

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC' NEW DELHI**

BEFORE SHRI H. S. SIDHU, JUDICIAL MEMBER

I.T.A. No. 3089/Del/2016
Assessment Year: 2010-11

M/s Maa Sharda Educational Society,
III-A/31, Nehru Nagar, Rakesh Marg,
Ghaziabad
(PAN:AABTM9201E)
(ASSESSEE)

vs. Addl. CIT, Range-1
Ghaziabad

(RESPONDENT)

Assessee by: Sh. Akhilesh Kumar, Adv
Revenue by: Sh. Pradeep Singh Gautam, Sr. DR.

ORDER

This appeal is filed by the assessee against the Order dated 28.03.2016 passed by the Ld. CIT(A), Ghaziabad relating to Assessment Year 2010-11 on the following grounds:-

1. *Because, CIT(A) erred in sustaining the addition of Rs. 9,02,500/-, being the corpus donations, though not doubting the claim of capital receipt but wrongly invoking provisions of s. 2(24) read with s. 56(1) though admittedly neither assessee is falling u/s 10 (23C) (vi) nor u/s 10(21) etc. of the Act and otherwise also is considered as AOP.*
2. *Because, Ld. CIT(A) erred in sustaining the addition of Rs. 13,24,355/- on merits, being 50% of repairs / maint and Rs. 1106370/- out of payment to services provider (Booked as Building repair/maint wrongly) without conducting any enquiry the remand etc. despite holding that, appellant having surrendered the amount, AO was defiantly precluded from making any other enquiries in the regard.*
3. *Because, in addition to above Id. CIT(A) failed to appreciate that surrender on wrong assumption of facts and law does not bind parties and failed to consider the facts on the record like exp. are mainly the banking transactions/suffered TDS/accepted in subsequent year etc.*

2. The brief facts of the case are that the assessee filed its return of income on 3.7.2010 declaring income of Rs. 31,607/-. The case of the

assessee was selected for compulsory scrutiny. The notice under section 143(2) of the Income Tax Act, 1961 dated 20.09.2011 was issued and served upon the assessee. Further notice under section 142(2) of I.T. Act alongwith questionnaire dated 16.11.2012 issued requiring for various details. In compliance of the same, the assessee filed its necessary documentary evidence supporting the claim. On further examining of all the documentary evidences filed by the assessee, the Assessing Officer made the addition of Rs. 13,24,355/- on account of repair and maintenance and added back to the income of the assessee. Secondly the Assessing Officer has also added an amount of Rs. 9,02,500/- on account of donation towards corpus fund and completed the assessment under section 143(3) of the Income Tax Act, 1961 on 22.02.2013.

3. Aggrieved by the assessment order dated 22.02.2013 passed by the Assessing Officer, assessee filed an appeal before learned First Appellate Authority who vide his impugned order dated 28.03.2016 dismissed the appeal filed by the assessee and upheld the assessment order.

4. The assessee aggrieved by the impugned order dated 28.03.2016 passed by the learned CIT(A), Ghaziabad, filed the present appeal before the Tribunal.

5. At the time of hearing Shri. Akhilesh Kumar, Advocate, learned counsel for the assessee stated that assessee is a society created on 4.5.2007 but not holding registration under section 12AA of the I.T. Act in the current year and has applied for registration under section 12AA on 28.03.2013 which was later granted on 28.03.2013. He also draw my

attention towards the registration certificate attached with the paper book. He further stated that the society is mainly educational society running college hospital management, Ghaziabad duly approved from the Sikkim Manipal University. Society has received corpus donation of Rs. 9,02,500/- during the current year towards corpus fund, but the Assessing Officer has added the same as business income only for want of registration under section 12AA/10(23C) of the Income Tax Act, as revenue receipt. Similarly, the learned first Appellate Authority has also upheld the order of the Assessing Officer.

6. Learned counsel for the assessee further stated that corpus donation of charitable institutions are capital receipts not subject to tax as per basic principle of law and not by virtue of section 11(1)(d) even without any registration under section 12AA of the Act and cannot be regarded income under section 2(24)(ii)/(56) of the Income Tax Act. He stated that this issue is covered in favour of the assessee by the following decisions of ITAT Benches:-

- *DIT vs. Vishwa Hindu Parishad [2017] 82 taxmann.com 135 (Delhi).*
- *ITO vs. Serum Institute of India Research Foundation (2018) 90 taxmann.com 229 (Pune)*
- *CIT vs. Apparels Export Promotion Council (1991) 190 ITR 163 (Del.)*
- *ITO vs. Smt. Basanti Devi & Sh. Chakhan Lal Garg Ed. Trust – ITA 5082/2010 (Del-G).*
- *ITO vs. M/s Vokkaligara Sangha – ITA 281-285/2014 (Bang. ITAT) –order dt. 14.08.15*
- *ITO vs. Gaudiya Granth Anuvad Trust – ITA 386/2012 (Agra)*

- *DCIT vs. KDA Enterprises (P) Ltd., (2012) 57 Taxmann.com 284 (Mumbai-Tribunal)*

7. Learned counsel for the assessee further stated that in view of the aforesaid decision rendered by the various Benches of the ITAT on the issue in dispute which has been decided in favour of the assessee by holding that when registration under section 12A of the Act is granted in subsequent years, then exemption cannot be refused in earlier years merely for registration under section 12A of the Act in terms of amended section 12A of Income Tax Act. He also cited the case of Sree Sree Ramkrishna Sanity vs. DCIT (2015) 64 taxmann.com 33 (Kol).

