

IN THE INCOME TAX APPELLATE TRIBUNAL “K (SMC)” BENCH, MUMBAI

BEFORE SHRI. OM PRAKASH KANT, AM  
AND  
MS. KAVITHA RAJAGOPAL, JM

ITA No. 4242/Mum/2024  
(Assessment Year: 2018-19)

<b>M/s. Bhiwandi Nizampur Nagarpalika College</b> 1, Dhamankar Naka, Bhiwandi, Vidyashram, S. O. Thane – 421305.	Vs.	<b>Assessing Officer, Ward 1(1), Mohan Plaza, Katak Pada, Kalyan, Dist. Thane – 421301.</b>
<b>PAN/GIR No. AAAAB1757C</b>		
<b>(Assessee)</b>	:	<b>(Respondent)</b>

<b>Assessee by</b>	:	Shri. H. N. Motiwalla
<b>Respondent by</b>	:	Mr. Tushar Mohite, Sr. DR

<b>Date of Hearing</b>	:	17.10.2024
<b>Date of Pronouncement</b>	:	31.12.2024

**ORDER**

**Per Kavitha Rajagopal, J M:**

This appeal has been filed by the assessee, challenging the order of the learned Commissioner of Income Tax (Appeals), Delhi ('Id. CIT(A)' for short), National Faceless Appeal Centre ('NFAC' for short) passed u/s.250 of the Income Tax Act, 1961 ('the Act'), pertaining to the Assessment Year ('A.Y.' for short) 2018-19.

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

*“1. On the facts and in the circumstances of the case, the learned Commissioner of Income tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, erred in dismissing the appeal only on the ground that the appellant has not made payment equal to advance tax which was due on its income without appreciating the fact that the appellant is a college affiliated to university of Mumbai under the management of Padmashri Annasahib Jadhav Bhartiya Samaj Unnati Mandal (Trust) Bhiwandi assessed under PAN AAATP2888P.*

*2. On the facts and in the circumstances of the case the said learned Commissioner of Income tax has also erred in not considering the ground that the Assessing Officer, Assessment unit, Income tax Department has erred in estimating @ 8% on college fee receipt of Rs. 1,63,75,639/- i.e. Rs. 13,10,051/- as business receipt without appreciating*

*that Padmashri Annasaheb Jadhav Bhartiya Samaj Unnati Mandal is a Charitable Trust under which the appellant has established.*

*3. On the facts and in the circumstances of the case the said learned Commissioner of Income tax has also erred in not following the order of assessment year 2016/17 and assessment year 2019/20, in appellant's own case, particularly when, there is no change in the facts of the case and therefore the Principle of Rules of Consistency should have been followed.”*

3. Brief facts of the case are that the assessee is an ‘Association of Person’ (AOP) and has not filed its return of income for the year under consideration. The assessee’s case was reopened vide notice u/s. 148 of the Act dated 31.03.2022, for the reason that the information received stated that the assessee has huge cash deposits amounting to Rs. 75,22,949/- in the current account no. 25120110000174 in Bank of India and Rs. 88,52,690/- in the current account maintained with Andhra Bank aggregating to Rs. 1,63,75,639/-. The learned Assessing Officer (‘ld. AO for short) sought for details from the assessee during the assessment proceeding, where the assessee has been non-compliant throughout the assessment proceeding. The ld. AO then passed the assessment order u/s. 147 r.w. 144 r.w.s. 144B of the Act dated 15.03.2023, being the best judgment assessment, thereby determining total income at Rs. 13,10,051/- towards the net profit @ 8% on the total deposits by treating the same as business receipts.
4. Aggrieved the assessee was in appeal before the first appellate authority, who vide order dated 29.06.2024, dismissed the appeal filed by the assessee on the ground that the assessee has not filed its return of income nor has it filed its advance tax. Further, it was held that the assessee has not requested for exemption from operation of Section 249(4)(b) of the Act, thereby failed to admit the assessee’s appeal.
5. Further aggrieved the assessee is in appeal before us, challenging the impugned order of the ld. CIT(A).

