

**IN THE INCOME TAX APPELLATE TRIBUNAL
“A”BENCH: BANGALORE**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER
AND
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.2186/Bang/2024
Assessment Year: 2018-19

Bethel Christian Fellowship Association Virupapur Bus Stand Road Gangavathi Dist. Koppal Karnataka 583 227 PAN NO : AACAB2143G APPELLANT	Vs.	ITO Ward-1 Koppal RESPONDENT
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Appellant by	:	Sri Veeranna M Murgod, A.R.
Respondent by	:	Sri Netrapal M.S., D.R.

Date of Hearing	:	19.12.2024
Date of Pronouncement	:	14.03.2025

O R D E R

PER KESHAV DUBEY, JUDICIAL MEMBER:

This appeal at the instance of assessee is directed against the order of Id. CIT(A)/NFAC dated 16.08.2024 vide DIN & Order No. ITBA/NFAC/S/250/2024-25/1067665957(1) passed u/s 250 of the Income Tax Act, 1961 (in short “The Act”) for the assessment year 2018-19. The assessee has raised the following grounds of appeal:

- 1. The impugned order of the Appellate Commissioner of Income Tax is liable to set aside in so far as the same is incorrect, irregular, improper, unlawful and oppose to the law and facts of the case*
- 2. Because, the learned Commissioner of Income Tax (Appeals) has failed to consider the written submission made against the notice issued u/s 250 of the Income Tax Act, 1961 and have dismissed the appeal without providing explanation for non-consideration of the written submission.*

3. *Because, the learned Commissioner of Income Tax (Appeals) has overlooked the facts of the case and had confirmed the additions of Rs. 76,63,259/- as unexplained money u/s 69A of the Income Tax Act, 1961 and Rs. 1,12,19,527/- as aggregate of income referred to in sections 11 and 12 of the Income Tax Act, 1961 declared in the Return of Income filed against notice issued u/s 148 of the Income Tax Act, 1961. The learned Commissioner of Income Tax (Appeals) failed to appreciate the fact the amount has been received by the appellant as part of the fees, scholarships etc., in the regular course of conducting the society activities. The source of the same was however explained before the lower authorities against the notice issued u/s 148A of the Income Tax Act, 1961 by the Learned Income Tax Officer, Ward-I, Koppal, which has not been discussed in the Assessment Order by the learned lower authorities.*
4. *Because, the learned lower authorities have erred in bringing to tax cash receipts under section 69A of the Income Tax Act, 1961, and charging it under section 115BBE at 60 percent tax with 25 percent surcharge which is bad in law.*
5. *Because, the learned Commissioner of Income Tax (Appeals) erred in confirming the interest levied by the lower authorities u/s 234A and 234B of the Income Tax Act, 1961 for default in furnishing return of income and default in payment of advance taxes respectively which is against law and facts of the case.*
6. *The appellant craves leave to add / alter any of the grounds of appeal before or at the time of hearing.*

2. At the outset as submitted by the AR of the assessee, there is a delay of 26 days in filing the appeal before this Tribunal. The Id. Counsel for the assessee has also drawn our attention on the application for condonation of delay filed along with an affidavit dated 11.11.2024 sworn before the notary public, Koppal district stating the reason that the distance from Gangavathi to Bengaluru is around 375 kms. The organization has faced this issue for the first time and the management delayed to decide the matter of filing the appeal in the committee meeting. Due to the above mentioned causes, there is a short delay of 26 days in submitting the appeal, which is beyond the control of the assessee and there was no intention on the part of assessee to file the appeal belatedly.

3. Ld. D.R. on the other hand opposed for the condonation of delay but could not controvert the submissions made therein.

4. We have heard the rival submissions and perused the material available on record. In our opinion, when substantial justice and technical consideration are pitted against each other the cause of substantial justice deserve to be preferred, for the other side cannot claim to have vested right for injustice being done because of non-deliberate delay. Moreover, no counter affidavit was filed by the revenue denying the claim made by the assessee. It is not the case of the revenue that the belated appeal was filed deliberately. Therefore, we have to prefer substantial justice rather than technicality in deciding the issue. Therefore, in our opinion, this is a fit case to condone the short delay of 26 days in filing the appeal before this Tribunal. Accordingly, the delay is condoned and the appeal is admitted for adjudication.

