

IN THE INCOME TAX APPELLATE TRIBUNAL

“A” BENCH: BANGALORE

**BEFORE SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER
AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No.586/Bang/2020
Assessment Year: 2013-14

Bharathi Education Trust, No.1435, 7 th B Main, RPC Layout, Vijayanagar, Bengaluru-560 040 PAN NO : AABTB 7102 P	Vs.	The Dy. Commissioner of Income-tax, (Exemptions) Circle-1 Bangalore.
APPELLANT		RESPONDENT

Appellant by	:	Shri R.E Balasubramanyam, C.A
Respondent by	:	Shri Kannan Narayanan, Addl. CIT (DR)

Date of Hearing	:	17.06.2021
Date of Pronouncement	:	02.07.2021

O R D E R

PER BEENA PILLAI, JUDICIAL MEMBER:

Present penalty appeal has been filed by assessee against order dated 29/06/2018 passed by the Ld.CIT(A)-3, Bangalore for assessment year 2013-14 on following revised grounds of appeal filed by assessee on 24/03/2021:

*“1. That the impugned order is opposed to facts and law in so far as it is pre-judicial to the interests of the Appellant.
General Ground*

2. The Ld. CIT(A) erred in confirming the order of penalty passed by the Assessing officer and in doing so,

Rs.1,76,46,858

a. He failed to appreciate that the notice u/s 274 was issued by an officer other than the one who recorded satisfaction for levying penalty.

b. Without prejudice to Ground No 2 (a) above and assuming without admitting that the proceedings were properly initiated and continued by the succeeding incumbent in office, the impugned penalty order is untenable and bad in law inasmuch as no intimation of change of incumbent was given to the Appellant and the penalty was levied for reasons other than what is recorded in the Assessment Order.

c. Without prejudice to above and assuming without admitting that the succeeding incumbent in office can initiate penalty proceedings for the first time, the impugned penalty order is untenable and bad in law as the notice u/s 274 is a nullity at law in view of the decision of the Honorable High Court of Karnataka in the case of Manjunatha Cotton & Ginning Factory (359 ITR 565) inasmuch as the notice does not specify clearly whether the penalty is proposed for concealment of income or for furnishing inaccurate particulars.

3. Without prejudice to above grounds, and assuming without admitting that the initiation and procedural Same as above requirements of penalty are held to be valid, no penalty is warranted when the returned income and assessed income are both the same and the penalty to be levied on the alleged amount of tax sought to be evaded as contemplated under explanation 4 to section 271 of the Act is also NIL.

Rs.1,76,46,858

4. Without prejudice to above grounds, the penalty so Same as above confirmed by the Ld CIT(A) is bad-in-law and deserves to be cancelled inasmuch as the approval for the same was granted by the Ld Joint Commissioner of Income Tax without affording an opportunity to the Assessee to present its case before him in violation of the principles of natural justice.

The appellant prays for leave to add, delete, modify and/or adduce additional ground at any time before the appeal is disposed off.

For these and such other grounds that may be adduced or removed in time to time, it is requested that the Hon'ble ITAT may be pleased to examine the case in the light of justice and grant the relief sought for."

Rs.1,76,46,858

Brief facts of the case are as under:

2. The assessee is a trust registered under 12A and entitled for exemption under section 11 for the relevant year under consideration. It had filed its return of income declaring 'nil'

income as the application of funds for charitable purposes exceeded the total receipts. The assessee incurred capital expenditure to the extent of Rs.56,46,98,998/- and claimed depreciation to the extent of Rs.1,21,62,267/-. During the year under consideration assessee treated donations towards corpus funds, which the Ld.AO treated as normal donations. The Ld.AO also made certain other additions by disallowing depreciation claimed on assets which was claimed as application by assessee in earlier years. The Ld.AO determined taxable income of assessee as 'nil' as the total revenue and capital expenditure applied for charitable purposes exceeded the amount considered as surplus by him. The Ld.AO initiated penalty proceedings under section 271(1)(c) of the Act, since assessee concealed the particulars of income within the meaning of is section 271(1)(c) of the Act.

3. It is submitted that, as there was no demand, the assessee chose not to agitate the issue on quantum.

4. Subsequently, on 21/09/2016 notice under section 274 of the Act, was issued to assessee. During the penalty proceedings assessee filed various submissions and replies in support of non-levy of penalty. Ld.AO after considering the replies held that, the amount paid by the students admitted to the assessee's educational institution was not towards corpus donation account, but was collected only by way of capitation fee and that such amount of capitation fee was not exempt in the hands of assessee. The Ld.AO relied on the decision of *Hon'ble Supreme*

Court in case of Mohini Jain vs State of Karnataka and Ors. reported in (1992) 3 SCC 666. The Ld.AO thus levied penalty by holding that assessee filed inaccurate particulars.

5. Aggrieved by the order passed by the Ld.AO, assessee preferred appeal before the Ld.CIT(A).

6. The Ld.CIT(A), upheld the order of the Ld.AO by rejecting the contentions of assessee. There was certain clerical error in the computation of penalty which was corrected by the Ld.CIT(A).

