

दआयकर अपीलीय अधिकरण "B" न्यायपीठ मुंबई में।

IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, MUMBAI

**BEFORE SHRI JOGINDER SINGH, JUDICIAL MEMBER
AND SHRI RAMIT KOCHAR, ACCOUNTANT MEMBER**

आयकर अपील सं./I.T.A. No.2746/Mum/2014

(निर्धारण वर्ष / Assessment Year : 2010-11)

Madhavi Raksha Sankalp Nirmal Niketan, 2 nd floor, Dr. Bhajekar Street, Mumbai - 400 004.	बनाम/ v.	The Dy. Director of Income Tax (Exemption) - 1(1), Income Tax Office, Lalbaug, Piramal Chambers, Parel Mumbai-400012
स्थायी लेखा सं./PAN : AAATM7188H		
(अपीलार्थी / Appellant)	..	(प्रत्यर्थी / Respondent)

Assessee by	Shri Dilip J. Thakkar
Revenue by :	Shri Sumen Kumar, D.R.

सुनवाई की तारीख / **Date of Hearing** : 06-04-2017

घोषणा की तारीख / **Date of Pronouncement** : 26-04-2017

आदेश / ORDER

PER RAMIT KOCHAR, Accountant Member

This appeal, filed by the assessee, being ITA No. 2746/Mum/2014, is directed against the appellate order dated 10th February, 2014 passed by learned Commissioner of Income Tax (Appeals)- 1, Mumbai (hereinafter called "the CIT(A)"), for the assessment year 2010-11, the appellate proceedings before the learned CIT(A) arising from the assessment order dated 22nd March, 2013 passed by the learned Assessing Officer (hereinafter called "the AO") u/s 143(3) of the Income-tax Act, 1961 (Hereinafter called "the Act").

2. The grounds of appeal raised by the assessee in the memo of appeal filed with the Income-Tax Appellate Tribunal, Mumbai (hereinafter called “the tribunal”) read as under:-

“1. On the facts and under the circumstances of the case and in law, the learned Commissioner of Income Tax(Appeals)-1, {CIT(Appeals)} erred in upholding the action of the Assessing Officer (AO) of disallowing the Appellant's claim of receipt of corpus donations of Rs.2,42,26,508/-

2. On the facts and under the circumstances of the case and in law, the learned CIT(Appeals) erred in upholding the action of the AO of treating corpus donations Rs.2,42,26,508/- as anonymous donations, taxable u/s 115BBC of I.T. Act.

3. On the facts and under the circumstances of the case and in law, the learned CIT(Appeals) erred in upholding the action of the AO of invoking the provisions of section 115BBC of I.T. Act, without appreciating the facts and circumstances of the case.

4. On the facts and under the circumstances of the case and in law, the learned CIT(Appeals) erred in upholding the action of the AO of not appreciating the facts and circumstances of the case and explanations offered in support of the Appellant's claim of corpus donations.

5. On the facts and under the circumstances of the case and in law, the learned CIT(Appeals) erred in upholding the order of the AO, of holding that the Option exercised in respect of unspent income of Rs.1,35,70,000/- is not in conformity with the provisions of Explanation 2 below Section 11 (1) of I.T. Act.

6. On the facts and under the circumstances of the case and in law, the learned CIT(Appeals) erred in not appreciating the facts and circumstances and the explanations offered in regard to the Option exercised u/s 11(1) of I T Act, in respect of the unspent income of Rs.1,35,70,000/-.”

3. The brief facts of the case are that the assessee is a trust registered as a charitable organization with DIT (E), Mumbai u/s 12A of 1961 Act vide

registration No. TR/25225 and the assessee is also registered with Charity Commissioner, Mumbai vide registration No. E-10395, Mumbai. The assessee trust has claimed that it is engaged in charitable activities in the field of education and medical relief and is thus entitled for exemption u/s 11 of 1961 Act. During the course of assessment proceedings u/s 143(3) r.w.s. 143(2) of 1961 Act, the A.O. observed that the assessee trust had shown addition to Corpus of Rs.2,42,26,508/- during the year and opening balance of corpus is at Rs. 23,82,41,105/-. The assessee was asked to furnish the following information:-

- “a) Copy of letters from donors showing specific direction that the donations are towards Corpus showing.
- (b) Copies of Receipts issued to donors w.r.t to Corpus Donations.
- (c) PAN & proof of Address of donors .
- (d) Specify mode of payment viz Cheque/cash. Wherever the donations are claimed to have been received in cash, furnish fresh confirmations for these corpus donations.

