

**BALAJI EDUCATIONAL & CHARITABLE PUBLIC TRUST vs. ASSISTANT COMMISSIONER OF INCOME TAX**

CHENNAI TRIBUNAL

CHANDRA POOJARI, AM & V. DURGA RAO, JM.

ITA No. 186/Mds/2014

Jul 24, 2015

**715Taxpundit 78**

Legislation Referred to

Section 271(1)(c), 12AA, 133A, 143(2), 11

Case pertains to

Asst. Year 2009-10

Decision in favour of:

Assessee

Counsel appeared:

S. Sridhar, Advocate for the Appellant.: for the Respondent

**V. DURGA RAO, JM.**

1. This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) (C) II, Chennai, dated 15.11.2013 passed under section 271(1)(c) of the Income Tax Act.

2. Brief facts of the case are that the assessee Sri Balaji educational and Charitable Public Trust is a trust registered under section 12AA of the Income Tax Act. The trust is mainly engaged in running educational institutions for conducting various professional courses such as Engineering, MBBS, Nursing and other Paramedical courses, etc. The assessee has filed its return of income for the assessment year under consideration on 30.09.2009 admitting total income of NIL. The case of the assessee was selected for scrutiny and notice under section 143(2) of the Act was issued and a detailed questionnaire was also issued to the assessee. Subsequently, a survey under section 133A of the Act was conducted on 20.11.2009. In the assessment order, the Assessing Officer has observed that from the materials impounded during the course of survey from Mahatma Gandhi Medical College & Research Institute, Pondicherry vide Annexure ANN/VN/B&D/IMP-5 PAGE 1-33, it was found that the assessee has received voluntary donations by way of cash amounting to Rs.12,94,74,800/- from August, 2008 to March, 2009. However, the assessee has admitted cash donations by way of cash only at Rs.4,73,20,000/- in the return of income for the financial year 2008-09 leaving a balance of Rs.8,21,54,800/- has not recorded in their regular books of accounts maintained either in their college or in their trust office. Based on the

impounded material and statement of Mr. M.K. Rajagopalan, Chairman, recorded in the trust office of Ashok Nagar on the date of survey i.e. 20.11.2009, while answering to question No. 17 and 24, the voluntary contribution collected by way of cash which was not disclosed to the Department is quantified as under:

F.Y.	Voluntary contribution received by way of cash	Voluntary contribution received by way of cash declared in the books of accounts	Difference
2008-09	129,474,800	47,320,000	82,154,800

3. While giving the answer to the question No. 17, Mr. Rajagopalan agreed that Sri Balaji Educational & Charitable Trust declared receipt of Rs.7,94,12,000/- on account of voluntary contribution from the students which includes Rs.3,20,92,000/- received in demand draft and the balance of Rs.4,73,20,000/- received in cash. But from the above table it is apparent that the assessee received voluntary contribution by way of cash to the tune of Rs.12,94,74,800/- Based on the above, the assessee was asked to explain as to why the balance cash received in the form of voluntary contribution to the tune of Rs.8,21,54,800/- should not be treated as undisclosed income of the trust and how the exemption under section 11 of the Act be granted.

4. It was submitted before the Assessing Officer that the impounded material in ANN/VN/B&D/Imp/5, the assessee claimed that all the cash received as voluntary contribution was recorded in the cash book but while preparing the ledger of voluntary contribution they booked some cash expenditure made directly from the said cash received. Thus, the total receipt of voluntary contributions showed lesser amount to the tune of Rs.3,86,48,000/- and the difference was not Rs.8,21,54,800/- as claimed by the Department. In support of the claim, the assessee has produced books of accounts. On verification of the vouchers of voluntary contribution, the Assessing Officer has noticed that many vouchers did not have the requisite details of the donors. The assessee was asked to produce the details of the donors so that the same could be verified. The assessee has submitted before the Assessing Officer that there are some unverifiable donation which comes to the tune of Rs.3,86,48,000/- and submitted that they want to disclose Rs.3,86,48,000/- under section 115BBC(3) of the Act as anonymous donation as it could not produce the details of the donors. Accordingly, assessment was completed by treating the disputed amount of Rs.3,86,48,000/- as anonymous donation as disclosed by the assessee under section 115BBC(3) of the Act.

