

आयकर अपीलीय अधिकरण "बी" न्यायपीठ पुणे में ।  
IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH, PUNE

BEFORE SHRI D. KARUNAKARA RAO, AM AND  
SHRI LALIET KUMAR, JM

Sl. No.	ITA No.	Name of Appellant	Name of Respondent	Asst. Year
1-4	3102/PUN/2017 3103/PUN/2017 3104/PUN/2017 3105/PUN/2017	Jagadguru Narendracharya Maharaj Sansthan (Formerly known as Sadguru Narendra Maharaj Sansthan, C/o Samria & Co., Chartered Accountants, 2E, Court Chambers, 35, New Marine Lines, Mumbai-400020. PAN: AAATS5417R	DCIT, Exemption Circle, Pune	2007-08 2008-09 2010-11 2011-12

Assessee by : Shri R. S. Samria  
Revenue by : Shri Pankaj Garg

सुनवाई की तारीख / Date of Hearing : 06.02.2020

घोषणा की तारीख / Date of Pronouncement : 07.02.2020

**आदेश / ORDER**

**PER BENCH :**

There are **4 appeals** under consideration. All these appeals relate to the assessment years 2007-08, 2008-09, 2010-11 and 2011-12 (i.e. four assessment years). The assessee had raised the following common grounds in these appeals:

**“1. Corpus Donations towards Vaidkiya Upkrum Hospital Nidhi (Hospital Building) Rs.96,25,291/- is erroneously treated as income**

*On the facts and under the circumstances of the case and in law, the learned Commissioner of Income Tax (Appeals)-2, Kolhapur (CIT A) has erred in passing the order dated 04.05.2017 upholding the addition made by the learned JCIT, Ratnagiri Circle, Ratnagiri in respect of Corpus Donations towards Vaidkiya Upkrum Hospital Nidhi (Hospital Building)” Rs.96,25,291/- which is allowed by the Ld. CIT(A), himself in other years and rejected recertification application u/s.154 without considering the nature of donations and evidence already on records which is quite illegal, bad in law, unreasonable, unjustified, factually and legally erroneous and as such the said order is liable to be and should be set aside and to that extent the rectification be allowed.*

*2. Any other grounds of appeal which your appellant may raise with the permission of the Hon’ble Income Tax Appellate Tribunal, Pune.*

*3. Your appellant reserves the right to add, delete, alter and/ or amend all or any of the grounds of appeal.”*

2. These appeals have directly linked case to the appeals adjudicated by us vide order dated 05.02.2020 in ITA Nos.1641 to 1646/PUN/2017 in the case of Jagadguru Narendracharya Maharaj Sansthan.

3. Briefly stated the relevant facts include that the assessee is a Trust and incurred capital expenditure of appreciating the corpus donations for the purpose of acquiring capital assets. During the assessment proceedings, the Assessing Officer did not allow this claim of the assessee.

3.1 Further, during the first appellate proceedings, the assessee filed the additional ground in the written submission and had requested for allowing expenditure. In the submission, it was mentioned as under:

**“III Capital Expenditure & Others**

*The Ld. AO has also erred in not allowing the capital expenditure as application, the broad details being as under which may kindly be allowed*

**Amount in Rs.**

		<i>1<sup>st</sup> half</i>	<i>2<sup>nd</sup> half</i>	<i>Total</i>
1.	<i>Land &amp; Buildings</i>	<i>1,42,93,276</i>	<i>2,61,17,291</i>	<i>4,04,10,567</i>
2.	<i>Other fixed assets</i>	<i>22,00,659</i>	<i>50,61,378</i>	<i>72,62,037</i>
	<i>Total</i>	<b><i>1,64,93,935</i></b>	<b><i>3,11,78,669</i></b>	<b><i>4,76,72,604</i></b>

*The details are as per computation and balance sheet attached herewith.”*

The CIT(Appeals) entertained the request of the assessee in all the appeals and allowed the claim partly. In the order, the Ld. CIT(Appeal) in Para 5.5 mentioned as under :