The assessee trust in reply submitted that the trust received donations totaling Rs. 2,42,26,508/- towards its corpus from about 6500 donors. All these donations were accompanied by letters of directions of the donors that the donations shall form part of corpus fund. The assessee enclosed direction letters from the donors. The assessee also drew the attention of the A.O. to the order u/s 264 dated 22.03.1996 passed by the then Director of Income tax (Exemptions) in assessee's own case for assessment year 1992-93 , whereby the Id. DIT (Exemptions) had allowed the petition u/s 264 of the Act which was filed against the assessment order wherein AO treated donation of Rs. 22,83,688/- as voluntary donations rather than corpus donations as

claimed by the assessee trust by virtue of which it was deductible u/s 11(1)(d) of 1961 Act. The relevant para of the order u/s 264 is reproduced below:-

“In order to understand the modalities of the donation in this case, the activity of the trust has to be seen. It is a unique way of creating impersonal wealth. In a village, like minded farmers get together and cultivate land and produce wealth in the service of God and such wealth is utilised for the upliftment of the village as well as for donation to the trust which in turn is again utilised for charitable purpose. A group of people who are devoted to the concept propagated by the trust join together and out of that someone contributes land another contributes seeds another contributes irrigation and another contributes labour and so on and cultivate the land jointly to produce wealth out of which part is utilised for charitable purpose at the village level and part of which is donated to trust by way of corpus donation. Therefore individual shares in the produce is an unidentified even amongst themselves and therefore, the certificate of the representative of that group is sufficient enough and acceptable to treat it as corpus donation. These activities are taken turn by turn from one village to another in subsequent year and this activity goes on. In these circumstances, the claim of the assessee that it is a corpus donation is in order and is acceptable and the AO is directed to treat as corpus donation. Wherever directions letters were not filed, they are available with the assessee which may be obtained and placed on record.”

The assessee has produced the sample copies of receipts issued to the donors in respect of corpus donations. The assessee also submitted direction letters for the period for verification. The assessee has also submitted PAN which were reflected in the respective direction letters of the donors. It was also submitted that all the donations were received by account payee cheques or demand drafts and nothing was received in cash. The assessee contended that all the corpus donations were supported by confirmatory letters from the donors that they are towards corpus and as such they are exempt u/s 11(1)(d) of 1961 Act.

The A.O. observed that all donation letters totaling 6584 in number furnished by the assessee trust were in the same format and each letter carried names of 3-4 villagers who were claimed to be the donors. It was observed by the AO that in each case name of village , Taluka , District is given but complete address is not given and claim of the assessee cannot be verified in the absence of address. It was also observed that none of the letters bear PAN of the donors as claimed by the assessee trust. Under these circumstances, the A.O. rejected these direction letters as an evidence in support of identity and address of donors as mandated u/s 115BBC of 1961 Act and held that exemption u/s 11(1)(d) of the Act is not admissible to the assessee. The AO held that the receipts which were claimed to be treated as voluntary contribution are liable to be taxed u/s 115 BBC of 1961 Act as anonymous donations. The A.O. after going through the object clauses of the assessee trust observed that the assessee trust is not a religious trust . The A.O. held that the assessee failed to establish the identity and address of donors and the AO invoked provisions of section 115 BBC of the Act and denied exemption to the assessee u/s 11 of 1961 Act and taxed the same u/s 115BBC of 1961 Act.

Further, it was observed by the AO that the assessee has exercised its option u/s 11(1) of 1961 Act for an unspent amount of Rs. 1,35,70,000/- during the year , whereby the assessee was show caused and asked to explain as to why the exercise of said option u/s 11(1) of 1961 Act should not be treated as invalid as the assessee has not specified any 'reason' for exercise of this option, which is mandatory in law and in the absence of which benefit of this option is not available as per the AO.

The assessee submitted that an unspent amount of Rs. 13570000/- will be spent during the next financial year relevant to the assessment year 2011-12 and also the assessee trust was actively considering launching of projects in

conformity with the objects of the trust, which requires more planning , time and funds.It was submitted that the project could be launched once the plans are finalized and funds are available for utilization . The assessee submitted revised option letter containing specific reasons for exercising the option.

The A.O. observed that as per explanation (2) to section 11(1) of 1961 Act, if in the previous year, the income applied to charitable or religious purposes falls short of 85% of the income derived during that year for two reasons namely (i) for the reason that the whole or any part of the income has not been received during the year , or (ii) for any other reasons , the benefit under explanation 2 to Section 11(1) of 1961 Act shall be available. The AO received that clause (i) is not applicable as the assessee duly received the said income while clause (ii) is applicable and the assessee's exercise of option u/s 11(1) of 1961 Act vide letter dated 22.09.2010 , reads as under:-

“Re:- Assessment year 2010-11
PAN AAATM7188H

Option exercised u/s 11 of the Income Tax Act, 1961

With reference to above, we have to inform you that is unspent amount for the assessment year 2010-11.