5. Thereafter, the Assessing Officer has initiated penalty proceedings and called explanation from the assessee as to why penalty proceedings under section 271(1)(c) of the Act should not be initiated. In response to the above, the assessee vide letter dated 02.01.2012, the assessee has given a detailed explanation to the Assessing Officer and requested that the penalty proceedings may be dropped. In the

penalty proceedings, the Assessing Officer, after considering the explanation of the assessee, has observed that the assessee's submission cannot be accepted since the assessee has not disclosed the above said amount in the return originally filed. During the survey operation, the Chairman of the trust accepted the fact that some undisclosed cash donation was received and they did not come up with details at the initial stage of the assessment proceedings. It was only during assessment proceedings, the assessee has left with no other choice but to accept the same. Considering the above facts, the Assessing Officer came to conclusion that the assessee has wilfully failed to discharge its duty to disclose all its income in the return originally filed and held that it is a clear case of concealment of income and the total undisclosed amount of Rs.3,86,48,000/- attracts penalty under section 271(1)(c) of the Act.

6. The assessee carried the matter in appeal before the Id. CIT(A). The Id. CIT(A), after considering the submissions of the assessee, has observed that the anonymous donation is taxable under the provisions of Income Tax Act and the assessee was duty bound to disclose the same and to pay the requisite tax on the same. The Id. CIT(A), by following the decision in the case of Mak Data (P) Ltd. v. CIT [2013] taxmann.com 448 (SC), confirmed the penalty order passed by the Assessing Officer under section 271(1)(c) of the Act.

7. On being aggrieved, the assessee carried the matter in appeal before the Tribunal.

8. (i) The Id. Counsel for the assessee has submitted that the assessee is running charitable educational institution and the donation received by the assessee are not taxable because the assessee is enjoying registration under section 12AA of the Act.

(ii) The Id. Counsel for the assessee has further submitted that all the donations received by the assessee are voluntary donation and therefore, the donations received by the assessee exempt from taxation under Income Tax Act.

(iii) He has further submitted that the Assessing Officer came to a conclusion based on the seized material in ANN/VN/B&D/Imp/5 page 1 to 33 that the assessee has received voluntary donation by way of cash amounting to Rs.12,94,74,800/-. When it was explained before the Assessing Officer that the amount shown lesser to the amount received was due to some expenditure made directly from the said cash receipts, the amount as found by the Assessing Officer of Rs.8,21,54,800/- is not correct and accepted that it is only Rs.3,86,48,000/-. It was also submitted before the Id. CIT(A) that the Assessing Officer himself, based on the seized materials came to a conclusion that the amount received by the assessee is a voluntary donation by way of cash. When the assessee was asked to produce details about the donation, the assessee was not able to give full details of donors in respect of Rs.3,86,48,000/- voluntary offered by the assessee as income. The Assessing Officer accepted the same and assessment was completed. Thereafter, penalty was initiated, which is not leviable.

(iv) The assessee has submitted a detailed explanation before the Assessing Officer. The explanation submitted by the assessee was neither found by the Assessing Officer false nor bonafide. However, the Assessing Officer has simply rejected the explanation and prayed that the penalty may be deleted.

9. On the other hand, the Id. DR strongly relied on the decision in the case of Mak Data (P) Ltd. v. CIT [2013] taxmann.com 448 (SC) and supported the orders passed by the authorities below. The Id. DR further submitted that the assessee knows that the donations received by the assessee is not voluntary donations and the Assessing Officer has pointed out the nature of donation, the assessee has accepted the donation received to the extent of Rs.3,86,48,000/- as anonymous donations.

