

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

BEFORE

**SHRI G.S. PANNU, HON'BLE PRESIDENT
AND
SHRI AMIT SHUKLA, JUDICIAL MEMBER**

ITA No. 5227/Del/2019
Asstt. Year: 2013-14

Lahoria Education Society, C/o Shri S.K. Jain, Advocate 696/8, Ganga Bagh, Hansi Distt. Hisar (Haryana) PAN AAATL3800F (Appellant)	Vs.	Income Tax Officer (Exemption) Rohtak (Haryana) (Respondent)
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Assessee by:	Shri Naveen Gupta, Advocate
Department by:	Dr. Maninder Kaur, Sr. Dr
Date of Hearing	12.06.2023
Date of pronouncement	26.07.2023

ORDER

PER AMIT SHUKLA, JM

The aforesaid appeal has been filed by the assessee against the order dated 22.04.2019, passed by Ld. Commissioner of Income Tax (Appeals)-5, Ludhiana for the quantum of assessment passed under section 143(3)/144A of the Income Tax Act, 1961 for the assessment year 2013-14.

2. In various grounds of appeal, the assessee has challenged, firstly, addition of Rs. 37,74,078/- on account of extra payment/salary paid to the staff; and secondly, addition of Rs. 1,34,114/- on account of some impounded diary owned by some other person. Other grounds raised have not been argued, therefore same are not considered.

3. Brief facts qua the issue involved that assessee is running Senior Secondary School named as 'Lahoria Vidya Mandir Senior Secondary

School', Lahoria Chowk, Hissar. Since assessee was carrying out educational activity, therefore it was granted registration under section 12AA of the Act. Income and expenditure account reflected gross receipts at Rs. 1,83,24,369/- on expenses under various heads at Rs. 1,40,77,776/- and the net surplus was shown at Rs. 42,46,593/- which was claimed as exempt under section 11 of the Act in the return filed on 19.10.2013. A survey action under section 133A was conducted on 4.4.2013, in the course of which certain loose papers were found and impounded. On perusal of some loose paper bunch marked as folder No. 154, it was found that assessee has maintained two separate records /sheets for salary payable to staff for the month of March, 2013. The details of which have been incorporated at pages 31 to 33 of the assessment order. The Assessing Officer noted that the salary paid through bank on school letterhead was Rs. 10,35,989/-, whereas salary payable mentioned in the other paper was Rs. 5,78,050/-. Thus, there was a difference of Rs. 4,57,939/- in salary paid through bank account and salary record maintained separately in the month of March, 2013. The Assessing Officer proposed to multiply this difference for 12 months and asked the assessee as to why the difference of Rs. 54,95,268/- (Rs. 457939 X 12).

4. In response the assessee submitted that there were two separate sheets with regard to salary/remuneration of staff for the month of March, 2013, one which was paid of Rs. 10,53,925/- on 08.04.2013, i.e., after the survey and second sheet was on account of remuneration payable to the staff on additional work done by them which was also paid through cheque No. 1033 of Rs. 5,93,550/- on 16.04.2013 and cheque No. 1034 at Rs. 1,33,000/- at the same date.

5. Ld. Assessing Officer held that assessee has not furnished the details of additional work done by the staff in support of its claim. Further, the loose paper sheets were written with pencil and for additional work how the payment of addition work has been calculated has not been done. He has also incorporated scanned copy of the payment of March and April, 2013 alongwith the days mentioned against various employees/staff. He further

held that salary payment through bank found is only a colourable device as actual salary was low payment of salary and separate salary is maintained for claiming higher salary expenditure. The assessee has shown these payments through cheque only after the date of survey and after impounding the material from the department and such a plea of additional work done by the staff is only frivolous. Accordingly, he proceeded to make the addition of Rs. 53,70,048/-.

6. Further, AO noted that there are certain salary payments to staff whose names are not recorded in the regular books of account which mentions some name of 18 staff. The assessee's contention before the Assessing Officer was that these are part time teachers/guest teachers for which no separate salary register is maintained and amount of Rs. 1,33,000/- has been paid for the month of March, 2013 to the 18 teachers for taking extra classes and for teaching weak students. Ld. Assessing Officer has rejected the said reply stating that assessee has not furnished details of additional work done by the guest/part time teachers. Again he reiterated the payment has been made through cheque only after the survey was done and photocopies were impounded. Thereafter, he has given certain logic and reasoning holding that these staff members are not being paid regularly throughout the year out of funds not disclosed to the department and accordingly an addition of Rs. 55,96,000/- was made. However Ld. Addl. CIT before whom application under section 144A was filed and the net addition on account of bogus salary payment was reduced to Rs. 37,74,078/-.

