

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'SMC-1' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER**

I.T.A. No. 2036/DEL/2018 (A.Y 2014-15)

Suvipra Shiksha Sansthan C-32, RDC Raj Nagar, Ghaziabad Uttar Pradesh AAHTS1409E (APPELLANT)	Vs	ITO Exemption Ward Ghaziabad, Uttar Pradesh (RESPONDENT)
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Appellant by	Sh. Rohit Tiwari, Adv
Respondent by	Sh. R. K. Gupta, Sr. DR

Date of Hearing	03.06.2020
Date of Pronouncement	09.06.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against the order dated 09/01/2018 passed by CIT(A)- Ghaziabad, for Assessment Year 2014-15.

2. The grounds of appeal are as under:-

“1. That on the facts of the case and in law, the Commissioner of Income Tax (Appeal), Ghaziabad erred in confirming action of assessing officer to make addition of Rs. 4(L62L430/- to the income of the appellant in respect of long term capital gain alleged to be have been derived on the sale of the land. The basis adopted and the finding recorded is simply based on surmises, conjectures and on hypothetical reasoning’s.

2. That on the facts of the case and in law, the Commissioner of Income Tax (Appeal), Ghaziabad erred in not considering the fact that the income derived

on the sale of the land and donated to the corpus funds of another trust engaged in the same nature of charitable activities is application of income in view of the provisions of Section 11 (1)(a) of the Act.

3. *That on the facts of the case and in law, the Commissioner of Income Tax (Appeal), Ghaziabad erred in confirming the action of the assessing officer to deny exemption as available under section 11 (1)(a) of the Act in respect of donation made to the corpus fund of the other charitable trust being application of income thereby working out long term capital gain in view of Section 11 (1 A) of the Act. The order passed is bad in law.”*

3. The return of income was e-filed by the assessee declaring NIL income against which assessment was completed on a total income of Rs. 46,62,430/- vide an order passed under Section 143(3) on 12.07.2016 by making an addition of Rs. 46,62,430/- to the income under the head long term capital gain. It is the case of the Society which is duly registered with the Registrar of Societies. The Society has been granted registration under Section 12A vide order dated 23.09.2010 by the Commissioner of Income Tax, Ghaziabad. The Society had purchased land which is held by the assessee for several years and on account of financial problems the Society could not establish the educational institute as a result of which a decision was taken to wind up the Society. The land was sold during the year under consideration and the income derived on the sale of the land had been donated to the corpus fund of the other trust engaged in running educational institutes as a charitable Society. The assessee claimed before the Assessing Officer that the income donated resulted into application of income liable for exemption under Section 11 of the Act. The Assessing Officer rejected the said claim and made addition under the head long term capital gain.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The CIT(A) dismissed the appeal of the assessee.

5. The Ld. AR submitted that the main object of the assessee trust is incorporated in the Clause 3 of the Trust Deed being to establish, maintain and or run or assist educational institutions and without any prejudice to its generality includes schools, colleges, universities, engineering and technical colleges, medical colleges, primary/higher secondary/secondary schools, pharmacy colleges, dental colleges, graduate/post graduate colleges etc. Further, the Ld. AR submitted that Sub Clause Z of paragraph 3 of the trust deed explains the process of winding up of the trust wherein it has been provided that at any point of time, the whole of corpus fund and other funds of movable and immovable properties belonging to the trust or the institution run by the trust shall only be transferred to any other public charitable trust or institution having the same aims and object for the public charitable purposes. The main object and aim of the done Society was kept in depth and the property sold/asset sold were donated to the other public charitable trust/institutions. Therefore, the donations given by the assessee donor satisfies the provisions of Section 11(1) (a) of the Income Tax Act, 1961 and addition made by the Assessing Officer is unjustified and the same deserves to be deleted. The Ld. AR submitted that the Commissioner of Income Tax (Appeal), Ghaziabad both failed to appreciate the fact and erred in confirming the action of the assessing officer to apply the provisions of Section 11(1A) of the Act. The Ld. AR further submitted that the Commissioner of Income Tax (Appeal), Ghaziabad has failed to apply judicious mind so to observe that sale proceeds should be invested in the purchase of another land and wrongly proceeded to tax income as long term capital gain. The Ld. AR relied upon the decision of the Tribunal in case of ACIT Vs. M/s Bhartiya Yug Vashista Sanga, ITA No.211/Ran/2014 order dated 9/9/2016 and the decision of the Hon'ble Delhi High Court in case of DIT Vs. Bagri Foundation 377 ITR 193.

6. The Ld. DR submitted that the assessee trust has donated the fund generated from selling of immovable property instead of transferring immovable property to the other charitable trust which was clearly set out in Clause Z of

Para 3 of the Trust Deed. Thus, this itself shows that the assessee has not properly fulfilled the conditions of Section 11(1)(a) of the Act.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the Trust Deed of the assessee clearly explained that at the time of winding up what procedure has to be followed of the corpus fund and other funds including movable and immovable property. Sub Clause 'z' of Clause 3 of the Trust Deed explains the process of winding up of the trust wherein it has been provided that at any point of time, the whole of corpus fund and other funds of movable and immovable properties belonging to the trust or the institution run by the trust shall only be transferred to any other public charitable trust or institution having the same aims and object for the public charitable purposes. The assessee at no point of time diverted any funds beyond the scope of its Trust Deed. In fact, the immovable property was sold and the amount of the sale proceeds were donated to the corpus of the other charitable society/trust. Section 11(1)(a) clearly sets out that the assessee is entitled to claim the benefit as the sale proceeds of property cannot be included in the total income of the assessee. The assessee has donated the sale proceeds to the corpus of another charitable society/trust. The Ld. AR relied upon the decision of the Hon'ble Delhi High Court in case of Bagri Foundations (supra) which is also apt in the present case. The Assessing Officer as well as CIT(A) both wrongly applied Section 11(1A) as there is no acquisition of another capital assets. In fact, the assessee society invoked the winding up clause of the Trust Deed. Therefore, the CIT(A) was not right in confirming the additions made under Section 11(1A) of the Act by the Assessing Officer. The appeal of the assessee is allowed.

9. In the result, appeal of the assessee is allowed.

Order pronounced on this 09th Day of June, 2020

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 09/06/2020

*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

Date of dictation	08.06.2020
Date on which the typed draft is placed before the dictating Member	08.06.2020
Date on which the typed draft is placed before the Other 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	10.06.2020
Date on which the final order is uploaded on the website of ITAT	10.06.2020
Date on which the file goes to the Bench Clerk	10.06.2020
Date on which the file goes to the Head Clerk	