5. Brief facts of the case are that the assessee Bethel Christian Fellowship Association is a society registered under the Karnataka Societies Registration Act, 1960 having registration No. SOR/51/1978-79. The assessee is running the educational institutions since 1980 and has obtained requisite permissions from the Department of Education, Government of Karnataka. Accordingly, the assessee is carrying on the activity of imparting education to the needy for the A.Y. 2018-19. The assessee is operating bank accounts and is using the same to deposit the fees collected from the students, funds received from the Government as part educating students under the provisions of Right to Education Act, Scholarships etc. The assessee being an educational institution was under a bonafide belief that since they are providing education and are applying all the receipts towards attaining the objectives of

the society and not accumulating any surplus and as such is not liable to any Income tax under the provisions of the Act. The assessee is maintaining regular books of accounts and is getting itself audited under the provisions of the Karnataka Societies Registration Act, 1960. The case of the assessee was reopened for scrutiny for the reason that the assessee has made substantial cash deposits to the tune of Rs.76,63,259/- in Syndicate Bank, Gangavathi, account No. 18022010040944 during the financial year 2017-18 relevant to the A.Y. 2018-19 but the assessee did not file return of income for A.Y. 2018-19.

5.1 As claimed by the assessee, in response to notice u/s. 148 of the Act dated 30.03.2022, the assessee filed its Return of income in ITR-7 on 12.5.2022 declaring Rs.1,12,19,527/- as aggregate of income, claimed Rs.1,13,42,326/- being amount applied and balance Rs.1,22,800/- being the deficit for the year, whereas on going through the assessment Order, the AO had categorically observed that the assessee did not file any return in response to notice u/s 148 of the Act. Further, the AO observed that the assessee society neither furnished any details as called for u/s 142(1) of the Act nor submitted any reply to the show cause Notices with regard to nature & source of cash deposits despite allowing ample opportunities and accordingly treated the entire cash deposits Rs.76,63,259/- in Syndicate Bank during the FY 2017-18 as unexplained money u/s. 69A of the Act from undisclosed sources and added to the total income of the assessee. The AO passed the assessment order dated 28/02/2023 u/s 147 r.w.s 144 of the Act on a **Total assessed income of Rs.76,63,260/-**.

5.2 Surprisingly, while preparing the computation sheet vide DIN & Document No. ITBA/AST/S/187/2022-23/1050190397(1) with regard to assessment order dated 28/02/2023 passed u/s 147

r.w.s 144 of the Act, the AO in Sl. No.3 i.e. under head “ Aggregate of Income referred to in sections 11 and 12 derived during the previous year excluding voluntary contribution included in 1 and 2 above (9 of Schedule AI)” had mentioned the **returned gross receipts** amounting to Rs.1,12,19,527 and also added Rs.76,63,259/- under “Income from other sources” and computed the Tax & Interest on a **total Income of Rs. 1,88,82,786/-** whereas the assessed Income is only Rs. 76,63,259/-

5.3 Being aggrieved by the said assessment, the assessee went in appeal before the ld. CIT(A)/NFAC who also dismissed the appeal of the assessee on the ground that after filing of appeal against the assessment order, the assessee is neither serious in pursuing the appeal nor care for the notices being issued and served on them. In view of above the ld. CIT(A)/NFAC held that the appeal is liable to be dismissed for non-compliance and non-pursuing of appeal.

5.4 Aggrieved by the order of the ld. CIT(A)/NFAC, the assessee is in appeal before us. The assessee has filed a paper book comprising 24 pages.

