

आयकर अपीलिय अधिकरण न्यायपीठ, कोलकाता ।
IN THE INCOME TAX APPELLATE TRIBUNAL
“A” BENCH, KOLKATA

BEFORE SHRI RAJPAL YADAV, HON'BLE VICE PRESIDENT
AND SHRI MANISH BORAD, HON'BLE ACCOUNTANT MEMBER

I.T.A. No. 2438/Kol/2018
Assessment Year: 2013-14

T.T. Charitable Trust 10, Pollock Street 2 nd Floor Kolkata - 700001 PAN : AAAT5450D	Vs	I.T.O., Exemption-1(3), Kolkata
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Vikas Kumbhat, FCA
Revenue by :	Shri Arup Chatterjee, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 18/07/2022
घोषणा की तारीख /Date of Pronouncement: 01/08/2022

आदेश/ORDER

PER SHRI RAJPAL YADAV, VICE PRESIDENT :

The present appeal is directed at the instance of the assessee against the order of the Learned Commissioner of Income Tax (Appeals), Kolkata - 25, (hereinafter the “ld. CIT(A)”) dt. 28/09/2018, passed u/s 250 of the Income Tax Act, 1961 (“the Act’), for Assessment Year 2013-14.

2. Thought the assessee has taken five grounds of appeal but its grievance revolves around a single issue, namely, the ld. CIT(A) has erred in confirming the addition of Rs.1,96,211/-.

3. The brief facts of the case are that the assessee has filed its return of income on 12/09/2013 declaring total income at Nil. The case was selected for scrutiny assessment and notice u/s 143(2) of the Act was issued and served upon the assessee. The assessee has been enjoying registration u/s 12AA of the Act. It is also enjoying registration u/s 80G of the Act. According to the Assessing Officer, perusal of the record would reveal that the assessee has received Rs.1,05,42,658/- as donation from several persons and it has donated Rs.1,05,27,646/- to several

organizations. The Assessing Officer further found that the assessee has made a donation of Rs.1,96,211/- to three trust of Baba Ramdev i.e., Divya Yog Mandir Trust, Patanjali Yogpeeth Trust and Bharat Swabhiman Trust. According to the Assessing Officer donations have been made to this extent for charitable purposes which is contrary to the objects of the assessee and, therefore, it cannot be allowed as a deduction to the assessee.

4. On appeal, the assessee has submitted complete details of the donation including their status as a charitable/religious institutions enjoying registration u/s 12A as well as 80G of the Act. The details of all these donations have been reproduced by the Id. CIT(A) in paragraph no. 5.1. of the impugned order. The assessee also contended that to the extent of 5% of its total donations, assessee can make donations for religious purposes also. Hence, the deductions should not be disallowed to the assessee. The Id. CIT(A) did not accept this contention of the assessee and observed in paragraph no. 5.3. that the assessee has made donations to the trust/institutions which have religious activity.

5. Before us, the Id. Counsel for the assessee contended that identical disallowances were made in Assessment Year 1996-97 & 1998-99. Dispute travelled up to the Tribunal and the Tribunal had deleted the disallowance. He also took us through Section 80G (5B) of the Act and contended that the assessee can make donations to the extent of 5% of its total donations even to the Trust working for religious purposes.

On the other hand, the Id. D/R relied on the orders of the revenue authorities.

6. We have heard the rival submissions and gone through the record carefully. Sub-clause (5B) of Section 80G of the Act, reads as under:-

["Notwithstanding anything contained in clause (ii) of sub-section (5) and Explanation 3, an institution or fund which incurs expenditure, during any previous year, which is of a religious nature for an amount not exceeding five percent of its total income in that previous year shall be deemed to be an institution or fund to which the provisions of this section apply."]

7. A perusal of the above would indicate that donations to an institution existing for religion can be allowed to an assessee who is otherwise entitled for deduction of these amounts u/s 80G. In other words, if it (donee) is enjoying registration u/s 80G, then the donor can claim deduction of all the donations. If such donations do not exceed 5% of its total income. In other words, if this aspect is applied to the facts of the instant case then it would reveal that the assessee's total income is Rs.1,05,27,647/-. It has made donations on charitable purpose to the extent of Rs.1,96,211/-, which is less than 5%. The donee is registered u/s 80G. Under these circumstances, the addition made by the Assessing Officer and confirmed by the Id. CIT(A) is not sustainable and the same is accordingly deleted.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the Court on 1st August, 2022 at Kolkata.

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

Kolkata, Dated 01/08/2022

**SC SpA*

Sd/-

(RAJPAL YADAV)
VICE-PRESIDENT

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

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलीय आयकर , कोलकाता/DR,ITAT, Kolkata,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,
TRUE COPY

Assistant Registrar
आयकर अपीलीय अधिकरण
ITAT, Kolkata