

IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN
BEFORE S/SHRI CHANDRA POOJARI, AM & GEORGE GEORGE K., JM

I.T.A. No./49/Coch/2017
Assessment Year : 2010-11

The Sacred Heart Provincial House, Alwaye, Ernakulam. [PAN: AABTS 9648B]	Vs.	The Asst. Director of Income-tax (Exemption), Range 4, Kochi.
(Assessee-Appellant)		(Revenue-Respondent)

Assessee by	Shri T.K. Mathew, CA
Revenue by	Shri A. Dhanaraj, Sr. DR

Date of hearing	28/02/2018
Date of pronouncement	28/02/2018

ORDER

Per CHANDRA POOJARI, ACCOUNTANT MEMBER:

This appeal of the assessee is against the order of the CIT(A)-III, Kochi dated 20/12/2016 for the assessment year 2010-11.

2. The assessee has raised the following grounds:

- 1) The order of the learned Assessing Officer and the learned first Appellate Authority are contrary to law, facts and other evidences.

- 2) The learned lower authorities ought to have accepted the supporting documents furnished by the donors as evidence for the donations given to the assessee institution as of capital nature which is corpus donations.
 - 3) The learned lower authorities erred in accepting the view taken by the Tribunal in the case of N.A. Ramachandra Raja Charity Trust vs. First ITO reported in (1985) 14 ITD 230 (Mad) and in ITO vs. Maliram Pooranmal Charitable Trust (1981) 12 TTJ (JP). These evidences are sufficient admit the voluntary contribution as corpus of capital nature.
 - 4) The learned lower authorities ought to have convinced that if any voluntary donation is made with specific direction, then it shall be treated as capital of the trust qualifying it as a corpus donation u/s. 11(1)(d). Reported in Director of Income Tax (Exemptions) & Anr. Vs. Sri Ramakrishna Seva Ashrama (2013) 258 CTR (Kar) 201.
 5. The learned lower authorities erred in treating Rs.2,01,000/- as not application of income in the absence of section 12AA registration for the donee institutions. The contributions were to convents functioning under the appellant Province which hold same objects as of the assessee which is enough to satisfy the eligibility of the claim.
3. The facts of the issue are that the assessee is a religious Trust registered u/s. 12A of the I.T. Act. The return for the assessment year 2010-11 was filed on 16/09/2011 admitting 'nil' income. Subsequently, the ACIT(Exemption) passed order u/s. 143(3) on 27/02/2013 with a demand at Rs.22,59,040/-.
4. Against this, the assessee went in appeal before the CIT(A) challenging the addition of corpus donation as income of the assessee and also non consideration of contribution to other institutions as application of income. Further, the Assessing Officer has not given 15% benefit of accumulation on the corpus donation which was treated as income of the assessee.

5. The assessee in the assessment year under consideration, has received Rs.1,63,16,030/- from members of the province working in Germany and another sum of Rs.29,76,448/- from the members working in Italy. The total amount of Rs.1,92,94,478/- was claimed as corpus donations by the assessee. Since the assessee failed to furnish evidence from each of the donors to prove that these donations were corpus donations given for specific purpose, the Assessing Officer disallowed the claim of the assessee in treating it as corpus donation given for a specific purpose.

6. Regarding addition of Rs.29,76,448/- received from the members in Italy. It was stated by the Assessing Officer that the assessee has not furnished any evidence regarding the fact that it was corpus donations. The same position continued before the CIT(A) and therefore, the CIT(A) confirmed the addition, treating it as income of the assessee.

7. Regarding the claim of the assessee relating to contribution of Rs.2,01,000/- it was stated that it has been given as donation from other institutions which are engaged in similar nature of charitable and religious activities.

8. With regard to corpus donation of 15% to be accumulated and set apart for application, the Assessing Officer has partly allowed Rs.38,18,712/- for the accumulation of income which is 15% of the returned income. There was

addition of Rs.1,92,94,478/- to the total income of the assessee. The CIT(A) directed the Assessing Officer to allow a further sum of 15% of Rs.1,92,94,478/- for the purpose of accumulation.

9. Now before us, the Ld. AR has filed certificate from donors, stating that the impugned amount has been given for corpus donation by Sr. Probus, Sr. Soona, Sr. Maria Pushpam, Sr. Shiny and Sr. Jereena and they have confirmed the same vide their letter dated 07/10/2016 which is kept on record at pg. 11 of the paper book. The Ld. AR submitted that the amount has been transferred from their bank account to the assessee's bank account which may be verified.

10. Regarding the contribution to other Trusts, it is submitted that other Trusts were duly registered u/s. 12A and having similar objects of the assessee-Trust. Hence it is to be considered as application of income.

11. On the other hand, the Ld. DR relied on the orders of the lower authorities.

12. We have heard the rival submissions and perused the material on record. In our opinion, the receipt of donation from various donors which were duly confirmed by them, it is to be examined by the Assessing Officer. Hence this issue is remitted back to the file of the AO for his fresh consideration. Regarding contribution to other institutions, the assessee has not furnished the

registration certificate u/s. 12A issued by the Income Tax authorities. Hence we decline to entertain this claim and accordingly, this ground is rejected.

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

Pronounced in the open court on 28th February, 2018.

sd/-
(GEORGE GEORGE K.)
JUDICIAL MEMBER

sd/-
(CHANDRA POOJARI)
ACCOUNTANT MEMBER

Place: Kochi

Dated: 28th February, 2018

GJ

Copy to:

1. The Sacred Heart Provincial House, Alwaye, Ernakulam.
2. The Assistant Director of Income-tax(Exemption), Range-4, Kochi.
3. The Commissioner of Income-tax(Appeals)-III, Kochi.
4. The Commissioner of Income-tax,
5. D.R., I.T.A.T., Cochin Bench, Cochin.
6. Guard File.

By Order

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