

IN THE INCOME TAX APPELATE TRIBUNAL
DELHI BENCH "F": NEW DELHI
BEFORE SHRI H.S. SIDHU, JUDICIAL MEMBER
AND
SHRI B.R.R. KUMAR, ACCOUNTANT MEMBER

ITA No. 666/DEL/2016

A.Y.: 2005-06

ANGIKA DEVELOPMENT SOCIETY,
5/7, 2ND FLOOR,
SARVAPRIYA VIHAR,
NEW DELHI
CENTRE
(PAN: AAECA8615N)
(Appellant)

VS. ASSTT. DIRECTOR OF INCOME TAX
(EXEMPTION), INV. CIRCLE-I,
24TH FLOOR, E-2 BLOCK
PRATYAKSH KAR BHAWAN, CIVIC
CENTRE, NEW DELHI - 2
(Respondent)

Assessee by : SH. SHASHANK SINGH, ADV. & SH. ARJUN
Department by : SH. SURENDER PAL, SR. DR.

ORDER

PER H.S. SIDHU, JM

This appeal filed by the Assessee is directed against the Order of the Ld. CIT(A)-21, New Delhi pertaining to assessment year 2005-06 on the following grounds:-

1. On the facts and in the circumstances of the case, the CIT(A) has erred in upholding the addition of Rs. 95,00,000/- (Rupees Ninety Five Lakhs Only) u/s 68 of the IT Act, disregarding the claim that this amount

represented corpus donation received by the Appellant which was exempt u/s 11(d) of the IT Act.

2. That on the facts and in the circumstances of the case, the CIT(A) erred in upholding the addition of Rs. 95,00,000/- (Rupees Ninety Five Lakhs Only) without appreciating that the AO did not carry out enquiries as directed by the ITAT, Delhi Bench in its order dated 15.07.2011 in ITA No. 2295(Del) of 2010 and did not bring on record any fresh evidence against the Appellant.
3. That on the facts and in the circumstances of the case, the CIT(A) erred in upholding the addition of Rs. 95,00,000/- (Rupees Ninety Five Lakhs Only) u/s 68 without appreciating that the Appellant, having produced all evidence to prove the genuineness of donation received, was not required to prove the source of source of donation given by LEARN.
4. That on the facts and circumstances of the case, the CIT(A) has erred in upholding addition of Rs. 95,00,000/- (Rupees Ninety Five Lakhs Only) without appreciating that the AO did not bring any fresh evidence on record against the Appellant and that the AO having failed to obtain any reply from LEARN, could not be used against the Appellant to sustain the addition.
5. That the CIT(A) ought to have followed the decision of his predecessor and deleted the addition as the AO

has not brought any fresh material against the Appellant on record.

6. That the CIT(A) ought to have deleted the addition, as the AO in his enquiries conducted as per directions of the ITAT, in its order dated 15.07.2011, has not been able to prove that cash deposits made in the bank account of LEARN were made by the Appellant and represented the undisclosed income of the Appellant.
7. The appellant craves liberty to add, amend, alter, modify, and / or delete any of the grounds of appeal in its hearing before your honour.
8. The appellant prays for justice and that its appeal may be allowed on the grounds raised hereinabove.

2. The brief facts of the case are that the assessee is an educational society duly registered under the Societies Registration Act and filed its return on 17.10.2005 declaring income of Rs. 20,166/- alongwith Audit Report for the period ending 31.3.2005. The case of the assessee was selected for scrutiny and the assessment was completed at Rs. 97,20,170/- by making addition of corpus donation of Rs.95 lacs received from M/s Locus for Educational & Academic Research Network (LEARN) of Imphal, treating as unexplained cash credit u/s. 68. Against the assessment order, Assessee filed an appeal before the Ld. CIT(A), and the Ld. CIT(A)

deleted the alleged corpus donation of Rs. 95 lacs by LEARN. Aggrieved by the order of the Ld. CIT(A), the Department preferred an appeal before the ITAT and the Tribunal vide its order dated 15.7.2011 set aside the issue for verification of corpus donations. In compliance to the directions of the ITAT, a letter dated 5.2.2013 was issued to the assessee to represent the case before the AO alongwith the documentary evidence. During the course of reassessment proceedings various queries were asked from the LEARN, which was not provided to the AO. Therefore, the AO has no option but to make an addition of Rs. 95 lacs in the hands of the assessee as an accommodation entry in the form of alleged donation. Aggrieved with the above assessment the assessee appealed before the Ld. CIT(A) and Ld. CIT(A) vide his impugned order dated 13.10.2015 has upheld the action of the AO in treating the corpus donation of Rs. 95 lacs allegedly received from LEARN as undisclosed income in the hands of the assessee u/s. 68 of the Income Tax Act, 1961 (in short "Act") and by Corrigendum dated 4.12.2015 has dismissed the appeal of the assessee. Aggrieved with the order of the Ld. CIT(A), assessee is in appeal before the Tribunal.

3. Ld. Counsel for the assessee submitted that as per the directions of the ITAT, the AO passed the order dated 31.3.2013 wherein he added the corpus donation of Rs. 95 lacs u/s. 68 of the Act, but he did not carry out enquiries as directed by the ITAT and did not bring on record any fresh evidence. He further submitted that AO was not justified in adding the corpus donation as one of the major reason for adding the corpus donation was lack of information received from LEARN to the queries that were raised by the AO during the course of reassessment proceedings as LEARN failed to provide the desired information. It is further submitted that the account of LEARN has no connection with the activities of the assessee society, therefore, investigations into the account of LEARN has no co-relation to the donation received by the assessee society through a legitimate banking transaction and which was duly declared as such by the assessee society. He further submitted that Ld. CIT(A) has wrongly upheld the action of the AO in declaring the corpus donation as undisclosed income, despite the fact that corpus donation was received through account payee cheque/drafts and moreover these modus of donation have been confirmed by the office bearers of LEARN and assessee is not required to prove the source of source of donation received as corpus donation. In view of

above, he requested to cancel the orders of the authorities below and delete the addition in dispute.

4. On the contrary, Ld. DR relied upon the orders of the authorities below and stated that in compliance to the Tribunal directions, the AO has taken all necessary steps to enquire the veracity and genuineness of corpus donation by LEARN on the basis of direction issued by the ITAT but no new facts or evidence have been gathered during the enquiry and Assessee has failed to discharge his onus to prove the nature and genuineness of the corpus donation of Rs. 95 lacs. Hence, Ld. CIT(A) has rightly upheld the action of the AO, which does not need any interference.

5. We have heard both the parties and perused the records especially the impugned order. We note that in compliance of the directions of the ITAT, the AO has made enquiry from each and every aspect, but the fact remains unchanged as nothing new has come up during the intervening period. It is also noted that all efforts to verify the balance sheet of LEARN, has gone in vain as the LEARN has not cooperated to provide the desired information which could have helped reaching the truth. However, the details of bank account in Bank of India, Ghaziabad was enquired but nothing new could come

from. It is also noted that the mode of transaction viz. depositing of cash equivalent to the donations immediately before the issuing of demand drafts raises doubt as to the genuineness of transactions, as also observed by the ITAT and earlier denied by the two letters written by Chairman, LEARN during original assessment, enumerating therein the fact that the assessee had no capacity to pay donation and now reflected in DCIT, Circle Imphal, letter dated 21.3.2013 received in fax, that the said NGO, LEARN only received donations from other parties during the assessment year 2005-06. We further note that AO has taken all necessary steps to enquire the veracity and genuineness of corpus donation by LEARN on the basis of directions issued by ITAT but no new facts or evidence have been gathered during the enquiry. It is further observed that all sufficient steps have been taken by the AO in accordance with the ITAT directions to investigate and unearth the truth behind the genuineness of corpus donation but no new facts or evidence came up as a result of same. It is germane to mention here that during the course of reassessment proceedings various queries were asked from the LEARN, which was not provided to the AO. In view of above, in our considered opinion, the assessee has failed to discharge his onus to prove the nature and genuineness of the corpus donation of Rs. 95 lacs, therefore, Ld. CIT(A) has rightly

affirmed the action of the AO in treating the corpus donation of Rs. 95 lacs allegedly received from LEARN as undisclosed income in the hands of the assessee u/s. 68 of the Act, which does not need any interference on our part, hence, we uphold the action of the Ld. CIT(A) of affirming the addition in dispute and accordingly reject the grounds raised by the Assessee.

6. In the result, the Appeal of the assessee is dismissed.

Order pronounced on 06-06-2019.

Sd/-

**[B.R.R. KUMAR]
ACCOUNTANT MEMBER**

Sd/-

**[H.S. SIDHU]
JUDICIAL MEMBER**

Date:06/06/2019

SRBhatnagar

Copy forwarded to: -

1. Appellant 2. Respondent 3. CIT 4. CIT (A) 5. DR, ITAT

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By Order,

Assistant Registrar, ITAT, Delhi Benches