

IN THE INCOME TAX APPELLATE TRIBUNAL "A" BENCH, KOLKATA

Before

Shri Rajpal Yadav, Vice President

&

Dr. Manish Borad, Accountant Member

I.T.A. No.1176/KOL/2023

Assessment Year: 2017-18

DCIT, Circle-2, Durgapur

.....

**Appellant**

Vs.

**Kalyan Educational Society**  
13, Dum Dum Cossipore Road,  
Dum Dum, Kolkata-700074.  
(PAN: AABTK2860K)

.....

**Respondent**

&

C.O. No. 03/Kol/2024

In I.T.A. No.1176/KOL/2023

Assessment Year: 2017-18

**Kalyan Educational Society**

.....

**Cross Objector**

Vs.

DCIT, Circle-2, Durgapur

.....

**Respondent**

**Appearances by:**

Shri Raja Sengupta, Addl. CIT, Sr. DR appeared for Revenue

Shri S. K. Tulsiyan, Advocate & Ms. Puja Somani, CA appeared for Assessee/Cross Objector.

Date of concluding the hearing : 12.09.2024

Date of pronouncing the order : 10.10.2024

**ORDER**

**Per Dr. Manish Borad, Accountant Member:**

The appeal filed at the instance of the revenue and the Cross Objection filed at the instance of the assessee pertaining to the Assessment Year (in short "AY") 2017-18 are directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the "Act") by Ld. Commissioner of Income-tax, (Appeals), National

Faceless Appeal Centre (NFAC), Delhi [in short Ld. "CIT(A)"] dated 16.08.2023 arising out of the assessment order framed u/s. 147/143(3) of the Act by ACIT, Circle-2, Durgapur dated 17.12.2019.

2. Appeal of the revenue is time barred by 18 days and a condonation petition has been placed on record. In the said condonation petition, revenue has pleaded the problems faced by it in implementation of the Faceless Appeal Scheme and its technical error in uploading Manual Order, hence, he prays before the bench to condone the said delay and admit the appeal for hearing. After hearing both the sides, we find that there is reasonable cause for late filing this appeal on behalf of the revenue, hence, we condone the delay and admit the appeal for hearing.

3. Grounds of appeal raised by the revenue read as under:

*"1. Whether on the facts and circumstances of the case and in law, the Ld. CIT(A), NFAC is justified in allowing the appeal of the assessee by deleting the addition amounting to Rs. 1,32,52,056/- made by the A.O. stating that scope of powers of A.O during income escaping assessment being limited to focus on the issue in respect of which reason to believe has been recorded. Any other issue that comes to the notice of AO during the course of such assessment as the AO converted the reopened assessment into full scale regular scrutiny and seeking to make addition and such additions would not qualify within the classification-things which come to the notice as per Explanation 3 to Section 147."*

3.1. Grounds for Cross Objection raised by the assessee read as under:

*"1. That on the facts and in the circumstances of the case, the Ld. CIT(A) erred in upholding the action of the Ld. AO in sustaining the addition of Rs.16,04,250/- u/s. 69A of the Act, being cash deposits made during the demonetization period when it was duly explained that the entire*

*cash deposits represent cash fees received by the society from the students of the educational institutions run by the society.*

*2. That on the facts and in the circumstances of the case, the assessee during the assessment proceedings has inadvertently stated that interest income of Rs.4,24,322/- was not included in the return of income although the same was duly included in the return of income under the head 'Misc. receipts', thus the addition of Rs.4,24,322/- is unwarranted.*

*3. That, the appellant craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds."*

4. Brief facts of the case are that the assessee is a society registered u/s. 12AA of the Act and engaged in running educational institution in the name of Camellia Institute of Engineering & Technology, Camellia Institute of Polytechnic and Camellia Public School. The assessee did not file income tax return for AY 2017-18. During the demonetization period announced during the FY 2016-17 cash of Rs.11,15,000/- was deposited in the bank account. Based on this information and the fact that assessee did not file the income tax return, case was reopened u/s. 147 of the Act by validly issuing and serving notice u/s. 148 of the Act. In compliance, assessee filed the return declaring loss of Rs.24,42,868/-. Thereafter, based on the documents submitted by the assessee as well as material gathered by issuing notice u/s. 133(6) of the Act, ld. AO concluded the assessment proceedings and assessed the total income at Rs.1,29,26,854/- after making following additions amounting to Rs.1,53,69,722/-