10. We have heard both sides, perused the materials on record and gone through the orders of authorities below. The assessee is an educational and charitable trust enjoying registration under section 12AA of the Act. There was a survey under section 133A conducted on 20.11.2009. The assessee has also filed return of income for the year under consideration on 30.09.2009 admitting NIL income. During the course of survey, certain materials were impounded in respect of Mahatma Gandhi Medical College & Research Institute vide Annexure ANN/VN/B&D/IMP/5 page 1 to 33. From the seized materials, it was found that the assessee has received voluntary donation by way of cash amounting to Rs.12,94,74,800/- from August, 2008 to March, 2009. However, the assessee has admitted a cash donation by way of cash only at Rs.4,73,20,000/- in the return of income for the assessment year under consideration. According to the Assessing Officer, the balance of Rs 8,21,54,800/- has not recorded in their regular books of accounts maintained either in their college or in their trust office. When the Chairman was asked to explain in respect of question No 17, Shri Rajagopalan agreed that Sri Balaji Educational & Charitable Public Trust declared receipt of Rs.7,94,12,000/- on account of voluntary contribution from the students which includes Rs 3,20,92,000/- received in demand draft and the balance of Rs.4,73,20,000/- received in cash. But, according to the Assessing Officer, the amount received by the assessee is Rs.12,94,74,800/-. The assessee was asked to explain in the context of seized material i.e. ANN/VN/B&D/IMP/5. It was submitted by the assessee that all the cash received are voluntary contribution and was recorded in the cash book. But while preparing ledger of the voluntary contribution, they booked some cash expenditure made from the cash received. Thus, the total receipt of voluntary contributions showed lesser amount to the tune of Rs.3,86,48,000/- and the difference was not Rs.8,21,54,800/- as claimed by the Department. In support of its claim, the assessee produced books of account. On verification of the vouchers of voluntary contribution, it was noticed that many vouchers did not have the requisite details of the donors. The assessee was asked to produce the details of the donors so that the same could be verified. The assessee has submitted before the Assessing Officer that there are some unverifiable donation which comes to the tune of Rs.3,86,48,000/- and they wanted to disclose Rs.3,86,48,000/- under section 115BBC(3) of the Act as anonymous donation as it could not produce the details of the donors. In so far as difference pointed out by the Assessing Officer based on the seized materials, it was explained before the Assessing Officer by producing books of accounts that the voluntary donations received by the assessee is only Rs.7,94,12,000/-. The above explanation given by the assessee was accepted by the Assessing Officer.

11. In the course of penalty proceedings, the assessee has submitted detailed explanation before the Assessing Officer by stating that during the course of examination of the donations received in the case by the trust, it was found that certain donations received did not have complete details of the donors as contemplated under section 115BBC(3) of the Act. The trust authorities, therefore, examined all the donation receipts on its own and thereafter it was found that donation receipts to the extent of

Rs.3,86,48,000/- do not contain complete details of the donors. The assessee himself has offered the above amount for taxation during assessment proceedings. In the penalty order, the Assessing Officer, after considering the explanation of the assessee, came to a conclusion that the assessee has to offer the above amount in the return originally filed and not at the stage of assessment proceedings. Therefore, the explanation of the assessee was not accepted. We find that the Assessing Officer has failed to understand that the assessee has filed nil return of income for the reason that the income received by the assessee is not liable to be taxed for that the assessee being a charitable institution and not liable to pay any tax. Therefore, the assessee filed a nil return of income. We find that the Assessing Officer has not considered the explanation of the assessee at all. He simply rejected by saying that he ought to have been offered the above amount in the original return filed. It is not the case of the Assessing Officer that the explanation given by the assessee was found either false or not bonafide. The Id. CIT(A), without examining these fundamental facts, simply came to a conclusion that the anonymous donation received by the assessee is taxable under the Income Tax Act and confirmed the order of the Assessing Officer. We find that the assessee has received voluntary donation and the assessee being an educational and charitable institution not liable for taxation. During the survey, some materials were seized and the Assessing Officer has asked the assessee to explain the details of the donors and the assessee has not been able to explain to the extent of 3,86,48,000/- calculated by the assessee himself and accepted that this amount may be considered for taxation. It is not the case of the Assessing Officer that based on the seized materials, the Assessing Officer came to a conclusion that the amount offered by the assessee is anonymous donation. In fact, in the assessment order, the Assessing Officer came to a conclusion based on the seized materials in ANN/VN/B&D/IMP-5 the assessee has received voluntary donation by way of cash amount to Rs.12,94,74,800/- and the managing trustee has submitted that the amount is only Rs.7,94,12,000/-. When the assessee gave an explanation by stating that all the donations received by the assessee are voluntary donations, however, he has submitted that in respect of certain donations, details of the donors are not available and relevant amount was offered for taxation. Under these facts and circumstances, the Assessing Officer, without making enquiry/investigation cannot presume that the donations received by the assessee are not voluntary donations, particularly, when the assessee is enjoying registration under section 12A(a) of the Act.

