

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर  
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES 'A' JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष  
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA No. 587/JP/2019  
निर्धारण वर्ष / Assessment Year :2016-17

Shri Merh Kshtriya Sabha, Patti Katla, Naya Bazar, Ajmer-305001	बनाम Vs.	ITO, (Exemption), Ajmer
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFTS9079J		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Sh. Sunil Porwal (CA)  
राजस्व की ओर से / Revenue by : Ms. Chanchal Meena (JCIT)

सुनवाई की तारीख / Date of Hearing : 21/09/2020  
उदघोषणा की तारीख / Date of Pronouncement: 22/09/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A), Ajmer dated 01.03.2019 wherein the assessee has taken following grounds of appeal:-

*"Under the facts & circumstances of case the Id. CIT(A) has erred in:-*

- (1) Application of Rule 46A and dismissing the appeal is bad in law.*
- (2) That confirming voluntary contribution received of Rs. 31,69,001/- as anonymous donation under section 115BBC is bad in law.*
- (3) That not calculating the income of trust being charitable in terms of section 11 and 12 of Act."*

2. During the course of hearing, the Id. AR submitted that the assessee is aggrieved with the following findings of the Id. CIT(A) which are contained at para 4.3 of his order which read as under:-

*"4.3 I have gone through the assessment order, statement of facts, grounds of appeal and written submission carefully. It is seen that the appellant had introduced sum of Rs. 31,69,001/- in the Balance Sheet under the head "received sahayog rashi from Patti Katla Bhawan". The AO during the course of assessment proceedings provided more than one opportunity to the appellant to explain nature and source of this amount taken directly in the Balance Sheet without routing the same through the Income & Expenditure Account. The appellant did not bother to furnish any explanation or detail even after show cause notice having been issued by the AO on 09.11.2016. The appellant during the course of appellate proceedings has not filed any application for admission of additional evidence under Rule 46A. Therefore, the additional evidences submitted by the appellant during the course of appellate proceedings are not admitted under Rule 46A, as the appellant has failed to show that the case of the appellant was covered under any Clause of Rule 46A.*

*As during the course of assessment proceedings, the appellant had not filed any explanation or detail with regard to the amount of Rs. 31,69,001/- taken directly in the Balance Sheet without routing the same through the Income & Expenditure Account, therefore, I am of the considered view that the AO has rightly treated the same as income u/s 2(24)(iia). Accordingly, the addition of Rs. 31,69,001/- made by the AO is hereby confirmed."*

3. The Id A/R submitted that the assessee trust is registered u/s 12A(a) vide order dated 19.12.2001 as a charitable trust and trust's accounts are

subject to audit and said audited accounts along with audit report were furnished along with the return of income. During the course of assessment proceedings, the AO observed that a sum of Rs. 31,69,000/- has been received by the assessee as Sahyog Rashi being Corpus Donation which has been directly credited in balance-sheet and not routed through income and expenditure account however shown as receipts/income in computation of income. Against the said receipt, the assessee has incurred a sum of Rs. 31,57,085/- towards capital expenditure. Due to difference with CA/AR of the trust and the online assessment process, the e-mail for show-cause and notices were received by CA/AR but no reply thereof could be filed and thus the AO has decided the case ex-parte qua the assessee. In this background, an affidavit was filed before the Id. CIT(A) and assessee requested him to consider the facts and evidence placed on record. It was submitted that a list of persons with their name & address were filed with the AO, however, the AO has not taken cognizance of the said details submitted by the assessee in support of the voluntary contributions of Rs. 31,69,001/- received by the assessee and the voluntary contribution so received was treated as anonymous donation in terms of section 2(24)(iia) read with section 115BBC of the Act.

4. It was further submitted that the assessee went in appeal against the said findings and an affidavit was filed before the Id. CIT(A) and assessee requested him to consider the facts and evidence placed on record and the said details were again submitted before the Id. CIT(A). However, the Id. CIT(A) has treated the said details as additional evidences and has not admitted the same invoking the provisions of Rule 46A. It was submitted that these were not additional evidences which was submitted for the first time before the Id. CIT(A) rather these documents were duly submitted before the Assessing Officer. A fact which has been confirmed by the AO

subsequently vide letter No. 519 dated 21.01.2019. It was accordingly submitted that the Id. CIT(A) has erred in invoking the provisions of Rule 46A and dismissing the appeal of the assessee. It was further submitted that the provisions of section 115BBC of the Act have been wrongly invoked by the Assessing Officer as such provisions does not apply to trust or institutions established wholly for charitable or religious purposes and the assessee being a charitable trust not established for any educational or medical purposes and in support, the reliance was placed on the CBDT Circular No. 14/2006 dated 28.12.2006. It was further submitted that the assessee has duly taken the said receipts in its computation of income while filing its return of income and against the said receipt, the assessee has incurred a sum of Rs. 31,57,085/- towards capital expenditure.

5. Per contra, the Id. DR submitted that from perusal of the assessment order, it is clear that the assessee has not responded to any of the show-cause notices issued by the Assessing Officer. Therefore, the contention of the assessee that the complete particulars about the donors were submitted before the Assessing Officer cannot be accepted. It was accordingly submitted that these were clearly additional evidences which were submitted before the Id. CIT(A) for the first time and in absence of any application seeking permission to file additional evidences under Rule 46A and in absence of satisfaction of any condition specified therein, the Id. CIT(A) has rightly dismissed the appeal of the assessee by not admitting the additional evidences. It was further submitted that one of the objects of the assessee's trust being setting up of educational institutions and carrying out activities in the field of education and which was considered while granting the approval under section 12A(a) of the Act, merely because the assessee has not set up any educational institution or has not carry on any activities in the educational sphere doesn't mean that the assessee trust is not setup for

educational purposes and therefore, the provisions of section 1115BBC are clearly applicable as the assessee has failed to submit the identity and other requisite details about the donors from whom the donation has been received during the year. The Id DR accordingly supported the findings of the lower authorities.

6. We have heard the rival contentions and perused the material available on record. The limited issue under consideration is the taxability of an amount of Rs. 31,69,001/- received by the assessee which has been treated as anonymous donations by the Assessing Officer by invoking the provisions of section 115BBC in absence of requisite details of the donors which have contributed the said amount to the assessee trust. The Id. AR has submitted that the details were duly submitted before the Assessing Officer and which has been confirmed by the Assessing Officer subsequently, vide letter No. 519 dated 21.01.2019. On perusal of the said letter, we find that it is a letter written by the ITO(Exemption), Ajmer to the Treasurer of the assessee trust which he has enclosed a copy of the ledger account for the period 1<sup>st</sup> April 2015 to 31<sup>st</sup> March, 2016 containing entries relating to individual donors. To what extent, the ledger contains the identity of the donors in terms of name and address and other requisite particulars as prescribed as so sought by the AO is not clear but it is a matter of record that the said ledger was produced before the Assessing Officer and is part of the assessment records and therefore, doesn't qualify as an additional evidence. Therefore, we find that these details so submitted by the assessee needs to be duly examined and basis such examination, a finding should be clearly recorded as to whether and to what extent, the donations so received qualify as anonymous donations or not. Therefore, in the facts and circumstances of the present case, we set aside the matter to the file of Id. CIT(A) to consider the details so submitted by the assessee and decide the

matter afresh on merits as per law including the contention of the assessee regarding applicability of section 115BBC after providing reasonable opportunity to the assessee. Ground No. 2 and 3 are disposed off accordingly.

7. In ground No. 3, the assessee has challenged the computation of income in terms of section 11 and 12 of the Act. Since, we have set aside the other matter, this matter is also set aside to the file of the Id. CIT(A) to decide the same afresh after providing reasonable opportunity to the assessee.

In the result, the appeal of the assessee is disposed off in light of above directions.

Order pronounced in the open Court on 22/09/2020.

Sd/-  
(विजय पाल राव)  
(Vijay Pal Rao)  
न्यायिक सदस्य / Judicial Member

Sd/-  
(विक्रम सिंह यादव)  
(Vikram Singh Yadav)  
लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 22/09/2020

\*Ganesh Kr.

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

1. अपीलार्थी / The Appellant- Shri Merh Kshtriya Sabha, Ajmer
2. प्रत्यर्थी / The Respondent- ITO, (Exemption), Ajmer
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File {ITA No. 587/JP/2019}

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar