

**आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "ए", चण्डीगढ़**  
**IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "A", CHANDIGARH**  
**VIRTUAL COURT**

**श्री एन.के.सैनी, उपाध्यक्ष एवं श्री संजय गर्ग, न्यायिक सदस्य**  
**BEFORE: SHRI. N.K.SAINI, VP & SHRI , SANJAY GARG, JM**

आयकर अपील सं./ ITA NO. 733/Chd/2019

निर्धारण वर्ष / Assessment Year : 2010-11

Jat Shiksha Samiti, Near Police Lines, Karnal Road, Kaithal, Haryana	बनाम	The ITO (Exemptions) Ambala
स्थायी लेखा सं./PAN NO: AAAAJ6528R		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारित की ओर से/Assessee by : Shri S.K. Mukhi, Advocate  
राजस्व की ओर से/ Revenue by : Shri Arvind Sudarshan, JCIT DR

सुनवाई की तारीख/Date of Hearing : 17/08/2020  
उद्घोषणा की तारीख/Date of Pronouncement : 17/08/2020

**आदेश/Order**

**PER N.K. SAINI, VICE PRESIDENT**

This is an appeal by the Assessee against the order dt. 13/02/2019 of Ld. CIT(A), Karnal.

2. Following grounds have been raised in this appeal:

1. That the orders of Ld. CIT(A) is illegal, erroneous and perverse and thus needs to be quashed.

2. That the Ld. CIT (A) is not justified in concurring with the order of Assessing Officer in denying exemption u/s 10(23)(iiiad) of Income Tax Act, 1961 and making addition of Rs 47,21,983/- (Revised to Rs 37,22,983/- u/s 154) by treating the same as surplus taxable income above Rs 1 crore by treating the appellant society as AOP having no registration u/s 12A and referring to Section 2(24)(iia) and thus the order is illegal, arbitrary and bad in law.

3. That the Ld. CIT (A) is not justified in concurring with the order of Assessing Officer in denying exemption u/s 10(23)(iiiad) of Income Tax Act,

1961 and making addition of Rs 1,12,715/- as income from other sources though receipt of institution is below rupees one crore and thus the order is illegal, arbitrary and bad in law.

4. That the Ld. CIT (A) is not justified in concurring with the order of Assessing Officer in not allowing exemption u/s 10(23C)(iiiad) and making addition of Rs 14,42,255/- by treating the amount of donation received as revenue receipt instead of capital receipt.

5. That without prejudice to above, the appellant also disputes the quantum of addition as highly excessive.

6. That the appellant craves leave to add, amend or delete any of the grounds of appeal on or before the disposal of the present appeal.

3. The Assessee also raised following additional ground:

*" That under the facts and circumstances of the present case and in view of the trite law the appellants appeal needs to be allowed in view of the fact that the appellant was allowed registration u/s 12AA by the CIT concerned during the pendency of appeal so that so the appellant qualifies for exemptions u/s 11 and 12 of the Income Tax Act, 1961."*

4. During the course of hearing the Ld. Counsel for the assessee submitted that the additional ground now raised is purely a legal ground and goes to the root of matter, therefore the same may be admitted as all the facts relating to the said ground are available on the record. Reliance was placed on the judgment of the Hon'ble Supreme Court in the case of National Thermal Power Co. Ltd. Vs. CIT reported at 229 ITR 383.

5. In his rival submissions the Ld. DR although opposed the admission of the additional ground but could not controvert the aforesaid contention of the Ld. Counsel for the Assessee.

6. After considering the submissions of both the parties and the material available on the record we are of the view that the additional ground raised by the assessee is purely a legal ground and it goes to the root of the matter.

6.1 On a similar issue the Hon'ble Supreme Court in the case of NTPC Vs. CIT (Supra) held as under:

*“ Undoubtedly, the Tribunal has the discretion to allow or not to allow a new ground to be raised. But where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee.”*

In the present case also, the assessee raised a legal ground and facts are available on the record. Therefore, in view of the ratio laid down by the Hon'ble Supreme Court in the aforesaid referred to case the additional ground raised by the assessee is admitted.

7. Facts of the case in brief are that the A.O. noticed that the assessee had not filed its return of income for the year under consideration, however as per the AIR information the assessee had made cash deposits to the tune of Rs. 1,58,62,942/- during the Financial Year 2009-10 relevant to the Assessment Year 2010-11. He therefore initiated the proceedings under section 147 r.w.s 148 of the Income Tax Act 1961 (hereinafter referred to as 'Act'). In response the assessee filed the return of income on 27/11/2017 declaring NIL income after claiming benefit of exemption under section 10(23C)(iiiad) of the Act. The A.O. however framed the assessment at an income of Rs. 62,76,953/- by making an addition of Rs. 47,21,983/- being surplus of the total receipt over the revenue expenses for which the assessee claimed exemption under section 10(23C)(iiiad) in the absence of Registration under section 12AA of the Act. The A.O. also added Rs. 1,12,715/- on account of interest, shop rent, ground rent and miscellaneous income by observing that no part of the said income was attributable to educational activities. Another addition of Rs. 14,42,255/- was made by treating the donations as revenue receipt instead of capital receipts claimed by the assessee. Accordingly the income was assessed at Rs. 62,76,953/-.

8. Being aggrieved the assessee carried the matter to the Ld. CIT(A) who sustained the additions made by the A.O. by observing that the assessee did not possess registration under section 12AA of the Act. He also observed that no evidence was given that the donors had given subsequent direction that the donation shall form part of the corpus of the trust.

9. Now the assessee is in appeal.

10. Ld. Counsel for the assessee at the very outset stated that when the assessment was framed by the A.O. and the appeal was decided by the Ld. CIT(A) the assessee could not produce the evidence in the form of Registration under section 12AA of the Act. It was further submitted that the assessee is having Registration under section 12AA of the Act and even for the subsequent year the Ld. CIT(A) deleted the similar additions made by the A.O. for the reasons that the assessee was having the Registration under section 12AA of the Act and thus qualified for exemption under section 11 and 12 of the Act. He requested that the matter may be restored to the A.O. to be decided afresh after considering the fact that the Registration under section 12AA granted to the assessee.

11. In his rival submissions the Ld. Sr. DR although supported the orders of the authorities below but could not controvert the aforesaid contention of the Ld. Counsel for the Assessee.

12. We have considered the submissions of both the parties and perused the material available on the record. In the present case it appears that when the A.O. framed the assessment and the Ld. CIT(A) decided the first appeal, the assessee could not produce the certificate of Registration granted under section 12AA of the Act which the Ld. Counsel for the Assessee claimed that now the assessee is in a position to produce the said certificate. We therefore by keeping in view the peculiar facts of this case and the principles of natural

justice, deem it appropriate to set aside this case back to the file of the A.O. to be decided afresh in accordance with law after providing due and reasonable opportunity of being heard to the assessee.

13. In the result, appeal of the Assessee is allowed for statistical purposes.

(Order pronounced in the open Court on 17/08/2020)

**Sd/-**  
**संजय गर्ग**  
**(SANJAY GARG)**  
**न्यायिक सदस्य/ Judicial Member**  
**AG**  
**Date: 17/08/2020**

**Sd/-**  
**एन.के.सैनी,**  
**( N.K. SAINI)**  
**उपाध्यक्ष / VICE PRESIDENT**

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File