7. Aggrieved by the order of the Ld.CIT(A), assessee is in appeal before us now.

8. The Ld.AR submitted that penalty is initiated due to the difference in the opinion on the part of the Ld.AO regarding the nature of receipt in the hands of assessee's. He submitted that a mere difference of opinion for rejection of the claim made by assessee does not lead to the presumption that there is concealment furnishing of inaccurate particulars. The Ld.AR relying on balance sheet of assessee for the year under consideration submitted that the entire money received from parents are declared as corpus donation, which is rejected by the Ld.AO. He submitted that while initiating penalty in the quantum assessment order, the Ld.AO went on concealment of particulars of income, while issue of notice under section 274 of the Act, the penalty is shown to be initiated for both the limbs being filing of inaccurate particulars as well as concealment of income. However in the penalty order passed by the Ld.AO, the penalty is

levied for filing of inaccurate particulars of income by changing the colour of receipts.

9. Insofar as the issue of depreciation is concerned Ld.AR submitted that, this issue is no more *res integra* as decision of *Hon'ble Supreme Court* in case of *CIT vs Rajasthan and Gujarati Charitable Foundation* reported in 402 ITR 441, is in favour of assessee on the issue.

10. On the contrary, the Ld.Sr.DR relied on the observations of Ld.CIT(A)

11. We have perused submissions advanced by both sides in the light of records placed before us.

12. We note that the issue of depreciation is covered in favour of assessee and therefore no penalty can be levied on that issue. Moreover the disallowance made by the Ld. AO on this respect is on account of difference of opinion.

13. On the other issue of disallowance of alleged corpus donation, we note that assessee disclosed the entire amount in the balance sheet as corpus donation which was not accepted by the Ld.AO and treated it as income in the hands of assessee. Under both these additions made by the Ld.AO, there is no finding that these are bogus also the genuineness is not questioned by the Ld.AO. *Hon'ble Supreme Court* in case of *CIT vs Reliance Petroproducts Pvt. Ltd.*, reported in (2010) 322 ITR 158 held as under:

"A glance of provision of section 271 (l) (c) would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished

inaccurate particulars of his income. The instant case was not the case of concealment of the income. That was not the case of the revenue either. It was an admitted position in the instant case that no information given in the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee could not be held guilty of furnishing inaccurate particulars. The revenue argued that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income. Such cannot be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing of inaccurate particulars. "

14. Similarly, in the present scenario, the assessee cannot be penalized for making a claim which in itself may be unsustainable in law. *Hon'ble Supreme Court* further held that:

"Merely because the assessee had claimed the expenditure, which claim was not accepted or was not acceptable to the revenue, that, by itself, would not attract the penalty under section 271(1) (c). If the contention of the revenue was accepted, then in case of every return where the claim made was not accepted by the Assessing Officer for any reason, the assessee would invite penalty under [section 271\(1\)\(c\)](#)"

15. From the facts of this case it is clear that the assessee disclosed all the particulars of his income. The Ld.AO has disallowed claim without holding it to be bogus or false. Thus, the genuineness of the claim is not in question here. *Hon'ble Supreme Court* while elaborating the scope of section 271(1)(c) in *CIT vs Reliance Petroproducts Pvt Ltd [2010] 322 ITR 158* held that-

"A glance of provision of section 271 (1) (c) would suggest that in order to be covered, there has to be concealment of the particulars of the income of the assessee. Secondly, the assessee must have furnished inaccurate particulars of his income. The instant case was not the case of concealment of the income. That was not the case of the revenue either. It was an admitted position in the instant case that no information given in

the return was found to be incorrect or inaccurate. It was not as if any statement made or any detail supplied was found to be factually incorrect. Hence, at least, prima facie, the assessee could not be held guilty of furnishing inaccurate particulars. The revenue argued that submitting an incorrect claim in law for the expenditure on interest would amount to giving inaccurate particulars of such income. Such cannot be the interpretation of the concerned words. The words are plain and simple. In order to expose the assessee to the penalty unless the case is strictly covered by the provision, the penalty provision cannot be invoked. By any stretch of imagination, making an incorrect claim in law cannot tantamount to furnishing of inaccurate particulars. “

16. Relying on the above observations by *Hon'ble Supreme Court*, we are of the view that the penalty levied deserves to be deleted.

17. As we have deleted the penalty on merits, other grounds raised by the assessee becomes academic at this stage.

Accordingly the appeal of assessee stands allowed on ground No.2 (c).

The result appeal filed by assessee stands allowed.

Order pronounced in open court on 2nd July, 2021

Sd/-

(Chandra Poojari)
Accountant Member

Sd/-

(Beena Pillai)
Judicial Member

Bangalore,
Dated 2nd July, 2021.

Vms

Copy to:

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

By order

**Asst. Registrar,
ITAT, Bangalore.**

		Date	Initial	
1.	Draft dictated on	On Dragon		Sr.PS
2.	Draft placed before author	-7-2021		Sr.PS
3.	Draft proposed & placed before the second member	-7-2021		JM/AM
4.	Draft discussed/approved by Second Member.	-7-2021		JM/AM
5.	Approved Draft comes to the Sr.PS/PS	-7-2021		Sr.PS/PS
6.	Kept for pronouncement on	-7-2021		Sr.PS
7.	Date of uploading the order on Website	-7-2021		Sr.PS
8.	If not uploaded, furnish the reason	--		Sr.PS
9.	File sent to the Bench Clerk	-7-2021		Sr.PS
10.	Date on which file goes to the AR			
11.	Date on which file goes to the Head Clerk.			
12.	Date of dispatch of Order.			
13.	Draft dictation sheets are attached	No		Sr.PS