

आयकर अपीलिय अधीकरण, न्यायपीठ – “सि” कोलकाता,  
*IN THE INCOME TAX APPELLATE TRIBUNAL  
KOLKATA BENCH “C” KOLKATA*

Before **Shri S.S.Godara, Judicial Member** and  
**Dr. A.L. Saini, Accountant Member**

**ITA No.08 to 11/Kol/2018**  
Assessment Years : 2009-10 to 2012-13

Income Tax Officer (Exemption), Ward-1(1), 10B, Middle Ton Row, 5 <sup>th</sup> Floor, Kolkata-71	<b>V/s.</b>	M/s Gopsai Avinandan Sangha, Vill. Gopsai, Chandrakona Town, Paschim Midnapore- 721201 <b>[PAN No.AAATG 8930 F]</b>
अपीलार्थी /Appellant	..	प्रत्यर्थी/Respondent

आवेदक की ओर से/By Assessee	Shri Somnath Ghosh, Advocate
राजस्व की ओर से/By Respondent	Mrs. Ranu Biswas, Addl. CIT-DR
सुनवाई की तारीख/Date of Hearing	13-12-2019
घोषणा की तारीख/Date of Pronouncement	17-01-2020

**आदेश /O R D E R**

**PER S.S.Godara, Judicial Member:-**

These four Revenue's appeal(s) for assessment year(s) 2009-10 to 2012-13 arise against the Commissioner of Income Tax (Appeals)-11 Kolkata's separate order all dated 27.10.2017 passed in case No.s 50, 12, 10 & 9/CIT(A)-11/Kol/2015-16, involving proceedings u/s 147 r.ws. 143(3) of the Income Tax Act, 1961; in short 'the Act'.

Heard Mrs. Biswas learned Addl. CIT-DR representing for the Revenue and Shri Ghosh appearing at the assessee's behest.

2. It transpires at the outset that the Revenue's identical sole substantive grievances canvassed in the instant four appeal(s) challenge correctness of the CIT(A)'s action treating the assessee's development fees received of ₹3,15,28,50/-, ₹1,81,95,688/-, ₹3,05,49,494/- & ₹2,75,40,630/-; assessment year-wise; respectively as capital receipts thereby reversing the Assessing Officer's action assessing the same as the assessee's taxable income liable to be assessed. The CIT(A)'s identical detailed discussion all four assessment year(s) to this effect reads as under:-

*"6. I have duly considered the written submissions made by the A/R of the appellant as well as the issue raised in the assessment order u/s 147 of the Act framed by the A.O. in light of the materials adduced on record. In these grounds the appellant is disputing the action of the AO for summarily holding the claim of "**Corpus Donation**" under/s. 11(1)(d) of the Act in the sum of Rs. 3,15,28,500/- as inadmissible. It is also vehemently submitted that the said amount received by the appellant is on capital account and is a capital receipt.*