We, therefore hereby exercise the option given u/s 11(1) of the Income Tax Act, 1961 that the unspent amount of Rs. 13570000 will be spent during the next financial year relating to assessment year 2011-12 which may be please be noted.

Thanking you,

Yours faithfully,

For MADHAVI RAKSHA SANKALPA”

The A.O. denied the exemption on the ground that the exercise of option is invalid as the assessee has not specified any ‘reason’ for exercise of this

option, which is mandatory in law and in the absence thereof the assessee is not entitled for benefit of this option and hence an unspent amount of Rs.1,35,70,000/- during the year was taxed as income under the head 'Income from other sources' by the AO vide assessment order dated 22-03-2013 passed by the AO u/s 143(3) of 1961 Act.

4. Aggrieved by the assessment order dated 22-03-2013 passed by the DDIT (Exemption)-1(1) i.e. the AO, the assessee carried the matter in appeal before the ld. CIT(A) who rejected the appeal of the assessee on the ground that the third party verification of donors was not possible by the A.O. due to incomplete identity and address of the donors which was vague and general . The ld.CIT(A), therefore, held that the corpus donations of Rs. 2,42,26,508/- received by the assessee trust during the year was assessee's income in the absence of identity and address of the donors being not verifiable as genuineness of the transaction remained unproved , and hence the same could not be considered as corpus donation , thus keeping in view provisions of Section 13(7) of 1961 Act , the said anonymous donations are liable to be taxed u/s 115 BBC of the Act . Similarly, the AO denied the exemption amount of Rs. 1,35,70,000/- as the assessee has not specified the reason for exercise of such unutilized amount of income, which is mandatory and in the instant case the assessee failed to specify the reasons for accumulation of income . The option given in the opinion of learned CIT(A) was general reasons and are not a specified reasons as plans of the proposed expenditure were not finalized and hence it is an unspecified accumulation for uncertain/contingent project which is not in fulfillment of notice in form no. 10 of the Act prescribed in this behalf. In nutshell, the ld. CIT(A) confirmed both the additions, vide appellate orders dated 10-02-2014 passed by learned CIT(A).

5. Aggrieved by the appellate order dated 10-02-2014 passed by the ld. CIT(A), the assessee filed an appeal before the Tribunal.

6. The ld. counsel for the assessee submitted that the donations were received by the assessee against the corpus fund and they are not anonymous donations. It is submitted that all the donations were accompanied by letters of directions of the donors that they shall form part of corpus fund. It was submitted that authorities below erred in rejecting the claim of the assessee and bringing to tax the said corpus donations as anonymous donations u/s 115BC of 1961 Act . The learned counsel submitted that identity , PAN and addresses of the donors will be submitted if one more opportunity is provided to the assessee. However, the ld. counsel submitted that if an opportunity is given to the assessee, the assessee can produce the said donors before the A.O. and also furnish the PAN and address of all the donors. Similarly, with respect to ground No. 5 and, it is submitted that the assessee trust is a registered trust under section 12A of 1961 Act. It was submitted that 85% of the amount of income received was spent and only 15% of the income received was accumulated for being spent during the next year. It was submitted that no specific purpose was given but the un-spent amount is accumulated to be spent for purposes of the trust. The learned counsel drew our attention to newly introduced form no 9A which is to be submitted for accumulation u/s 11(1) of 1961 Act while our attention was drawn to form no 10 which is for accumulation u/s 11(2) of 1961 Act . The ld. counsel drew our attention to Form 9A whereby there is no requirement to specify the purpose of retaining the amount unspent and it was claimed that the same can be spent in the next year for the purposes of the trust.

7. The ld. D.R. relied on the orders of authorities below.

8. We have considered rival contentions and also perused the material available on record. We have observed that the assessee-trust is registered u/s 12A of 1961 Act with DIT(E) , Mumbai bearing No. TR/25225 and also registered with Charity Commissioner , Mumbai. We have observed that the assessee has shown additions to corpus donations to the tune of Rs. 2,42,26,508/- . The assessee has submitted in paper book filed with the tribunal copies of some of such direction letters of donation issued by the donors whereby instructions are issued by the donors that the donations shall form part of the corpus of the trust. The said letters of donations are placed in paper book page 35-123. The names of the donors were given in the said letters but the addresses and PAN of the donors were not given. These are standard letters which are identical for all the donors. The said letters contained the name of village/taluka/district and State of the donor but the addresses, father's name and PAN of the donors are not there. Another peculiar feature is that it is a common direction letter issued by multiple donors ranging from 2-5 donors and Demand draft/Pay order mentioned in said common donation letter are also same being consolidated amount covered for the donation in the said letter as donated by 2-5 donors. We find that assessee is not a religious trust hence the amount is hit by provisions of Section 115 BBC of the Act and the onus is on the assessee to prove that it is covered by exceptions to chargeability to tax as is provided by provisions of Section 115BBC of 1961 Act, namely that the assessee maintained a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed or else it is a religious trust. Section 115BBC of 1961 Act is reproduced hereunder:

“ [Anonymous donations to be taxed in certain cases.

