

**IN THE INCOME TAX APPELLATE TRIBUNAL  
COCHIN BENCH: COCHIN**

**BEFORE SHRI INTURI RAMA RAO, ACCOUNTANT MEMBER  
AND  
SHRI KESHAV DUBEY, JUDICIAL MEMBER**

ITA No.324/Coch/2024
Assessment Year: 2016-17

Navdeep Educational Trust 38/109, Navdeep Mundakkal East 691001 Kollam Kerala  <b>PAN NO : AABTN0952H</b>	<b>Vs.</b>	ACIT Circle Kollam
<b>APPELLANT</b>		<b>RESPONDENT</b>

<b>Appellant by</b>	:	Shri Surendranath Rao, A.R.
<b>Respondent by</b>	:	Smt. Leena Lal, Sr. D.R.

<b>Date of Hearing</b>	:	29.01.2025
<b>Date of Pronouncement</b>	:	24.04.2025

**O R D E R**

**PER KESHAV DUBEY, JUDICIAL MEMBER:**

This appeal at the instance of the assessee is directed against the order of the Id.CIT(A)/ NFAC dated 26.02.2024 vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1061508122(1) for the AY 2016-17 passed u/s 250 of the Income Tax Act, 1961 (in short "The Act").

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

1. The order of the Commissioner (Appeals) is against Law and Facts.
2. The Commissioner (Appeals) is not justified in upholding the disallowance of travel expenses of Rs.2,19,604/- incurred by the trustee, for his multiple trips to Hyderabad, to attend training sessions conducted by NIIT. These visits were very beneficial to the success and quality of the education provided by the school. The Commissioner (Appeals) failed to appreciate that the travel was undertaken for the purpose of the business of the trust and was not his personal expenses. The Commissioner (Appeals) held that the appellant failed to produce the evidence of expenditure though the letter evidencing the visit of trustee to the conference was furnished.
3. The amount of Rs. 3,30,606/- represented travel expenses incurred by the managing trustee for travel on behalf of the trust, to the United Kingdom for meeting educational

consultants for getting accreditation to the institution for overseas collaboration for the academic excellence of the appellants' students. The Commissioner (Appeals) has not disputed that documents were available to prove the purpose of the visit. But the disallowance was confirmed primarily because the outcome or productivity of the visit was not allegedly proved. The Commissioner (Appeals) has erred in confirming the disallowance due to not proving the outcome of the visit. Such a requirement is beyond the scope of s.37(1) of the Income Tax Act.

4. As regards the confirmation of the protective addition of Rs. 1,54,45,000/- being alleged unexplained credits in the account of the trustee under section 68, it is submitted that the AO had made the addition on protective basis and the substantive addition was to be made in the hands of the trustee- Mr. Cletus Austin. Reassessment proceedings were accordingly commenced against him and ultimately the reassessment was completed on 18.06.2021, without making any substantive addition in his hands by accepting the documents and explanations about the source of credits in his current account in the trust. Once no substantive addition was made in the hands of the trustee after reassessment proceedings u/s 147 against him, the protective addition in the hands of the appellant should have been automatically dropped. The Commissioner (Appeals) has erred in confirming the protective addition even after a categorical finding in the case of the trustee of the appellant that the source of funds for the credits in his current account in the appellant's books have been properly explained. The Commissioner (Appeals) is not justified in ignoring the findings in the re-assessment order of the trustee and confirming the protective addition.
5. Without prejudice to the above, it is submitted that even if credits in the account of the trustee were not explained by him, the addition if at all to be made, had to be made in the individual hands of the trustee and not in the hands of the trust.

**3.** Brief facts of the case are that the assessee being a private trust, engaged in running an educational institution with CBSE affiliation under the name & style of 'Navadeep Public School'. The assessee trust filed its return of income for the AY 2016-17 on 16.10.2016 declaring total income of 33,74,920/-. Thereafter the case was selected for scrutiny under CASS to verify "Large cash deposit in the accounts of trustee" and accordingly notices u/s 143(2) & notice u/s 142(1) of the act were served on the assessee. The assessee furnished the details as called for. Finally, after verification of details, the assessment was completed u/s 143(3) of

the Act vide order dated 29.12.2018, on a total assessed income of Rs.1,95,50,340/-.

**4.** Aggrieved by the assessment completed u/s 143(3) of the Act by the AO, the assessee preferred an appeal before the Id. CIT(A)/NFAC.

**5.** The Id. CIT(A)/NFAC vide order dated 26/02/2024 partly allowed the appeal. However, the Id. CIT(A)/NFAC has not granted any relief in respect of the following additions:

Particulars	Amount
Travelling expenses of Managing trustee and chairman to Hyderabad for attending conference disallowed	2,19,604
Travelling expenses of Managing trustee to UK	3,33,606
Protective addition made u/s 68 for alleged unexplained cash credit in the account of the Managing trustee- Cletus Austin	1,54,45,000/-

**6.** Aggrieved again by the order of the Id. CIT(A)/NFAC, the assessee is in appeal before us. The assessee filed a paper book comprising 10 pages containing therein comparative chart, assessing officer's letter dated 19.11.2019, assessee's reply dated 2.12.2019 as well as ITAT order in ITA No.243/Bang/2024. Further, assessee has filed another paper book comprising 59 pages containing therein the argument note and various case laws relied upon by the assessee.

