

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR**

**Before Sh. N. S. Saini, Accountant Member
And**

Sh. N. K. Choudhry, Judicial Member

ITA No. 737/Asr./2017 : Asstt. Year : 2012-13

Diocese of Chandigarh, CNI, Mission Compound, Brown Road, Ludhiana	Vs	Income Tax Officer(Exemption), Jalandhar
(APPELLANT)		(RESPONDENT)
PAN No. AAATD0653Q		

**Assessee by : Shri. Padam Bhal, CA
Revenue by : Smt. Ratinder Kaur, DR**

Date of Hearing :19.02.2019	Date of Pronouncement : 19.03.2019
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ORDER

Per N. S. Saini, Accountant Member:

This is an appeal filed by the assessee against the order of CIT(A)-4, Ludhiana dated 22.09.2017.

2. The assessee has raised following grounds of appeal:

"The learned CIT (APPEALS) order is not justified so far as additions resulting in taxable income of the assessee amounting to Rs. 1823453/- by non-deletion of following additions made by Assessing Officer in order u/s 143(3) in gross receipts of the assessee and even afterwards net rectifying the order passed u/s 154 r.w.s. 250(6) as per details below:

1. The amount of Group Gratuity Fund balance as on 31.03.2012 Rs.2039842/- and interest accrued on this Group Gratuity Fund Rs.176503/- for the financial year has wrongly been treated as part of gross receipts of the trust by the Assessing

Officer, whereas this amount is not part of gross receipts of the trust as:

a) a sum of Rs.1975050/- which was total deposit under Group Gratuity Scheme by the trust from the year 2000 (since inception of the scheme) till 31.03.2011 was b/f and incorporated in books by passing contra entry by debiting " Group Gratuity Fund" balance under Cash and Bank Balance on Asset Side and crediting " Group Gratuity Fund" a/c under Designated Funds on Liability Side.

b) further deposit in this fund account were also entered by passing contra entry resulting in total balance in Funds A/c (both Assets and Liability Side) to Rs.2039842/-. Further a sum of Rs.176503/- received as interest on this fund deposits was wrongly credited by assessee as income, however was reduced from Gross Receipts while working % utilization of Gross Receipts by the trust for the financial year 2011-12.

c) these debit and credit entries were only incorporated in books by the trust to keep track on the balance lying in group gratuity funds scheme and amount deposited pertained to the period from the year 2000 to 2012 and this is only contra entry and does not form part of receipts of the trust. On Asset side the balance shows balance of Funds deposited in Designated A/c and on liability side the same amount is shown as it pertains to liability against deposits on behalf of different employees of the trust. "

3. The brief facts of the case are that the assessee filed return of income on 06.03.2013 showing Nil income after claiming exemption u/s 11 & 12 of the Act. The Assessing Officer observed that the assessee has shown designated fund of Rs.29,11,196/- received during the year as receipt out of which a sum of Rs.20,39,842/- is on account of group gratuity

fund and Rs.1,76,503/- on account of interest received on LIC group gratuity fund have been deducted without any legality. Thus, it is not in accordance with the provisions of Section 11 of the Act. The amount received in designated fund is to be shown as receipt for the year without any deduction of the group gratuity scheme fund and interest received on LIC group gratuity fund as per provisions of Section 11 of the Act. Therefore, he held that the assessee should have utilized Rs.83,37,167/- being 85% of the total receipts of Rs.98,08,432/- during the year but had actually utilized Rs.65,13,714/- which is 66.40% of the total receipts. Therefore, he assessed Rs.18,23,453/- being the difference amount as income of the assessee.

4. On appeal, the CIT(A) confirmed the order of the AO by observing as under:

"5.2 I have considered the observations of the Assessing Officer as made by him in the assessment order while making impugned addition. I have also considered written submissions filed by the assessee trust/society through its learned AR vide letter dated 09.08.2016 on the issue under reference. On careful consideration of the rival contentions, it has been noticed that the submissions made by the learned AR of the assessee during appellate proceedings are almost similar to the submissions which were made by him during assessment proceedings. It has also been noticed that the funds received by the assessee on account of Group Gratuity Scheme Fund have directly been taken to balance sheet under the head 'designated funds' and have not been routed through income and expenditure account which in my opinion is a glaring mistake on the part of the assessee. Similarly, other receipts routed through designated funds account have also not been routed through income and expenditure account. Moreover,

the learned AR of the assessee has himself admitted that the receipt through designated funds account should have been treated as income of the assessee trust. As and when the designated funds are utilized, the assessee trust is free to claim it as an expenditure which has also been done by the learned AR while filing revised computation during assessment proceedings. In the present case, after receiving the funds which have directly been taken to designated funds account, the assessee has deposited part of it in its bank account. It means that the control over the funds is still with the assessee. Nothing has been brought on record to suggest that the assessee trust has no control over the funds deposited in its bank account which has also been made part of the balance sheet. Moreover, the Assessing Officer is fare enough to allow the utilization of expenses claimed through designated fund account. Under such circumstances, I am of the opinion that the Assessing Officer has made no mistake in bringing to tax the underutilized amount of funds received during the year. The plea of the assessee that the amount is lying in the bank account and it should be allowed deduction under section 11(5) of the Act cannot be accepted as the assessee trust do not fulfill the necessary conditions for claiming such deduction.

