

Date:29.04-2021

From
M.C MODI EDUCATIONAL TRUST
5-4-187/3 & 4, 2nd Floor,
Soham Mansion, M.G. Road,
Secunderabad – 500 003.

To
Assessing Officer,
National e-Assessment Centre,
Delhi.

Respected Sir/Madam,

Sub: Reply to Notice for penalty u/s.274 r.w.s. 270A of IT Act -Asst. year 2018-19-
PAN – AAATM5488Q – Reg.

Ref: Notice dated 12.04.2021 (DIN ITBA/PNL/S/270A/2021-22/1032350822(1)

In connection with the above penalty notice the following reply is submitted for your kind consideration.

1. The Trust e-filed its ITR on 31-10-2018 admitting income of Rs. NIL. The ITR is filed in Form No ITR -7 considering the Trust as registered Trust u/s. 11/12 of IT Act.
2. The case was selected for scrutiny assessment.
3. The assessment is completed u/s. 143(3) vide order dated 12/04/2021. The Income assessed is Rs. 78,99,722/-. Thus, it has resulted in addition of Rs. 78,99,722/-.
4. The nature and break-up of the additions made are as under:

a) Addition on account of rent receipts	Rs. 48,93,403/-
b) Addition on account of interest receipts	Rs. 20,71,319/-
c) Addition on account of disallowance of donation made	Rs. 9,35,000/-

Total addition

Rs.78,99,722/-

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5. In the course of assessment proceedings, it is submitted that the application for registration u/s 12AA got rejected in FY 2018-19 and therefore the same has to be applicable for Asst. year 2019-20 and not for prior years. The rejection has to be prospective and not retrospective.
6. For the purpose of completing the assessment, the Assessing Officer has treated the Trust as an AOP and not as registered Trust. As a consequence, the deduction towards application of income towards charitable activities and also accumulation and amount set apart to be utilized in subsequent years has not been allowed.
7. Further, since while completing the assessment submission made by the Trust to consider the Trust as registered for the purpose of assessment and not as an AOP is not accepted, the assessment is completed not under the provision of section 11/12 of IT Act but under the normal provision of IT Act under different 'Heads of Income' as provided in section 14 of IT Act.
8. Accordingly, the rental income of Rs.48,93,403/- derived by the Trust is assessed under the head of Income 'Income from House Property' and Interest income received of Rs.20,71,319/- under the head of income, 'Income from Other Sources'.
9. The Penalty Notice states that there is under-reporting of income which is in consequence of misreporting.
10. The cases of misreporting have been listed out in sub section 9 of Section 270A. Out of total 6 cases designated as mis-reporting, 3 relate themselves with books of accounts and remaining 3 covers conduct during assessment. The same is given in the tabular form below:

Mis reporting of Income – Books ofAccounts	Mis reporting of Income – Conduct During Assessment
• Non-recording of investments in books of account.	• Claiming of expenditure not substantiated by any evidence.
• Misrepresentation or suppression of facts.	• Failure to record any receipt in books of account having a bearing on total income.
• Recording of false entry in books of account.	• Failure to report any international transaction or deemed international transaction under chapter X.

11. It can be seen that the addition to the income returned is not for any of the six stated cases provided in sub- section 9 of section 270A. In our case none of the cases as listed out above is applicable and therefore it can not be held that the under-reporting of the income is due to misreporting of the income.



