

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'D' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“D” BENCH, AHMEDABAD

BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMEBR
& SHRI WASEEM AHMED, ACCOUNTANT MEMEBR

आयकर अपील सं./I.T.A. No. 1578/Ahd/2019
(निर्धारण वर्ष / Assessment Year : 2015-16)

Asst. Commissioner of Income-tax (Exemptions) Circle-2, Ahmedabad 6 th Floor, Room No.607, Aaykar Bhavan (Vejalpur), Pralhad Nagar Road, Near Sachin Tower, Satellite, Ahmedabad - 380015	बनाम/ Vs.	Rajkot Dawoodi Jamat Anjuman E Hatimi Committee Dawoodi Bohra Jamat, Noor Masjid Complex, Navanaka Road, Rajkot
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AAATR2442K		
(अपीलार्थी /Appellant)	..	(प्रत्यर्थी / Respondent)

अपीलार्थी ओर से/Appellant by :	Shri Atul Pandey, Sr. D.R.
प्रत्यर्थी की ओर से / Respondent by :	Shri Ankit Choksi, A.R.

सुनवाई की तारीख / Date of Hearing	21/06/2022
घोषणा की तारीख /Date of Pronouncement	24/06/2022

ORDER

PER MAHAVIR PRASAD, JM:

The appeal has been preferred by the Revenue against the order of the Commissioner of Income Tax (Appeals)-9, Ahmedabad ('CIT(A)' in short) vide Appeal No. CIT(A)-9/10400/DCIT(E) Cir-2/17-18dated 13.08.2019 arising in the assessment order dated 28.12.2017 passed by the

Assessing Officer (AO) under s. 143(3) of the Income Tax Act, 1961 (the Act) concerning AY. 2015-16.

2. The grounds of appeal raised by the Revenue read hereunder:

- “1) Whether the *ld. CIT(A)* has erred in law and on the facts of the case in admitting the additional evidences without drawing satisfaction on one or more of the circumstances laid down in Rule 46A of the IT Rules, 1962, when the AO has given ample opportunities to the assessee to furnish the requisite details.
- 2) Whether the *Ld. CIT(A)* has erred in law and on the facts of the case in admitting the additional evidences merely relying on the decisions without examining their applicability on the facts of the case of the assessee.
- 3) Whether the *Ld. CIT(A)* has erred in law and on the facts of the case in deleting the additions made by the AO as per provision of section 68 of the Act, though the assessee could not fully furnish the complete details of donors as required under section 68 of the Act, at assessment stage and even during the remand proceedings.
- 4) Whether the *Ld. CIT(A)* has erred in law and on the facts of the case in deleting the additions made by the AO of Rs5,60,87,760/- towards corpus donations without appreciating that the AO has correctly invoked the provisions of section 68 r.w.s. 115BBE of the Act, as the assessee could not furnish the requisite evidences towards genuineness & creditworthiness of the donors.
- 5) Whether the *Ld. CIT(A)* has erred in law and on the facts of the case in deleting the additions made by the AO of Rs. 5, 60, 87, 760/- towards corpus donations as the assessee could not furnish the requisite evidences towards the specific direction of the donors for corpus donations.
- 6) Whether the *Ld. CIT(A)* has erred in law and on the facts of the case in deleting the additions made by the AO of Rs. 2, 22, 51,323/- towards voluntary contributions without appreciating that the AO has correctly invoked the provisions of section 68 r.w.s. 115BBE of the Act, as the assessee could not furnish the requisite details.”

3. The facts of the case are that the assessee is a public charitable/religious trust registered under the ' Bombay Public Trust Act with the office of the Assistant Charity commissioner vide registration No.

B/4, Rajkot, Dated 08/12/2008. The main objects of the trust are to run a public dispensary namely-lazzy Shirakhana, to run an educational institution under the name Al Madressa Tus Saifiya Tul Burhaniya, to provide necessary financial assistance to pilgrims for performing Haj and karbal Jayarat, incurring expenditure for celebrating religious festivals, etc and to provide the necessary financial assistance to pilgrims. The trust is registered u/s. 12AA of the I.T. Act vides no. 65-R-45/74-75/CIT.V dated. 15/12/1975 with Commissioner of Income-Tax, Gujarat-V,Ahmedabad.

3.1 During the course of assessment proceedings, on verification of computation of income, it was found that assessee has claimed corpus donation amounting to Rs. 6,27,71,069/-. In this regard, during the course of assessment proceedings vide letter dated 15.11.2017 and 18.12.2017 assessee was asked to provide the supporting evidences like letter of specific direction given by the donor, confirmation letter of the donor and copy of return of income of donors for A.Y. 2015-16 for the cross verification. Assessee was also asked to show cause as to why in case of failing in the providing the called for details, amount received as corpus donation should not be treated as unexplained cash credit u/s 68 of the Act?

