



IN THE INCOME TAX APPELLATE TRIBUNAL, 'SMC' BENCH PUNE
BEFORE HON'BLE SHRI G. D. PADMAHSHALI, ACCOUNTANT MEMBER
AND
HON'BLE SHRI VINAY BHAMORE, JUDICIAL MEMBER

ITA No. 1432/PUN/2024
Assessment Year : 2017-18

Shri Balaji Shikshan Prasarak Mandal

At & Post : Chowka, Tal.: Phulambri,

Dist.: Ch. Sambhaji Nagar-431008.

PAN: AAITS9855P.

..... **Appellant**

V/s

The Income Tax Officer,

Exemption Ward, Nanded.

..... **Respondent**

Appearances

Assessee by : Mr Umesh Ruparel ['Ld. AR']

Revenue by : Mr BS Rajpurohit ['Ld. DR']

Date of conclusive Hearing : 11/09/2024

Date of Pronouncement : 01/10/2024

ORDER

PER G. D. PADMAHSHALI, AM;

This appeal agitates DIN & Orders ITBA/APL/S/250/2023-24/1063723509(1) dt. 30/03/2024 passed by the first appellate authority ['Ld. NFAC/ CIT(A)' hereinafter] u/s 250 of the Income-tax Act, 1961 ['the Act' hereinafter] which in turn confirmed the order of assessment passed u/s 144 of the Act by the Income Tax Officer, Exemption Ward-Nanded ['Ld. AO' hereinafter] for assessment year 2017-18 ['AY' hereinafter];



1. ***Pithily stated facts of the cases are that;*** the assessee is a Trust which failed to file its return of income for the year under consideration, resultantly it was identified as ‘non-filer’. Upon the receipt of information through Annual Information Return [‘AIR’ hereinafter] that the assessee during the period of demonetisation deposited huge special bank notes [‘SBN’ hereinafter] amounting ₹26,69,500/- into its bank account No. 62206087647 maintained with State Bank of Hyderabad, Dhamangaon, Phulambri, Dist. Aurangabad [‘SBH’ hereinafter], by notice dt. 12/12/2017 issued 142(1) of the Act the assessee was called upon to furnish return of its income which went unattended. In the event of failure to file return, the assessee vide notices dt. 08/04/2019, 13/06/2019, 15/07/2019 and 30/10/2019 was again called upon to comply with requirements and also to explain source & nature of cash deposits made by it. However same did not yield any response from the assessee. Adhering to principle of natural justice, the Ld. AO put the assessee to show cause notice before proceeding ex-parte, in response to show cause notice issued, the filed return of NIL income on 17/11/2019 which for the purpose of assessment was turndown as not filed within the time limit allowed u/s 142(1) of the Act.



2. In the event of assessee's effective failure to file valid return within the period of 30 days allowed to him u/s 142(1) of the Act and offer satisfactory explanation about nature & source of cash deposits, the Ld. AO proceeded ex-parte on the basis of material & written submission placed on record, and treated the difference of cash deposits and opening cash balance held as on 09/11/2016 as unexplained cash credit u/s 68 of the Act while making addition of ₹5,66,535/- in the hand of assessee which was brought to tax u/s 115BBE of the Act. The appeal thereagainst before the Ld. CIT(A) did yield no favourable results to the assessee. Aggrieved thereby the assessee came in present appeal before the Tribunal.

3. During the course of hybrid hearing, the Ld. AR Mr Ruparel appeared on behalf of the appellant. Adverting to the Central Govt. Gazette amended notification dt 24/11/2016 published by Ministry of finance, department of economic affair ['the Gazette' hereinafter], Ld. AR contended the assessee is a aided trust running government college affiliated to 'Dr Babasaheb Ambedkar Marathwada University, Aurangabad ['DBAMU' hereinafter]. The difference of opening cash / SBN balance held as on 09/11/2016 by the assessee and the amount of SBN actually deposited by it



solitarily represents the exam fees collected from its students during the subsistence of demonetisation which then remitted to the Registrar of the DBAMU.

4. It was also submitted that in the course of hearing that, the assessee being/running a government college therefore in view of clause (t) inserted to original paragraph 1 vide clause 2(v) of the Gazette, the assessee was allowed to accept the SBN for making payments towards college exam fees. The assessee acted in accordance with such authorisation and accepted the SBN in the form of fees from its student and since it was the only one source of receipt available to it, the excess of opening balance over SBN actually deposited into its bank account with 'SBH' i.e. ₹5,66,535/- exclusively represent fees from students for their payment to DBAMU and does not in any way suggest the unaccounted income. This explanation however neither inspired the Ld. AO nor the Ld. NFAC, therefore the assessee came in appeal with as many as nine elaborate grounds which are directed against solitary impugned addition sustained in appeal by the Ld. NFAC. The assessee by these grounds & submission prays for deletion of impugned addition solely on merits.



