

**IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH : BANGALORE**

**BEFORE SHRI A. K. GARODIA, ACCOUNTANT MEMBER AND
SMT. BEENA PILLAI, JUDICIAL MEMBER**

ITA No. 1360 & 1361/Bang/2016
Assessment years : 2008 – 09 & 2009 – 10

M/s Rabiya Basari Rahmat – Ulla Hi – Allayaha Charitable Trust, Rabiya Education Centre, G P Road, Sagara – 577401, Dist. Shimoga PAN : AABTR3112R	Vs.	DCIT Circle 1, Shimoga
APPELLANT		RESPONDENT

Assessee by	:	Shri. V. Sreenivasan, Advocate
Revenue by	:	Smt. R. Premi, Addl. CIT DR
Date of hearing	:	20.08.2020
Date of Pronouncement	:	25.08.2020

ORDER

PER ARUN KUMAR GARODIA, A. M.:

Both these appeals are filed by the assessee and these are directed against two separate orders of learned CIT (A) – Davangere dated 31.03.2016 for A. Y. 2008 – 09 and dated 28.03.2016 for A. Y. 2009 – 10. Both these appeals were heard together and are being disposed of by way of this common order for the sake of convenience.

2. In course of hearing, learned AR of the assessee submitted that Ground No. 1 in both years is general for which, no separate adjudication is required and Ground No. 2 in both years is regarding objection of the

assessee in respect of validity of reopening and this ground is not pressed in both years. Accordingly, these grounds in both years are rejected. Thereafter, he submitted that one issue on merit in both years is regarding allowability of exemption u/s 11 and in A. Y. 2009 – 10, there is one more issue in respect of addition made by the AO of Rs. 58,69,441/- u/s 115BBC by alleging that this donation is unanimous donation. He placed reliance on the tribunal order rendered in the case of M/s Sadia Educational and Charitable Trust vs. Addl. CIT in ITA Nos. 1368 to 1370/Bang/2016 dated 29.05.2020 copy available on pages 171 to 178 of the paper book. Our attention was drawn to para 4 of this tribunal order on page 177 of the paper book and he pointed out that as per this para, the tribunal noted that registration u/s 12A in that case was granted on 19.10.2016 but the order of CIT (A) was passed on 20.03.2016 as noted in para 3 of that tribunal order and under these facts, the tribunal restored the matter back to the file of CIT (A) for a fresh decision in respect of allowability of exemption/s 11. He also submitted that in the present case also, the facts are similar because registration u/s 12A was granted on 19.10.2016 as per the certificate available on page 65 of the paper book and both the orders of CIT (A) were passed in march 2016 and therefore, in the present case also, the issue about allowability of exemption/s 11 in both years should be restored back to the file of CIT (A) for a fresh decision in respect of allowability of exemption/s 11. Thereafter, he submitted that for the second issue in A. Y. 2009 – 10 in respect of addition made by the AO of Rs. 58,69,441/- u/s 115BBC by alleging that this donation is unanimous donation should also be restored to CIT (A) on similar line as was held by the tribunal in the case of M/s Sadia Educational and Charitable Trust vs. Addl. CIT (Supra) because in that case also, as per para 5 and 6 of that tribunal order, similar issue under similar facts was restored to CIT (A) for a fresh decision. He pointed out that in para

6 of this tribunal order, the tribunal noted that in para 6b of the order of CIT (A) in that case, it is held by CIT (A) that the assessee has not filed full details regarding the donors but in the paper book filed by the assessee before the tribunal in that case, the tribunal noted that as per these details, the assessee has given the particulars like date of receipt of donation, Receipt No., name and address of the donors and the amount of donation received and the tribunal observed that such details are sufficient to decide this aspect of the matter as to whether the donations are anonymous or not and therefore, the tribunal restored the matter to CIT (A) in that case for fresh decision. He pointed out that in the present case also, in para 6c of his order for A. Y. 2009 – 10, learned CIT 9A) has made similar observation that the assessee has not provided full details and similar details regarding donors is available on pages 121 to 147 of the paper book and these details also include the same particulars such as date of receipt of donation, Receipt No., name and address of the donors and the amount of donation received and therefore, on this issue also in A. Y. 2009 – 10, the matter should be restored to CIT (A) for fresh decision with similar direction. Learned DR of the revenue supported the orders of the lower authorities.

3. WE have considered the rival submissions. We find that as per above discussion, the facts in the present case are identical on both issues i.e. allowability of exemption u/s 11 in both years and addition u/s 115BBC in A. Y. 2009 – 10. Hence, we first reproduce para nos. 4 to 6 from the tribunal order rendered in the case of M/s Sadia Educational and Charitable Trust vs. Addl. CIT (Supra) from pages 177 to 178 of the paper book. These paras read as under:-

“4. We have considered the rival submissions and %cc find force in the submissions of the learned AR of the assessee that the matter

in all the three years should go back to the file of the CIT(A) in view of the Registration granted to the assessee under section 12AA of the Income Tax Act, 1961. as per the certificate dated 19.10.2016 available on page N0.58 of the Paper look. Accordingly, we set aside the order of CIT(A) in all three years and restore the matter back to the file of CIT(A) for a fresh decision in all the three appeals in respect of the issue regarding eligibility of the assessee for exemption under section 11 raised by the assessee as per ground Nos.4 and 5 before us in all the three years because when the impugned orders were passed. registration was not granted and it is granted later. Accordingly, ground Nos.4 and 5 of the assessee's appeal in all three years are allowed for statistical purposes.

5. Regarding ground No.6 in respect of anonymous donations, it was submitted by learned AR of the assessee that on pages 112 to 125 of the Paper Book is a list of donors along with address and amount of donation for Assessment Year 2008-09 and similar list for Assessment Year 2009-10 is available on pages 126 to 131 of the Paper Book and for the next year, similar list is available on pages 132 to 137 of the Paper Book and hence, on this issue also, the matter should be restored back to the file of CIT(A) for a fresh decision after considering these details. Learned DR of the Revenue supported the order of learned CIT(A).

6. We have considered the rival submissions and we find that in para No.6b of his order, it is held by learned CIT(A) that the assessee has not filed full details regarding the donors which means that some details were filed by the assessee regarding donors which is not considered as full details by learned CIT(A) but he has not pointed out the defects or the shortcomings in the details filed by the assessee. For all these three years, we find that in these details filed in paper book before us as noted above, the particulars given are regarding dates of receipt of donation, receipt number, name and address of the donors and the amount of donation received. In our considered opinion, such details are sufficient to decide this aspect of the matter as to whether the donation are anonymous or not. Hence, we feel it proper to restore this matter on this issue also back to the file of CIT(A) for fresh decision in all these three years. Accordingly, ground No.6 is also allowed for statistical purposes in all the three years.

7. In the result, all the three appeals of the assessee are allowed for statistical purposes.”

4. No difference in facts could be pointed out by the learned DR of the revenue and therefore, respectfully following this tribunal order, we restore both issues i.e. the issue about allowability of exemption u/s 11 in both years and about addition made by the AO of Rs. 58,69,441/- u/s 115BBC in A. Y. 2009 – 10 by alleging that this donation is unanimous donation to CIT (A) for fresh decision with similar directions as were given by the tribunal in that case in paras 4 to 6 of that tribunal order reproduced above.

5. In the result, both the appeals of the assessee are partly allowed for statistical purposes.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(BEENA PILLAI)
Judicial Member

Bangalore,

Dated: 25th August, 2020.

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|---------------|-------------------------|---------------|
| 1. Appellants | 2. Respondent | 3. CIT |
| 4. CIT(A) | 5. DR, ITAT, Bangalore. | 6. Guard file |

Sd/-

(A.K. GARODIA)
Accountant Member

By order

Assistant Registrar,
ITAT, Bangalore.