6. Before us, the ld. A.R. of the assessee vehemently submitted that the authorities below have not provided the reasonable opportunity of being heard which is a clear violation of the principles of natural justice. Further, ld. A.R. of the assessee submitted that the assessee filed its return of income in response to notice u/s 148 of the Act and therefore, the addition made u/s 69A of the Act amounting to Rs.76,63,259/- without issuing the notice u/s 143(2) of the Act is illegal and bad in law. Further, ld. A.R. of the assessee submitted that the ld. CIT(A) without considering the written submissions as well as various documents/records uploaded on 29/07/2024 (placed at pages 13-16 & 20-21 of the PB)

treated the cash deposited as unexplained money u/s 69A of the Act.

7. The Id. D.R. on the other hand, supported the order of the authorities below.

8. We have heard the rival submissions and perused the materials available on record. During the course of assessment proceedings, we find that the assessee could not submit/furnish any information/documents/records in response to any of the notices/show cause notices and accordingly AO treated the cash deposits made of Rs.76,63,259/- in Syndicate Bank as unexplained money u/s 69A of the Act from undisclosed sources and added to the income of the assessee. We are of the opinion that in response to notice u/s. 148 of the Act dated 30.03.2022, the assessee had filed its Return of income in ITR-7 on 12.5.2022 declaring Rs.1,12,19,527/- as gross receipts/aggregate of income. The copy of the ITR-V is also part of the paper book placed in page -19. Further the AO in his computation sheet had also considered the Returned gross receipts as Income by disallowing the entire applications/expenses of Rs.1,13,42,326/-as claimed in the return. This clearly demonstrate that the assessee trust had filed its return of Income in response to notice U/s 148 of the Act & the AO had also considered the return filed by the assessee while preparing the computation sheet in order to compute tax & interest liability. The AO on the other hand in his assessment order specifically on various instances observed that the assessee had not filed any return in response to notice u/s 148 of the Act. All these facts were not examined by the Id. CIT(A)/NFAC. Further, If the assessee society had filed the return even after a period of 30 days, then also the Id. CIT(A)/NFAC has to verify whether statutory notice u/s 143(2) of the Act was issued by the AO to assume jurisdiction. As

per the provision contained in section 250(6) of the Act, the order of the Id. CIT(A)/NFAC disposing of the appeal shall be in writing and shall state the points for determination, the decision thereon and the reason for the decision.

8.1 Further, on going through the appellate order, we also find that although the Id. CIT(A)/NFAC clearly observed the fact that the assessee is a educational institution and engaged in providing education to the needy students and was eligible for deduction u/s 10(23C) of the Act, but as the assessee society had also not filed any documentary evidence or cash book/receipt book from whom the cash has been collected during the financial year 2017-18 relevant to assessment year 2018-19 to prove that the cash deposited in the bank account are nothing but collection from students and accordingly held that assessee is not serious in pursuing the appeal and did not care for the notices being issued and served on them and it appears that the non-adherence to notices is deliberate. In view of the above, Id. CIT(A) held that the appeal is liable to be dismissed for non-compliance and non-pursuing of appeal. The assessee on the other hand sturdily claimed that the Id. CIT(A)/ NFAC had not considered the written submissions as well as various documents/records uploaded on 29/07/2024 (placed at pages 13-16 & 20-21 of the PB) while passing the appellate order. Being so, we are of the opinion that in the interest of justice and fair play, we remit the entire issue in dispute to the file of Id.CIT(A)/NFAC with the above observations for fresh consideration in accordance with the law. The assessee is also directed to cooperate with the appellate proceedings and to file the necessary documents/records in support of its claim and as required by Id. CIT(A)/NFAC for proper adjudication of the case. Needless to say, a reasonable opportunity of being heard must be

granted to the assessee. Further, we also direct that in case of further default, the assessee shall not be entitled to any leniency.

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

Order pronounced in the open court on 14th Mar, 2025

Sd/-
(Waseem Ahmed)
Accountant Member

Sd/-
(Keshav Dubey)
Judicial Member

Bangalore,
Dated 14th Mar, 2025.
VG/SPS

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The DR, ITAT, Bangalore.
5. Guard file

By order

Asst. Registrar,
ITAT, Bangalore.