

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI "SMC" BENCH: NEW DELHI**

(THROUGH VIDEO CONFERENCING)

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No.7785/Del/2019

[Assessment Year : 2015-16]

Adarsh Shiksha Sansthan, The Kids Elementary School, B-2 Block, Phase-2, Ashok Vihar, Delhi-110052. PAN-AAATA1783A	vs	ITO, Ward(E)-1(1), New Delhi.
APPELLANT		RESPONDENT
Appellant by	Shri Devi Dayal Gupta, CA	
Respondent by	Shri Sanjiv Mahajan, Sr.DR	
Date of Hearing	03.03.2022	
Date of Pronouncement	20.05.2022	

ORDER

PER KUL BHARAT, JM :

The present appeal filed by the assessee for the assessment year 2015-16 is directed against the order of Ld. CIT(A)-40, Delhi dated 30.07.2019. The assessee has raised following grounds of appeal:-

1. *"That the impugned order under section 250 of Income Tax Act, 1961 of Ld. CIT (Appeals)-40, New Delhi dated 30.07.2019 is bad in law and wrong, incorrect and illegal on the facts and in the circumstances of the case and legal position.*
2. *That on the facts and circumstances of the case and the legal position that Ld. CIT(Appeals) has erred in confirming the net addition at Rs. 14,17,467 /- when ,on the contrary.*
3. *Rs. 8,20,000 received were towards specific Corpus Donation for Land & Building fund under section 11(1)(d) of Income tax act 1961 , and Rs. 18,40,000 received towards Life Membership Fees were capital receipts,. ,and, out of Gross Income Rs. 57,03,327 the appellant trust had proved the balance application of funds of Rs. 24,92,268 (i.e. actual application of Rs. 33,12,268 - Rs. 8,20,000 allowed by Ld. A.O.) towards Construction of Community Hall*

incurred under section 11 (1)(a) of Income Tax Act,1961 before both Ld. A.O. and Ld. CIT(A).

4. *The aforesaid net additions of Rs. 14,17,467 has been confirmed based on after ignoring relevant material evidence and/or was based on irrelevant material and/or was arbitrary without any cogent basis and based on mere surmises and is perverse and bad in law.*
5. *The appellant had discharged the onus that rests on it and the lower authorities has failed to discharge the onus that rest on them.*
6. *That on the facts and in the circumstances of the case and legal position the Ld. CIT(Appels) erred in confirming interest under section 234B of Income Tax Act,1961 particularly, the said interest was not leviable at all in view of the arbitrary net addition of Rs. 14,17,467.*
7. *That the appellant craves leave to add, alter, delete, modify, or vary any ground(s) of appeal before or at the time of hearing of appeal.”*

FACTS OF THE CASE

2. Facts giving rise to the present appeal are that in this case, the return was filed declaring NIL income on 30.09.2015 which was processed u/s 143(1) of the Income Tax Act, 1961 (“the Act”). Thereafter, the case was selected for scrutiny assessment and the assessment u/s 143(3) of the Act was framed vide order dated 16.10.2017. The assessee is a society registered with the Registrar of society and also granted registration u/s 12A of the Act. The Assessing Officer (“AO”) noticed that during Financial Year 2014-15, the assessee society has received life membership fee amounting to Rs.18,40,000/- and claimed the same as capital receipt of the corpus donation. The AO was of the view that since the receipt is not in the nature of corpus donation within the meaning of provision of section 11(1)(d) of the Act. Therefore, he issued a show cause notice to the assessee. However, the submission made by the assessee was not acceptable to the AO therefore, he made addition of Rs.18,40,000/-. Further, he made

addition of Rs.8,20,000/- which was not included in the total income, was directly credited to the balance sheet under the head "Land & Building Fund". Hence, the AO assessed the income at Rs.14,17,470/- against the NIL income.

3. Aggrieved against this, the assessee preferred appeal before Ld.CIT(A) who after considering the submissions, dismissed the appeal.

4. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before the Tribunal.

5. The effective ground in this appeal is against the sustaining o addition of Rs.14,17,467/-.

6. Ld. Counsel for the assessee argued that the action of authorities below is not justified. He contended that the AO by framing the assessment, made addition of Rs.18,40,000/- being life membership fee and Rs.8,20,000/- i.e. donation given for land building. The claim of the assessee for both these amounts was that the receipts are of capital in nature. However, the authorities below have arbitrarily treated the same, as revenue receipt contrary to the facts on records.

7. Ld. Sr. DR opposed these submissions and supported the orders of the authorities below.

8. I have heard the rival submissions and perused the material available on record. In this case, the AO made addition in respect of two claims namely, life membership fee amounting to Rs.18,40,000/- and donation of Rs.8,20,000/-. The basis of making addition in respect of first claim is that it does not meet the requirement of law as this being not a voluntary contribution and is given in lieu

of service. However, the contention of the assessee is that the action of AO is erroneous and unjustified under the facts and circumstances of the present case. As per section 11(1)(d) of the Act, income in form of voluntary contributions made with a specific direction that it shall form part of the corpus of the trust or institution shall not be included in the total income of the previous year of the person in receipt of the income. In the present case, the assessee did not furnish any specific direction of the donors/members regarding the amount it received. Moreover, by no stretch of imagination, membership fee can partake character of voluntary contribution so as to qualify being voluntary contribution with a specific direction that it shall form part of corpus of the trust. The membership fee is paid in anticipation/in lieu of services rendered by the assessee. The case law as relied by the assessee is not applicable on the facts of the present case. Hence, ground related to life membership fee is rejected.

9. Now, coming to the issue regarding donation of Rs.8,20,000/-. It was stated before the authorities below that the amount was received and spent on construction of building etc. The AO rejected the claim on the basis that the assessee had received it as an ordinary donation but not as a corpus donation. Looking to the direction given by the donors and the same was credited in land & building fund account.

10. I have heard the rival submissions and perused the material available on record. I am of the considered view that the authorities below ought to have taken a liberal approach in construing the direction of the donors. I, therefore, direct the AO to delete this addition and allow the claim of the assessee. Hence, this ground raised by the assessee is allowed.

11. Ground No.6 raised by the assessee is regarding charging of interest u/s 234B of the Act. Charging of interest is consequential , I hold accordingly.
12. Ground No.7 is general in nature, needs no separate adjudication.
13. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 20th May, 2022.

Sd/-

**(KUL BHARAT)
JUDICIAL MEMBER**

** Amit Kumar **

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT, NEW DELHI