12. All the facts have been represented correctly and in fact on the basis of the facts submitted by us in the assessment proceedings a stand is taken that the Trust cannot be said to be registered under section 12A. The assessment is completed by changing the status of the Trust as AOP and not as Trust registered u/s 12A.
13. Thus, the addition that have happened to the income returned is only for the reason of change of status from registered Public Charitable Trust to AOP and therefore the computation of income is done not under section 11 and 12 of the Income Tax Act but under other provisions as applicable to various heads on income categorized u/s 14.
14. Keeping in view the above fact of change in the status of the Trust it is further submitted that there is no under-reporting of the income though the income assessed is more than the income returned. As explained, it is only due to change in the Computation of the total income due the change in the status. There is no change in the amount of income/receipts that have been declared in ITR filed in ITR7 as applicable to a Trust registered u/s 12A. The same income/receipts have been considered while completing the assessment.
15. Section 270A(6) provides for the cases where income shall NOT be considered as under reported and consequently no penalty shall be leviable. They are as under:
- I. **The amount of income in respect of which the assessee offers an explanation and the A.O./C.I.T. (Appeals)/Pr.C.I.T./C.I.T., is satisfied that**
 - a. explanation is bona fide and
 - b. The assessee has disclosed all the material facts to substantiate the explanation offered.
 - II. The amount of under-reported income determined on the basis of an estimate,
 - a. if the accounts are correct and complete to the satisfaction of the A.O./C.I.T. (Appeals)/Pr.C.I.T./C.I.T, but
 - b. the method employed is such that the income cannot properly be deduced therefrom.
 - III. The amount of under-reported income determined on the basis of an estimate,
 - a. if the assessee has, on his own, estimated a lower amount of addition or disallowance on the same issue,
 - b. has included such amount in the computation of his income and
 - c. has disclosed all the facts material to the addition or disallowance.
(e.g. Disallowance of car expenses on account of personal use, where assessee on his has disallowed the same at a lower percentage)



IV In transfer pricing cases, where the amount of under-reported income is represented by any addition made in conformity with the arm's length price determined by the Transfer Pricing Officer, and

- a. the assessee had maintained information and documents as prescribed under section 92D,
- b. declared the international transaction under Chapter X, and,
- c. disclosed all the material facts relating to the transaction.

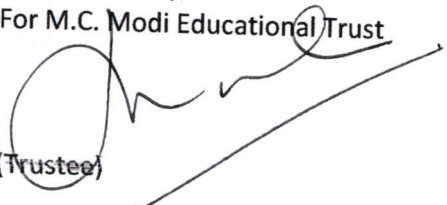
V. The amount of undisclosed income during search cases where penalty is leviable u/s. 271AAB.

16. It is submitted that in the course of assessment proceeding we have given a bonafide explanation with all the material facts to substantiate the explanation offered. Merely because our explanation has not been accepted while completion of the assessment the fact remains that the explanation offered is genuine and bonafide.

17. It is submitted that there is no under-reporting of income and also such under-reporting is not as consequence of misreporting. It is therefore requested to drop the penalty proceedings and not to levy the penalty as proposed in the Notice.

Yours faithfully,
For M.C. Modi Educational Trust

(Trustee)



From

Date : 30-03-2021.

MC Modi Educational Trust,
5-4-187/3 & 4, 2nd Floor,
Soham Mansion,
M.G. Road,
Secunderabad – 500 003.

To

The Assessing Officer,
National e-Assessment Centre,
Delhi.

Sub: IT Assessment proceedings – Own case – Assessment Year 2018-19
PAN – AAATM5488Q – reply to Show Cause Notice (SCN) dated 26-03-2021.

Ref: SCN Dated 26-03/2021 – DIN: ITBA/AST/F/143(3)/(SCN)/2020-21/1031773622(1).

We are in receipt of the above referred SCN in connection with the Income tax assessment proceedings for Asst. Year 2018-19. We are required to Show cause as to why assessment should not be completed as the Draft Assessment Order and file our objection to the same.

In the regard SCN dated 16-02-2021 (DIN: ITBA/AST/F/143(3)/(SCN)/2020-21/1030685014(1) was issued on the identical issues that has been raised in the SCN dated 26-03-2021. In Para 3.6 of the present SCN dated 26-03-2021 it is stated that our submissions dated 20-02-2021 are not found acceptable. There is no reasons as to why the same are not acceptable. The only reason that can be gathered from the SCN is that is absence of certified copy of Registration Certificate of Trust and certified copy of 12AA, the assessee is treated as an AO and the income of the assessee is assessed accordingly.