Sl. No.	Particulars	Addition made	Total addition
1.	Cash deposits during demonetization period (u/s. 69A of the I. T. Act, 1961)	Rs.16,04,250/-	Rs.16,04,250/-
2.	Administrative Expenses	Rs. 89,183/-	Rs. 89,183/-
3.	Operating Expenses	Rs.30,11,571/-	Rs.20,11,571/-

4.	Other sources of income	Rs. 4,24,322/-	Rs. 4,24,322/-
5.	Caution Deposit and Fees Refundable u/s. 68:		
	(i) Caution Deposit	Rs.73,19,939/-	Rs.1,02,40,396/-
	(ii) Fees Refundable worth	Rs.29,20,457/-	
		Total Additions	Rs.1,53,69,722/-

5. Aggrieved, assessee preferred appeal before the Ld. CIT(A) but partly succeeded. Now, revenue is in appeal before this Tribunal against the relief granted by Ld. CIT(A) and assessee has raised Cross Objection against the addition sustained by the Ld. CIT(A).

6. Ld. DR vehemently argued supporting the order of the Ld. CIT(A) for the addition confirmed and supported the order of the AO for the additions deleted by the Ld. CIT(A).

7. On the other hand, Ld. Counsel for the assessee referring to the written submission and the paper book containing various documents relating to audited financial statement, ledger account of various expenses as well as caution money and date wise detail of cash collected from students towards tuition fees, submitted that the source of cash deposit of Rs.16,04,250/- is duly supported by the details of cash receipts from various students placed at pages 76 to 149 and since the cash receipts were voluminous in nature, only the details were filed before Ld. AO but now the sample copy of such cash deposit are being filed . As regards the addition for interest income of Rs.4,24,322/- he submitted that the same has already been disclosed in the return of income and, therefore, the alleged addition tantamount to double addition.

8. Coming to the revenue's grounds of appeal Ld. Counsel for the assessee submitted that the total addition of Rs.1,32,52,056/- mainly

includes disallowance of expenses of Rs.31,00,754/- which is merely on *ad hoc* basis and the same has rightly been deleted by the Ld. CIT(A). As regards addition for caution deposit and refundable fees, he submitted that these deposits are taken from the students as part of the normal practice of running the educational institution and such amount is deposited towards college and hostel charges and the same is refunded back to the students when they leave the school/college. Reference was made to the ledger account showing the details of opening balance, caution deposit receipt during the year and refunded during the year and closing balance. Similarly, the addition for refundable fee of Rs.29,20,457/- has rightly been deleted by Ld. CIT(A) as the same relates to some of the students who at the time of admission in the college pay the tuition fee and other incidental charges but then do not join the college. Such sum is shown as current liabilities and are paid back to the students as per their claim. The said liability is neither bogus nor is covered under the category of cessation of liability.

8. We have heard rival contentions and perused the material available on record. The assessee is a registered society u/s. 12AA of the Act and is running educational institution in the field of engineering and technology and polytechnic and also runs a public school. Admittedly, the assessee did not file the return u/s. 139(1) of the Act but subsequently has filed the return in compliance to notice u/s. 148 of the Act. Books of account are regularly maintained and the financial statements are duly audited and the audit report is dated 29.07. 2017. Ld. AO has made additions relating to unexplained cash deposit, unaccounted interest income, disallowance of expenses and addition for caution deposit and refundable fee.

**Revenue's appeal in ITA No. 1176/Kol/2023**

9. Now, we take up the revenue appeal, wherein the only ground has been raised by the revenue is regarding the deletion of addition of Rs.1,32,52,056/- which comprises the following:

- (i) Administrative expenses disallowance : Rs.89,183/-
- (ii) Operative expenses disallowance : Rs.30,11,571/-
- (iii) Caution deposit u/s. 68 : Rs.73,19,939/-
- (iv) Refundable fee u/s. 68 : Rs.29,20,457/-

10. As regards the disallowance of expenses on *ad hoc* basis under the head administrative and operative expenses of Rs.89,183/- and Rs.30,11,571/- respectively, we find that the reopening case was carried out for examining the unexplained cash deposit. Complete details along with the books of account were furnished. Ld. AO has accepted the book results since books of account have not been rejected u/s. 145(3) of the Act. No specific discrepancy has been observed by the Ld. AO prior to making alleged *ad hoc* disallowance and, therefore, it can be safely inferred that Ld. AO had no evidence/ adverse observation prior to making *ad hoc* disallowance of 25%. This Tribunal in the case of *ACIT Vs. Shyam Sundar Agarwal, ITA No. 1182/Kol/2013 dated 27.05.2016* adjudicating the similar disallowance of *ad hoc* disallowance has held as under:

