

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL,
JAIPUR BENCHES,"SMC" JAIPUR

श्री संदीप गोसाई, न्यायिक सदस्य एवं श्री राठोड कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: SHRI SANDEEP GOSAIN, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA No. 212/JP/2021
निर्धारण वर्ष / Assessment Year : 2017-18

Lalita Devi Saboo Charitable Trust D-5, Kalwad Scheme Jaipur	बनाम Vs.	The ITO (Exemption) Ward 1 Jaipur
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATL 3509 P		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : Written Submission
राजस्व की ओर से / Revenue by: Shri A.S. Nehra, Addl.CIT

सुनवाई की तारीख / Date of Hearing : 10/08/2022
उदघोषणा की तारीख / Date of Pronouncement: 31/08/2022

आदेश / ORDER

PER: SANDEEP GOSAIN, JM

This appeal filed by the assessee is directed against order of the ld. CIT(A) dated 30-08-2021, National Faceless Appeal Centre, Delhi [hereinafter referred to as (NFAC)] for the assessment year 2017-18 wherein the assessee has raised the following ground of appeal.

“1. The ld. CIT(A) has erred in upholding the action of AO in treating the corpus donation of Rs.17,00,000/- as not liable to be excluded from income as per Section 11(1)(d). The ld. CIT(A) has erred in treating the same as income liable to be included to tax.

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2. The order passed by erred in upholding the action of the AO in computing the income at Rs.17,15,838/- as against Nil income. The income so computed is bad in law and bad on facts.’’

3. The interest charged u/s 234B is bad in law and bad on facts.

2.1 Brief facts of the case are that the assessee is a charitable trust which is registered u/s 12A(a) of the Income Tax Act. The assessee electronically filed its return of income for the year under consideration declaring total income at Rs. Nil. The case of the assessee trust was selected for scrutiny under CASS. The assessment u/s 143(3) of the Act was completed on 26-11-2019 and the case was finalized assessing the total income at Rs.17,15,840/- after treating corpus donation as Revenue receipt.

2.2 Aggrieved by the order of the AO, the assessee preferred an appeal before the Id. CIT(A) who after considering the case of the parties dismissed the appeal filed by the assessee.

2.3 Against the order of the Id. CIT(A), the assessee filed the appeal before us raising the grounds mentioned hereinabove. It is pertinent to mention that although the grounds raised by the assessee in Form No. 13 are defective yet the Bench has considered the grounds mentioned in statement of facts, placed on record and signed by the assessee.

2.4 The Ground No. 1 and 2 raised by the assessee are interrelated and interconnected and relates to challenging the order of the ld. CIT(A) in upholding the action of the AO in treating the Corpus Donation of Rs.17.00 lacs as not liable to be excluded from the income as per Section 11(1)(d) of the Act. Therefore, we deem it fit and proper to decide both the issue through a consolidated order for the sake of convenience and brevity of the case.

2.5 The ld. AR appearing on behalf of the assessee reiterated the same arguments as were raised before the ld. CIT(A) which are contained in Para No. 6 to Para No. 6.2 of ld. CIT(A)'s order and also submitted that the ld. CIT(A) erred in upholding the action of the AO in treating the Corpus Donation of Rs.17.00 lacs as not liable to be excluded from income as per section 11(1)(d) of the Act. The ld. AR of the assessee further submitted that the ld. CIT(A) also erred in upholding the action of the AO in computing income at Rs.17,15,840/- as against nil income of the assessee. It was submitted that during the course of assessment proceedings details of corpus donation was given and confirmation of the donors were also given with regard to such corpus donation but lower authorities ignored the same and misinterpreted / misconstrued the confirmation given by respective donors. We noticed from the records that assessee could furnish copies of letters issued by donors only in respect of 8 such donors, the list of which is reproduced here below.