3.2 In response to said show cause notice, assessee has submitted the reply vide forwarding letter dated 20.12.2017 and all the annexure mentioned in forwarding letter was provided in soft copy in CD. On perusal of reply submitted by the assessee, the AO found that assessee has provided the ledger account for the corpus fund received by the trust for F.Y. 2014-15. On detailed verification of ledger account, it was seen that opening balance of the said ledger account was of Rs. 62,67,420.62 and closing balance of the said ledger account was of Rs. 6,23,55,180.62. Thus, as per ledger account total corpus donation received by the trust

during the F.Y. 2014-15 is Rs. 5,60,87,760/-. Further, on verification of the balance sheet provided by the assessee as on 31.03.2015 it was seen that during the year assessee has received corpus fund of Rs. 5,60,87,760 and other earmarked fund received by the trust which was treated as corpus fund was of Rs. 26,65,329/-. Thus, as per books of accounts total corpus fund received by the assessee trust is Rs. 5,87,53,089/- where as in computation of income assessee has claimed corpus donation amounting to Rs. 6,27,71,069/-. Thus, amount claimed as corpus fund in computation of income is not being matched with the balance sheet provided by the assessee.

3.3 Further, during the course of assessment proceedings, assessee was asked to provide the copy of specific direction given by the donor regarding the utilization of the fund. In this regard, assessee has submitted letter of specific direction given by the donors for Rs. 5,50,00,000/- only. For difference amount of Rs.10,87,760/- (5,60,87,760 - 5,50,00,000) assessee has not provided any letter for specific direction.

3.4 During the course of assessment proceeding, assessee was asked to provide the supporting evidences like donation receipts for corpus donation received by the trust. In response to said letter assessee had submitted the copy of donation receipts for amount Rs.5,53,94,000/- only. For difference amount of Rs.6,93,760/- assessee has not provided any supporting evidences. Further, on verification of donation receipt, it was seen that donors has not made any signature to confirm that said donation is given as corpus donation. Relevant part of one donation receipt is reproduced below in which it can be seen that nowhere donor has confirmed that said donation is for corpus of the trust.

3.5 Further, during the course of assessment proceedings, assessee was requested to produce the copy of return of income for A.Y. 2015-16 of donors who have given corpus donation to trust, to cross verify the creditworthiness and genuineness of the donor and donation given by the donor but till date assessee has not submitted the Return of Income of any donor.

3.6 In view of the above facts justification given by the assessee for corpus donation received by the trust of Rs. 5,60,87,760/- is not satisfactory to A.O.

3.7 During the course of assessment proceedings, it was seen that during the year under consideration, assessee has received voluntary contribution amounting to Rs. 2,22,51,323/-. In this regard, vide letter dated 15.11.2017 assessee was asked to provide the supporting evidences. In response to said letter, copy of ledger account was provided by the assessee. Again vide letter dated 18.12.2017 assessee was asked to provide the supporting evidences for general donation received by the trust and also asked to show cause that in case of failing in submitting the details why the amount received by the trust as voluntary contribution should not be treated as unexplained cash credit as per the provisions of section 68 of The Act. Till date assessee has not provided any supporting evidences except the copy of ledger accounts. Further, on verification of ledger accounts provided by the assessee for voluntary contribution received by the trust, it was seen that as per ledger accounts, total voluntary contribution received by the trust is Rs. 2,02,93,288/- whereas in computation of income voluntary contribution shown by the trust is Rs. 2,22,51,323/-. Thus, for amount of Rs. 19,58,035/- assessee has not provided any explanation and for the rest amount assessee has not provided any supporting evidences. Hence,

regarding the voluntary contribution of Rs. 2,22,51,323/- explanation given by the assessee is not satisfactory. After considering the submission of assessee, for which, learned AO did not agree and he made addition of Rs.7,83,39,083/-.

4. Against the said order, the assessee preferred first statutory appeal before the learned CIT(A) who admitted the additional evidence under Rule 46A and partly allowed the appeal of the assessee on the ground that in the interest of justice, learned CIT(A) can admit the additional evidence.

5. Now, Revenue is before us by way of second statutory appeal.

6. We have gone through the relevant record and impugned order. The Revenue's contention is that Rule 46A prescribed that appellant shall not be entitled to produce additional evidence before the first appellate authority because in the case before us ample opportunity was given to the assessee to file the evidentiary support of his contention and CIT(A) ought to have record in writing the reason for its admission of additional evidences before him. On the other hand, learned AR's contention was that in the interest of justice, learned CIT(A) can admit additional evidences and in this case, learned CIT(A) has sought remand report from AO with regard to each and every additional evidence submitted before him and thereafter, decided the matter. In our considered opinion, learned CIT(A) can admit additional evidence if he finds it crucial and necessary for the disposal of the appeal. We think if additional evidence is without any blemish and in order to advances the cause of justice the same ought to be admitted. After considering the plethora of judgments, the paramount consideration of the adjudicating authority should be fair disposal of the appeal/case in order to protect interest of justice. As in the present case,

assessee could not file certain details before the learned AO but he filed before the learned CIT(A) and learned CIT(A) forwarded same details for the comments of the learned AO and sought remand report. In remand report, learned AO did not doubt the content of documents but objected to filing of additional evidence under Rule 46A. After considering the remand report, CIT(A) decided the matter. As per Income Tax Act, learned CIT(A) has co-terminus power. Thus, we do not find any infirmity in the order of the CIT(A). We agree with the finding of learned CIT(A).

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

This Order pronounced in Open Court on 24/06/2022

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER
Ahmedabad: Dated 24/06/2022

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

True Copy

S.K.SINHA

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. राजस्व / Revenue
2. आवेदक / Assessee
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त- अपील / CIT (A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद /
DR, ITAT, Ahmedabad
6. गार्ड फाइल / Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण, अहमदाबाद ।