12. The assessee, by explaining all the facts, submitted a detailed explanation before the Assessing Officer. Thereafter, it is the duty of the Assessing Officer to establish that the assessee has either concealed the income or filed inaccurate particulars. In the present case, the Assessing Officer has accepted the amount offered by the assessee for taxation and levied penalty without doing any enquiry or investigation to disprove that the explanation given by the assessee either false or not bonafide, penalty cannot be levied. The above view has been endorsed by the Hon'ble Andhra Pradesh High Court in the case of CIT v. Chennupati Tyre & Rubber Products [2014] 90 CCH 0181 APHC.

13. We find that the assessee has failed to handle the donations received by them in appropriate manner. Therefore, the assessee offered the very same amount for taxation. Under these facts and circumstances of the case, we are of the opinion that the assessee has neither concealed the income nor furnished inaccurate particulars. In so far as case law relied on by the Id. DR is concerned, in the case of Mak Data (P) Ltd. v. CIT (supra), in that case, the assessee has not given any explanation before the

Assessing Officer. In the present case, the assessee has given a detailed explanation and the explanation given by the assessee was accepted to certain extent and only in respect of donations received and details of the donors not filed, the Assessing Officer has considered those donations are anonymous donations. It is not the case of the Assessing Officer that the explanation given by the assessee was found either false or not bonafide. Therefore, the case law relied by the Id. DR has no application.

14. The Hon'ble Jurisdictional High Court in the case of CIT v. M/s. Gem Granites (Karnataka) in T.C.(A) No. 504 of 2009 vide order dated 12.11.2013 has considered the judgement of the Hon'ble Supreme Court in the case of Mak Data P. Ltd. v. CIT (supra) and observed as under:

"11. In a recent decision of the Hon'ble Supreme Court in Civil Appeal No.9772 of 2013, dated 30.10.2013 (Mak Data P. Ltd., vs. Commissioner of Income Tax-II), the Hon'ble Supreme Court while considering the Explanation to Section 271(1), held that the question would be whether the assessee had offered an explanation for concealment of particulars of income or furnishing inaccurate particulars of income and the Explanation to Section 271(1) raises a presumption of concealment, when a difference is noticed by the Assessing Officer between the reported and assessed income. The burden is then on the assessee to show otherwise, by cogent and reliable evidence and when the initial onus placed by the explanation, has been discharged by the assessee, the onus shifts on the Revenue to show that the amount in question constituted their income and not otherwise. Factually, we find that the onus cast upon the assessee has been discharged by giving a cogent and reliable explanation. Therefore, if the department did not agree with the explanation, then the onus was on the department to prove that there was concealment of particulars of income or furnishing inaccurate particulars of income. In the instant case, such onus which shifted on the department has not been discharged. In the circumstances, we do not find that there is any ground for this Court to substitute our interfere with the finding of the Tribunal on the aspect of the bonafides of the conduct of the assessee."

15. In the present case, the assessee has explained before the Assessing Officer that the amounts received by it are voluntary donation and certain details are not available. Therefore, the extent of details not available are worked out by the assessee and offered for taxation. We find that by explaining all the reasons, the assessee has discharged burden cast upon it. Thereafter, it is the duty of the Assessing Officer to disprove that the explanation given by the assessee is neither correct nor bonafide. Therefore, the Id. CIT(A) is not correct in upholding the penalty order passed by the Assessing Officer by following the above decision of the Hon'ble Supreme Court without considering the explanation given by the assessee.