In fact, without prejudice to our submission in our reply 20-02-2021 we have submitted draft computation of Income assuming the Trust as AOP.

In the present SCN the total income is arrived treating the assessee as an AOP to which we have the following objections. Kindly consider the same.

1. With respect to determination of net income (taxable at normal rates) of Rs.57,62,910/-.

- a) The Gross Income is taken at Rs.69,64,722/- which is the total receipts as per Income and Expenditure account. Break-up of total receipts is as under:

Rental Income	Rs.48,93,403.00
Interest on Bank FD & Interest on SB A/c.	Rs.20,71,308.00
Rounded off	Rs. 11.00
Total Income	Rs.69,64,722.00

Out of this expenditure of Rs.12,10,812/- is deducted. The break-up of the same as per our workings will be as under:

Audit Fees	Rs.11,776.00
Misc. Expenses	Rs.13,880.00
Legal Expenses	Rs.650.00
Interest on Service Tax	Rs.352.00
Interest on GST	Rs.1750.00
Prior Period items	Rs.11,56,172.00
Electricity	Rs.160.00
IT Representation Fees	Rs.17,250.00
Total expenditure	Rs.12,01,790.00

The Net income is arrived at Rs.57,62,910/- which appears to be considered as 'Income from Other Sources'.

It may be noted that the total receipt of Rs.64,64,722/- includes Rs.48,93,403/- as Rental Income which is to be considered as Income from House Property and not as Income from other sources. The Standard deduction u/s.24(a) @ 30% is also be allowed. Further, property tax paid of Rs.2,23,296/- is also to be deducted against property rental income. The property tax paid is not considered in arriving at expenditure deducted of Rs.12,01,812/-.

Thus we have the above objections to your proposed net income assessment under the head 'Income from other Sources'.

2. With regard to Additions u/s.69C of I.T. Act

- In the SCN and in the Total Income revised it is proposed to add an amount of Rs.97,83,710/- as unexplained capital expenditure which is in excess to net income (Rs.1,55,46,620/- (-) Rs.57,62,910/-)
- As we gather from the SCN the reason to treat the capital expenditure to the extent of Rs.97,83,710/- is on the stand taken that such expenditure / part of which is in excess of revenue receipts and therefore such excess becomes such expenditure as defined by section 69C of the IT Act.
- In our earlier submission dated 20-02-2021 we have submitted that merely because capital expenditure is more than the revenue receipt it becomes unexplained expenditure. It is not necessary that every capital expenditure has only to be out of revenue receipts. There may be many sources to incur capital expenditure such as borrowings, Capital receipts, realizations of current assets, Sale of properties etc. The view that capital expenditure has to be incurred out of income / revenue receipts is too narrow a view and there is no such provision under the IT Act that capital expenditure has to be incurred only out of revenue receipts or income. No business / industries can run if capital expenditure is to be met only out of income. The industries do start up with capital expenditure which is met out of capital or borrowings. The revenue stream is generated after the capital asset is put to use. Thus the view taken is not rational and logical.
- Section 69C do not provide that in case the capital expenditure is more than revenue receipt it per-se becomes unexplained expenditure to be taxed as such.

- e) For the sake of quick reference section 69C is reproduced below:

[Unexplained expenditure etc.

69C. Where in any financial year an assessee has incurred any expenditure and he offers no explanation about the source of such expenditure of part thereof, or the explanation, if any, offered by him is not in the opinion of the Assessing Officer, satisfactory, the amount covered by such expenditure of part thereof as the case may be, may be deemed to be the income of the assessee for such financial year;]

[provided that notwithstanding anything contained in any other provision of this Act, such unexplained expenditure which is deemed to be the income of the assessee shall not be allowed as a deduction under any head of income.]