8. On the issue of disallowances of Rs. 13,24,355/- being out of repair and maintenance, learned counsel for the assessee stated that the books of accounts of the assessee are audited and bill vouchers were produced by the assessee before the lower authorities which have been examined. He further stated that Revenue authorities have not rejected the books of accounts and no defect in any specific entry / payment were made nor provision of section 142 or section 144 of the Act applied by the Revenue authorities. All the payments are through banking channel and TDS deducted against amount debited to building repair and maintenance, Rs. 14,66,370/- and only Rs. 42,64,094/- is paid in cash for day to day repair and maintenance for petty amounts are duly booked to audited accounts.

9. Learned counsel for the assessee further stated that assessee offered disallowances of Rs. 1,11,06,370/- out of building repair maintenance and Rs. 2,17,985/- out of other repair and maintenance

considering the facts of the case i.e. when landlord has claimed repair allowance @ 30% subject to no imposition of penalty thus disallowance of Rs. 13,24,355/- has made. But the learned First Appellate Authority has also upheld this disallowances by ignoring the condition by the assessee regarding the wrong surrender because the expenses booked under the head building and repair and maintenance, but not repaired being monthly payments for services and maintenance. He stated that surrender is conditional but condition not followed by the AO but not only Rs. 9 Lacs addition made over and above, but further initiated penalty, hence the same does not bind assessee and even learned CIT(A) has sustained the addition monthly on merits and not solely on surrender. He stated that in view of the various decisions rendered by the ITAT which includes the case of ITO vs. Ram Prakash [2014] 52 taxmann.com 361 (Agra-Trib.), the issue is covered in favour of the assessee.

10. Learned DR strongly opposed the arguments advanced by the learned counsel for the assessee and relied upon by the order passed by the lower authorities.

11. I have heard both the parties, perused the orders passed by the Revenue authorities alongwith the paper books filed by the learned counsel for the assessee in which he has attached various documentary evidence supporting the claim of the assessee including various citations referred by him during the course of arguments. I am of the considered view that the issue of corpus donation of Rs. 9,02,500/- has already been decided in favour of the assessee by the ITAT Delhi Benches decision

passed in the case of DIT vs. Vishwa Hindu Parishad [2017] 82 taxmann.com 135 (Delhi) / [2017] 248 taxman 290 (Delhi) / [2017] 394 ITR 411 (Delhi) / [2017] 297 CTR 148 (Delhi). The relevant paragraph 33 of the said order is reproduced as under:-

"33.The CIT(A) noted that even if there was a non-compliance with Section 12 A (b) of the Act by the Assessee, thus disentitling it to exemption under Sections 11 and 12 thereof, the AO was still not justified in adding the entire corpus of the Assessee to its taxable income. The corpus fund had been present in the earlier years and was a capital receipt. Even as per the original return, the Assessee did not have any excess over expenditure which could have been taxed. The ITAT committed no error in concurring with the CIT (A).

12. Keeping in view, the issues in dispute and the judgment of the ITAT Delhi Bench cited above and in view of the order of the Kolkata Benches of ITAT in the case of Sree Sree Ramkrishna Sanity vs. DCIT (2015) 64 taxmann.com 33 (Kol), I am of the view that addition of corpus donation has already been decided in favour of the assessee by the ITAT Delhi Bench (supra) by holding that even if there was a non compliance of section 12A(b) of the Act by the assessee then the corpus donation received by the assessee is not taxable in the hands of assessee. Secondly when the registration under section 12AA is granted in the subsequent year then exemption cannot be refused in the earlier years merely for non registration under section 12A in terms of amended under section 12A of the Act. Keeping in view of the aforesaid discussion and respectfully following the precedents as aforesaid, the addition of Rs. 9,02,500/- on account of corpus donation is deleted.

13. As regards to the second issue of disallowance of Rs. 324355/- on account of repair and maintenance. After considering the arguments

advanced by the learned counsel for the assessee and the learned DR alongwith the documentary evidences filed by the assessee in support of his contention, I am of the considered view that books of accounts of the assessee are audited and bill and vouchers in support of the expenses has been produced by the assessee and examined by the Assessing Officer. The Assessing Officer has not pointed out any defect and has also not rejected the same by applying the provisions of section 145 of the I.T. Act. Even otherwise, all the payments were through bank channel and TDS deducted, against building repair and maintenance amount. Therefore, keeping in view the facts and circumstances of the present case and the non rejection of books of accounts the addition in dispute is not sustainable in the eyes of law, therefore, the same is deleted by allowing the ground no. 2.

14. In the result, the impugned order is set aside and the additions involved in the grounds of appeal are deleted by accepting the appeal filed by the assessee.

15. In the result, the appeal filed by the assessee is allowed.

Order pronounced on 20/12/2019.

Sd/-
[H.S. SIDHU]
JUDICIAL MEMBER

Date: 20/12/2019
SH

Copy forwarded to: -

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

By Order,

Assistant Registrar, ITAT, Delhi Benches