*6.1 Be that as it may, I am not in agreement with the justification of the AO in rejecting the claim raised u/s 11(1)(d) of the Act in this respect. In the first place, the AO assessed the appellant by changing the status as an AOP, Thus by his own admission, the appellant is not entitled to any benefit claimed u/s 11, 12 or 13 of the Act. In the case of an assessee, not being an assessee registered u/s. 12AA of the Act, the capital expenditure/capital receipts are kept outside the ambit of income computation whereas in case of a charitable organization/ trust, the same are considered in '**application**' and '**income**'. The AO has also failed to consider the CBDT Circular No. 5P (LXX 6) dated 19.06.1968 wherein it was clarified that "for the purpose of the Section 11(1), the income should be the real income at the disposal of the organization. In spite of the fact that as per the definition of total income u/s 2(45), may items could be included in the income, though there are not available for '**application**', For example, tax deducted at source may form a part of the total income but in reality it is not available for application. The total income u/ s. 2(45) is artificially computed as per the provisions laid therein and therefore, it may be different from the actual income. To sum up, Section 14 provides the "**heads of income**" under which the '**total income**' for the purposes of charge of income tax is to be computed. But for the purposes of Section 11, the term income assumes special significance for determination. of '**income**' subject to '**applications**' and '**exemptions**' and therefore applicability of Section 14 also become difficult in case of Charitable Organizations. Therefore, at the outset, one has to be careful about the principles on which income of charitable organization is to be determined." Thus, the AO's action is wholly flawed and contradictory as there is neither power given under the statute nor any responsibility enjoined under the law enabling him to act in such manner. As regards the dictum that education does not constitute business, it is observed, that the Apex Court in the 5 Judges Bench in Unnikrishnan J.P. vs. State of Andhra Pradesh AIR 1993 SC 2178 has categorically held "**that imparting education cannot be trade, business or profession it may perhaps fall under the category of occupation.**" The above ratio that education is an occupation was reaffirmed in the 11 Judges Bench of the Apex Court in T.M.A. Pai Foundation vs. State of Karnataka [2002] 8· SCC 481. There is no doubt or dispute to the fact that imparting education is a charitable activity. In other words, '**education**' per se is*

**'charity'**; there are no strings attached. In the case of P.C. Raja Ratnam Institution vs. Municipal Corporation of Delhi [1980] 181 ITR 354 (SC) it was held as under:-

" ... Test of charitable purpose satisfied' by proof of any of the three conditions of relief of poor, education or medical relief ..."

Further, in the case of DIT vs. Garden City Educational Trust [2011] 330 ITR 480 (Kar.), it was held as under:-

"... so long as a trust has education as one of its objects which is one of enumerated heads which qualifies and comes within scope of charitable purpose as enumerated in section 2(15), it has to be accepted that trust is having a charitable purpose as its object and may qualify for claiming exception in terms of section 11....."

*I have no difficulty in agreeing to this submission of the appellant, as the language of the statute is crystal clear and requires no interpretation, whatsoever, to hold that 'education' per se is a 'charitable purpose' u/s 2(15) of the Act, Therefore, the AO was supposed to make an assessment of the appellant by taking into consideration the income derived from its activity, expenditure incurred thereon and the surplus which may be considered as taxable. However, the AO chose to ignore all these aspects and limited himself towards making- a disallowance without acknowledging the purports of such receipts,*

*5.2 In fact, the findings of the AO also are without any sustainable basis. The main plank of the AO's approach was that the amount of Rs. 3,15,28,500/- received by the appellant were not voluntary contribution so as to entitle itself to benefit u/s 11(1)(d) of the Act. As regards exemption u/s 11 of the Act, it is enacted for '**application**' of income and not source. The provisions of s. 11(1) provides that "**income derived from property held under trust wholly for charitable or religious purposes to the extent it is applied for such purposes ....** " shall not be included in the total income. The Hon'ble Supreme Court in Gangabai Charities vs, CIT [1992] 197 ITR 416 (SC) has upheld the aforesaid interpretation as under:-*

"the crux of statutory exemption under section 11 (1)(a ) of the Act is not the income earned from property held under trust, but the actual application of the said income for religious and charitable purposes."

*In other words, the understanding of the AO in this respect is wholly flawed since he failed to go to the root of the issue by interpreting the receipt thereof without considering the application of such receipt. In any case, the AO has also asserted that such contribution on account of Corpus Donation was not voluntary. Thus, the AO has himself ruled out the application of s. 2(24)(iia) of the Act in the circumstances of the case.*

*5.3 Now what remains to be adjudicated is that whether such receipts on account of Corpus Donation were capital receipts or not. In this respect, it is observed that the appellant has explained the issue of such receipts in a rejoinder dated 25.03.2015 before the AO. It was explained before the AO that such receipts were taken by the appellant on account of Development fees for the construction of the college building and for acquisition of other fixed asset and as such the same was directly capitalized in the Balance Sheet. In fact, this particular receipt is in addition to the tuition fees received by the appellant which is credited to the Income & Expenditure Account. It is categorically provided in the bye laws of the appellant that it is authorised to accept such donation on account of development of its college infrastructure. Thus, on*