**7.** Before us, Id. A.R. of the assessee submitted that the AO has made protective addition u/s 68 of the Act for the alleged unexplained cash credit in the account of managing trustee Mr.

Cletus Austin vide order dated 29.12.2018. However, the reassessment proceedings were subsequently commenced against trustee Mr. Cletus Austin on 29.1.2020. Therefore, at the time of completion of the assessment in the hands of assessee in which the protective addition was made there was no substantive assessment/addition made in the hands of any other person. Further, ld. A.R. of the assessee submitted that there can be no protective addition without there being substantive addition in any other's hand by relying the judgement of Apex court in the case of Lalji Haridas Vs. Income Tax Officer (1961) 43 ITR 387 (SC). Further, without prejudice to the above, ld. A.R. submitted that as the substantive addition which enables the AO to make a protective addition was dropped by holding that the sources from which funds were introduced by him by credit to his current account in the books of the assessee were genuine and there is no income escapement, there cannot be any protective addition in the hands of the assessee trust as there is no substantive addition in the hands of Mr. Cletus Austin on the date of protective addition. Further, with regard to disallowance of expenses, the ld. A.R. of the assessee submitted that the expenses are genuine and bonafide and it is allowable unless it is proved that the same is not connected with business at all.

**8.** Ld. D.R. on the other hand supported the order of authorities below.

**9.** We have heard the rival submissions and perused the materials available on record. On going through the order of the assessment passed by the AO, we find that cash was credited on various dates as received from Mr. Cletus Austin, Chairman of the Trust and also the repayments were also made by the Trust. The AO added Rs.1,54,45,000/- (Rs.1,84,45,000 (-) Rs.30,00,000/-) as unexplained cash credit u/s 68 of the Act in the hands of trust

**protectively.** The assessment order was passed by the AO on 29.12.2018. Further, on going through the order of assessment, passed in the case of Mr. Cletus Austin, Managing Trustee of the Trust placed at page 5 - 10 of the paper book, the AO has observed that the assessee has elaborately explained the facts and figures and observed that the ledger account as well as income and expenditure account are produced in his case, in the case of his spouse and Navadeep Public School and accordingly, the AO accepted the returned income as explained in the letters dated 14.10.2020 and 23.3.2021. Therefore, we are of the considered opinion that at the time of completion of the assessment in the hands of assessee trust, in which the protective additions were made, there was no substantive assessment/addition made in the hands of Mr. Cletus Austin, Managing Trustee as on that date. Protective addition was made in the assessment order of the assessee dated 29.12.2018 whereas reassessment proceedings in the hands of the Managing Trustee Mr. Cletus Austin commenced only on 29.1.2020 and thus, on the date of protective addition there was no substantive addition. We are of the considered opinion that such a course of action in making a protective addition first and substantive assessment later is not sustainable in the light of apex court's judgement in the case of Lalji Haridas vs. ITO (supra) and Suresh K. Jajoo Vs. ACIT (2010) 39 SOT 514 (Mum.) supporting assessee's case that a protective addition comes to play then there arises a doubt in the mind of the assessing officer regarding taxability of an income in case of more than one assessee, he could indeed make a substantive addition followed by the protective one and not vice versa. Faced with situation, we deem it fit to delete the impugned protective addition of Rs.1,54,45,000/- u/s 68 of the Act in very terms. Accordingly, this ground of appeal is allowed.

**9.1** Now with regard to the disallowances made with respect to travelling expenses of the Managing Trustee to Hyderabad

amounting to Rs.2,19,604/- and disallowances of travelling expenses of the Managing Trustee to U.K. amounting to Rs.3,33,606/-, the ld. CIT(A)/NFAC has confirmed the disallowances on the ground that assessee failed to produce evidence of expenditure such as air tickets, vouchers etc. and also fails to furnish the outcome and productivity of the business and how it was related to the work of the trust. Being so, in the interest of justice and fair play and as requested by the ld. A.R. of the assessee, we remit these two issues to the file of ld. CIT(A)/NFAC to decide afresh in accordance with law after affording reasonable opportunity of being heard to the assessee. The assessee is also directed to produce the above evidence of expenditure and justify the outcome and productivity of the business and demonstrate how it is related to the work of the trust. It is ordered accordingly.

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

Order pronounced in the open court on 24<sup>th</sup> Apr, 2025

**Sd/-**  
**(Inturi Rama Rao)**  
**Accountant Member**

**Sd/-**  
**(Keshav Dubey)**  
**Judicial Member**

Bangalore,  
Dated 24<sup>th</sup> Apr, 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, Cochin.**