5. *Per contra* Ld. DR Mr BS Rajpurohit averred that, the assessee admittedly failed to prove with cogent evidences that, it is indeed a Central or State Government College or School so as to accept the SBN during the demonetisation period. Merely affiliation to university does in no case prove that the college as Central or State Govt College. Further the assessee laid no documents before the tax authorities below such as receipt of college fees endorsing therein its entitlement to accept the SBN. It goes without saying that, in the present proceeding also the assessee did place no certificate to demonstrate its claim of being Govt College. The representation/contention is after thought therefore misplaced for the purpose of any relief. The appeal of the assessee thus deserves to be dismissed and impugned addition needs to be upheld.

6. We have heard rival submission and subject to rule 18 of ITAT-Rules, 1963 perused the material placed on record and considered the facts in the light of settled position of law which are also forewarned to the parties present. As agreed by the rival parties, the sole & substantive issue to be adjudicate in the present appeal leads us to vouch merits of the addition sustained.



7. We accordingly proceeded and noted that, the appellant assessee is a trust running college in the name & style of 'Sai Institute of Engineering And Technology' ['SIET' hereinafter] and is affiliated to DBAMU. The appellant also registered with 'All India Council of Technical Education, a body of Ministry of HRD, Govt of India' ['AICTE' hereinafter] with Permanent-id No. 1-400722875. From page 8 of the paper-book filed on record containing 17 pages it reveals us that, the appellant is registered with AICTE as private institution with no grant-in-aid from the Government i.e. registered under category '*Unaided-Private*'

8. Admittedly, the appellant in first place did fail to file its return of income u/s 139(1) of the Act and when Revenue by issuance of multiple notices called upon the assessee to file return and explain nature & source of cash deposits etc., the appellant flouted the notices & compliance requirement. In the event the return filed beyond the permitted time limit was treated as nonsensical for the purpose of assessment by the Ld. AO who proceeded ex-parte in absence of valid return and assessed the income to the best of his judgment u/s 144 of the Act by bringing to tax only the difference of cash/SBN balance held as at the



declaration of demonetisation over and above the SBN deposited by the appellant. The said addition on like grounds and findings was upheld by the Ld. NFAC. In explaining the nature & source of cash deposits the appellant before the tax authorities below and also in the present proceeding claimed that it was entitled to accept SBN being a Government College. The said claim is not only baseless but untrue in the evince of category of registration granted by AICTE. The material placed on records does in no way suggest that the appellant is a Central or State Govt. College engaged in running educational institution, rather it a private unaided college as per the details laid in letter of approval extension issued by AICTE. Thus the very foundation of being a Government College is failed on record, in consequence explanation that it accepted the fees from the student also failed like house of cards. Further there is hardly any cogent deprecative material placed by the appellant to dismantle the Revenue's findings beyond an iota of doubt that the difference of SBN deposits assessed as income and brought to tax u/s 115BBE of the Act represents unaccounted income which appellant tried to colour it as being student fees received by misquoting itself as Government College, when it is not.



9. The burden of proof that, the nature & sources of amount of cash deposits made into bank account do not in any way represents income is on claimant assessee and when assessee fails to discharge the same to the satisfaction of the Revenue with corroborative evidences, then the Revenue in view of Hon'ble Apex Court decision in 'Shashi Garg Vs PCIT' [2020, 113 taxmann.com 93 (SC)] is entitled to treat the same as unexplained income of the assessee and can assessed as such.

10. Without multiplying the ratio on the subject matter, in view of the aforesaid discussion, we see strong reasons in countenancing the action of both the tax authorities below. Consequently, we uphold the impugned addition sustained by Ld. NFAC and dismissed all the grounds of the assessee.

11. In result, the appeal of the assessee is DIMISSED.

In terms of rule 34 of ITAT Rules, the order pronounced in the open court on this Tuesday, 01st Day of October, 2024.

-S/d-

VINAY BHAMORE
JUDICIAL MEMBER

-S/d-

G. D. PADMAHSHALI
ACCOUNTANT MEMBER

पुणे / PUNE ; दिनांक / Dated : 01st Day of October, 2024.

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

1. अपीलार्थी / The Appellant.

2. प्रत्यर्थी / The Respondent.

3. The Pr. CIT Concerned.

4. The CIT(A)/NFAC Concerned.

5. DR, ITAT, 'SMC' Bench, Pune

6. गार्डफाइल / Guard File.

आदेशानुसार / By Order

वरिष्ठ निजी सचिव / Sr. Private Secretary

आयकर अपीलीय न्यायाधिकरण, पुणे / ITAT, Pune.