

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

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

I.T.A. No. 2337/DEL/2015 (A.Y 2011-12)

(THROUGH VIDEO CONFERENCING)

Umalok Charitable Trust C-111, Samrat Palace, Garh Road Meerut AALCS4967Q (APPELLANT)	Vs	ACIT Central Circle Meerut (RESPONDENT)
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Appellant by	Sh. K. Sampath, Adv
Respondent by	Mrs. Sunita Singh, CIT(A) DR

Date of Hearing	19.08.2020
Date of Pronouncement	24 .08.2020

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the assessee against order dated 16/02/2015 passed by CIT(A)- Meerut for assessment year 2011-12.

2. The grounds of appeal are as under:-

1. *"The learned CIT (Appeal) was not justified by dismissing the appeal.*
2. *The learned Commissioner of Income Tax (Appeal) has not taken into account the facts of the case that no evidence has been brought on record to support that the appellant trust has made the payment of Rs 2 crore.*

The learned CIT (Appeal) has erred in summarily rejecting the plea of the

appellant trust for exemption under section 10(23C)(vi).

3. The several observations as made and inferences drawn are untenable, incorrect, unwarranted.”

ADDITIONAL GROUND

“That on the facts and in the circumstances of the case and in law the assessment framed u/s 153C of the Income Tax Act, 1961 in ab initio, illegal and void and so must be quashed.”

2. A search and seizure operation under Section 132 of the Income Tax Act 1961 was conducted in M/s Subharti KKB Charitable Trust and Dr. Atul Krishan group of cases wherein incriminating documents relating to the assessee were found and seized. Accordingly assessment proceeding under Section 153C read with Section 153A was initiated by the Assessing Officer. The assessee trust is running two educational institutions namely Umalok Paramedical College and Umalok Nursing School. The trust does not have certificate either under Section 12A or under Section 10(23C). However, the assessee claimed exemption under Section 10(23C) on the ground that it is engaged in running educational institutions and its total receipts are below Rs. 1 crore. During the course of assessment proceedings, the Assessing Officer asked the assessee to show cause as to why exemption claimed under Section 10(23C) shall not be disallowed since the trust has not been established solely for educational purposes. The assessee stated before the Assessing Officer that the main object of the trust is to run solely for educational purposes and not for the purposes of profit and the annual aggregate receipts of the trust which does not exceed Rs. 1 crore in each and every year. However the Assessing Officer did not accept the explanation given by the assessee and came to a conclusion that the assessee is not fulfilling the conditions required u/s 10 (23C) and accordingly made addition.

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

4. The Ld. AR submitted that Ground No.1 is general, Ground No. 3 & 4 are academic and additional ground is not pressed by the assessee. Hence, Ground Nos. 1, 3, 4 and additional grounds are dismissed.

5. The Ld. AR further submitted that the main ground is part two of Ground No. 2 and the submission is that the Assessing Officer was not right in treating the amount of Rs.2,95,22,244/- as assessee's income thereby ignoring the fact that the assessee has categorically brought on record, the evidences in support of the payment of Rs.2,95,22,244/-. The Assessing Officer in the assessment order has categorically mentioned that the investor Shri Alok Bhatnagar has approached Settlement Commission and the matter was pending before the Settlement Commissioner at that point of time. The Settlement Commission has now decided the matter. The Ld. AR further submitted that the assessee has been granted exemption u/s 12AA and the confirmations of investors were not at all taken into account by the Assessing Officer. Therefore, the matter may be remanded back to the file of the Assessing Officer for proper verification of the evidence in consonance with the order passed by the Settlement Commission in case of Shri Alok Bhatnagar.

6. The Ld. DR relied upon the order of the CIT(A) and the assessment order. The Ld. DR further submitted that the income of the trust is exceeding Rs. 1 crore threshold, therefore, the Assessing Officer was right in making addition.

7. We have heard both the parties and perused the material available on record. It is pertinent to note that the Assessing Officer has not called for confirmation as per the observation made by the Assessing Officer in assessment order. Therefore, it will be appropriate to verify the evidence/documents relating to investors who happen to be the Trustee/Director of the assessee trust. Therefore, we are remanding back this matter to the file of the Assessing Officer for proper verification of the

documents/evidence produced by the assessee during the assessment proceedings and in support of assessee's claim. The Assessing Officer also should take into account the decision taken by the Settlement Commission in case of one of the investors Shri Alok Bhatnagar. Needless to say, the assessee be given proper opportunity of hearing by following principles of natural justice. Ground No. 2 is partly allowed for statistical purpose.

8. In result, the appeal of the assessee is partly allowed for statistical purpose.

Order pronounced in the Open Court on this 24th Day of AUGUST, 2020

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 24/08/2020
*R. Naheed **

Copy forwarded to:

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

ASSISTANT REGISTRAR

ITAT NEW DELHI

