



**IN THE INCOME TAX APPELLATE TRIBUNAL  
ALLAHABAD BENCH "DB", ALLAHABAD**

**BEFORE SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER AND  
SHRI SUBHASH MALGURIA, JUDICIAL MEMBER**

ITA Nos.7 & 8/ALLD/2025  
Assessment Year: 2010-11

<b>Gyan Vikas Samiti</b> C/o Ram Das Chaudhary Balika Inter College, Hasanpur, Kedar Nagar Tanda, Ambedkar nagar-224230.	v.	<b>The Income Tax Officer</b> Ambedkarnagar, Income Tax Office, Ambedkarnagar-224122.
<b>PAN:AAEAG3996L</b>		
(Appellant)		(Respondent)

Appellant by:	(Application)
Respondent by:	Shri A. K. Singh, Sr. CIT(DR)

**ORDER**

**PER ANADEE NATH MISSHRA, A.M.:**

A) These are appeals preferred by the assessee against the action of the Ld. Commissioner of Income Tax (Appeals)/National Faceless Appeal Centre (NFAC), Delhi dated 13.03.2024, for the assessment year 2010-11. Since the identical issues and grounds have been raised for adjudication, all these appeals were heard together and are being disposed of by way of common order for the sake of convenience and brevity. In ITA. No.7/Alld/2025, pertaining to A.Y. 2010-11, the assessee has raised the following grounds of appeal: -

*"1 Because the order of Ld. CIT (A) is contrary - - to law, facts and circumstances of the case. The order of the Ld. CIT (A) is liable to be set aside.*

*2. Because the order of Ld. CIT (A) has erred in dismissing the appeal, by not issuing any show cause notice, on the ground of not paying due advance tax by the appellant whereas the admitted tax liability is 'NIL' and the appellant was not liable to pay any advance tax in view of its exempt income under the provisions of section 10(23C) (iiiad) being involved in educational activities. The order of the Ld. CIT (A) is on misconceived facts and against the principles of natural justice therefore liable to be set aside,*

*3. The appellant reserves its rights to amend, delete or modify the present Grounds of Appeal in: future in accordance with the law."*

(A.1) The grounds of appeal of the assessee for ITA. No.8/ALLD/2025 are as under: -

*“1. Because the order of Ld. CIT (A) is contrary to law, facts and circumstances of the case. The order of the Ld. CIT (A) is liable to be set-aside.*

*2. Because the order of Ld. CIT (A) has erred in disallowing the appeal, by not issuing any show cause notice, on the ground of not paying due advance tax by the appellant whereas the admitted tax liability is ‘NIL’ and the appellant was not liable to pay any advance tax in view of its exempt income under the provisions of section 10(23C) (iiiad) being involved in educational activities. The order of the Ld. CIT (A) is on misconceived facts and against the principles of natural justice therefore liable to be set aside.*

*3. Because the Ld. CIT (A) has erred in dismissing the appeal imposing penalty of Rs. 17,02,000/- without going through the facts of the case and looking into the educational activities of the appellant society. The order of the penalty is liable to be set-aside.*

*4The appellant reserves its rights to amend, delete or modify the present Grounds of appeal in future in accordance with the law.”*

(A.2) These appeals have been filed by the assessee, beyond time limit prescribed under section 253(3) of IT Act. The assessee has submitted applications for condonation of delay, supported by affidavit. The Ld. Sr. Departmental Representative for Revenue did not express any objection to the delay being condoned. Being satisfied with the reasons stated in application seeking condonation of delay in filing of these appeals; we condone the delay in filing of these appeals and admit the appeals for decision on merits.

(B) We first take up appeal vide ITA. No.7/ALLD/2025. In this case, the Ld. CIT(A) dismissed the assessee's appeal in limine on the ground that the assessee did not fulfill the requirement u/s 249(4) of the Income Tax Act, 1961 (“Act”, for short). The relevant portion of the order of the Ld. CIT(A) is reproduced as under: -

**4. In ground of appeal No. 4,** it is submitted that without prejudice to the grounds of appeal nos. 1 to 3, it is averred that the learned Assessing Officer erred in law and on facts in failing to treat the educational institution as exempt from tax and imposing tax ( including interest ) on total income arbitrarily computed at Rs.58,27,000 on the basis of presumptions, surmises and conjectures .