5.3 In view of the above stated facts and in the circumstances of the case, I am of the opinion that the Assessing Officer is fully justified in bringing to tax the underutilized amount of Rs. 18,23,453/- for claiming exemption under section 11/12 of the Act. The addition of Rs. 18,23,453/- made by the Assessing Officer in this case on account of under utilization of income is, therefore, upheld. In the result, ground No.1 of appeal taken by the assessee is dismissed."

5. Before us, the AR of the assessee submitted as under:

"ii) In this regard copies of balances in group gratuity fund balance with L.I.C. Group Gratuity Funds as on 31.03.2011 as well as 31.03.2012 duly confirmed are enclosed herewith wherein it is clear

that Rs.1975050/- was lying in the funds account as on 31.03.2011 and neither this amount appeared in the funds account under "Designated Fund" in Balance Sheet as on 31.03.2011 on liability side nor the Gratuity Fund Deposit A/c appeared in the books during that year under "Cash & Bank Balances" on asset side (as per copies of Balance Sheet already submitted). This amount actually pertains to deposits in this fund a/c from the year 2000 to 2011 as this fund account was opened in the year 2000 (as per copy of master policy of LIC enclosed herewith).

iii) Hence our submission that the amount shown in funds account under the head "Group Gratuity Fund" i.e. Rs.2039842/- should not be taken as receipt of funds during the year as this entry has occurred only due to the reason that the assessee has decided to incorporate the Gratuity Fund Deposit account in the books by debiting the Deposit Account under Cash & Bank Balances and Crediting the same under the head Funds received, which earlier was not being depicted in books as funds in this account belong to Employees of the institution and not to the institution and withdrawals from this fund can only be made by the employees (after retirement or earlier termination of services). This is only contra entry for total amount till the passing of entry in the books b/f in books by the assessee.

iv) in this regard, copy of LIC Group Gratuity Fund Agreement issued at the time of starting of the fund is also enclosed herewith which clearly reflects that the fund was opened by the institution in 2000 and till 2011 (i.e. 31.03.2011) only funds deposited were being shown as expenditure in the books but in the year 2011-12, total funds lying in the fund have been b/f in the books by Debiting "LIC group Gratuity" A/c shown under Cash & Bank Balances in debit side of Balance Sheet as on 31.03.2012 and crediting "Group Gratuity Scheme Funds" under the column "received during the year" under Designated Funds a/c on credit side of the Balance Sheet. This

entry was passed by the institution Just to keep track of funds deposited in this scheme."

6. The DR supported the orders of the lower authorities.

7. We have heard the rival submissions and perused the orders of the lower authorities and materials available on record. In the instant case, it is not in dispute that the assessee trust is a charitable trust registered u/s 12AA of the Act. The only dispute raised before us is that the AO added Rs.20,39,842/- as receipt on account of group gratuity fund to the income of the assessee for the year under consideration which according to the assessee ought not to have been included in the income of the year under consideration.

8. The AO observed from the balance sheet of the assessee that Rs.20,39,842/- was shown credited under the head group gratuity fund whereas no such amount was appearing in the balance sheet of the immediately preceding year. Therefore, the AO treated this amount as receipt of the assessee of the year. The assessee explained before us that it was maintaining a group gratuity policy with the LIC since the year 2000. The investment made in the said policy was kept outside the balance sheet. For tracking the balance lying in the group gratuity fund scheme, the same was capitalized in the balance sheet of the year under consideration by passing contra entry. The group gratuity fund was credited by a sum of Rs.19,75,050/- which was total deposit under group gratuity scheme by the trust from the year 2000 (since inception of the scheme) till 31.03.2011 was brought forward and incorporated in books by passing contra entry by debiting group gratuity

fund balance under cash and bank balance on asset side and crediting group gratuity fund account under designated funds on liability side.

9. However, we find that no evidence could be produced before us or before lower authorities by the assessee to show that Rs.19,75,050/- was the value of investment in group gratuity scheme with LIC as on 31.03.2011. Simultaneously, it is observed that the assessee filed a copy of group gratuity policy issued by the LIC in the year 2000 which is placed at page nos. 40 to 46 of the paper book. It is also observed that in the earlier year when investment was made in the group gratuity scheme with LIC how the same was accounted for by the assessee. The assessee also could not explain the difference between the closing balance of Rs.20,39,842/- shown on the credit side of the balance sheet and Rs.19,75,050/- which was credited by way of contra entry. Thus, the difference of Rs.64,792/- which has been increased during the year also needs inquiry by the AO. In our considered view simply because value of group gratuity policy as on 31.03.2011 is capitalized this year by crediting to group gratuity fund account, the said amount cannot be treated as receipt or income of the assessee of the year.

10. In these circumstances, in our considered opinion, it shall be in the interest of justice to restore this issue back to the file of the AO for adjudicating afresh after proper verification in light of the discussion made hereinabove. The assessee is also directed to cooperate with the department and furnish the necessary evidence before the AO as and when called for by

the AO. We order accordingly. This ground of appeal of the assessee is partly allowed as above.

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

(Order Pronounced in the Open Court on 19/03/2019)

Sd/-
(N. K. Choudhry)
Judicial Member

Sd/-
(N. S. Saini)
Accountant Member

Dated: 19/03/2019

Subodh

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR