

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 99/SRT/2017 (AY: 2013-14)
(Hearing in Virtual Court)

I.T.O. (Exemption) Ward-Surat, Room No. 105, 1 st Floor, Aayakar Bhavan, Adajan Hazira Road, Surat-395009.	Vs.	Nav Jyot Social Service Society, Subir, District Dangs-394716 Gujarat PAN : AAATN 1806 D
APPELLANT		RESPONDEDNT

Department by	Shri H.P. Meena, CIT-DR
Assessee by	Shri Brijesh Shah, AR
Date of hearing	17/05/2022
Date of pronouncement	17/05/2022

Order under Section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. The appeal filed by the Revenue is directed against the order of the Commissioner of Income Tax (Appeals)-3, Surat [in short 'Id.CIT(A)] dated 13/06/2017 for the Assessment Year (A.Y.) 2013-14. The Revenue in its appeal has raised following grounds of appeal:

“1. *The Id. CIT(A) has erred in law and on facts of the case in deleting the addition of Rs. 2,10,00,000/- being corpus donation claimed by the assessee trust as exempt u/s 11(1)(d) of the Act.*

1.1 *The Id. CIT(A) has erred in law and on facts of the case by not adjudicating on issue as to whether there was a specific provision in the Trust Deed regarding creation of a corpus fund for building construction. Whether the trustees had passed a resolution to that effect?*

1.2 *The Id. CIT(A) has erred in law and on facts of the case in not adjudicating as to whether there was specific direction by the donors with regard to contribution towards a corpus or whether the donations were collected and simply printed receipts had been issued?*

Additional grounds:

- i) Whether such donations received mostly from the parents/relatives of students etc. studying in the school run by the Trust could be considered as voluntary corpus donation as it was a part of the fee structure of the school?*
- ii) On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) ought to have upheld the order of the Assessing officer.*
- iii) On the facts and circumstances of the case, the Id. Commissioner of Income Tax (Appeals) may be set aside and that of the Assessing Officer be restored.”*

2. Brief facts of the case are that the assessee is a charitable trust/institution registered under Section 12A of the Income Tax Act, 1961 (in short, the Act). The assessee is running a school and hostel mainly for tribal children. The assessee filed its return of income for the Assessment Year (AY) 2013-14 on 17/09/2013 declaring NIL income. The assessee also furnished audit report in Form No. 10B. The case was selected for scrutiny and assessment was completed under Section 143(3) of the Act on 01/03/2016. The Assessing Officer during the assessment noted that the assessee has reported donation of Rs. 2.10 crores for "Construction Fund" and claimed exemption under Section 11(1)(d) of the Act and treated the same as corpus donation. The assessee was issued show cause notice to submit details and justify the exemption. The assessee filed its reply dated 18/01/2016. The reply of the assessee is extracted in para 4.2 of the

assessment order. In the reply, the assessee in sum and substance submitted that the contribution was made for specific direction that it will form part of corpus of donee trust and accepted by them as such. The contribution is not income within the meaning of Section 12 as it is a part of corpus for capital. The assessee also relied on certain case laws. The reply of assessee was not accepted by the Assessing officer by taking a view that the assessee trust has not specified in its trust deed as to what kind of funds will constitute corpus. Nowhere in the trust deed is mentioned that any donation for construction fund or building fund will be a part of corpus fund. The Assessing Officer treated the donation of Rs. 2.10 crores as general donation and added to the income of the assessee.

3. Aggrieved by the additions in the assessment order by treating the corpus donation as income, the assessee filed appeal before the Id. CIT(A). Before the Id. CIT(A), the assessee stated that the assessee is a Public Charitable Trust having registration under Section 12A of the Act. The assessee society is involved in charitable activities which includes running of school up to High School, boarding of students seeking secular education. During the period under consideration, the assessee received donation for the purpose of construction of hostel building. The copy of letters specifying the purpose of donation was furnished. The assessee also relied on the case laws i.e. CIT Vs Bal Utkarsh Society (1979) 119 ITR 137 and Sri Dwarkadheesh Charitable Trust Vs ITO (1975) 98 ITR 557. The Id. CIT(A) after considering the submission of assessee

held that he had perused the details submitted, financial statements and the letter/confirmation of donors accompanying the donations from three donors parties i.e. (i) the Gujarat Education Society (ii) The Ahmedabad Jusit Schools' Society & (iii) the Loyala Education Society wherein they have clearly mentioned that the donations for corpus "building fund". The Id. CIT(A) further held that on similar issue in the case of Hari Om Ashram in Appeal No. CAS-3/444/2015-16 dated 24/01/2016, he had decided similar appeal by relying on the decision of Hon'ble Gujarat High Court in the case of Sthanakvasi VardhamVanik Jain Sangh (2003) 260 ITR 366 wherein it was held that the donation for construction of wadi for the caste people was directly taken to balance sheet without considering it as income was corpus donation. The Id. CIT(A) also relied upon the decision of Hon'ble Allahabad High Court in the case of Sri Dwarkadheesh Charitable Trust Vs ITO (Supra) and the decision of Hon'ble Gujarat High Court in the case of CIT Vs Bal Utkarsh Society (supra) and held that on the basis of decision of Hon'ble Gujarat High Court and various Tribunals, the donations received for construction is forming part of corpus and shall not be included in the total income of the assessee and accordingly deleted the entire addition. Aggrieved by the order of Id. CIT(A), the Revenue has filed the present appeal before this Tribunal.

4. We have heard the submissions of learned Commissioner of Income tax-departmental representative (Id.CIT-DR) for the Revenue and the Id. Authorised Representative (AR) for the assessee. The Id. CIT-DR for the Revenue supported the order of the Assessing Officer. The Id. CIT-DR submits that there is no

provision in the trust deed as to what kind of funds will constitute corpus or donation or construction fund will be treated as corpus fund of the trust. The Assessing officer in absence of any specific clause in the trust deed, treated the donations as income of the assessee and taxed it accordingly. The assessee has not specified as to how they treated the said donation as corpus for building fund.

5. On the other hand, the Id. AR of the assessee submits that the grounds of appeal raised by the revenue are covered in favour of the assessee by various decisions of different Hon'ble High Courts including the Jurisdictional High Court in the case of CIT Vs Bal Utkarsh Society (supra). Moreover, the donors while giving the donations has clearly mentioned in their letter that donation was given for building fund. Copies of such conformation is placed on record.
6. We have considered the rival submissions of both the parties and have gone through the orders of the authorities below. We find that the Assessing Officer treated the donations as a general donation and denied the exemption under Section 11 of the Act and treated the same as income of assessee. We find that the Id. CIT(A) by following his own order in the case of Hari Om Ashram (supra) wherein he has followed the orders of Hon'ble jurisdictional High Court. We find that the assessee has placed on record copies of confirmation/letter issued by the donors confirming that the donation was given for specific purpose. Considering the decision of Hon'ble Gujarat High Court in the case of CIT Vs Bal Utkarsh Society (supra) wherein the fund was donated for construction was held

as corpus donation. Therefore, in view of the aforesaid additional observation, we affirm the order passed by the Id. CIT(A).

7. In the result, this appeal of the Revenue is dismissed.

Order pronounced on 17/05/2022, in open court and result was also placed on notice board.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 17/05/2022

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By Order

Sr. Private Secretary, ITAT Surat