4.1 It is most humbly submitted that Rs.58,27,000/- is the value of land and building as per circle rate whereas the consideration mentioned in the registered deed is Rs.10,00,000/- and a kind perusal thereof would reveal that the purchaser is Ram Das Chaudhary Balika Inter College through treasurer Ram Shanker .The impugned assessment order also the aforesaid educational institution is assessed c/o Ram Shanker Verma who happens to be the treasurer of the institution.

The land and building, the sale of which has been registered on 23-03-2010 was gifted by Smt. Gyanmati, who is the sitting president of the society, running the educational institution styled Ram Das Chaudhary Balika Inter College .

As a matter of fact no money was received by the Smt. Gyanmati and Ram Shankar Verma, treasurer of the aforesaid society is son of Smt. Gyanmati. The Sale Deed instead of gift deed has been executed by Smt. Gyanmati in favour of Ram Das Chaudhary Balika Inter College, the aforesaid educational institution in accordance with the legal advice for preempting any dispute.

In this regard, it is most humbly submitted that no cash has been paid before the registering authority and the sale consideration amounting to Rs. ten lakh is noted to have been received earlier by the transferor Smt. Gyanmati.

It is most respectfully submitted that the assessee is an educational institution whose income is exempt under section 10(23C)(iiiad) of the I.T. Act, 1961.

In view of the fact mentioned above the addition of Rs.58,27,000/- may very kindly be deleted.

Reliance in this regard is placed on the decisions noted hereunder :-

- i) CIT vs. Om Sarla Babu Educational Trust [ Income Tax Appeal No. 100 of 2014 ] ( Allahabad High Court )  
A copy of the decision is placed on pages 43 to 45 of the Paper Book ]
- ii) ITO vs. M/s Sanskritik Vikas & Samaj Kalyan Sansthan [ ITA No. 419/LUC/2007 ( ITAT ,Lucknow Bench )  
A copy of the decision is placed on pages 46 to 49 of the Paper Book ]

**PRAYER**

In view of the facts and the ratio of the decisions mentioned above it is most respectfully prayed that the appeal may, very kindly, be allowed.

For such an act of judicial kindness the appellant shall ever remain grateful.

Yours faithfully,

Dated : 12-05-2021

( Ram Shankar Verma )  
Treasurer of the Society

**6. Decision:**

6.1 The appellant vide his appeal has assailed the AO for reopening its case for A.Y. 2010-11 u/s. 148 and computing its income at Rs. 58,27,000/-. On perusal of the Form 35 it is seen that the appellant in column 8 regarding the details of ITR filed has mentioned "Not Applicable". The appellant in column 9 which is regarding the advance tax paid in a case where no return has been filed the appellant has again mentioned "Not Applicable". On perusal of the assessment order it is seen that the appellant has not filed his return of income for the year which is under appeal.

6.2 The appeal to CIT (A) is filed as per the provisions of section 249 of the Income Tax Act. The conditions for admitting an appeal are specified in section 249 (4). The provisions are as under:

*Section 249*

*(4) No appeal under this Chapter shall be admitted unless at the time of filing of the appeal,—*

- (a) where a return has been filed by the assessee, the assessee has paid the tax due on the income returned by him; or*
- (b) where no return has been filed by the assessee, the assessee has paid an amount equal to the amount of advance tax which was payable by him:*

*Provided that, [in a case falling under clause (b) and] on an application made by the appellant in this behalf, the [Joint Commissioner (Appeals) or the] Commissioner (Appeals) may, for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of [that clause].]*

6.3 Therefore as per the proviso to section 249 (4) (b) the appellant was required to make an application under the same to exempt him from the operation of the said provision. It is only in a case where the appellant has filed an application in this regard, the CIT(A) may for any good and sufficient reason to be recorded in writing, exempt him from the operation of the provisions of clause (b) of sub-section(4) of section 249. As the appellant has not filed any application in this regard, there is no opportunity for the CIT (A) to examine the reason for exemption from the operation of the provisions of clause (b) of subsection (4) of section 249. The CIT(A) is not competent to suo moto decide the issue of exemption from the operation of the provisions of clause (b) of subsection (4) of section 249, in a case where the appellant has not filed the requisite application as per the Proviso to section 249(4)(b).

6.4 As per section 249(4), No appeal shall be admitted unless at the time of filing of the appeal, the prescribed conditions are satisfied. As per section 249(4) (b) of the Act, the appeal shall not be admitted, unless the appellant has paid an amount equal to the amount of advance tax which was payable. As the applicable advance tax has not been paid by the appellant before filing of the present appeal, the present appeal shall not be admitted. Therefore, the present appeal filed is not admitted as per the provisions of Section 249(4) of the Act.

(C) The assessee filed appeal against the aforesaid impugned order of the Ld. CIT(A). In the grounds of appeal, it has been stated by the assessee that the Ld. CIT(A) erred in dismissing the appeal for non-payment of Advance Tax, without issuing any show cause notice. It has been contended that the admitted tax liability was nil and the assessee was not liable to pay any advance tax in view the income of the assessee being exempt u/s 10(23C) of the Act. Further, in grounds of appeal, it has been contended by the assessee that the impugned order of the Ld. CIT(A) was liable to be set aside. On perusal of the impugned appellate order dated 13.03.2024 of the Ld. CIT(A), it is found that there is no mention of any opportunity having been given by the Ld. CIT(A) before dismissing the assessee's appeal in limine for the alleged default in compliance with section 249(4) of the Act. As the Ld. CIT(A) failed to provide any opportunity to the assessee before dismissing the assessee's appeal, there was clear violation of principles of natural justice. In view of the foregoing, the impugned appellate order dated 13.03.2024 is set aside and

the Ld. CIT(A) is directed to pass *de novo* order in accordance with law, after providing reasonable opportunity to the assessee. If it is found by the Ld. CIT(A), in pursuance of the aforesaid direction, that the assessee is not in default u/s 249(4) of the Act, then, the Ld. CIT(A) is further directed to admit the appeal and decide the grounds of appeal on merits through a speaking order in accordance with law.

(D) We now come to ITA. No.8/ALLD/2025 which pertains to the penalty imposed by the Assessing Officer u/s 271(1)(c) of the Act in respect of income assessed vide assessment order dated 29.12.2017 whereby the assessee's income was assessed at Rs.58,27,000/-. As we have set aside the impugned order of the Ld. CIT(A) dated 13.03.2014 passed in respect of the assessment order; and have directed the Ld. CIT(A) vide foregoing paragraph (C) of this order, to pass *de novo* order; the Ld. CIT(A) will be required to take a fresh look on the assessee's appeal against levy of penalty u/s 271(1)(c) of IT. Act also. Therefore, the impugned appellate order dated 13.03.2024 of Ld. CIT(A) in this appeal is also is set aside and the Ld. CIT(A) is directed to pass *de novo* order in accordance with law, after deciding the appeal in respect of the assessment order passed by the Assessing Officer; and after providing reasonable opportunity to the assessee.

(E) In the result, the impugned orders of the Ld. CIT(A) are set aside in both the appeals before us and the Ld. CIT(A) is directed to pass *de novo* orders, in accordance with aforesaid directions. For statistical purposes, both appeals are partly allowed.

Order pronounced in open court on 30/09/2025.

Sd/-  
[SUBHASH MALGURIA]  
JUDICIAL MEMBER

Sd/-  
[ANADEE NATH MISSHRA]  
ACCOUNTANT MEMBER

DATED: 30/09/2025

Vijay Pal Singh, (Sr. PS)

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. DR
5. Guard file

//True Copy//

By order

Assistant Registrar