- f) In our earlier submissions dated 20-02-2021 the detailed source for the capital expenditure incurred is given. The source is mainly encashment of fixed deposits with HDFC Bank. In support of our this explanations we have submitted fixed deposit ledger, bank account statements as Annexure 1,2 & 3 respectively. We are once again submitting the same for a quick reference.

HDFC Fixed Deposit Ledger – **Annexure 1.**

Bank Statement for the month of February, 2018 & March 2018, which reflects credits in the bank account towards encashment of fixed **deposit Annexure – 2 & 3.**

- g) In the SCN, there is no mention as to why the explanation and documentary evidence given are found to be not satisfactory. As said above, the only reason that appears is the capital expenditure is more than the income.
- h) For invoking provision of section 69C it is a pre-requisite condition to record the opinion of the A.O. as to why the explanation offered by the assessee is not satisfactory.
- i) As the capital expenditure incurred is accounted in the regular books the source is obviously explained. The provisions of section 69C are not applicable as there was no un accounted expenditure. In support of above contention reliance is placed on certain juridical pronouncements as under:

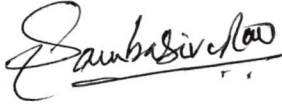
- 1) HYDITA 463/HYD/2014-Dy. CIT vs Smt. Shashikala Ramkumar – Copy of judgment attached **Annexure- 4.**
- 2) CIT vs M/s. Radhika Creation – ITA No.692/2009 – Copy of Judgment attached – **Annexure – 5.**
- 3) Pr. Commissioner of Income tax-13-Mumbai vs Vaman International Pvt. Ltd. ITA No1940 of 2017 – copy of judgment attached – **Annexure 6.**
- 4) Vatan Soap Industries vs Dy. CIT, Circle 12, Ahmadabad – Copy of judgment attached – **Annexure – 7.**

3. It is further submitted that deductions that is available u/s.80G for donations made to 80G registration Trust/Institutions should also be considered to arrive at the taxable income. The total donations made are Rs.9,35,000/- out of this R.2,00,000/- qualify for deductions @ 50% u/s.80G of IT act. The list of donations given with receipts are attached herewith **Annexur – 8.**

Keeping in view our above objections to SCN it is requested to drop proposed computation of revised total assessed income at Rs.1,55,46,620/-.

Yours faithfully,

For MC Modi Education Trust,

A. 

(Authorized Signature)

M.C. MODI EDUCATIONAL TRUST

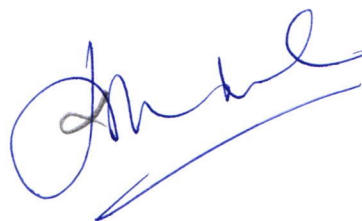
ASSESSMENT YEAR: 2018-19

Statement of Facts

1. The appellant e-filed its ITR on 31-10-2018 admitting income of Rs. NIL. The ITR is filed in Form No ITR -7 considering the Trust as registered Trust u/s. 11/12 of IT Act.
2. The assessment is completed u/s. 143(3) vide order dated 12/04/2021. The Income assessed is Rs. 78,99,722/-. Thus, it has resulted in addition of Rs. 78,99,722/-.
3. The nature and break-up of the additions made are as under:

Addition on account of rent receipts	48,93,403/-
Addition on account of interest receipts	20,71,319/-
Addition on account of disallowance of donation made	9,35,000/-
Total addition	78,99,722/-

4. The appellant is a Public Charitable Trust established under a Trust Deed date 15-11-1955. Subsequently, a Supplementary Trust Deed dated 01-04-2016 is executed. The Trust was registered u/s. 11/12 of Income Tax Act. Unfortunately, the Original Trust Deed dated 15-11-1955 and the registration letter has been lost. For regularization a fresh application for registration got filed u/s. 12 AA of the Income Tax Act. The application got rejected mainly on the technical ground that Trust could not produce the Original Trust deed dated 15-11-1955 for verification.
5. In the course of assessment proceedings, it is submitted that the application for registration u/s 12AA got rejected in FY 2018-19 and therefore the same has to be applicable for Asst. year 2019-20 and not for prior years. The rejection has to be prospective and not retrospective.
6. For the purpose of completing the assessment, the Learned Assessing Officer has treated the appellant as an AOP and not as registered Trust. As a consequence, the deduction towards application of income towards charitable activities and also accumulation and amount set apart to be utilized in subsequent years has not been allowed.
7. Further, since while completing the assessment submission made by the appellant to consider the Trust as registered for the purpose of assessment and not as an AOP is not accepted, the assessment is completed not under the provision of section 11/12 of IT Act but under the normal provision of IT Act under different 'Heads of Income' as provided in section 14 of IT Act.



8. Accordingly, the rental income of Rs.48,93,403/- derived by the Trust is assessed under the head of Income 'Income from House Property' and Interest income received of Rs.20,71,319/- under the head of income, 'Income from Other Sources'.
9. The learned Assessing Officer has not allowed deduction on account of municipal tax and standard deduction @30% u/s 24(a) of the I T Act towards repairs and maintenance. The entire rent receipts of Rs.48,93,403/- is treated as taxable income of the appellant. The learned Assessing Officer has taken stand that as the claim was not made in the return of income filed by the appellant under the head income from house property. Hence the entire rent receipts of Rs.48,93,403/- added back to the total income of the appellant.
10. Likewise, the entire interest income of Rs.20,71,319/- is considered as Income of the appellant without allowing certain expenses incurred.
11. In the course of assessment proceedings, it is submitted that the ITR was filed in Form No ITR 7 as applicable to the Trust registered under section 12A of the Income Tax Act, 1961 and therefore the income returned is in accordance with the provisions of section 11 and 12. It is also submitted that since the status as registered Trust is not accepted, the income has to be computed under the respective applicable heads of income and in accordance with the provision contained therein. This plea has not been accepted by the learned Assessing Officer. The claim of deductions made in the course of assessment proceedings should have been considered.
12. Addition of Rs 9,35,000/- on account of disallowance of donation made is an expenditure as per the Income and expenditure account and is not an item of Income like rental income and interest income. The learned Assessing Officer has misunderstood the fact while computing the income under the normal provisions of the Act and not under section 11/12 of the Income Tax Act, 1961. The donations made, if eligible u/s 80G, has to be allowed as deduction. Instead, the learned Assessing Officer has considered the same as income.
13. Keeping in the above facts and circumstances it is prayed in the appeal to grant the relief.


(Appellant)

MC MODI EDUCATIONAL TRUST

ASSESSMENT YEAR :: 2018-19

GROUND OF APPEAL

1. The Order of the learned Assessing Officer, in the so far as it is prejudicial to the interest of the applicant, is against law, weight of evidence and probability of the case and the following grounds are intent prejudice to each other.
2. The Learned Assessing Officer on the peculiar facts and circumstances of the case has erred in taking a view that the Trust is an Association of Person (AOP) and not a Trust registered u/s.12A of the Income tax Act and to assess the income of the Trust as applicable to an Association of persons.
3. The learned Assessing Officer on the facts and circumstances of the case has erred in computing gross rental receipt of Rs.48,93,403/-under the head 'Income from House Property' without allowing deduction on account of municipal tax paid and the standard deduction @30% u/s 24(a) of the Income Tax Act,1961and therefor the same is bad in law.
4. The learned Assessing Officer on the facts and circumstances of the case has erred in computing gross interestreceipt of Rs.20,71,319/ under the head 'Income from Other Sources' without allowing deduction for certain expenses incurredand therefor the same is bad in law.
5. The learned Assessing Officer on the fact and circumstances of the case has erred in considering the donations given of Rs 9,35,000/- as Income instead of allowing eligible deduction u/s 80G of the Income Tax Act,1961.
6. The appellant craves leave to add, amend, alter or delete any or all the grounds of appeal.


(Appellant)