

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH
KOCHI**

BEFORE S/SHRI P K BANSAL, VICE PRESIDENT & GEORGE GEORGE K, JM

ITA No 330/Coch/2016 (Asst Year 2011-12)

The Deputy Commissioner of Income Tax(Exemptions), Kochi.	Vs	Chinmaya Mission Educational & Charitable Trust, Greater Cochin, Nettipadam Road, Ernakulam.
(Appellant)		(Respondent)

PAN No.	AAATC 4449H
Revenue By	Shri A. Dhanaraj, Sr. DR
Assessee By	Sh P.M. Veeramani, CA
Date of Hearing	04/10/2017
Date of pronouncement	05 th /10/2017

ORDER

PER GEORGE GEORGE K, JM:

This appeal, at the instance of the Revenue is directed against the order of the CIT-III, Kochi dated 10.05.2016. The relevant assessment year is 2011-12.

2 The effective grounds raised reads as under:

2) The Id. CIT(A)-III Kochi erred in deleting the addition of Rs.52,66,500/- on account of donations received during A.Y. 2011-12 towards building fund since the assessee has not satisfied both the conditions in order to claim the building fund as exempted under section 11(1)(d) of the I.T. Act, 1961.

3) The decision of the Id. CIT(A) is not acceptable as the Assessing Officer has rightly pointed out that the assessee, has not proved that 'specific donations' were given by the donors that the voluntary donations given by them shall form part of the corpus.

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

The assessee is a Trust registered under section 12A of the I.T. Act. The return of income for the assessment year 2011-12 was filed on 29/09/2011 declaring 'nil' income. The assessment was taken up for scrutiny by issuance of notice under section 143(2) of the Act. The assessment was completed u/s. 143(3) vide order dated 26/03/2014. In the assessment completed, the Assessing Officer had disallowed a sum of Rs.2,53,18,335/- claimed by the assessee as exempt income under section 11((1)(d) of the Act, being contribution to the building development fund. The relevant observation of the Assessing Officer In disallowing the claim of the assessee reads as follows:

"Contribution to building fund which assessee considered as exempt income under section 11(10(d) is a wrong claim as long as the specific direction described in Act does not come, they are just voluntary contribution only. So the sum is added back in total income + Rs.2,53,18,335/-"

4. Aggrieved by the assessment order, the assessee preferred an appeal to the first appellate authority. Before the first appellate authority, it was contended that these donations are corpus fund, received specifically for building development fund. It was submitted that the same is clearly mentioned in the donation receipt issued by the assessee. It was further submitted by the assessee that the actual contribution received during the relevant assessment year is only Rs.52,66,500/- and the sum of Rs.2,53,18,335/- was the aggregate contribution received over several years. The assessee placed reliance on the following judicial pronouncements for the proposition

that the amount received from the donors for building fund is exempt under section 11(1)(d) of the Act.

5. On appeal, the CIT(A) allowed the plea of the assessee. The relevant finding of the CIT(A) reads as follows:

"7.3 I have considered this issue. The appellant is a charitable trust running an educational institution and also registered u/s. 12A of the IT Act. It is observed from the copies of balance sheet furnished by the appellant that the sum of Rs.2,53,18,335/- represent the aggregate contribution received during the FY 2010-11 was only Rs.52,66,500/-

7.4 It is also observed from the copies of receipts furnished by the appellant that the above sum of Rs.2,00,51,815/- belong to earlier financial years, it cannot be considered for FY 2010-11. In the above circumstances, I am of the opinion that the appellant is entitled for exemption under section 11(1)(d) of the Income Tax Act for the sum of Rs.52,66,500/- received during the FY 2010-11 towards building fund. Hence I direct the Assessing Officer to delete the addition of Rs.2,53,18,335/-."

6. The Revenue, being aggrieved, has filed the present appeal before the Tribunal. The Ld. DR submitted that the assessee could not prove that the donors had given donations to the Corpus Fund. It was stated that since the assessee was not maintaining a separate account for this purpose, the Assessing Officer was justified in denying the claim made under section 11(1)(d) of the Act.

7. The Ld. AR on the other hand relied on the submissions made before the Income Tax authorities and relied on the conclusions of the CIT(A).

8. We have heard the rival contentions and perused the material on record. The assessee has filed a paper book comprising of 58 pages. In the paper book, the audited accounts for the year ending 31/03/2011, partywise details of contributions to the building fund etc. are enclosed. On examining the details of the contributions towards building development fund, we notice that the receipts are issued by the assessee stating that the contributions made by the donors are for specific purpose of putting up infrastructure, namely building. For the relevant assessment year, the total contribution received towards building fund is to the tune of Rs.52,66,500/-. The remaining sum of Rs.2,00,51,815/-are contributions received in the earlier assessment years. The contribution received for building fund has not been denied the benefit of section 11(1)(d) for the earlier assessment years. The Hon'ble Karnataka High Court in the case of DIT(Exemption) vs. Sri Ramakrishna Seva Ashrama (357 ITR 731) had held that if the intention of the donor is to give money to a Trust and to utilize the same for carrying out a particular activity, it satisfies the definition of the word 'corpus fund'. It was concluded by the Hon'ble Karnataka High Court that the assessee would thus be entitled to the benefit of section 11(1)(d) of the Act. A similar view has been taken by the following judicial pronouncements:

1. DIT (Exemptions) vs. Jaipur Golden Charitable Clinical Laboratory Trust (311 ITR 365 (Del).
2. DIT(Exemptions) vs. N.H. Kapadia Education Trust (136 ITD 111)(Ahd)
3. Indian Society for Anesthesiologists vs. ITO (32 ITR Trib. 152) (Chennai)

8.1 As mentioned earlier in the instant case, there is a categoric finding by the CIT(A) that the amount of Rs.52,66,500/- was received towards building fund only. Therefore, in view of the judicial pronouncements cited supra, we are of the view that the assessee is entitled to exemption under section 11(1)(d) of the I.T. Act of amount of Rs.52,66,500/- received during the concerned assessment year, i.e., 2011-12. Therefore, we see no reason to interfere with the order of the CIT(A) and we uphold the same as correct and in accordance with law. It is ordered accordingly.

9. In the result, the appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 05th/10/ 2017.

sd/-	sd/-
(P K BANSAL)	(GEORGE GEORGE K)
Vice President	Judicial Member

Cochin: Dated 5th/10/ 2017

GJ

Copy to:

1. Chinmaya Mission Educational & Charitable Trust, Greater Cochin, Nettiadam Road, Ernakulam, Kochi-682 016.
2. The Deputy Commissioner of Income-tax (Exemptions), Kochi.
3. CIT(A)-III, Kochi.
4. CIT(Exemptions), Kochi
5. DR
6. Guard File

By order

Assistant Registrar
ITAT, COCHIN