

IN THE INCOME TAX APPELLATE TRIBUNAL “D” BENCH : KOLKATA

[Before Hon’ble Sri N.V.Vasudevan, JM & Shri Waseem Ahmed, AM]

I.T.A No.760/Kol/2017
Assessment Year : 2012-13

Biseswar Chattopadhyay Trust
Kolkata
[PAN : AABTB 2639 M]
(Appellant)

-vs- C.I.T.(Exemptions),
Kolkata

(Respondent)

For the Appellant : Shri Soumitra Choudhury, Advocate
For the Respondent : Shri G.Mallikarjuna, CIT(DR)

Date of Hearing : 26.07.2017.

Date of Pronouncement : 28.07.2017.

ORDER

Per N.V.Vasudevan, JM

This is an appeal by the assessee against the order dated 14.03.2017 of C.I.T.(Exemptions), Kolkata passed u/s 263 of the Income Tax Act, 1961 (Act).

2. The Assessee is a trust. It is registered u/s 12AA of the Act and has also approval u/s 80G of the Act. It provides services in the field of health and education and other social welfare activities to the public at large. For A.Y.2012-13 the assessee filed return of income on 31.07.2012 declaring total income at ‘Nil ‘. The AO passed an order of assessment u/s 143(3) of the Act on 27.08.2014 assessing the total income of the assessee at Rs. ‘Nil ‘ in the following manner :-

“4. The case was heard and discussed with the authorized representative of the assessee and after considering the submissions of the assessee, the income of the assessee trust is computed as under :-

Income as per Income & Expenditure Accounts		Rs.58,47,058/-	
Income available for application (A)			Rs.58,47,058/-
Income exempt u/s 11			
Application of income towards objective of the Trust u/s 11			

For charitable purpose i)Revenue Expenditure ii)Accumulation u/s 11(1)(a) upto _____of the income (A)amounting to Rs.8,77,059/- upto the extent available	<u>Rs.8,77,059/-</u>	<u>Rs.49,87,077/-</u> <u>Rs.8,59,981/-</u>	Rs.58,47,058/-
Total Application			Rs.58,47,058/-

As the income applied by the assessee for charitable purpose is in excess of 85% of the income derived from property of the Trust, exemption u/s 11 is allowed.

Total income available for application		Rs.58,47,058/-
Application for charitable purpose	Rs.58,47,058/-	
Accumulations u/s 11(1)(a)	Rs.Nil	
Total application		Rs.58,47,058/-
Taxable Income		Nil
Tax payable		Nil

3. The CIT in exercise of his powers u/s 263 of the Act was of the view that the aforesaid order of the AO was erroneous and prejudicial to the interest of the revenue. According to CIT the assessee received a sum of Rs.9,00,000/- as donation from one M/s. Luxmi Township Ltd. The assessee had treated this donations as towards corpus fund. There was no evidence to suggest that this donation was towards corpus fund with specific direction as required in section 11(1)(d) of the Act. According to the CIT the AO had not verified as to how this donation could be taken as donation towards corpus fund. According to CIT if the donation is not regarded as donation towards corpus fund then the income that has to be applied for charitable purpose (85% of general donation)

will be much more than what was applied by the assessee for charitable purpose during the previous year and therefore there would be a short fall in application of the income to the extent of 85% of income by the assessee which had to be brought to tax. On this basis the CIT issued a show cause notice u/s 263 of the Act and after hearing the objections of the assessee finally concluded that there was no specific direction by the donor to treat the contribution as corpus donation and therefore income of the assessee had to be determined by treating the corpus donation as part of the general donation for the purpose of application as well as accumulation.

4. Aggrieved by the order of CIT(Exemptions), Kolkata the assessee is in appeal before the Tribunal.

5. We have heard the submissions of the Id. Counsel for the assessee and the Id. DR. The donation in question was given by M/s. Luxmi Township Ltd pursuant to a request made by the assessee in a letter dated 02.01.2012. In this letter the assessee has explained that it requires fund to set up an eye hospital in the state of Tripura and that the donations given would be eligible for deduction u/s 80G of the Act. There is a specific request in this letter that the assessee requires "help through a donation for corpus fund". Pursuant to this letter the assessee received a sum of Rs.9,00,000/- as donation for which the Assessee issued a receipt to the donor in which it has been specifically mentioned that the donation is on account of corpus fund. The Id. Counsel for the assessee after bringing to our notice the above facts submitted that the conclusion of CIT that there was no basis for treating the donation as a corpus fund cannot be sustained. The Id. DR relied on the order of CIT(Exemptions).

6. We have given a very careful consideration to the rival submissions. Under section 11(1)(d) of the Act, income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust shall not be included in the total income of the previous year of the person in receipt of the income. Therefore irrespective of the application of the said income, the same shall not be included in the total income. The relevant statutory provision does not specify the manner in which

specific direction should be given. In our opinion the evidence on record is sufficient to come to a conclusion that the donation in question was towards corpus fund. We do not find any material on the basis of which the CIT(Exemptions) has come to the conclusion that there was no material to show that the donation in question was towards corpus fund. Order of the CIT does not spell out as to what is the evidence required to prove that the donation was towards corpus fund. The powers u/s 263 of the Act can be invoked only when it is shown by CIT that order of AO was erroneous and prejudicial to the interest of the revenue. In the present case the conclusion of CIT that order of AO was erroneous, cannot be sustained. There is no material on the basis of which CIT(Exemptions) has come to the conclusion that the donation in question is a voluntary contribution not falling within section 11(1)(d) of the Act. His conclusions on this issue is purely on assumptions and surmises. We therefore quash the order u/s 263 of the Act and allow the appeal of assessee.

7. In the result the appeal of the assessee is allowed.

Order pronounced in the Court on 28.07.2017.

Sd/-
[Waseem Ahmed]
Accountant Member

Sd/-
[N.V.Vasudevan]
Judicial Member

Dated : 28.07.2017.

[RG PS]

Copy of the order forwarded to:

- 1.Biseswar Chattopadhyay Trust, Kishore Bhavan, 17, R.N.Mukherjee Road, Kolkata-700001.
2. C.I.T. (Exemptions), Kolkata.
- 3..CIT(DR), Kolkata Benches, Kolkata.

True copy

By Order

Sr. Private Secretary
Head Of Office/D.D.O., ITAT Kolkata Benches

