

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'C' BENCH, CHENNAI
श्री वी दुर्गा राव न्यायिक सदस्य एवं श्री जी. मंजुनाथा, लेखा सदस्य के समक्ष
Before Shri V. Durga Rao, Judicial Member &
Shri G. Manjunatha, Accountant Member

आयकर अपील सं./I.T.A. No. 2824/Chny/2018
निर्धारण वर्ष/**Assessment Year:2009-10**

M/s. Periyasamy Pillai Educational
Trust, No. 4, Aishwarya Complex,
41, Duraisamy Road, T. Nagar,
Chennai 600 017.

[PAN:AAATP9255C]

The Income Tax Officer
Vs. (Exemptions), Ward 4,
Chennai.

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से / Appellant by : Shri T. Vasudevan, Advocate
प्रत्यर्थी की ओर से/Respondent by : Shri P. Sajit Kumar, JCIT
सुनवाई की तारीख/ Date of hearing : 09.05.2022
घोषणा की तारीख /Date of Pronouncement : 01.06.2022

आदेश /O R D E R

PER V. DURGA RAO,, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 17, Chennai, dated 05.07.2018 relevant to the assessment year 2009-10. The assessee has raised the following grounds of appeal:

- "1. The order of the Commissioner of Income-tax (Appeals) dismissing the appeal is contrary to law, erroneous and unsustainable on the facts of the case.*
- 2. The CIT(A) erred in upholding the order of the officer that the issue of assessing corpus donation as income of the Trust would not fall for consideration under sec.154 of the Act.*

3. *The CIT(A)] failed to appreciate that the corpus donation statutorily stands excluded from the income of the trust under sec.11(1)(d) of the Act and that the inclusion of the same as income of the Trust is an obvious and patent mistake and therefore warrants rectification of the order passed on 30.12.11.*
4. *The CIT(A) further failed to appreciate that as per sec.11(1)(d), the amount of corpus donation per se does not form part of the total income and hence confirming the order u/s.154 as a debatable issue is unsustainable and untenable in law.*
5. *The CIT(A) further failed to appreciate that the entire factual matrix on the corpus donation received is part of the records even at the time of assessment u/s.143(3) and does not involve any fresh consideration of facts and hence ought to have deleted the amount of corpus donation from the income of the assessee.*
6. *The CIT(A) further failed to appreciate that the reliance on the Mumbai Bench decision in 169 ITD 271 was only to buttress the point that once registration u/s. 12AA is available, the corpus donation cannot be taxed and does not depend on the availability of sec.11 exemption to the assessee.*
7. *The CIT(A), in any event, ought to have considered the contentions of assessee in the proper perspective and also the judicial precedents and held that prima facie, the corpus donation does not form part of the taxable income of the assessee and thus allowed the appeal.”*

2. Brief facts of the case are that the assessee is an educational trust and filed the return of income on 09.10.2010 admitting Nil income. While completing the assessment under section 143(3) of the Income Tax Act, 1961 [“Act” in short] dated 30.12.2011, the Assessing Officer denied the benefit of exemption under section 11 of the Act and treated the corpus donation received of ₹.2,92,75,200/- as income of the assessee. On appeal, the Id. CIT(A) allowed the appeal of the assessee. On further appeal by the Department, vide order in I.T.A.

No. 1668/Mds/2012 dated 13.06.2013, the Coordinate Benches of the Tribunal set aside the order of the Id. CIT(A) and reinstated the assessment order. Thereafter, the assessee filed a petition under section 154 of the Act for deleting the amount of corpus donation to the tune of ₹.2,92,75,200/- from the total income. The petition filed by the assessee under section 154 of the Act was dismissed by the Assessing Officer for the following reasons:

- i) *When benefit u/s. 11 is denied, the entire receipts including corpus donation is taxable under the Act.*
- ii) *Taxability of corpus donations when exemption u/s. 11 is denied is a debatable issue which cannot be entertained u/s. 154 of the IT Act.*
- iii) *The inclusion of corpus donation in the total income is not contested by the appellant before any of the legal forums i.e., before CIT(A).*
- vi) *The appellant has not contested this point in their earlier rectification petition dated 22.07.2013. Thus, the present claim for exclusion of corpus donations from total income at this stage is clearly for evading payment to tax.*

3. The assessee carried the matter in appeal before the Id. CIT(A). After considering the submissions of the assessee and by following the decisions of the Hon'ble Supreme Court in the case of Volkart India 82 ITR 50(SC) as well as in the case of CIT v. Hero Cycles (P) Ltd. (1997) 94 Taxman 271 (SC), the Id. CIT(A) dismissed the appeal of the assessee.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the

corpus donation statutorily stands excluded from the income of the trust under section 11(1)(d) of the Act and that the inclusion of the same as income of the Trust is an obvious and patent mistake and therefore warrants rectification of the order passed on 30.12.2011. It was further submitted that as per section 11(1)(d) of the Act, the amount of corpus donation per se does not form part of the total income and hence it is not a debatable issue and does not form part of the taxable income of the assessee and prayed for allowing the appeal of the assessee. It was also submitted that the corpus donation received by the assessee is part of the records and even at the time of assessment under section 143(3) of the Act and does not involve any fresh consideration of facts and also prayed for deleting the amount of corpus donation from the income of the assessee.

5. On the other hand, the Id. DR has submitted that the rectification under section 154 of the Act can only be made when glaring mistake of fact or law has been committed by the Assessing Officer while passing the assessment order and it becomes apparent from the record. It was also submitted that rectification is not possible if the question of law is debatable and pleaded for confirmation of the appellate order.

6. We have heard both the sides, perused the materials available on record and gone through the orders of authorities below. The point at issue is whether corpus donation has to be taxed or totally exempt at the stage of rectification under section 154 of the Act after attaining finality before the final facts finding authority. The Assessing Officer has considered the entire facts and rightly denied the benefit of exemption claimed under section 11 of the Act and treated the corpus donation received as income of the assessee in the assessment order under section 143(3) of the Act. However, the Id. CIT(A) allowed the appeal of the assessee. On appeal by the Department, vide order in I.T.A. No. 1668/Mds/2012 dated 13.06.2013, the Coordinate Benches of the Tribunal set aside the order of the Id. CIT(A) and reinstated the assessment order. Thereafter, the assessee filed a petition under section 154 of the Act for deleting the amount of corpus donation to the tune of ₹.2,92,75,200/- from the total income. The petition filed by the assessee under section 154 of the Act was dismissed by the Assessing Officer and the reasons given are reproduced hereinabove. On appeal, by following the decisions of the Hon'ble Supreme Court in the case of Volkart India 82 ITR 50(SC) as well as in the case of CIT v.

Hero Cycles (P) Ltd. (1997) 94 Taxman 271 (SC), the Id. CIT(A)

dismissed the appeal of the assessee by observing as under:

“4. Decision: I have considered the observations of the Assessing Officer and the submissions made by the appellant. To resolve the issue on hand, it is relevant to refer to the observations of the Hon’ble Supreme Court of India in the case of Volkart India (82 ITR 50)(SC) wherein it was observed as under:

“A mistake apparent on the record must be an obvious and patent mistake and not something which can be established by a long drawn process of reasoning on points on which there may conceivable two opinions. A decision on a debatable point of law is not a mistake apparent from the record”.

Further, the Apex Court fortified this view in the case of CIT v. Hero Cycles (P) Ltd. [(1997) 94 Taxman 271 (SC)] declaring as under:

“Rectification under Sec. 154 can only be made when glaring mistake of fact or law has been committed by the officer passing the order and it becomes apparent from the record. Rectification is not possible if the question is debatable. Moreover, the point which is not examined on fact or in law cannot be dealt with as mistake apparent on the record.”

It is seen from the petition filed by the appellant u/s. 154 that the mistake that was requested to be rectified is not only debatable but also neither obvious nor patent from the face of the record. In fact, the appellant’s reliance on the decision of the Hon’ble ITAT in the case of Serum Institute of India Research Foundation (169 ITD 271 (Mum) itself proves that the issue is a highly debatable one and therefore not amenable to the provisions u/s. 154. The claims made by the appellant involve fresh determination of facts and statutory interpretation once again. In view of the above, I have no hesitation in holding that the Assessing Officer rightly rejected the petition filed u/s. 154 by the appellant. The appellant fails on this ground.”

6.1 From the above, we find that the rectification petition filed by the assessee under section 154 of the Act is a debatable issue and therefore, it cannot be considered at this stage. That apart, the Id. Counsel for the assessee has submitted that the issue is pending

before the Hon'ble High Court. Under the above facts and circumstances, we find no infirmity in the order passed by the Id. CIT(A) and accordingly, the appeal filed by the assessee is dismissed.

7. In the result, the appeal filed by the assessee is dismissed.

Order pronounced on the 01st June, 2022 in Chennai.

Sd/-
(G. MANJUNATHA)
ACCOUNTANT MEMBER

Sd/-
(V. DURGA RAO)
JUDICIAL MEMBER

Chennai, Dated, 01.06.2022

Vm/-

आदेश की प्रतिलिपि अग्रेषित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. विभागीय प्रतिनिधि/DR & 6. गार्ड फाईल/GF.