16. The Hon'ble Gujarat High Court in the case of National Textiles v. CIT 249 ITR 125 has held that the Explanation 1 to section 271(1)(c) is to the effect that where in respect of any fact or material for purposes of his assessment, an assessee offers an explanation which is found by the AO or the Dy. CIT(A) to be false or where the assessee is unable to substantiate his explanation, then the amount added to his income shall be deemed to represent his concealed income. The newly introduced Explanation 1 considerably reduces, but does not altogether remove the Department's onus to prove concealment in assessment based on unexplained cash credit or unexplained investment and like. There has not been any significant difference by the introduction of new Explanation 1 in place of original Explanation 1

w.e.f. 1st April, 1976. The previous Explanation used the expression "deemed to have concealed the particulars of his income or furnish inaccurate particulars of such income for the purpose of clause (c) of this sub-section". While the present Explanation 1 reads: "such income shall be deemed to represent the income in respect of which particulars have been concealed." In effect, this makes explicit what was implicit in the previous Explanation and the Hon'ble Gujarat High Court has concluded that in order to justify levy of penalty for addition of cash credits, there must be some material or circumstances leading to reasonable conclusion that the amount does represent assessee's income and the circumstances must show that there was conscious concealment or act or furnishing of inaccurate particulars; Explanation 1 does not make the assessment order conclusive evidence that the amount assessed was in fact the income of the assessee.

17. In the case of CIT v. Balraj Sahani 119 ITR 36, the Hon'ble Bombay High Court has observed as under:

"The proceedings for penalty against the assessee were taken under s. 271(1)(c). Under that provision, before the ITO can exercise his jurisdiction to make an order by way of penalty, he has to be satisfied that the assessee has concealed the particulars of his income or furnished inaccurate particulars of such income. The gravamen of the charge against the assessee was that he had concealed the receipt which he had received from the producer in connection with the a particular picture. It is no doubt true that in the quantum appeal the Tribunal had come to a conclusion that the assessee had received a sum which was paid to him by the producer. The finding in those proceedings, however, is not binding in the proceedings relating to penalty. It is, therefore, perfectly open to the Tribunal when the matter was taken to it in an appeal from the order of IAC levying the penalty, to go into the question as to whether the assessee had in fact received the said sum from the producer. While dealing with that question the Tribunal has exhaustively dealt with the evidence and has found that the producer was an unreliable witness. The Tribunal has also taken into consideration the fact that no finding against the assessee could be reached on the basis of account books which the assessee did not have any opportunity to see or study and in respect of which the assessee did not have any opportunity of cross-examining the producer. The producer has been found to be an unreliable witness, whose relations with the assessee were strained. The original cash book or account books were not anywhere to be seen. Not only did they remain unproved, but they were, in fact, not produced at all. If this was the only material to show that the assessee had received the said amount and the material was found to be wholly unreliable, no burden shifted to the assessee which he was called upon to discharge. There was, therefore, no question of drawing any adverse inference because his case throughout had been that he had not received the said amount. The assessee could not really be asked to prove the negative. The Tribunal has found as a fact that the assessee did not receive the said amount at all. On that finding, no charge of concealment could possibly arise. The Tribunal was, therefore, justified in setting aside the order of penalty."

18. The Hon'ble Bombay High Court in the above case has concluded that the findings in quantum proceedings are not binding in penalty proceedings and the Tribunal, or consideration of unreliable state of evidence regarding concealment, was justified in deleting penalty.

19. In view of the above, after considering the entire facts and circumstances of the case and also by following the judicial precedents, we hold that the assessee has neither concealed the income nor filed inaccurate particulars. Therefore, the Id. CIT(A) was not justified in confirming the penalty order passed by the Assessing Officer. Thus, the order passed by the Id. CIT(A) is reversed and the penalty levied by the Assessing Officer under section 271(1)(c) of the Act is deleted.

20. In the result, the appeal filed by the assessee is allowed.

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