

<b>IN THE INCOME TAX APPELLATE TRIBUNAL</b>
<b>COCHIN BENCH, COCHIN</b>
<b>BEFORE S/SHRI GEORGE GEORGE K., JM &amp; MANJUNATHA G. AM</b>

I.T.A. No.199/Coch/2017
Assessment Year : 2012-13

'Santhwanam' Papal Tower, S.T. Nagar, Thrissur-680 001. [PAN: AAKTS 9893B]	<b>Vs.</b>	The Commissioner of Income-tax, (Exemptions), Kochi.
<b>(Assessee-Appellant)</b>		<b>(Revenue-Respondent)</b>

<b>Assessee by</b>	Shri Anil D. Nair, Adv.
<b>Revenue by</b>	Shri A. Dhanaraj, Sr. DR

<b>Date of hearing</b>	28/08/2017
<b>Date of pronouncement</b>	29 <sup>th</sup> /08/2017

## **ORDER**

Per GEORGE GEORGE K., JUDICIAL MEMBER:

This appeal at the instance of the assessee-Trust is directed against the order of the Commissioner of Income-tax(Exemptions), Kochi dated 17/03/2017 passed u/s. 263 of the I.T. Act.

2. Briefly stated the facts of the case are as follows:

The assessee is a charitable trust registered u/s. 12A of the Act vide order dated 25/09/2012. The return of income for the assessment year 2012-13 was

filed by the assessee showing 'nil' income after claiming exemption u/s. 11 of the Act. The assessment was taken up for scrutiny by issuance of notice u/s. 143(2) of the Act. The scrutiny assessment u/s. 143(3) of the Act was completed vide order dated 16/01/2015, accepting the return of income as filed by the assessee. Thereafter, the Commissioner of Income-tax (Exemptions) initiated proceedings u/s. 263 of the Act vide notice dated 07/12/2016. The CIT(E) proposed to treat the donations to marriage fund which was claimed by the assessee as corpus funds, as revenue receipts. Further, it was proposed by the CIT(E) to add the same to other receipts to compute application of income of 85% during the year. On re-computing in this manner CIT(E) felt that as the application of income fell short of 85% of the receipts, the assessment made is erroneous and prejudicial to the interests of the revenue. The assessee-Trust objected to the proposal and filed detailed reply vide letter dated 27/01/2017. The authorized representative of the assessee also appeared before the CIT(E) and the following points were submitted before the CIT(E).

"1. The AO has taken one view which is sustainable in law and hence jurisdiction to initiate 263 proceedings is not available in view of the decision in Malabar Industrial Co. Ltd. v. CDIT (2000) 243 ITR 83 (SC) and CIT Vs D.C.Mills Pvt. Limited (387 ITR 64) (Ker).

2. In similar situations and contributions have been treated as corpus donations in the Cases of DIT(Exemptions) Vs Sri Ramakrishna Seva Ashrama (357 ITR 731) (Kar) Society of Anesthesiologist Vs. Income Tax Officer 32 ITR (Trib) 152 and DIT(Exemptpion), Ahmedabad Vs. N.H. Kapadia Educational Trust 136 ITD 111(Ahad).

3. The assessee does not have absolute control over marriage fund to utilize the same in any manner as deem fit. Hence the same is to be treated as corpus donations.
  4. As per records available donation of 25,00,000 from arch diocese of Trichur was made specific written direction that same is for marriage fund. For the balance donations also evidence is available to show that the same are corpus donations for marriage fund.
3. The CIT(E) however rejected the contentions raised by the assessee and set aside the assessment order as erroneous and prejudicial to the interests of the revenue. The relevant finding of the CIT(E) reads as follows:

*"4. I have gone through the submissions made by the assessee during the course of the proceedings u/s. 263 of the Income Tax Act. I have also gone through the assessment order and also the details available in the assessment record. The contentions/objection raised by the assessee are not at all convincing. The judicial decision cited by the assessee in the case of Director of Income Tax (Exemptions) And Another v. Sri Ramakrishna Seva Ashrama (2013) 357 ITR 731 (Kar) has no relevance in this case as it is against the rejection of 80G approval application. As already mentioned, in the case of a non-business concern, for arriving at the income available for application u/s. 11, the gross income (both revenue and capital) received by the assessee (other than corpus donation) need to be taken into account. For accumulating the unspent amount received for any projects/specific purposes, the Act provides for set apart of income u/s. 11(2) and also deeming provision vide Explanation (2) to section 11(1) of the Income Tax Act. For the sake of convenience section 11(2) is reproduced below:*

*"(2) Where eighty five percent of the income referred to in clause (a) or clause (b) of sub-section (1) read with the Explanation to that sub-section is not applied, or is not deemed to have been applied, to charitable or religious purposes in India during the previous year but to accumulated or set apart, either in whole or in part, for application to such purposes in India, such income so accumulated or set apart shall not be included in*

*the total income of the previous year of the person in receipt of the income, provided the following conditions are complied with, namely:-*