*“No enquiry whatsoever was made by the Assessing Officer with the concerned truck owners to find out the genuineness of the hire charges claimed to be paid by the assessee. Even no specific or material defects were pointed out by the Assessing Officer in the vouchers maintained by the assessee in support of his claim for truck hire charges except that the said vouchers were self-made vouchers and the truck hire charges were paid by the assessee in cash. Keeping in view the nature of the business of the assessee, there was nothing unusual in making the payment of truck hire charges in cash through self-made vouchers so as to doubt the genuineness of the expenditure incurred by the assessee on truck hire charges. Moreover, as rightly held by the ld. CIT(Appeals), the ad hoc disallowance of Rs.30,00,000/- made by the Assessing Officer was without any basis. In the case of *Ranjit Singh Prem Singh Ahuja -vs.- DCIT (ITA No. 961/PN/2014 dated 24.06.2015)*, a similar issue had come up for consideration before the Pune Bench of this*

*Tribunal and the disallowance of 2% of transport expenses made by the Assessing Officer by raising trivial objection was held to be not sustainable by the Tribunal on the ground that no material discrepancy whatsoever had been pointed out by the Assessing Officer in the books of account and other record maintained by the assessee in support of its claim for transport expenses. Keeping in view the decision of the Coordinate Bench of this Tribunal in the case of Ranjit Singh Prem Singh Ahuja (supra) and having regard to all the facts of the case, we are of the view that the ad hoc disallowance of Rs.30,00,000/- made by the Assessing Officer out of truck hire charges was not sustainable and the ld. CIT(Appeals) is fully justified in deleting the same. In that view of the matter, we uphold the impugned order of the Ld. CIT(Appeals) giving relief to the assessee on this issue and dismiss this appeal filed by the Revenue.”*

11. Similar view was also taken by the coordinate Bench Mumbai in the case of *TUV Pvt. Ltd. Vs. PCIT (2019) 110 taxmann.com 175* and by the Coordinate Bench Delhi in the case of *ITO Vs. Amit Verma (2012) 34 CCH 0154*. Respectfully following the decisions referred above and also taking into consideration the fact that Ld. AO had made the alleged disallowance without rejecting the book result and without making any reference to any discrepancy in the claim of alleged expenses, we are of the considered view that Ld. CIT(A) has rightly deleted the impugned disallowance of administrative and operating expenses. Thus, no infirmity is called for in the finding of the Ld. CIT(A) deleting the alleged *ad hoc* disallowance of expenses amounting to Rs.31,00,754/-.

12. Next, we take up the addition on account of caution money deposit u/s. 68 of the Act. We note that the assessee along with educational institution also runs hostel for boarding and lodging of the students. In the normal course of carrying out activities for educational institution caution money is taken from the students at the time of admission and refunded back when they leave the school/college. This is a routine practice by all the educational institutions. Assessee has maintained complete details of the caution money deposits along with the supporting bills which are placed at

paper book page 150 to 180. Ld. AO has simply made the addition for closing balance of caution deposit ignoring the fact that only Rs.26,88,000/- was received during the year. The summary of transactions of caution money deposits placed in the written submission at page 11 reads as under:

Particulars	Opening Balance	Caution Deposit received during the year	Caution Deposit refunded back during the year	Closing balance
Caution Deposit Hostel	36,79,714	19,98,000	93,500	55,81,214
Caution Deposit College	10,58,725	6,90,000	10,000	17,38,725
Total	47,35,439	26,88,000	1,03,500	73,19,939

13. From going through the above details as well as the caution deposit, sample copies of caution deposit receipt, we find that the same are forming part of the regular books of account and the details of deposit under this head from the students are duly recorded with the details of the students as well as the refund made on case to case basis. Under these given facts, we find that the Ld. AO grossly erred in invoking section 68 of the Act because the nature and source of deposit is duly explained. Thus, no interference is called for in the finding of the Ld. CIT(A) deleting the addition of Rs.73,19,939/- made for unexplained caution deposit.

