

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'E' : NEW DELHI)
BEFORE SH. ANIL CHATURVEDI, ACCOUNTANT MEMBER
AND
SH.ANUBHAV SHARMA, JUDICIAL MEMBER
ITA No. 2288/Del/2022, A.Y. 2018-19

National Law University Sector-14, Dwarka New Delhi-110078 PAN : AAALT0918Q	Vs.	Additional/Joint/Deputy/Assistant Commissioner of income Tax, National faceless Assessment Centre, Delhi
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Assessee by	Sh. R.S.Ahuja, CA
Revenue by	Ms. Kirti Sankratyayan, Sr. DR

Date of hearing:	09.05.2023
Date of Pronouncement:	24.05.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been preferred by the Assessee against the order dated 20.07.2022 of CIT(A), National Faceless Appeal Centre (hereinafter referred as Ld. First Appellate Authority or in short Ld. 'FAA') in Order No. ITBA/NFAC/S/250/2022-23/1043951594(1) arising out of an appeal before it against the penalty order passed by the AO of Rs. 1,50,000/- imposed u/s 271B of the I.T. Act by way of an order dated 24.01.2022.

2. The facts in brief are that the assessee university filed return of income for the assessment year 2018-19 declaring a total income at Rs. Nil. The assessee has claimed exemption u/s 10(23C)(iiiab) of the Act for Rs.

28,69,49,640/- in its return of income for the year under consideration. The case was assigned for faceless assessment. Notice u/s 143(2) of the Act was issued and the case was taken up for scrutiny. During the assessment proceedings Ld. AO was not satisfied with the claim of exemption for the purpose of Section 10(23C)(iiiab) r.w.r. 2BBB for the following reason :-

“4.1 However, on perusal of the return of income for the year under consideration, it is found that the assessee university has total receipt of Rs. 28,69,49,640/- out of which only Rs. 12,00,00,000/- received by the assessee university as Grant /Subsidies. That means the ratio of grants to the total receipts is only 42.45% which is less than the threshold limit of 50% prescribed in section 10(23C)(iiiab) r.w.rule 2BBB to be considered as substantially financed by government.”

3. The reply of assessee was not found sustainable and Ld. AO held that the assessee is not eligible for aforesaid exemption. At the same time, Ld. AO observed that the assessee university has not audited its account as per Clause (b) of sub-section (1) of section 12A of the Act despite the fact that its total income as computed under the Act without giving effect to the provisions of Section 12 exceeds the maximum amount which is not chargeable to Income Tax in F.Y. 2017-18. Therefore, directed that penalty proceedings u/s 271B of the Act be initiated. Accordingly, notice u/s 271B was issued to the assessee for which assessee had replied

“The Assessee is a University established by an Act passed the Delhi Government. It is a local authority & prepares accounts accordingly which are duly Audited & the report is presented in the Delhi Assembly.

Its sources of meeting expenses are from grants received from the Government, Tuition fees etc. It does not prepare a profit & loss account. It prepares a Receipts & Payment Account & and Income & Expenditure Account.

The provisions of Section 44AB are applicable to people who are carrying on Business and Profession. As the Assessee is not carrying on business or profession the said section is not

applicable to the Assessee & therefore a Tax Audit report is not required.

In view of the facts stated above you are requested to drop the penalty proceeding U/s 271B under information to us."

4. However, Ld. AO was not satisfied and relying on the provisions of Section 12A(b) of the Act passed the penalty order. Ld. CIT(A) has also sustained the same with following relevant findings in para 7 and 8:

"7. During the course of appellate proceedings, in the appellant stated that stated that the appellant's university is a non- profit organization and purely run for educational purpose and not for any profit and all its receipts are exempted u/s. 10(23)(iiiab) of the Income tax Act.

*8. I have gone through the submissions. The explanation offered by the appellant for non- compliance with the provisions of section 44AB is of a very general nature. I find considerable merit in the contention of the Assessing Officer that the appellant had gross receipts for the year under consideration that was well above the prescribed limit of Rs. 60 Lacs for mandatorily getting the **books of accounts audited as per the provisions of the sec. 44AB** of the I.T. Act 1961., Apart from the above there is no reasonable cause for the aforesaid failure and enough material was brought on record to prove that the appellant had failed to audit his accounts as required u/s 44AB of the Income Tax Act, 1961.*

During the course of appeal proceedings also, the appellant did not offer any valid reason for the aforesaid failure to get accounts audit as require u/s. 44AB. In view of above discussion, the levy penalty u/s 271B of the I.T, Act, 1961 is justifiable. Under the circumstances, the Penalty levied by the Assessing Officer is confirmed. Therefore, ground no (1) is dismissed."

5. The assessee University is in appeal raising following grounds :

"1. Imposing a penalty of Rs. 1,50,000/- u/s 271B."

6. Heard and perused the record.

7. Ld. AR repeated the contentions as raised before Ld. Tax Authorities below. Annual accounts for the year 2017-18 and the National Law University Act, 2007 (hereinafter referred as 'University Act') were also produced. Ld. DR however, defended the order of Id. Tax Authorities below.

8. It can be appreciated that the assessee university has been established by the Act of Legislative Assembly of the National Territory of Delhi, and Sub-section (3) of Section 3 of the University Act, provides for the establishment of University and that “ *The University shall be engaged in teaching and research in law and in allied disciplines.*”. The preamble of the University Act, makes it very apparent that the purpose of establishment of Law university is the establishment of national level institution of excellence in the field of legal education and research in the NCT of Delhi. The object of the university as specified in section 4 of the University Act, the powers and function of the University defined u/s 5 grossly indicate that the University is not engaged in any 'business' as understood for the purpose of the Act. It is existing solely for educational purposes. It is not established for purpose of profit.

8.1 To justify invoking mandate of Section 44AB it was necessary to see if the assessee university can be said to be engaged in Business as defined under Section Section 2(13) of the Act where the word “business” includes any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture. The penalty order u/s 271B of the Act and the assessment order, both specifically mention that assessee is a local authority. Once, the Revenue accepts assessee to be local authority then certainly it cannot be considered to be one engaged in 'business' or to be earning profit, in the ordinary course of it objectives and functions of imparting legal education and legal research in the NCT of Delhi. The Ld. AO has not at all examined the

constitution and composition of various authorities of the university, objectives of the University, mode of achieving objective, to give a conclusive finding that it is engaged in 'business' or earning profits from the same. Thus on that account alone the penalty order is not sustainable.

9. Further, appreciating the record and the submissions, the Bench is constrained to observe that Ld. Tax Authorities have passed the orders bereft of application of judicious mind. It can be observed that the University has claimed exemption of income earned by it from Tax u/s 10(23C)(iiiab) of the Act. However, Ld. AO has erroneously introduced provisions of Section 12A(1)(b) of the Act to the income of the assessee university and then considered it in the light of the Proviso to section 44AB, to conclude that as assessee has not got its account audited in terms of Section 12A(1)(b) of the Act, therefore, penalty is liable to imposed u/s 271B of the Act.

9.1 The first thing that comes up is that the Proviso of Section 44AB is not a default or charging provision rather is a beneficial provision for the any assessee whose accounts are audited under any other law other than the Act and such audited accounts if furnished with return will be considered as compliance of Section 44AB of the Act. However, ld. AO has considered it to be a default Clause and erroneously introduced the default of audit u/s 12A(1)(b) of the Act to fall in the Proviso to Section 44AB. While in case there is a failure of audit for the purpose of Section 12A(1)(b) of the Act, then there is no penalty provision except that the Act provides that the concerned assessee shall not be entitled to the benefit of exempt income u/s 11 or 12.

10. Then if the impugned order of ld. CIT(A) is considered it appears that he introduced his own case in para 8 as the Ld. AO had not found violation of main part of the Section 44AB for the reasons that the assessee university had gross receipts for the year under consideration above the prescribed limit of Rs.

60,00,000/- for mandatorily getting books of accounts audited as per provisions of Section 44AB of the Act but Ld. AO had taken shelter of Proviso to section 44AB and assumed as assessee University has not got the accounts audited for the purpose of Section 12A(1)(b) of the Act, this is a violation of Section 44AB of the Act.

11. Thus, it appears that Ld. Tax Authorities below have fallen in grave error on facts and law while invoking the penalty provisions. The ground is sustained. **The appeal is allowed.** The impugned order of penalty passed by Ld. AO and as sustained by the Ld. CIT(A) are quashed.

Order pronounced in the open court on 24th May, 2023.

Sd/-

**(ANIL CHATURVEDI)
ACCOUNTANT MEMBER**

Sd.-

**(ANUBHAV SHARMA)
JUDICIAL MEMBER**

Date:- 24.05.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR
ITAT, NEW DELHI