

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH "F", MUMBAI**

**BEFORE D.T. GARASIA, JUDICIAL MEMBER AND  
SHRI G. MANJUNATHA, ACCOUNTANT MEMBER**

**ITA Nos.4923/ & 4924M/2015  
Assessment Years: 2010-11 & 2011-12**

M/s. Fellowship of Physically Handicapped, FPH Building, Lala Lajpat Rai Marg, Haji Ali, Mumbai – 400 034 <b>PAN: AAATF 0551D</b>	Vs.	Dy. DIT(E)-I(2) Piramal Chambers, Lalbaug, Parel, Mumbai - 400012
(Appellant)		(Respondent)

**Present for:**

Assessee by : Shri Yogendra Trivedi, A.R. Ms. Usha Dalal, A.R.  
Revenue by : Ms. Pooja Swaroop, D.R.

Date of Hearing : 14.06.2017  
Date of Pronouncement : 30.06.2017

**ORDER**

**Per D.T. GARASIA, Judicial Member:**

The above titled appeals have been preferred by the assessee against two separate orders of the Commissioner of Income Tax (Appeals) [hereinafter referred to as the CIT(A)] dated 14.07.2015 & 16.07.2015 relevant to assessment years 2010-11 & 2011-12 respectively. Since the facts and issues involved in both the appeals are identical in nature, hence the same are taken together for disposal by this common order.

2. The common ground in both the appeals which reads as under:

“The Learned Commissioner of Income - tax (Appeals) - 1, Mumbai ["Ld. CIT (A)"], erred in confirming the action of the Deputy Director of Income – tax (Exemption) - I (2), Mumbai ["the A.O."] in making addition of Rs. 25,05,600/- [transfer to corpus donation] and Rs. 14,55,501/- [transfer to building fund] to the income of the Appellant.”

3. The short facts of the case are as under:

The Assessing Officer (hereinafter referred to as the AO) has held that assessee has received corpus donation of Rs.25,05,600/- and donation towards building fund of Rs.14,55,501/- which was directly taken to balance sheet and same has been claimed exempt. However, assessee is not eligible to get benefit under section 11 for failure to get its account audited under section 12(A)(1), the benefit of exemption under section 11(1)(d) is not available to the assessee. Therefore, donation amounting to Rs.39,61,101/- were treated as capital donation by the assessee. Accordingly, it was added to the total income of the assessee.

4. Matter carried to the Ld. CIT(A) and the Ld. CIT(A) has dismissed the appeals of the assessee.

5. We have heard the rival contentions of both the parties. Looking into the facts and circumstances of the case, we find that the assessee trust is receiving grants from the state through Director of Social Welfare, Mumbai and the Maharashtra State for imparting educational training at work shop and recognized as "Welfare and Rehabilitation Institute for the Handicapped". The assessee trust is carrying out charitable activities to achieve the object of the trust to provide medical, education and relief to poor handicapped persons. Trust is receiving donation and income from property of trust by means of rent. The trust is letting out the property of trust for the purpose of charitable activities carried out by the trust. Therefore, rent and compensation received by the trust is income from property of the trust. We find that the order issued by Ld. CIT(A) in assessment year 2008-09 and assessment year 2006-07, and the order by ITAT for A.Y. 2008-09 and the Hon'ble Bombay High Court in its order dated 10.03.15 have held that assessee's income by way of rent from the property of the trust is not to be taxed as business income but it is to be treated as income from house property.

6. In view of this, we are of the view that assessee's income is to be treated as income from house property. The AO and the Ld. CIT(A) have disallowed the claim of the assessee only on the ground that assessee is not eligible for benefit of section 11 for failure to get its account audited under section 12(A)(1), therefore benefit was not available to the assessee. The assessee has submitted the audit report as required under section 12(A)(1) in form No.10-B along with the return of income. The above corpus donation was in the balance sheet and this amount was transferred from income and expenditure account to balance sheet only and said amount was taken into computation of income. The assessee has exercised this option by giving letter to the AO which is on page 39 of the paper book. We are of the view that AO and the Ld. CIT(A), without verifying the record, have disallowed the claim. We also held that assessee has not claimed deduction under section 11(1)(d) of the said amount. The assessee has claimed deduction under Explanation 2 to section 11(1) of the Act before due date of filing the return of income. Therefore, we allow the claim of the assessee.

7. In the result, both the appeals of the assessee are allowed.

**Order pronounced in the open court on 30.06.2017.**

**Sd/-**  
**(G. Manjunatha)**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(D.T. Garasia)**  
**JUDICIAL MEMBER**

Mumbai, Dated: 30.06.2017.

\* Kishore, Sr. P.S.

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The CIT (A) Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.