6. We have heard the rival submissions and perused the materials available on record. It is observed that the assessee has cash deposits in its current account maintained with bank of India and Andhra Bank and since the assessee has not filed its return of income for the year under consideration, the assessee's case was reopened vide notice u/s. 148 of the Act, dated 31.03.2022, where the ld. AO has sought for details of the source of cash deposits made in the assessee's bank account along with supporting documentary evidences. The ld. AO has also sought for details of the cash withdrawals made by the assessee during the year under consideration. The assessee has not made compliance during the assessment proceedings, where the ld. AO made an addition of 8% on the net profit of the total deposits by treating the same as business income of the assessee.
7. The ld. CIT(A) on the other hand has failed to admit the assessee's appeal for the reason that as per Section 249(4)(b) of the Act, since the assessee has not filed its return of income, the assessee has to pay an amount equivalent to the amount of advance tax for admission of the appeal. The assessee in form no. 35 has specified that the same was 'Not Applicable' to the assessee. The ld. CIT(A) further stated that the assessee has failed to establish as to why it was not applicable to pay advance tax and also to prove that it has already made payment of the amount equivalent to the advance tax which was due on its income. Further, the ld. CIT(A) has also held that the assessee has not requested for exemption from Section 249(4)(b) of the Act.
8. The learned Authorised Representative ('ld. AR' for short) for the assessee contended that the revenue has accepted the fact that the assessee was not entitled to file return of income in A.Y. 2016-17 and 2019-20 and the same was accepted by the ld. AO for that year. The ld. AR brought our attention to the assessment order for the A.Y. 2016-17

and 2019-20, vide order dated 28.02.2024 and prayed that even for this year, there has to be no addition made in the hands of the assessee, as the rule of consistency would be applicable in assessee's case on no change in facts and circumstances.

9. The learned Departmental Representative ('Id. DR' for short) for the revenue on the other hand controverted the said fact and stated that the assessee has being non-compliant before the Id. AO and also the facts of the assessee's case on the merits has not been examined by the first appellate authority. The Id. DR further stated that in the absence of documentary evidences, the addition made in the hands of the assessee ought to be upheld. The Id. DR relied on the order of the lower authorities.
10. On perusal of the rival contentions and materials available on merit, it is observed that the assessee college is affiliated to the University of Mumbai under management of Padmashri Annasaheb Jadhav Bhartiya Samaj Unnati Mandal, Biwandi. It is observed that the said trust has various schools and colleges where the statement of accounts of all branches and trusts are consolidated and the return has been filed regularly in the name of the parent trust viz. Padmashri Annasaheb Jadhav Bhartiya Samaj Unnati Mandal. Further, the assessee contends that the cash deposits are made in assessee's bank account out of the college fees collected from students during the year under consideration. The assessee for A.Y. 2016-17 and 2019-20 is said to have filed the ITR, audited books of accounts of Padmashri Annasaheb Jadhav Bhartiya Samaj Unnati Mandal having PAN No. AAATP2888F and also the certificate from auditor stating that the bank account of the assessee college are incorporated in the statement of accounts of the parent trust.

11. The Id. AO for A.Y. 2016-17 and 2019-20 has accepted the assessee's contentions and had not made any addition for these years. For the impugned year, since the assessee has not made any compliances during the assessment proceedings, we are not aware if these documents have been filed by the assessee before the Id. AO. Though, it has been stated that the documents of the trust has been filed before the Id. AO, no such finding has been recorded in the assessment order. The only issue that has to be decided here is whether the assessee's income by way of college fees has already been declared as income of the parent trust and whether the same has been declared in the return of income filed by the parent trust. There is no doubt that the Id. AO in earlier year and subsequent year has accepted the assessee's contention that it was not entitled to file its return of income for the reason that the same was filed by the parent trust consolidating the income of all schools and colleges running under the parent trust. We therefore are of the considered view that this matter is to be remanded back to the file of the Id. AO for perusal of the documentary evidences filed in support of the assessee's contentions. The Id. AO is directed to verify the details of the trust alongside verify whether the cash deposits made in the assessee's account has already been declared in the return of income filed by the parent trust. The Id. AO is directed to decide the issue on the merits of the case based on the submission proposed by the assessee.

12. In the result, the appeal filed by the assessee is allowed for statistical purposes.

*Order pronounced in the open court on 31.12.2024*

Sd/-

**(OM PRAKASH KANT)  
ACCOUNTANT MEMBER**

Mumbai; Dated: 31.12.2024

Karishma J. Pawar (Stenographer)

Sd/-

**(KAVITHA RAJAGOPAL)  
JUDICIAL MEMBER**

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent
3. CIT- concerned
4. DR, ITAT, Mumbai
5. Guard File

BY ORDER,

(Dy./Asstt.Registrar)  
ITAT, Mumbai