*“5.5 Additional ground 1: Through this ground the appellant prays that the deduction for capital expenditure be allowed to him. It is seen that in the original ROI, the appellant had claimed this at Rs.64,10,894/-. However the AO denied this deduction as he denied the whole exemption u/s.11. In the light of my decision above that the appellant is entitled for an exemption u/s.11, it naturally follows that the appellant is entitled for this deduction as this capex has been utilized for the object of the trust. In the circumstances, the additional ground 1 deserves to succeed and is allowed. The AO is accordingly directed to grant deduction of the capital expenditure as claimed in the original ROI.*

3.2. It is the case of the Ld.AR that while passing the order, the CIT(Appeals) has committed mistake and therefore, an application was moved for rectification. However, the said application of rectification was dismissed by the CIT(Appeals) with the following order:

*“2. I have examined the matter and perused my appeal order in this case. I find that I have taken a considered view on the issue raised in this application. The capital expenditure was allowed as claimed in the return of income. Therefore, in my view there is no case of any rectification in the matter as the decision was taken by me after due*

*consideration to the facts on record and law. The application of the appellant u/s.154 is therefore rejected.”*

Therefore, the assessee is in appeals before us.

4. Before us, Ld. Counsel for the assessee submitted that this issue is linked closely with that of the issues raised by the assessee in the assessee's appeals adjudicated by us vide order dated 05.02.2020 (supra). Further, Ld. Counsel for the assessee submitted that all these issues may be set-aside to the file of the Assessing Officer for taking a uniform decision in the matter. The Ld. DR had not raised any objection for sending it back to the file of Assessing Officer for considering afresh.

5. On hearing both the sides on the issue of remanding, we find it appropriate to consider the plea of the assessee. In our view, once the CIT(Appeals) had admitted the additional ground of claiming, the issue pertaining to allowability of capital expenditures and others for the first time then it was not appropriate for the CIT(Appeals) to restrict to the claim raised in the return of income. In our view, the CIT(Appeals) is under an obligation to consider and examine the claim of the assessee when it was filed before him in the form of additional ground in accordance with law, as per the judgment of Hon'ble Supreme Court in the matter of **Goetze (India) Ltd. v. CIT [2006] 28 4 ITR 323/157 Taxman 1** and also in accordance with the decision of the Co-ordinate Bench in the matter of **Chicago Pneumatic India Ltd. v. Dy. CIT [2007] 15 SOT 252 (Mum.)**.

5.1 Further, in our order dated 05.02.2020 (supra), we have already considered the fact of taxation of part of the corpus (which is not donated with the specific purpose) and also approved the allowability of the capital expenditure out of the said corpus donations as an allowable deduction.

5.2 In view thereof, we remand all these appeals to the file of Assessing Officer with a direction to consider the said decision of the Tribunal in assessee's own case order dated 05.02.2020 (supra) and examine the issue afresh in accordance with the said decision. Needless to say, the Assessing Officer shall decide the issue after granting reasonable opportunity of being heard to the assessee as per set principles of natural justice. Thus, the grounds raised by the assessee in all the four appeals are allowed for statistical purposes.

6. In the result, **all the four appeals of the assessee are allowed for statistical purposes.**

Order pronounced on this 07<sup>th</sup> day of February, 2020.

**Sd/-**  
**(LALIET KUMAR)**  
न्यायिक सदस्य/JUDICIAL MEMBER

**Sd/-**  
**(D. KARUNAKARA RAO)**  
लेखा सदस्य/ACCOUNTANT MEMBER

पुणे / Pune; दिनांक / Dated : 07<sup>th</sup> February, 2020.

Sujeet /SB

**आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant.
2. प्रत्यर्थी / The Respondent.
3. The CIT(A)-2, Kolhapur.
4. The CCIT, Pune.
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, "बी" बेंच,  
पुणे / DR, ITAT, "B" Bench, Pune.
6. गार्ड फ़ाइल / Guard File.

// True Copy //

आदेशानुसार / BY ORDER,

Senior Private Secretary  
आयकर अपीलीय अधिकरण, पुणे / ITAT, Pune.