14. The last issue raised in Revenue's appeal is in respect of addition for fees refundable of Rs.29,20,457/- made u/s. 68 of the Act. Similarly, to our discussion for caution deposit (*supra*), we find that the refundable fee is also explained on the strength of the details placed before us and the same indicates that those students who are interested to take the admission, deposits the tuition fees and other

incidental fees but later on for their own reasons if they do not join the college then such type of amount received from the students remains with the assessee society and is shown under the head refundable fee as the current liability. Details of each of the entries appearing in the refundable fee account are available. As and when the student claims them back, they are returned. Therefore, the alleged liability is not a bogus liability but an ascertained liability. It even cannot partake the character of cessation of liability because it is an active/live liability and not extinct and the same is payable to the student when they claim back. Therefore, neither the addition is called for u/s. 68 of the Act nor u/s. 41(1) of the Act. We thus, fail to find any infirmity in the finding of the Ld. CIT(A) deleting the addition of Rs.29,24,457/-. Therefore, the ground raised by the revenue is dismissed.

**Cross Objection No. 03/Kol/2024 raised by the assessee.**

15. Ground No. 1 of the Cross Objection is raised against the addition for cash deposit u/s. 69A of the Act at Rs.16,04,250/-. We have gone through the details of date wise cash collected from students placed at page 76 to 149 of the paper book and the same suggest that complete details for the period 9.11.2016 to 28.12.2016 are available during which cash of Rs.13,98,000/- was received. Cash in hand in books was also available as on 09.11.2016 and together with the opening balance and the cash received during the demonetization period the assessee had sufficient cash to explain the alleged deposit of Rs.16,04,250/-. We notice that the Ld. AO had invoked section 69A of the Act for the unexplained money but the said section is applicable if the assessee is found to be the owner of any money, bullion, jewellery or other articles which are not recorded in the books of account, if any, maintained by him and the assessee offers no explanation for the nature and source of acquisition of such

asset. But in the instant case, the entry of cash receipts and deposits are duly recorded in the books and the cash in hand available in the cash book sufficiently explains the source of cash deposit of Rs.16,04,250/-. We, thus, fail to find any merit in the finding of the lower authorities confirming the impugned addition u/s. 69A of the Act and, therefore, addition of Rs. 16.04,250/- is deleted. Ground no. 1 of the Cross Objection raised by the assessee is allowed.

16. Ground no. 2 raised in the Cross Objection is regarding addition for interest income of Rs.4,24,322/-. Our attention was drawn to the income tax return filed by the assessee where under the head other receipts cum misc. receipts shows a sum of Rs.4,24,322/- which is comprising of two figures i.e. Rs.3,94,423/- and Rs.29,899/- and already stands disclosed in ITR. In the audited P&L Account and more specifically under Schedule 10 of other receipts, a sum of Rs.33,71,424/- is shown as miscellaneous receipt and the same comprises of the following :-

Misc. Receipts	Amount in (Rs.)
Examination fee	18,44,000.00
Project Works	48,250.00
Received from Students	10,37,147.00
Exam Fees	11,620.00
Interest on FD	3,94,423.00
Interest WBSEDCL	29,899.00
Xerox Library	6,085.00

17. From the perusal of the above details, we find that the assessee has duly offered the alleged sum of Rs.4,24,322/- (interest on FD Rs.3,94,423/- and interest from WBSEDCL at Rs.29,899/-) in the books of account and the income tax return and, therefore, no addition of Rs.4,24,322/- is called for. Findings of the Ld. CIT(A) is

set aside and the addition of Rs.4,24,322/- is hereby deleted. Ground No. 2 raised by the assessee in the Cross Objection is allowed.

18. In the result, the appeal of the revenue is dismissed and the Cross Objection of the assessee is allowed.

Order is pronounced in the open court on 10<sup>th</sup> October, 2024.

Sd/-

(Rajpal Yadav)  
Vice President

Sd/-

(Dr. Manish Borad)  
Accountant Member

Dated : 10.10.2024

*J.D. Sr. PS.*

*Copy of the order forwarded to:*

1. **Appellant – DCIT, Circle-2, Durgapur,**
2. **Respondent – Kalyan Educational Society**
3. CIT(A), NFAC, Delhi
4. CIT-
5. Departmental Representative
6. Guard File.

*True copy*

By order

Assistant Registrar  
ITAT, Kolkata Benches, Kolkata