115BBC. (1) *Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiiae) or sub-clause*

(via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of—

(i) the amount of income-tax calculated on the income by way of any anonymous donation, at the rate of thirty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

The following clauses (i) and (ii) shall be substituted for the existing clauses (i) and (ii) of sub-section (1) of section 115BBC by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2010 :

(i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—

(A) five per cent of the total donations received by the assessee; or

(B) one lakh rupees; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received.

(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by—

(a) any trust or institution created or established wholly for religious purposes;

(b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

(3) For the purposes of this section, “anonymous donation” means any voluntary contribution referred to in sub-clause (iia) of clause (24) of [section 2](#), where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed.]”

The assessee in the instant case could not provide addresses, father's name and PAN of the donors and the assessee is also not a religious trust to be covered under exception. The assessee has come forward with a request that if an opportunity is given to the assessee, the assessee can produce the donors before the AO as directed by the AO. It is also submitted that PAN and addresses of all the donors for verification by the A.O. will also be furnished for verification by the AO. Considering the factual matrix of the case, keeping in view the provisions of Section 115BBC of 1961 Act and in the interest of justice and fair play, we are of considered view that this matter needs to be set aside and restored to the file of the A.O for necessary enquiry and verification of the said donations so received by the assessee as to genuineness and also for verifying compliance of the relevant section 115BBC of 1961 Act. The onus as well burden of proof is entirely on the assessee to provide to the AO all relevant details as contemplated under section 115BBC of 1961 Act to the satisfaction of the AO as to compliance of Section 115BBC of 1961 Act and as to genuineness of the said donation. The assessee is directed to furnish PAN, addresses and all other relevant details of all the said donors before the AO to satisfy mandate of Section 115BBC of 1961 Act. The assessee is directed to produce before the AO donors, 25% in numbers for donation up-to Rs 20,000/- and 10% in number for donations above Rs.20,000/- to satisfy the AO about compliance of mandate of Section 115BBC of the Act and genuineness of the such donations. The selection of donors shall be on random basis at the sole discretion of the AO, which short listed list of donors shall be supplied by the AO to the assessee for necessary compliance as per our above directions. If so required for ensuring compliance of Section 115BBC of 1961 Act and for establishing genuineness of the said donations of Rs. 2,42,26,508/-, the AO can enhance the number of persons to be produced by the assessee before him higher than minimum stipulated by us as above. Similarly, with respect to the denial of the exemption amount to the tune of Rs. 1,35,70,000/- for 15% of income being

set aside for accumulation to be spent for charitable purposes in the next year as provided u/s 11(1) of 1961 Act. The assessee had stated that the trust was actively considering launching of projects in the next year after plans are finalized and the amount so aside was spent in the next year. In our considered view and in the interest of justice and fair play, this claim of the assessee that the said amount was kept for launching of project next year after plans are finalized and was spent in the next year accordingly also need verification and as such the matter is set aside and restored to the file of the A.O. for proper verification with respect to the contentions of the assessee to be decided by the AO in accordance with law. Needless to say that proper and adequate opportunity of being heard shall be provided by the AO to the assessee in accordance with principles of natural justice in accordance with law. The evidences and contentions of the assessee in its defense shall be admitted by the AO in set aside proceedings in the interest of justice. We order accordingly.

9. In the result, appeal filed by the assessee in ITA No. 2746/Mum/2014 for assessment year 2010-11 is allowed for statistical purposes as indicated above.

Order pronounced in the open court on 26th April, 2017.

आदेश की घोषणा खुले न्यायालय में दिनांक: 26-04-2017 को की गई ।

Sd/-
(JOGINDER SINGH)
JUDICIAL MEMBER

sd/-
(RAMIT KOCHAR)
ACCOUNTANT MEMBER

मुंबई Mumbai; दिनांक Dated 26-04-2017

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आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)- concerned, Mumbai
4. आयकर आयुक्त / CIT- Concerned, Mumbai
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai "B" Bench
6. गार्ड फाईल / Guard file.

सत्यापित प्रति //True Copy//

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai