

आयकर अपीलीय अधिकरण, इन्दौर न्यायपीठ, इन्दौर

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

**BEFORE HON'BLE KUL BHARAT, JUDICIAL MEMBER
AND
HON'BLE MANISH BORAD, ACCOUNTANT MEMBER**

ITA No.578/Ind/2016
Assessment Year: 2011-12

M/s Keerti Friends Foundation, A-114, Shahpura, Bhopal (Appellant)	<u>बनाम/</u> Vs.	DCIT-1(1) Indore (Revenue)
PAN: AABTK4655N		
Appellant by	Shri Girish Agrawal, CA	
Revenue by	Shri K.G. Goyal, Sr. DR	
Date of Hearing:	27.03.2019	
Date of Pronouncement:	29.04.2019	

आदेश / O R D E R

PER MANISH BORAD, A.M:

This appeal by Assessee pertaining to A.Y. 2011-12 is directed against the order of Ld. Commissioner of Income Tax(Appeals)-1 Bhopal, (in short 'CIT(A)'), dated 29.02.2016 which is arising out of the order u/s 143(3) of the Income

Tax Act 1961(hereinafter called as the 'Act') framed on 27.02.2014 by DCIT, 1(1) Bhopal.

The assessee has raised following grounds of appeal:

“The assessee, in view of the aforesaid facts, state the following grounds in support of the appeal:

1. On the facts and in the circumstances of the case, the Ld. CIT(A)-1, Bhopal, erred in sustaining the addition of Rs.5,08,380/- made by the Ld. assessing officer on account of Long Term Capital Gain in the hands of the assessee society.

2. On the facts and in the circumstances of the case, the Ld. CIT(A)-1, Bhopal erred in sustaining the addition of Rs.29,90,802/- made by the Ld. Assessing officer on account of disallowance of donation of movable assets along with liabilities made to another society with similar objects and treating it as long term capital gain.

3. On the facts and in the circumstances of the case, the Ld. CIT(A)-1, Bhopal erred in sustaining the addition of Rs.1,28,434/- made by the ld. Assessing officer on account of depreciation on fixed assets claimed by the assessee society.

4. On the facts and in the circumstances of the case, the Ld. CIT(A)-1, Bhopal, erred in sustaining the disallowance of Rs.11,03,070/- made by the Ld. Assessing officer on account of claim of exemption of income u/s 10(23C)(iiiad) by the assessee society.

5. On the facts and in the circumstances of the case, the Ld. CIT(A)-1 Bhopal, erred in not considering in proper perspective, the submissions made by the appellant.”

2. Briefly stated facts as culled out from the records are that that the assessee is a society which is mainly engaged in the Educational activity. After, claiming exemption u/s

10(23)(iiiad) of the Act at Rs.11,03,069/-, nil income was declared in the return filed on 10.07.2012. Case picked up for scrutiny and notice u/s 143(2) of the Act duly served upon the assessee.

3. Ld. Assessing Officer(AO) examined the books of accounts and financial statement of the assessee and came across transactions through which the assessee has claimed to have been donated immovable properties to the closely hold societies. He observed that the assessee society has not taken any approval from the Registrar of Firms before donating the land. He also observed that the various other assets along with liabilities including bus loan, unsecured loan have been donate to the two closely held society and such transfer of capital asset was liable to be taxed as capital gain. In his view depreciation was also wrongly claimed on the donated assets. Further on going through the activities carried out by the society, Ld. AO observed that apart from education, other activities were also undertaken and therefore, as the society is not existing solely for educational purposes, the assessee's claim for exemption u/s 10(23)(iiiad) of the Act is liable to be rejected. Ld. AO after considering submissions of the assessee, assessed the income of Rs.52,22,306/- after

making following additions to the nil income declared by the assessee:-

(i) Addition for Long Term Capital Gain	Rs.5,08,380/-
(ii) Disallowance of immovable assets	Rs.29,90,02/-
(iii) Disallowance of depreciation at	Rs.1,28,434/-
(iv) Disallowance of exemption u/s10(23)(iiiad)	<u>Rs.11,03,070/-</u>
Total	<u>Rs.52,22,306/-</u>

4. Aggrieved the assessee preferred an appeal before the Ld. CIT(A) but failed to succeed.

5. Now the assessee is in appeal before the Tribunal.

6. Ld. counsel for the assessee referring to the written submissions and paper book running from pages 1 to 159 and paper book containing case laws running from pages 162 to 167 prayed for deletion of additions/disallowances.

7. Per contra Ld. Departmental Representative (DR) vehemently argued supporting the order of both the lower authorities.

8. We have heard the rival contentions and perused the record placed before us. The assessee has raised ground no.1 to 6 out of which effective grounds are 1 to 4

challenging following additions/disallowances:-

(i) Addition for Long Term Capital Gain	Rs.5,08,380/-
(ii) Disallowance of immovable assets	Rs.29,90,02/-
(iii) Disallowance of depreciation at	Rs.1,28,434/-
(iv) Disallowance of exemption u/s 10(23)(iiiad)	Rs.11,03,070/-

9. We observe that Ld. CIT(A) confirmed the above stated additions/disallowances observing as follows:

6. I have carefully considered the facts of the case and the submissions of the appellant. As per the assessment order, it is seen that the appellant is a registered charitable society. The society claimed exemption u/s 10(23C)(iiiad) and declared 'Nil' taxable income for the year. As per the submissions filed, the auditors in their audit report for the F.Y.2009-10, have stated that this is the first year of audit for the appellant. In the audit report for the F.Y. 2010-11, the relevant previous year, the auditors have reported that the appellant society has donated its immovable property being land at village Barkheda Nathu to the following two societies (50 % each):- Human life Development Society and Galaxy charitable Trust. Apart from the land aggregate value being Rs.35,88,000/- all other movable properties were also donated for a value of Rs. 29,90,802/- along with liabilities amounting to Rs.19,17,341/-. However the learned AO disallowed the claim of such donation on the following grounds:-

- a) The bye laws of the society do not permit such donation of its immovable and movable property.*
- b) That no permission was obtained from the Registrar of Firms & Societies prior to the donation of this land as was specifically required as per clause 23 of the bye laws of the appellant society.*
- c) That in the land donation deed, name and designation of the*

office bearers of the Donee societies have been mentioned first instead of the name of the Donee societies first and the name of the office bearers later.

d)The society in its notes to account duly certified by the auditors has mentioned that the land has been donated to Mr. Kalrav Shrivastava slo K.Shrivastava, Chairman, Galaxy Charitable Trust and Smt Geeta Deewan wlo Shri Sachindra Deewan, Chairman of Human Life Development Society, Bhopal.

e) That the office bearers of the Donee societies are related to the assessee society.

7. The appellant is claiming to be a society having various objectives from slum development to village development to family planning to SC/ST development, health, music, dance, agriculture, so on and so forth. The Society was registered under the society registration act on 19th September 2008. The society was definitely not registered under 12A of the 1. T. Act. The first financial year of the society would be F .Y. 2008-09. At this stage it is not clear whether returns of income for A.Y 2009-10 and 2010-11 were filed or not. Thus after a very short period of existence of the appellant society, from the audit report it is seen that during the middle' of the F .Y., the property of the appellant were transferred to two other societies namely Human Life Development Society and Galaxy charitable trust.

8. During the year under consideration the appellant has shown incomes on account of various kind of fees at Rs. 40,83,498/- and after claiming various expenses, excess of income over expenditure has been shown at Rs. 11,03,069/-. The entire amount has been claimed exempt U/S 10 (23C)(iiiad). The assessing officer has rejected the claim of exemption u/s 10 (23C)(iiiad) for the following reasons:

•As per the provisions of section 10(23C)(iiiad) "Any university or other educational institution existing solely for educational purpose and not for the purpose of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed."

•In the case of the appellant, the appellant has multifarious object clauses in its bye laws reproduced in

the assessment order above and which clearly indicate that the educational institution is not existing solely for the purposes of education. The mandatory word here is 'solely' i.e. exclusively for education.

•In view of the Supreme Court decision in the case of Dharmaposhanam Co. Vs. CIT (1978) 114 ITR 463 (SC) wherein it has been held that 'whether a trust is for charitable purpose is to be determined by reference to all the objects for which trust has been brought in to existence and for considering the claim of exemption, the activities open to the assessee under the provisions of its memorandum of association are relevant and not the activities actually conducted by the assessee.

9. Another important aspect of the matter is that the appellant has claimed that it has donated the immovable properties to the two societies which are controlled by the same set of people namely - Human Life Development Society and Galaxy charitable trust. As stated by the A.O, there are prima facie violations of M.P. Society registration certificate. Therefore, in view of the complete facts of the case and the assessment order, the addition made by the A.O on account of long term capital gain of Rs. 5,08,380/- is hereby confirmed. The claim of donation by the appellant society is not accepted. With regard to the addition made by the A.O of Rs. 29,90,802/-, the A.O may verify the cost of acquisition in the hands of the appellant and work out the capital gain accordingly. The addition on account of depreciation at Rs. 1,28,434/- is also confirmed.

10. The source of capital creation in the hands of the appellant during the preceding years F.Y. 2008-09 and 2009-10 was through corpus donations and unsecured loans. Looking at the manner in which the affairs of the appellant society have been conducted for personal gains and the manner in which the assets of the society have been transferred/siphoned, the AO is directed to verify the records to verify the genuineness of the corpus donations/unsecured loans etc. and take appropriate action under the law. In view of all the facts mentioned above, the claim of exemption of income u/s 10(23C)(iiiad)

has been rightly denied by the AO therefore the addition on this account of Rs.11,03,070/- is hereby confirmed.

10. From perusal of the above finding of the Ld. CIT(A), we observed that from para 6 to 8, she has only discussed the finding of the Ld. AO. Thereafter, in para 9 & 10 the additions have been confirmed without giving any reasoning/clear finding. At some places Ld. CIT(A) has merely mentioned that the addition had been confirmed. She has also given directions to verify the cost of acquisition. Directions have also given to verify the genuineness of corpus donations/unsecured loans.

11. In our considered view and in the given facts and circumstances of the case order of Ld. CIT(A) is not a speaking order, therefore, all the four additions/disallowances challenged by the assessee before us needs to be set aside to the file of the ld. CIT(A) for afresh adjudication with a direction that a proper speaking order is to be passed along with specific finding for confirming or deleting the addition/disallowance as case may be. Needless to mention that proper opportunity of being heard should be provided to the assessee.

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

Order was pronounced in the open court on 29.04.2019.

Sd/-
(KUL BHARAT)
JUDICIAL MEMBER

Sd/-
(MANISH BORAD)
ACCOUNTANT MEMBER

Indore; दिनांक Dated : 29/04/2019

Patel. P.S./नि.स.

Copy to: Assessee/AO/Pr. CIT/ CIT (A)/ITAT (DR)/Guard file.

By order
Assistant Registrar