7. Another addition relate to some payment recorded in diary which was estimated by the Assessing Officer of Rs. 5,00,000/- and reduced to Rs. 1,34,114/- by the Ld. CIT(A). A diary was impounded during the survey marked as No. 140 which contains details of various expenses on account of tours of students. In response to the show cause notice the assessee submitted that these are expenses written in a diary maintained by Shri Surender Kuchhal. Further it was submitted that these entries of expenses

pertained to making arrangement of tour/cultural programme of students and other activities. The assessee further contended that amounts were collected from the students on mutuality basis for organising tour and farewell parties and cultural programme etc. by the staff members of the assessee society and amounts collected in the active presence of Shri Surender Kuchhal. This work of organising tours, parties, cultural parties etc. were entrusted to Shri Surender Kuchhal by the assessee society therefore amounts collected by the staff from the students were handed over to the teachers/staff of the assessee society who accompanied tour and as per direction of Shri Surender Kuchhal, amounts distributed among the staff and no amount, expenditure or balance were ever incurred or retained by the society and balance amount if any was always kept by Shri Surender Kuchhal, and only he can explain the balance, if any remained and use whereof.

8. The Ld. Assessing Officer did not accept the assessee's contention and held the entries pertaining to Shri Surender Kuchhal is not plausible explanation and is afterthought and therefore he made some lump sum addition of Rs. 5,00,000/- .

9. The Ld. CIT (A) in so far as extra salary paid to the staff is concerned the action of the Assessing Officer that if the payment for additional work was for whole of the financial year 2012-13 as claimed by the assessee then why the same was kept on pending till April 2013 which shows that the payment shown by the assessee was merely on the afterthought.

10. We have heard both the parties and also perused the relevant finding given in the impugned order as well as material referred to before us. In so far as the issue relating to addition of Rs. 37,74,078/-, the same has been made by the Department on the ground that assessee has maintained two accounts, one was regular salary register and one separately in diary wherein salary has been shown for additional work done by the staff for the entire year. Further addition has been made on account of extra salary paid

to part time/guest teachers. First of all, in so far as the regular account of salary of the staff for the month of March, 2013, same has been paid through cheque at Rs. 10,53,925/- on 8.4.2013, which is four days after the date of survey and was otherwise regular date on which assessee had been showing to have been making the salary especially for the month of March. Apart from that, assessee has also paid remuneration to the staff on account of additional work done by them which was also paid on 16.4.2013 by cheque and in the assessment order itself, the Ld. Assessing Officer has noted the details of employees, additional work done under various heads alongwith the number of days in the year on the basis of which payment/remuneration has been calculated for the additional work. If the payment has been made through cheque and the details of expenses are duly debited in the books of account, then we fail to understand as to how it is outside the books. Ld. Assessing Officer has treated the difference between the salaries for the month of March for additional work done by the staff for the entire year which he has interpolated for entire 12 months on presumption basis. This is not only erroneous but also without any material or information on record, whereas assessee has given the explanation alongwith the proof of payment that this payment of additional salary is calculated at the year end and payment is made alongwith salary of March, then there is nothing on record that either of the employees have denied such payment or it is some kind of fictitious payment made to them and money has been taken by the assessee in the form of cash. There is nothing on record that assessee has been making these payments for additional work for all the 12 months. The assessee has been categorically stating that the additional work done by certain employees is calculated on the basis of days in the entire year and then payment has been made at the year end. The calculation of days ranges from few days to 31 days in a year which is calculated on the basis of their salary paid. Thus, it cannot be inferred that payment of additional work is done for every month which AO has tried to interpolate for entire 12 months. Thus the addition made by the AO and sustained by the Ld. CIT (A) is directed to be deleted.

11. Further even for salary paid to part time/guest teachers, the same is calculated on the basis of number of days which these teachers have taught to the students and is payable at year ending 31st March and same too has been paid through account payee cheque duly debited in the books of account. Therefore, it cannot be treated as unexplained expenditure that to be while interpolating for entire 12 months. Thus this addition is also directed to be deleted.

12. In the result ground No. 1 and 2 raised by the assessee are allowed.

13. Lastly, in so far as the addition of Rs. 1,34,114/-, it has been argued that in respect of other some addition made on the basis of same diary which has been noted by the Assessing Officer, Ld. CIT(A) has held that this diary has been owned by Shri Surender Kuchhal and Ld. CIT(A) has already directed that Shri Surender Kuchhal has owned up these expenditure which has been incurred by him and he has directed the Ld. Assessing Officer that Shri Surender Kuchhal needs to be investigated by the Ld. Assessing Officer and take necessary action in this matter. Before the Ld. Assessing Officer also, assessee has clearly stated that this expense does not pertain to the assessee society, because these amounts were collected from the students on mutuality basis for tours, farewell parties and cultural programmes etc. by the staff members of the school and is handed over to Shri Surender Kuchhal to carry out these activities and none of the expenditure has been incurred by the assessee society. Once the entries in the said diary has been accepted by Shri Surnder Kuchhal who has owned these entries and given details of expenditure, we do not find any justification in sustaining this addition in the hands of the assessee and therefore the same is also directed to be deleted.

14. Since other grounds have not been argued same are dismissed as infructuous.

15. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 26th July, 2023.

sd/-
(G.S. PANNU)
PRESIDENT

Dated: 26/07/2023

sd/-
(AMIT SHUKLA)
JUDICIAL MEMBER

Veena

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
 ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr. PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr. PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	