs. ITO', ITA No.

1472/Chd/2018, order dated 26.04.2019, as well as the Order passed by the Hon'ble jurisdictional High Court of Punjab & Haryana in the case of 'CIT vs. Rajeev Garg' reported in 313 ITR 256 (P&H) where the penalty was deleted on the ground that the Assessee had not filed any inaccurate particulars and it was also hold that simply because the Assessee had claimed the same deduction or exemption which was later on not allowed by the Department, could not lead to attract penalty provisions.

6. Keeping in view the facts of this case as well as the judicial pronouncements cited above, Assessee's appeal on this ground is allowed.

7. In the result, appeal is allowed.

Order pronounced on 20.09.2024.

Sd/-	**Sd/-**
(A. D. JAIN)	**(KRINWANT SAHAY)**
Vice President	**Accountant Member**

"आर.के."

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar