

**IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'A' : NEW DELHI)**

**BEFORE SHRI B.P. JAIN, ACCOUNTANT MEMBER
and
SHRI KULDIP SINGH, JUDICIAL MEMBER**

**ITA No.906/Del./2016
(ASSESSMENT YEAR : 2010-11)**

United Education Society,
C/o NIMT College,
Opp. Indira Priyadarshani Park,
Near Hindon Bridge, Mohan Nagar,
Ghaziabad.

vs. JCIT,
Range 2,
Ghaziabad.

(PAN : AAAAU0750C)

(APPELLANT)

(RESPONDENT)

ASSESSEE BY : Shri Ved Jain, Advocate and
Shri Ashish Goyal, CA

REVENUE BY : Shri Ravi Kant Gupta, Senior DR

Date of Hearing : 02.01.2018

Date of Order : 25.01.2018

ORDER

PER KULDIP SINGH, JUDICIAL MEMBER :

The Appellant, United Education Society (hereinafter referred to as 'the assessee') by filing the present appeal sought to set aside the impugned order dated 27.11.2015 passed by the Commissioner of Income-tax (Appeals), Ghaziabad on the grounds inter alia that :-

“1. On the facts and circumstances of the case, the order passed by the learned Commissioner of Income Tax {CIT(A)} is bad, both in the eye of law and on facts.

2. On the facts and circumstances of the case, the learned CIT(A) has erred both on facts and in law in passing the order without giving assessee a proper and adequate opportunity of being heard in gross violation of principle of natural justice.

3. On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in 'confirming the order passed by the learned Assessing Officer (AO) levying penalty amounting to Rs.1,00,000/- invoking the provision of Section 271 B of the Act, 1961.

4. On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in confirming the levied penalty by rejecting the contention of the assessee that being a charitable society and not carrying on any business the provisions of section 44AB of the Act are not applicable to the assessee.

5. On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that audit of the assessee as contemplated u/s 12(A)(b) been carried out within the time specified under the Income Tax Act, 1961, no default has been committed and hence no penalty is leviable.

6. On the facts and circumstances of the case, the Id. CIT(A) has erred both on facts and in law in ignoring the contention of the assessee that failure, if any, to carry out the audit under section 271B was under bonafide belief that provisions of section 44AB are not applicable to it and hence no penalty is leviable.”

2. Briefly stated the facts necessary for adjudication of the controversy at hand are : The assessee society is registered under section 12A of the Income-tax Act, 1961 (for short ‘the Act’) and has been maintaining regular books of account. AO, on the basis of assessment order dated 27.09.2013, initiated penalty proceedings u/s 271B of the Act as the assessee has failed to get its accounts audited under the provisions contained u/s 44AB of the

Act. After providing an opportunity of being heard to the assessee, AO levied penalty to the tune of Rs.1,00,000/-.

3. Assessee carried the matter by way of filing appeal before the Id. CIT (A) who has dismissed the appeal. Feeling aggrieved, the assessee has come up before the Tribunal by challenging the impugned order passed by Id. CIT (A).

4. We have heard the Id. Authorized Representatives of the parties to the appeal, gone through the documents relied upon and orders passed by the revenue authorities below in the light of the facts and circumstances of the case.

5. Undisputedly, the assessee society is registered u/s 12A of the Act as a charitable trust engaged in charitable activities for imparting education through its colleges. It is also not in dispute that the assessee society has been claiming exemption u/s 11 of the Act on the ground that no business is being carried out by it.

6. Now, the sole question arises for determination in this case is:-

“as to whether the assessee society is required to get its accounts audited as required u/s 44AB of the Act?”

7. For facility of reference, provisions contained u/s 44AB of the Act are reproduced as under :-

“44AB. Every person,—

(a) carrying on business shall, if his total sales, turnover or gross receipts, as the case may be, in business exceed or exceeds one crore rupees in any previous year ; or

(b) carrying on profession shall, if his gross receipts in profession exceed [fifty] lakh rupees in any previous year; or

(c) carrying on the business shall, if the profits and gains from the business are deemed to be the profits and gains of such person under section 44AE or section 44BB or section 44BBB, as the case may be, and he has claimed his income to be lower than the profits or gains so deemed to be the profits and gains of his business, as the case may be, in any previous year; or

(d) carrying on the [profession] shall, if the profits and gains from the [profession] are deemed to be the profits and gains of such person under [section 44ADA] and he has claimed such income to be lower than the profits and gains so deemed to be the profits and gains of his [profession] and his income exceeds the maximum amount which is not chargeable to income-tax in any [previous year; or]

[(e) carrying on the business shall, if the provisions of sub-section (4) of section 44AD are applicable in his case and his income exceeds the maximum amount which is not chargeable to income-tax in any previous year,]

get his accounts of such previous year audited by an accountant before the specified date and furnish by that date the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars as may be prescribed :

[Provided that this section shall not apply to the person, who declares profits and gains for the previous year in accordance with the provisions of sub-section (1) of section 44AD and his total sales, turnover or gross receipts, as the case may be, in business does not exceed two crore rupees in such previous year:]

Provided [further] that this section shall not apply to the person, who derives income of the nature referred to in section 44B or section 44BBA, on and from the 1st day of April, 1985 or, as the case may be, the date on which the relevant section came into force, whichever is later :

Provided [also] that in a case where such person is required by or under any other law to get his accounts audited , it shall be sufficient compliance with the provisions of this section if such

person gets the accounts of such business or profession audited under such law before the specified date and furnishes by that date the report of the audit as required under such other law and a further report by an accountant in the form prescribed under this section.

8. Bare perusal of the provisions contained u/s 44AB of the Act goes to prove that the same are applicable to the person carrying on business or profession and is required to get its account mandatorily audited by an accountant. But, in the instant case, when assessee is undisputedly a charitable society and is not carrying out any business and has been claiming exemption u/s 11A of the Act, the penalty u/s 271B of the Act cannot be levied. Furthermore, when there is no computation of profits and gains of the business or profession as part of the total income, the assessee society is not amenable to section 44AB of the Act.

9. No doubt, exemption claimed by the assessee society trust u/s 11A has not been granted by the AO and completed the assessment u/s 143 (3) at Rs.6,93,54,217/- but it will not burden the assessee to get its account audited with retrospective effect so long as registration u/s 12A of the Act is in operation.

10. Identical issue has already been decided by the coordinate Bench of the Tribunal *in case of M/s. Sant Baba Rangi Ram vs. ITO in ITA No.185 (Asr)/2012 vide order dated 06.08.2012* in favour of the assessee.

11. In view of what has been discussed above, we are of the considered view that when the assessee under bonafide belief claimed the exemption u/s 11 of the Act and had not got his accounts audited from the accountant as per provisions contained u/s 44AB, penalty u/s 271B cannot be levied, hence penalty imposed u/s 271B is hereby ordered to be deleted by reversing the order passed by the AO as well as Id. CIT (A). Consequently, the appeal filed by the assessee stands allowed.

Order pronounced in open court on this 25th day of January, 2018.

**Sd/-
(B.P. JAIN)
ACCOUNTANT MEMBER**

**sd/-
(KULDIP SINGH)
JUDICIAL MEMBER**

**Dated the 25th day of January, 2018
TS**

Copy forwarded to:

- 1.Appellant
- 2.Respondent
- 3.CIT
- 4.CIT(A), Ghaziabad.
- 5.CIT(ITAT), New Delhi.

**AR, ITAT
NEW DELHI.**