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S.N.	Name of donor	Amount	Date of issue of letter
1.	Sarita Kailash Narayan Saraf	3,00,000	17-06-2016
2.	Ritesh Kailash Narayan Saraf	2,00,000	17-06-2016
3.	Ratnam Stone Exports	8,00,000	16-06-2016
4.	Urmila Anil Kumar Saraf	2,00,000	16-06-2016
5.	Rishi Anil Kumar Saraf	1,00,000	16-06-2016
6.	Saraf Dye Chem Industries	6,00,000	17-06-2016
7.	Shree Capital Services Ltd.	50,00,000	09-06-2016
8.	New Investments Pvt. Ltd.	50,00,000	09-06-2016

Out of above, the donors appearing at Serial No. 7 & 8 had categorically stated in their letter that donation were for the corpus of the trust. Therefore, the AO believed the same and not disputed the said facts. As far as, other donors appearing at Serial Nos. 1 to 6 are concerned, they had also given their confirmatory letters but the AO treated the donations given by the donors at Serial Nos. 1 & 2 as voluntary donors as the assessee himself had credited in the income and expenditure account and treated the same as voluntary donors. Regarding other donors appearing at Serial Nos. 3 to 6 are concerned, although their donations were credited to the corpus fund in the balance sheet and this regard the donors had also confirmed the same by giving additional letters but the AO did not accept the letters given by the donors and treated the donations as voluntary by relying upon their earlier confirmations and letters as the AO was of the view that subsequent letter was an afterthought.

2.6 During the course of hearing, the ld. DR supported the order of ld. CIT(A).

2.7 We have heard both the parties and perused the materials available on record. After having meticulously gone through the facts of the case, we are of the view that clarificatory confirmations subsequently issued by the donors at Serial Nos. 3 to 6 cannot be ignored simply with a view to rejecting such corpus donations being received by the assessee. Although the donors have confirmed at later stage but the intent of the donors cannot be ignored. In this regard, we draw strength from following decisions:-.

(a) DIT (Exemptions) vs. SRI RAMAKRISHNA SEVA ASHRAMA (2013) 258 CTR (Kar) 201: (2013) 357 ITR 731 (Kar) Deduction under s. 80G-Recognition of institution, etc. under s 80G(5)-Corpus donation vis-a-vis specific direction-If any voluntary contribution is made with a specific direction, then it shall be treated as the capital of the trust for carrying on its charitable or religious activities-Then such an income falls under s. 11(1)(d) and is not liable to tax-It is not necessary that a voluntary contribution should be made with a specific direction to treat it as corpus If the intention of the donar is to give that money to a trust which they will keep it in trust account in deposit and the income from the same is utilised for carrying on a particular activity, it satisfies the definition part of the corpus-Assessee would be entitled to the benefit of exemption under s. 11(1)(d) Amount collected by the assessee was kept in deposit as capital and only the income from the said capital was used for rural projects. It shows the intention of the assessee is to treat these contributions as corpus and the income derived from the corpus is used for carrying on the said activities-Requirement is that the voluntary contributions have to be made with a specific direction-Law does not require that the said direction should be in writing-In the absence of the direction in writing the only way that one can find out whether

there was a specific direction and to find out how the money so paid is utilised-Appeal dismissed with cost of Rs. one lakh

(b) SERA FOUNDATION vs. ITO (2012) 150 TT (Del) 537 Charitable trust-Exemption under s. 11-Corpus donation vis-a-vis violation of s. 11(1)(d)-Assessee-trust received 11,47,110 equity shares of M Ltd. and 2,01,500 equity shares of S Ltd. from another trust towards corpus donation-Department taxed the corpus donation as general donation by holding that assessee was adopting colourable device as it could not hold investment in the form of shares in view of s. 11(5)-Not justified-There is no restriction on accepting shares by a charitable institution-However, cl. (a) of the proviso to s. 13(1)(d)(i) entitles an assessee-trust to hold the shares for a maximum period of one year before which they have to be converted into the modes of investment as prescribed in s. 11(5)-Contention of the Departmental Representative that the assessee has violated the provisions of s. 11(1)(d) by selling the shares suffers from the basic fallacy in not recognizing that the assessee has merely converted one form of investment into another viz., money by selling the shares Thus, it cannot be said that there was violation of s. 11(1)(d) particularly when the donor did not impose any condition that the shares could not be sold-Therefore, Revenue authorities were not Justified in holding that the corpus donation was voluntary donation as contemplated under s. 2(24)(iia). Conditions prescribed in the registration certificate are only directory in nature and they cannot override the provisions of the Act-Further, a trust can accumulate not more than 15 per cent of the income from property held for charitable or religious purposes and these amounts along with corpus donations form part of corpus of the trust-Income of the corpus fund can be utilized towards the objects of the trust-Conditions contemplated under s. 11(1)(d)