*primary principles, a donation towards the corpus fund is a capital receipt outside the ambit of income. In this respect, it is proper to refer the ratio as deduced in the case of CIT vs. Tollygunge Club Ltd. [1977] 107 ITR 776 (SC) wherein it was found by the Apex Court that the Club conducted Gymkhana races for amateur riders. It charged fees for admission into the enclosure at the time of race. Along with admission fees, the assessee charged from persons entering the Club "surcharge" to be spent for local charities as per resolution of the Club. The revenue treated the 'surcharge' as part of trading receipts. The Supreme Court held that the 'surcharge' at the time of receipt being earmarked with obligation to be spent for local charities was not part of trading receipts. Hon'ble Justice P.N. Bhagwati, approvingly quoted the following observations of Lord Macnaghten in London County Council v. Attorney-General [1901] AC 25 (HL) observed as under:-*

"It is familiar learning and yet Lord Macnaghten had to draw our attention to it in London County Council v. Attorney-General (1901J AC 25 (HL) that income tax is a tax on income. It is what reaches the assessee as income that is intended to be charged to tax under the Act. Every receipt by the assessee is not necessarily income in his hands. It is only when it bears the character of income at the time when it reaches the hands of the assessee that it becomes exigible to tax."

*Their Lordships then quoted as follows:*

"The question then arises whether this obligation to utilise the surcharge for local charities was an obligation to apply the surcharge to local charities after it reached the assessee as its income or it was diverted for being applied to local charities before it was received by the assessee. Did it involve an application by the assessee of a part of its income to local charities, or was it rather an allocation of a receipt for local charities before it became income in the hands of the assessee?. The true test for determining this question is, to use the words of Hidayathullah, J in CIT vs. Sitaldas Tirathdas [1961] 41 ITR 367 (SC) whether the amount sought to be deducted, in truth, reached the assessee as his income. The learned judge proceeded to explain this test in the following words:

'In our opinion, the true test is whether the amount sought to be deducted, in truth, never reached the assessee as his income. Obligations, no doubt, there are in every case, but it is the nature of the obligation which is decisive fact. There is a difference between an amount which a person is obliged to apply out of his income and an amount which by the nature of the obligation cannot be said to be a part of the income of the assessee. Where by the obligation income is diverted before it reaches the assessee, it is deductible; but where the income is required to be applied to discharge an obligation after such income reaches the assessee, the same consequence, in law, does not follow. It is the first kind of payment which can truly be excused and not the second. The second payment is merely an obligation to pay another a portion of one's own income, which has been received and is since applied. The first is a case in which the income never reaches the assessee, who even if he were to collect it, does so, not as part of his income, but for and on behalf of the person to whom it is payable. In our opinion, the present case is one in which the wife and children of the assessee who continued to be members of the family received a portion of the income of the assessee, after the assessee had received the income as his own. The case is one of application of

a portion of the income to discharge an obligation and not a case in which by an overriding charge the assessee became only a collector of another's income.'

*It is clear on the application of this test, in the present context that the corpus donation being pressed with an obligation in the nature of development of the college infrastructure was by this obligation diverted before it reached the hands of the appellant and, at no stage, it became a part of the income of the appellant. Further, in the case of DCIT vs. Vellore Institute of Technology [2011 J 46 SOT 224 (Chennai) (URO) after considering the decision of the Tollygunge Club (Supra) held as follows:-*

"58. Applying the ratio of this decision, it was submitted that even assuming, without admitting that the corpus donations were received at the time of admission, the fact that it was received with a specific written direction from the donor that the donation was towards the corpus fund of the trust followed up by the factum of actual application of the donation for the capital purposes of the trust would, by virtue of the ratio of the said judgment would take the corpus donations received outside the ambit of income being a capital receipt... .. "

*7. In other words, the 'Corpus Donation' received by the appellant on account of development of the college infrastructure leads to the only conclusion that the contention of the A/R in this respect is absolutely correct that such receipt is capital in nature and as such, beyond the scope and ambit of s. 5 of the Act. Thus, the addition of Rs.3,15,28,500/- do not survive for judicial scrutiny since the justification thereof stands negated by the detailed discussion made on this account taking into consideration the law laid down in the case of Tollygunge Club (supra) along with other decisions on the issue and accordingly, the addition being unjustifiable on this count is therefore deleted. Thus, Ground nos. 1, 3 & 5 of the appeal are **allowed**."*

3. We have given our thoughtful consideration to rival pleadings. The Revenue vehemently contends during the course of hearing that the Assessing Officer had rightly assessed the impugned development fees in all four year(s) as the assessee's taxable income since it could not prove that a voluntary contribution u/s.11(1)(d) requiring specified directions to this effect. It is further highlighted that assessee's u/s. 12AA registration also stood declined by the CIT(Exemption). It had preferred ITA No. 2244/Kol/2013 before the tribunal wherein the learned co-ordinate bench's order dated 03.01.2018 restored the issue back to the CIT(Exemption) for afresh adjudication as per law. Mrs. Biswas's case accordingly is that the impugned corpus donation addition made by the Assessing Officer must also follow suit therefore. Mr. Ghosh on the other hand has chosen to place a strong reliance on the CIT(A)'s above extracted identical detailed discussion deleting the impugned disallowance / addition. He submits that the assessee had very well

proved the impugned contribution as a corpus donation only and therefore, the Assessing Officer had erred in law and on fact in holding the same as taxable income.

4. After giving our thoughtful consideration to foregoing rival pleadings against and in support of the CIT(A)'s action deleting the impugned disallowance / addition we notice that he has not considered the clinching aspect of finality of assessee's status as a registered body u/s. 12AA of the Act. Learned CIT(A) has rather proceeded to treat the impugned alleged development sums as corpus donations u/s. 11(1)(d) despite the fact that as sec. 12A (**as amended from time to time**) makes it clear that the same does not apply in absence of registration. Mr. Ghosh submitted at this stage that the CIT(A) has independently examined the assessee's case as per the relevant facts and law to hold the impugned sums as capital receipts. We observe that once the assessee has itself been seeking sec. 12A registration and the same is yet to be granted, the instant relief u/s. 11(1)(d) deserves to be decided afresh in lower appellate proceedings. We therefore restore the Revenue's instant grievance back to the CIT(A) for afresh adjudication as per law within three effective opportunities of hearing and after taking into consideration the CIT(Exemption)'s final order in Sec. 12A proceedings. Ordered accordingly.

5. These Revenue's four appeal(s) are allowed for statistical purposes in above terms.

Order pronounced in the open court 17/01/2020

Sd/-  
(लेखा सदस्य)  
( A.L.Saini)  
(Accountant Member)  
Kolkata,

Sd/-  
(न्यायिक सदस्य)  
(S.S.Godara)  
(Judicial Member)

\*Dkp

दिनांक:- 17/01/2020

कोलकाता ।

**आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-**

1. आवेदक/Assessee-M/s Gopsai Avinandan Sangha, Vill. Gopsai, Chandrakona  
Town, Paschim, Midnapore-721201
2. राजस्व/Revenue-ITO (Exemption), Wd-1(1), 10B, Middle Ton Row, 5<sup>th</sup> Fl. Kolkata-71
3. संबंधित आयकर आयुक्त / Concerned CIT Kolkata
4. आयकर आयुक्त- अपील / CIT (A) Kolkata
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, **कोलकाता** / DR, ITAT, Kolkata
6. गार्ड फाइल / Guard file.

/True Copy/

By order/आदेश से,

सहायक पंजीकार  
आयकर अपीलीय अधिकरण,  
**कोलकाता ।**