

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'B', NEW DELHI**

**BEFORE SH. R. K. PANDA, ACCOUNTANT MEMBER
AND
SH. KULDIP SINGH, JUDICIAL MEMBER**

ITA No.4789/Del/2016
Assessment Year: 2012-13

Income Tax Officer (Exemption), Ward – 1 (1), New Delhi	Vs	Escorts Cardiac Diseases Hospital Society, C/o. Escorts Heard Intt. & Research Centre, Okhla Road, New Delhi-110025 PAN No.AAAE0049G
(APPELLANT)		(RESPONDENT)

Appellant by	Smt. Nidhi Srivastava, CIT DR
Respondent by	Sh. R. M. Mehta, Advocate

Date of hearing:	24/04/2019
Date of Pronouncement:	01/07/2019

ORDER

PER R.K. PANDA, AM:

This appeal filed by the revenue is directed against the order dated 30.06.2016 of the CIT(A)-40 (Exemption), New Delhi relating to A. Y. 2012-13.

2. The ground of appeal No.1 by the revenue reads as under :-

1 *"On the facts and in the circumstances of the*

case and in law, the Ld. CIT(A) has erred in allowing the appeal of the assessee ignoring the fact that AO has made addition on account of donation given to M/s Subros Education Society on the basis of non-availability of information on the part of assessee such as purpose of donation, basis of selection of donee and reasons for utilization of fund that have been accumulated for the purpose and objectives of the assessee's trust, to a donee whose objectives are on altogether different track.

3. Facts of the case in brief are that the assessee is a society registered under section 12A of the Act and also u/s. 80 G of the Act. It filed its return of income on 30.03.2013 declaring nil income. During the course of assessment proceedings the Assessing Officer asked the assessee to produce complete details of donation paid for Rs.2,05,02,400/- which includes amount given to M/s. Subros Educational Society (registered) Rs. 2 crores. The assessee filed the details of payment made as donation alongwith a certificate from M/s. Subros Educational Society (registered) confirming that they have received donation of Rs.2 crores.

4. The Assessing Officer, however, was not satisfied with the above submission on the ground that the purpose of the donation and the basis of selection of the donee is not satisfactorily substantiated. According to him mere confirmation of the donee is not sufficient to substantiate the allowability. He observed that

the donation to an educational society is not in consonance with the aims and objects of the assessee society and the assessee did not furnish the details of past accumulation u/s. 11(2) of the IT Act. He, therefore, made addition of the above amount of Rs. 2 crores.

5. Before CIT(A) the assessee submitted that complete details of the donation of Rs.2.00 cr. was filed including a resolution of the Board of Governors approving the donation and the confirmation of the donee. The AO could not enquire into the selection of the donee or the purpose of the donation unless the genuineness was under doubt more so when it is settled law that donation by one charitable institution to another such institution was permissible in law and would be treated as application of income. The fact that the donee is a charitable institution is evidenced by the order dated 31.03.2011 passed by the DIT(E) u/s 80G of the Act covering the period A.Y. 2011-12 onwards. The allegation of the Assessing Officer in the assessment order that the assessee had not furnished details of past years accumulations etc. was stated to be factually incorrect as the requisite information had been filed vide letter dated 05.02.2015 addressed to the AO. It was argued that the donation to Subros Educational society was supported by the confirmation of the donee, resolution of the Board of Governors and the order passed u/s 80G of the Act by the DIT(E). Various decisions were relied upon to support the proposition that donation to another charitable institution or

society is permissible in law and treated as application of income.

The assessee relied on the following decisions :-

- 1) CIT vs. Shri Ram Memorial Foundation (2004) 269 ITR 35 (Del.)
- 2) CIT vs. Sarladevi Sarabhai Trust (1988) 172 ITR 698 (Guj.)
- 3) CIT vs. Hindustan Charity Trust (1983) 139 ITR 913 (Cal.)
- 4) CIT vs. Trustees of the Jadi Trust (1982) 133 ITR 393 (Bom.)

6. Based on the arguments advanced by the assessee the Ld. CIT(A) deleted the addition. While doing so he noted that the assessee had filed submissions on various occasions alongwith details as called for although partial and not in one go. The details filed were in conformity with past assessments which had accorded the status of a charitable institution to the assessee. He noted that asking the assessee to justify the selection of the donor and purpose in respect of the sum of Rs. 2 crores is uncalled for when the genuineness was not doubted and the Assessing Officer could have made enquiries from the donee which he did not do. So far as the observation of the Assessing Officer that assessee has not filed the details of past accumulation and their utilization is concerned, he noted that the assessee has filed all those details. He further noted that the various adverse inferences drawn by the Assessing Officer are uncalled for. He accordingly deleted the addition.

7. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal.

8. We have considered the rival arguments made by both the sides and perused the material available on record. From the various details filed in the paper book we find the assessee, during the course of assessment proceedings has filed complete details of donation of Rs. 2 crores including a resolution of the Board of Governors approving the donation and the confirmation of the donee. We find merit in the arguments of the Ld. Counsel for the assessee that the Assessing Officer could not enquire into the selection of the donee or the purpose of the donation unless the genuineness is doubted. It has been held in various decisions that donation by one charitable institution to another such institution is permissible in law and would be treated as application of income. The donee in the instant case is a charitable institution which is evidenced by the order passed by the DIT (Exemption) u/s. 80G on 31.03.2011 which covers the period for A. Y. 2011-12 onwards. The observation of the Assessing Officer that the assessee had not furnished details of past years accumulations etc is also factually incorrect since such information was filed by the assessee vide letter dated 05.02.2005 addressed to the Assessing Officer, copy of which is placed at page No. 87 to 90 of the paper book. In view of the above discussion we are of the considered opinion that the Ld. CIT(A) is fully justified in deleting the addition made by the

Assessing Officer on account of donation given to M/s. Subros Educational Society (registered). The ground raised by the revenue is accordingly dismissed.

9. Ground of appeal No. 2 by the revenue reads as under :-

2. " On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that allowance of depreciation will lead to double deduction as assessee has already claimed gross amount of such assets as application of income in the year in which such assests were purchased.

10. Facts of the case, in brief are that the Assessing Officer during the course of assessment proceedings observed that a sum of Rs. 1,50,00,000/- had been claimed as sponsorship fee payable to M/s Escorts Heart Institute & Research Centre Ltd. for organizing seminars and continuing medical education (CMEs) events by eminent cardio surgeons/cardiologists and the assessee had furnished only two vouchers for Rs. 11,16,000/-. According to the Assessing Officer the details furnished by the assessee were brief and it was not possible to examine the allowability of said expenditure. He observed that the reports of activities undertaken along with relevant bills and vouchers were not placed on record and the co-relation of the expenditure with the aims and objects of the assessee was not established. In view of the above and in absence of supporting documents the Assessing Officer made addition of Rs.1,38,84000/- to the total income of the assessee.

11. Before CIT(A) it was submitted that the payment of Rs.1.50 cores to EHIRC Ltd. was substantiated by details and evidence including a request letter and there was no requirement in law to provide copies of vouchers evidencing expenses incurred by the donee. The sum of Rs.1.50 crores was paid by cheque minus TDS and related to the area of charity in which the assessee was engaged i.e. medical relief. As it was a routine item of expenditure incurred even in earlier years, a resolution of governing body as sought by the Assessing Officer was not required.

12. Based on the arguments advanced by the Ld. CIT(A) deleted the addition by observing as under :-

“As regards Ground No.4 the solitary ground on which the disallowance has been made is the non-production of the relevant vouchers pertaining to the expenses incurred by EHIRC Ltd. out of the sponsorship fee of Rs.1.5 crores paid to the said institution.

In my view the assessee was not expected to produce vouchers of expenses incurred by EHIRC Ltd. and the evidence produced namely the request letter from EHIRC Ltd. which ran a medical facility of international repute, the nexus of the amount paid with the category of charity in which the assessee was engaged i.e. medical relief and the allowance of a part of the expenditure for which vouchers were produced on sample basis collectively proved the bonafides of the claim. Being of the view that the partial disallowance of Rs.1,38,84,000/- was not called for I delete the same.”

13. Aggrieved with such order of the CIT(A), the revenue is in appeal before the Tribunal.

14. After hearing both the sides we find the Assessing Officer made an addition of Rs.1,38,84,000/- out of the sponsorship expenses of Rs.1,50,000/-payable to M/s. Escort Heart Institute and Research Centre on the ground that assessee did not produce the necessary details. We find the Ld. CIT(A) allowed the deduction so claimed, the reasons of which have already been reproduced in the preceding paragraph. Although the amount of Rs.1.50 crores has been claimed as sponsorship fee payable for organizing seminars and continuing medical education events, however, the assessee furnished only 2 vouchers for Rs.11,16,000/- which the Assessing Officer has allowed. In our opinion the assessee is duty bound to furnish all the requisite details for the examination of the Assessing Officer especially when an amount has been claimed as deduction on the basis of the claim made by another institution as sponsorship fees. Assessee cannot be absolved of its responsibility by not producing requisite details for the examination/ verification of the Assessing Officer. Considering the totality of the facts of the case and in the interest of justice we deem it proper to restore the issue to the file of the Assessing Officer with a direction to give one more opportunity to the assessee to substantiate with evidence to his satisfaction regarding the allowability of the balance amount of

Rs.1,38,84,000/- by filing the details of bills and vouchers. The Ground of appeal No.2 raised by the revenue is allowed for statistical purpose.

15. Ground of appeal No.3 reads as under :-

3. " On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in allowing the appeal of the assessee by ignoring the fact that allowance of depreciation will lead to double deduction as assessee has already claimed gross amount of such assets as application of income in the year in which such assests were purchased.

16. After hearing both the sides we find the Assessing Officer disallowed depreciation of Rs.3,82,216/- claimed in the income and expenditure account on the ground that the assessee has already claimed gross of amount of such assets as application of income in the year in which it was purchased. He, therefore, held that the same is not allowable and accordingly made the addition. We find the CIT(A) relying on various decisions held that assessee is entitled to claim depreciation even if the value of the asset has been claimed as application of income in the year of purchase in the light of various decision and in conformity with the past assessment. According to the CIT(A) the Act was amended w.e.f. 01.04.2015 to deny deduction on account of depreciation and not for the earlier years. We do not find any infirmity in the order of the Ld. CIT(A) on this issue. The Hon'ble Supreme Court in the case of CIT Vs. Rajasthan and Gujarati Charitable Foundation Pooa in Civil Appeal No.7186/2014 order dated 13.12.2017 has

already decided the issue in favour of the assessee by holding that depreciation is allowable on the assets, the cost of which is fully allowed as application of income u/s. 11 in the past years. The ground raised by the revenue is, therefore, dismissed.

17. In the result, the appeal filed by the revenue is partly allowed for statistical purpose.

Order pronounced in the open court on 01.07.2019.

Sd/-
(KULDIP SINGH)
JUDICIAL MEMBER

Sd/-
(R.K PANDA)
ACCOUNTANT MEMBER

Neha

Date:- 01.07.2019

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for Pronouncement	
Date on which the fair order comes back to the Sr. PS/ PS	
Date on which the final order is uploaded on the website of ITAT	01.07.2019
Date on which the file goes to the Bench Clerk	
Date on which file goes to the Head Clerk.	
The date on which file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	