

**IN THE INCOME TAX APPELLATE TRIBUNAL
ALLAHABAD SMC BENCH, ALLAHABAD**

(THROUGH VIRTUAL COURT),

BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER

**ITA No.137/ALLD/2019
Assessment Year: 2007-08**

Bal Bharti Nursery School 13 Kamla Nehru Road, Allahabad Uttar Pradesh. PAN-AAATB6395D	v.	ACIT, Circle-2, Allahabad
(Appellant)		(Respondent)

Appellant by:	Mr. Vinay Kumar Agarwal, CA
Respondent by:	Mr. A.K. Singh, Sr. DR
Date of hearing:	26.04.2021
Date of pronouncement	14.06.2021

ORDER

PER SHRIVIJAY PAL RAO, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order dated 08.08.2019 of CIT (appeals) arising from penalty order passed under Section 271 (1) (c) of the Income Tax Act for the assessment year 2007-08.

2. The assessee has raised following grounds:-

(i) Because considering the facts and the circumstances of the case penalty of Rs. 9,54,952/- imposed under section 271 (1) (c) of the Income Tax Act, 1961 is erroneous and bad in law.

(ii) Because order of CIT (Appeals) confirming the penalty of Rs. 9,54,952/- is illegal. The penalty is liable to be cancelled.

The assessee is a society and engaged in the activity of running educational institution. The assessee has filed its return of income on 12th February, 2008 declaring 'nil income'. There was a survey under Section 133 A of Income Tax Act at

school and office premises of the assessee on 6.12.2006 during which certain facts were detected from the record of the assessee. The A.O. in the assessment proceedings noted that there a discrepancy in the student fee as shown by the assessee in the books of accounts in comparison to the facts and details noted during the survey. The Assessing Officer accordingly took the student fee as per survey recording and computed the total students fee for the year under consideration. Accordingly the A.O. made an addition of the differential amount of Rs. 27,97,056/- The assessee challenged the action of the Assessing Officer in making the addition to the income of the assessee, however, it could not succeed before the CIT (appeals) as well as before this Tribunal. In the meantime the Assessing Officer initiated penalty proceedings under Section 271(1) (c) of the act and levied the penalty of Rs. 9,54,952/-being 100% of tax should to have been evaded by the assessee on account of under reporting of student fee. The assessee challenged the penalty order passed under Section 271 (1) (c) by filling an appeal before the CIT (appeal) however, the CIT (appeal) has confirmed the levy of penalty under Section 271 (1) (c) while passing the impugned order.

3. Before the Tribunal the Ld. AR of the assessee has submitted that the assessee is an educational institution having income from fee and schools receipt from students. The assessee has maintained regular books of accounts, which have been duly audited by the Chartered Accountant. The fee income recorded in the books of accounts has been supported by the fee receipt and other records. The assessee has shown a consolidated fee of Rs. 1,52,34,584/- comprising of Rs. 1,46,39,389/- pertaining to Allahabad unit and Rs. 5,95,195/-for Lucknow unit. The Assessing Officer has estimated the fee receipt for the entire financial year on the basis of compilation of fee income for one month and multiplying by 12. Thus, the Ld. AR has contended that the addition made by the Assessing Officer is based on estimation of the income of the assessee and thereby the case of the assessee does not fall in the ambit of furnishing inaccurate particulars of income or concealment of particulars of

income. The Assessee Officer has estimated the fee receipt without considering the fact that for all the 12 months the receipt from the students is not uniformed but there are defaults and outstanding amounts in respect of the students who have left in between. The fee receipt recorded in the books of accounts by the assessee is supported by the fee receipts and therefore, it is the correct amount of fee received by the assessee during the year. Though the addition is sustained in the quantum proceedings however, the addition may made by the Assessing Officer is based on estimation. The Ld. AR has submitted that the penalty levied by the Assessing Officer under Section 271 (1) (c) of the Act is not sustainable and liable to be deleted. In support of his contention he has relied upon the decision of the Hon'ble Supreme Court in case of CIT vs. Reliance Petro Products Private Ltd. reported in 322 ITR 158 as well as the decision of Hon'ble Jurisdiction High Court in case of JK Synthesis Ltd. The Ld. AR has also relied upon the judgment of Hon'ble Jurisdiction High Court in case DCIT vs. Hanuman Sugar Mills Ltd. reported in 221 taxman 156.

4. On the other hand the Ld. DR has submitted that the addition made by the Assessing Officer during the assessment proceedings is based on certain facts which were detected during the survey proceedings conducted by the Department. Thus, the calculation of income on account of fee received from the students as well as running of buses is not a guesswork but it is based on undisputed facts. He has relied upon the order of the authorities below.

5. I have considered the rival submissions as well as the material on record. The Assessing Officer has levied the penalty under Section 271 (1) (c) in respect of the addition made on account of under reporting of student fee during the year under consideration. The Assessing Officer has given class wise details of the student fee per student and total amount in two tables at page no. 2 and 3 of the assessment orders as under;

” at the time of survey, class wise students and their fees for one month

ITA No. 137/ALLD/2019
Bal Bharti Nursery School 13, Kamla Nehru Road, Allahabad

S. No.	Class	No. of Section	No.ofStudents	Fees per Student	Total Amount (Rs)
1	Pre Nursery	1	2	350	750
2	Nursery	1	17	350	5950
3	Prep.	1	23	350	8050
4	Class-1	1	43	625	16875
5	Class-2	1	36	625	22500
6	Class-3	1	44	625	27500
7	Class-4	1	46	765	35192
8	Class-5	1	49	765	37485
9	Class-6	1	50	775	38750
10	Class-7	1	59	775	45725
11	Class-8	2	71	775	55025
12	Class-9	4	176	875	154000
13	Class-10	3	141	875	123375
14	Class-11	5-Science	298	925	275650
		2-Commerce	102	775	79050
15	Class-12	3-Science	200	925	185000
		1-Commerce	498	775	37200
		Total	1405		11,58,075/

S. No.	Class	Annual charges	No. of Students	Total Amount
1	Pre Nursery to prep	3100	42	130200
2	Class to 3	3100	123	381000
3	Class 4 to 5	3100	95	294500
4	Class 6 to 8	3100	180	558000
5	Class 9 to 10	3150	317	998550
6	Class 11 to 12	3150	648	2041200
	Total			51,03,750/

Total	Rs.51,03,750/-
Less Old Students Fees	Rs.16,17,000/-
Balance	Rs.34,86,750/-
Add	
Total of monthly fees @ Rs. 11, 58,075/- X 12=	Rs.1,38,96,900/-
Add. Bus receipt @Rs. 400/- X 29= 11,600/- X 12=	Rs.1,39,200/-
Total	Rs. 1,75,22,850/-
	“

6. These facts as recorded by the Assessing Officer in the assessment order are not disputed by the assessee so far as the number of students and fee per student to be received by the assessee. The Assessing Officer by taking these facts into consideration has computed the total fee receipt of the assessee for 12 months. Even otherwise these facts were detected and taken during the survey proceedings under Section 133 A of the Income Tax Act. Once the facts regarding the number of students and fee per student as recorded by the Assessing Officer are not in dispute then the estimation made by the Assessing Officer is not based on guesswork but it is the computation of the income on the basis of undisputed facts. There may be a discrepancy in the total quantum of the actual receipts due to the reason that there may be defaults on the part of the students in payment of fee or there may be drop out of the certain students. However, these facts had to be brought on record by the assessee to claim specific deduction on account of non receipt of the fee from the students. The assessee has not brought on record any material to show that certain number of students have not paid the fee. Even otherwise the non-payment of fee in time and showing the same as outstanding would not affect the total income for the year. Hence, the computation of school fee by the Assessing Officer for the entire year is based on the facts of actual receipts from the number of students which are not in dispute as found during the course of survey proceedings and therefore, multiplying the one month receipt by 12 to arrive at the total school fee for the year under consideration cannot be said to be an irregularity or mistaken on the part of the Assessing Officer. The only contention raised by the assessee is that while estimating the income on account of student fee the Assessing Officer has not considered the default on the part of the students in payment of the school fee. This may be an issued in the quantum proceedings as it required the verification of correct facts to be brought on record by the assessee. Once, the addition made by the Assessing Officer is confirmed up to the stage of this Tribunal in the quantum proceeding and the assessee has not brought on record any new fact to contradict

the amount of total fee computed by the Assessing Officer then, this contention of the assessee is without any material to substantiate the same. It is undisputed that the assessee has reported the total fee of Rs. 1,52,34,584/- as against the computation of the fee by the Assessing Officer at Rs. 1,75,22,850/-. Once the computation of the fee by the Assessing Officer is based on the correct facts then the discrepancy in the fee shown by the assessee in the books would amount to furnishing of inaccurate particulars of income. The explanation of assessee is not supported by any facts or details therefore, the said explanation cannot be regarded as bona-fide or reasonable when it is only to dispute the computation of the consolidated fee received by the assessee. There is no quarrel on the point that as per the explanation 1 to Section 271 (1) (c) the primary onus is on assessee to furnish the explanation which is bona-fide and reasonable and if the Assessing Officer is not satisfied with such explanation the burden is shifted on the Assessing Officer to bring contrary facts or material on record to counter the explanation so furnished by the assessee being not bona-fide. In the case in hand the assessee, though explained the reasons for discrepancy in the fee recorded in the books of accounts however, the actual fee received by the assessee as detected during the survey proceedings is not in dispute therefore, such an explanation for discrepancies without any supporting evidence and proper details cannot be accepted as bona-fide or reasonable. The decisions relied upon by the Ld. A. R. of the assessee would not help the case of assessee as in the case of CIT vs. Reliance Petro products Private Limited (supra) the dispute in the quantum proceedings was only regarding disallowance made by the Assessing Officer under Section 14 A of the Act. Therefore, it was found that the claim of the assessee for not making su-moto disallowance and such a disallowance was held not amounting to furnish inaccurate particulars of income due to the reason that all the primary facts were brought on record by the assessee. Similarly in the decisions of the Hon'ble Jurisdiction High Court the addition against which the penalty was levied by the Assessing Officer was

a trading addition after rejection of books of accounts and estimating the income whereas in the case in hand the addition is not a trading addition by estimating the N.P./G.P. but the Assessing Officer has made the addition on the basis of the undisputed facts detected during the survey proceedings. Accordingly, in the circumstances of the case I do not find any error or illegality in the impugned order of the CIT (appeals) in sustaining the levy of penalty under Section 271 (1) (c). The same is upheld.

In the result, the appeal of the assessee is dismissed.

The order is pronounced in the open Court through video conferencing on 14/06/2021.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 14 /06/2021

*kd.

Copy forwarded to:

1. Appellant –
2. Respondent –3. CIT(A) –AayakarBhawan, Civil Lines, Allahabad
4. CIT-Allahabad, U.P.
5. DR – The Sr. DR, AayakarBhawan, Civil Lines, Allahabad, U.P.

By order
Assistant Registrar