- (a) such person furnishes a statement in the prescribed form and in the prescribed manner to the Assessing Officer, stating the purpose in which the income is being accumulated or set apart and the period for which the income is to be accumulated or set apart, which shall in no case exceed five year;*
- (b) the money so accumulated or set apart is invested or deposited in the forms or modes specified in sub-section (5);*
- (c) the statement referred to in clause (a) is furnished on or before the due date specified under sub-section (1) of section 139 for furnishing the return of income for the previous year.*

*Provided that in computing.....be excluded.*

*[Explanation – Any amount credited or paid out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (vi) or sub-clause (via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.]*

*In the instant case, the assessee had not exercised any option u/s. 11(2) or Explanation (2) to Section 11(1) of the Act. As such excess income over expenditure should have been taxed.*

*5. In the light of the above discussion, I find that the assessment order passed by the Assessing Officer u/s. 143(3) of the Income Tax Act dated 16/01/2015 for the assessment year 2012-13 is erroneous and prejudicial to the interests of revenue. Accordingly, invoking the provisions of section 263 of the Income Tax Act, 1961, the assessment order dated 16/01/2015 is set aside with a direction to the Assessing Officer to redo the same afresh after considering all issues raised herein above and after affording sufficient opportunity of being heard to the assessee."*

4. Aggrieved by the order of the CIT(E), the assessee has filed the present appeal before the Tribunal raising the following grounds:

1. The order of the Ld CIT is opposed to law and facts of the case.
  2. The Ld CIT ought to have found that there are no legal grounds to validly exercise jurisdiction u/s. 263 of the Act.
  3. The Ld CIT ought to have found that the marriage fund donations are for earmarked funds and the appellant does not have control over its use and hence they are corpus donations.
  4. Ld CIT ought to have found marriage fund donations are corpus donations and are to be excluded u/s. 11(1)(d) and sec 12(1) of the Act.
  5. The Ld CIT ought to have found that on facts the donations are made with specific directions to be utilised exclusively for marriage of poor girls.
  6. The Ld CIT ought to have applied the principles of decisions in Sri Ramakrishna Seva Ashrama (357 ITR 731) (Kar) Society of Anesthesiologist 32 ITR (Trib) 152 and N.H. Kapadia Educational Trust 136 ITD 111 (Ahad), and held that the impugned donations are corpus donations.
  7. The Ld CIT ought to have found that there are no valid grounds to include the marriage donations as receipts to compute the application of income u/s. 11 of the Act.
  8. For these and other grounds that may be urged at the time of hearing the order of CIT u/s. 263 may be cancelled.
5. The Ld. AR relied on the grounds raised in the Memorandum of Appeal. The Ld. DR on the other hand strongly supported the revisionary order passed by the CIT(E).

6. We have heard the rival contentions and perused the material on record. The assessee has filed detailed submissions before the CIT(E) and the same is reproduced in para 3 of the impugned order. In the written submission filed, the assessee has specifically taken the plea that the donations to marriage fund are corpus fund and does not form income liable to be taxed by virtue of section 11(1)(d) of the Act. The CIT(E) while passing his revisionary order u/s. 263 of the Act did not specifically refer to any of the submissions except the judgment cited in the case of DIT(Exemptions) vs. Sri Ramakrishna Seva Ashrama reported in 357 ITR 731 (Kar). In respect of the said judgment, the CIT(E) held that this case has no relevance as the same relates to rejection of 80G approval application. The CIT(E) further referred to section 11(1) and section 11(2) of the Act and held that when marriage fund contributions are treated as revenue receipts, the application of income falls short of statutory requirement of 85%. The CIT(E) further held that since there is no request for accumulation u/s. 11(2) of the Act, the application which falls short of 85% ought to be brought to tax. It was concluded that the assessment order dated 16/01/2015 having not done so, the same is erroneous and prejudicial to the interests of the revenue. We find from the impugned order that the CIT(E) has not considered specifically the issue, whether donations to marriage fund are corpus funds or not? Since the CIT(E) has not considered the specific plea of the assessee that the marriage fund is corpus funds and is not income by virtue of Section 11(1)(d) of the Act, we are of the view that matter needs to be considered afresh by the CIT(E).

Accordingly, the issue is restored to the files of the CIT(E). The CIT(E) shall decide the matter afresh after affording a reasonable opportunity of hearing to the assessee. It is ordered accordingly.

7. In the result, the appeal of the assessee is allowed for statistical purposes.

Pronounced in the open court on 29<sup>th</sup>/08/2017.

sd/-  
(MANJUNATHA G.)  
ACCOUNTANT MEMBER

sd/-  
(GEORGE GEORGE K.)  
JUDICIAL MEMBER

Place: Kochi

Dated: 29<sup>th</sup> August, 2017

GJ

Copy to:

1. 'Santhwanam' Papal Tower, S.T. Nagar, Thrissur-680 001.
2. The Commissioner of Income-tax(Exemptions), Kochi.
3. D.R., I.T.A.T., Cochin Bench, Cochin.
4. Guard File.

By Order

(ASSISTANT REGISTRAR)  
I.T.A.T., Cochin