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stand satisfied when a voluntary donation is received with a specific direction that it shall form part of the corpus of the trust-No further condition is prescribed in the Act for utilization of corpus fund-Therefore, assessee was well within its rights in utilizing the corpus fund for giving donations towards corpus funds of other charitable institutions-Thus, the corpus donations received by. the assessee could not be considered as general donations merely on the ground of its utilization in the subsequent year for giving corpus donations to other charitable institutions.

(c) GUJARAT CRICKET ASSOCIATION vs. ACIT(Exemption) (2019) 33 NYPTT) 102 (Ahd) - Charitable trust-Exemption under s. 11-Corpus donation-Assessee. a cricket association, received Rs. 1,58,00,000 from the Board of Cricket Control of India towards the TV rights-Assessee has filed specific confirmations to the effect that these amounts were corpus donations-BCCI resolution No. 5, dt. 29th Sept., 2001 specifically states that the TV subsidies should henceforth be sent to the member associations towards "corpus funds"-TV subsidy in question is sent under this resolution-Any payments made by BCCI, without a legal obligation and with a specific direction that it shall be for corpus fund, is required to be treated as corpus donation not includible in total income-Any payment which is with a specific direction that it for corpus fund is a corpus donation-In the light of the BCCI resolution under which the payment is made and in the light of the payment not being under any legal obligation, the conditions under s. 11(1)(d) are satisfied-AO is accordingly directed to delete this addition''

Since the Donors at Serial Nos. 3 to 6 have specifically expressed their intention by a written communication/ confirmation that the same shall be for corpus fund.

Hence, the AO is required to treat the same as corpus donation not includible in the total income and in this regard we rely upon an old clarificatory circular No. F.No.20/10/67-IT(AI) dated 1st May, 1967 which has been placed by the Id.AR of the assessee before us. The contents of the same are reproduced as under:-

"1. There appears to be certain amount of misconception in minds of some ITOS regarding the provision against the accumulation of income in excess of 25%, contained in s. 11(1) of the IT Act. It may be clarified that the provisions in s. 11(1), prohibiting accumulation of income in excess of 25% apply only to the income derived from property held under trust, but such restrictions are not applicable to capital receipts. The donations received by a charitable trust from the members of the public, being capital receipts, cannot be regarded as income of the trust. Accordingly, the donations received by the trust should be excluded from the income of the trust for the purpose of calculating the accumulation limit of 25% except in cases covered by s. 12(2) of the Act."

Although the law does not require any specific letter from the donors that donations were towards corpus as has been held in the case of *Shri Vasu Pujiya Jain Derasar Pedhi vs ITO* [1991] 39 TTJ 337 (Jp. Trib). Therefore, while relying upon the judicial pronouncement of the Coordinate Bench (supra) wherein it has been categorically held that confirmations had been submitted by the donors, the same would apparently satisfy the requirement of the provisions that the same were corpus donations only. Therefore, the AO is directed to treat the donations made by the donors at Serial Nos. 3 to 6 as corpus donations and delete the addition while

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addition with regard to other serial numbers donors, stand upheld. Thus the appeal
of the assessee is partly allowed.

3.0 Ground No. 3 of the assessee is regarding charging of interest u/s 234B of
the Act which is consequential in nature.

4.0 In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the open court on 31/08/2022

Sd/-
(राठोड कमलेश जयन्तभाई)
(Rathod Kamlesh Jayantbhai)
लेखा सदस्य / Accountant Member

Sd/-
(संदीप गोसाईं)
(Sandeep Gosain)
न्यायिक सदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 31/08/2022

*Mishra

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

1. The Appellant- Lalita Devi Saboo Charitable Trust,
2. प्रत्यर्थी / The Respondent- ACIT, Circle- 1, Kota
3. आयकर आयुक्त / The Id CIT
4. आयकर आयुक्त(अपील) / The Id CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 146/JP/2022)

आदेशानुसार / By order,

Asstt. Registrar