आयकर अपीलीय अधिकरण] पुणे न्यायपीठ "बी" पुणे में
IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "B", PUNE

BEFORE SHRI ANIL CHATURVEDI, AM
AND SHRI VIKAS AWASTHY, JM

<u>आयकर अपील सं.</u> / <u>ITA No.399/PUN/2014</u>
<u>निर्धारण वर्ष</u> / <u>Assessment Year : 2006-07</u>

Sinhgad Technical Education Society, S.No.44/1, Vadgaon (Budruk), Off. Sinhagad Road, Pune – 411041. PAN No.AABTS9900Q.	.... अपीलार्थी / Appellant
<u>बनाम</u> v/s	
Asst.Commissioner of Income Tax, Central, Circle 2(2), Pune.	.... प्रत्यर्थी / Respondent

अपीलार्थी की ओर से / Appellant by : Shri Piyush P. Bafna
प्रत्यर्थी की ओर से / Respondent by: Shri Hareshwar Sharma

सुनवाई की तारीख / Date of Hearing : 16.02.2017		घोषणा की तारीख / Date of Pronouncement: 10.03.2017

<u>आदेश / ORDER</u>

<u>PER ANIL CHATURVEDI, AM :</u>

This appeal of the assessee is emanating out of the order of Commissioner of Income Tax (Appeals) – Central, Pune, dated 16.01.2014 for the assessment year 2006-07.

2. The relevant facts as culled out from the material on record are as under :-

2.1. An action u/s 132 of the Act was carried out in the case of Shri M.N. Navale on 20.07.2005. Mr. Navale is stated to be Principal Trustee of Sinhagad Technical Education Society. During the course of search and seizure operations from the documents seized from the residence of Principal Trustee, Shri Navale, it was found that the Trust was taking huge donations for the purpose of admissions and quiet a large part was being appropriated by the trustees for their personal purposes. Consequent to search, assessment u/s 143(3) was completed on 07.08.2008 and the total income was assessed at Rs.34,79,99,520/- which included an addition of Rs.22,45,06,500/- on account of undisclosed income out of the donations collected from the students. On the addition of Rs.22,45,06,500/- that was made, penalty proceedings u/s 271(1)(c) were initiated and thereafter vide order dt.31.03.2011, AO concluded that assessee has concealed the income and was therefore liable for penalty u/s 271(1)(c) and accordingly levied penalty of Rs.6,73,51,950/-. Aggrieved by the order of AO, assessee carried the matter before Ld. CIT(A), who vide order dt.16.01.2014 dismissed the appeal of the assessee. Aggrieved by the order of Ld. CIT(A), assessee is now in appeal before us and has raised following grounds :

> *"1. On the facts and in the circumstances of the case, the CIT(A) has erred in not appreciating the correct law that proves that the assessment order passed u/s 153C rws 143(3) or u/s.143(2) rws 143(3) is bad in law and invalid and no penalty at all can be imposed where the assessment order itself is a nullity in the eyes of law.*
>
> *2. On the facts and in the circumstances and without prejudice to above Ground No 1, the CIT(A) has utterly failed in proving firstly, that in fact the appellant has collected the donations and secondly, that it is the concealed income of the appellant institution.*

3. On the facts and in the circumstances of the case and without prejudice to above Ground No 1 the CIT(A) has again erred in not appreciating the patent, apparent, obvious arithmetical error in making the addition of Rs. 22,45,06,500/- in place of Rs.10,15,22,340/- which Assessing Officer himself has worked out in the Annexure to the assessment order.

4. On the facts and in the circumstances of the case and without prejudice to above ground no 1 the CIT(A) has further utterly failed in not appreciating both the factual and legal submission that the amount of Rs.10,15,22,340/- is already taxed as income of Shri. M.N. Navale on substantive basis in the assessment order passed for the same assessment year u/s. 143(3) and having so accepted the Assessing Officer could not have assessed the said vary amount as the income of the appellant institution and which basically cannot be the subject matter or item to be considered in this penalty proceeding

5. On the facts and in the circumstances of the case the CIT(A) has erred in not applying his competent mind in examining and appreciating the valid submissions afresh as is required while deciding the issue of levy of penalty as penalty proceeding is distinct from assessment proceeding. This order passed u/s 271 (1)(c) is based exclusively on the material considered adequate for the purpose of making an assessment by the Assessing Officer and in this penalty proceeding Assessing Officer has failed to reexamine this issue in the proper perspective particularly to prove and pinpoint specifically that not only the said amount is the concealed income but it is represented in the forms of unexplained investments made by the appellant institution."

3. Before us, at the outset, Ld.A.R. submitted that the sole controversy is with respect to levy of penalty u/s 271(1)(c) of the Act. He further submitted that against the quantum addition of Rs.22,45,06,550/-, assessee had preferred appeal before Tribunal. Tribunal vide order dt.14.12.2016 in ITA 320/PN/2010 has set aside the order of Ld. CIT(A) and deleted the entire addition of Rs.22,45,06,500/-. He therefore submitted that since the quantum addition on which the penalty has been levied itself has been set aside by Tribunal, the very basis of levy of penalty does not survive and therefore the penalty levied by AO and confirmed by Ld. CIT(A) be deleted. He pointed to the

relevant finding in the order of Tribunal. He therefore prayed that the penalty be deleted. Ld.D.R. on the other hand did not controvert the factual submission made by Ld.A.R. but however supported the order of Ld. CIT(A).

4. We have heard rival submissions and perused the material on record. The issue in the present case is with respect to levy of penalty u/s 271(1)(c) on the addition of undisclosed income out of the donations collected from the students at Rs.22,45,06,500/- made u/s 69C of the Act. We find that the Co-ordinate Bench of the Tribunal in ITA 320/PN/2010 dt.14.12.2016 has set aside the order of Ld. CIT(A) and deleted the entire addition of Rs.22,45,06,500/-. We are of the view that since the quantum addition on which impugned penalty has been levied has itself has been deleted, the question of levy of penalty on account of concealment of income of such addition does not survive. We therefore delete the penalty and **thus, the grounds of the assessee are allowed.**

5. **In the result, the appeal of the assessee is allowed.**

Order pronounced on the 10th day of March, 2017.

Sd/-	**Sd/-**
(**VIKAS AWASTHY**)	(**ANIL CHATURVEDI**)
न्यायिक सदस्य / JUDICIAL MEMBER	**लेखा सदस्य / ACCOUNTANT MEMBER**

पुणे Pune; दिनांक Dated : 10th March, 2017.

Yamini

<u>आदेश की प्रतिलिपि **अग्रेषित**/**Copy of the Order forwarded to**</u> **:**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. CIT(Central), Pune,
4. CIT(A)-12, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" / DR, ITAT, "B" Pune;
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

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सहायक रजिस्ट्रार/ Assistant Registrar,
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune.