IN THE INCOME TAX APPELLATE TRIBUNAL
"PATNA BENCH, PATNA
VIRTUAL HEARING AT KOLKATA

श्री संजय गर्ग, न्यायिक सदस्य एवं श्री राजेश कुमार, लेखा सदस्य के समक्ष
Before Shri Sanjay Garg, Judicial Member and Shri Rajesh Kumar, Accountant Member

I.T.A. No.03/Pat/2017
Assessment Year: 2011-12

Akshay Educational & Social Welfare Charitable Trust.....……Appellant
Amawa (Thakar),
Bodhgaya-824234.
[PAN:AACTA5613R]

vs.

DCIT, Circle-3, Gaya…....…….....….....…….....……..…..…..Respondent

Appearances by:
Shri A.K. Rastogi, Sr. Adv. And Shri Rakesh Kumar, Advocate, appeared on behalf of the appellant.
Smt. Rinku Singh, CIT-DR, appeared on behalf of the Respondent.

Date of concluding the hearing : November 21, 2022
Date of pronouncing the order : January 11, 2023

आदेश / ORDER

संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:

The present appeal has been preferred by the assessee against the order dated 26.08.2016 of the Commissioner of Income Tax (Appeals)-1, Patna [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act'). The assessee in this appeal has taken the following grounds of appeal:

"1. For that the ld. CIT(A) has erred in sustaining of Rs.57,25,000/- being the amount of voluntary contribution received from "Association Akshy" Patriarca, San Jose, CA, US.

2. For that the ld. CIT(A) has erred in holding that there was no specific direction by the donor towards utilization of the fund so donated.

3. For that the ld. CIT(A) has erred in holding that though the contribution in question has been received towards infrastructure development, no activity on this account has been carried out.

4. For that the ld. CIT(A) has erred in holding that provision of section 11, 12 & 13 are applicable even in cases where the institution is not registered u/s 12A of the Income Tax Act.

5. For that the ld. CIT(A) has erred in holding that the appellant trust though not having benefit of registration u/s 12A of the Act, it is registered with Ministry of Home Affairs as charitable for seeking permission under FCRA.

6. For that the ld. CIT(A) has erred in holding that registration with Ministry of Home Affairs for FCRA makes the appellant trust in existence for religious and charitable purposes and the income including contribution or donation received will form part of total income for the Income Tax purposes.

7. For that the ld. CIT(A) has erred in accordingly upholding the taxation of Rs.57,25,000/- even though the appellant trust was not registered u/s 12A of the Income Tax Act.

8. For that the ld. CIT(A) has erred in upholding disallowance @ 20% amounting to Rs.89,598/- out of expenditure incurred under the head food & beverages.

9. For that the addition/disallowance sustained are wrong, illegal and unjustified on the facts and in the circumstances of the appellant case.

10. For that the whole order is bad in fact and law of the case and is fit to be modified.

11. For that the other grounds, if any, shall be urged at the time of hearing of the appeal.

2. **Ground Nos.1 to 7** – The assessee vide Ground Nos.1 to 7 has agitated the action of the CIT(A) in sustaining the addition of Rs.57,25,000/- being the amount of donation received from Association Akshy Patriarca, San Jose, CA, US.

3. The brief facts of the case are that the assessee trust has been established for charitable purposes. The main aim and objectives of the trust is to help the weaker section of the society, children, women and old people who are in very bad economical conditions, mainly through education and other development projects. The assessee trust

for the year under consideration i.e. A.Y 2011-12 was not registered u/s 12A of the Act.

4. During the assessment proceedings, the Assessing Officer observed that the assessee had shown Rs.57,25,000/- as 'development fund' in his 'receipt and payment account' but it has not credited this amount in his 'Income and Expenditure Account'. The assessee trust claimed that the said amount was donated by Association Akshy Patriarca, San Jose, CA, US for infrastructural development and other development and further in case of other necessity, the trustees in consultation with the Chairman can use the fund for the development of trust activities. The assessee trust, therefore, claimed that the said donation was towards the corpus fund of the trust with a specific direction to be used for infrastructural development and, therefore, the same was a capital receipt, not taxable even in the absence of registration u/s 12A of the Act. However, the Assessing Officer did not agree with the above contention of the assessee and held that the exemption for donation received towards corpus fund was available to a trust only if the same was registered u/s 12A of the Act.

5. In appeal, the ld. CIT(A) confirmed the addition so made by the Assessing Officer, on the following grounds:

> *"(i) the appellant trust has got registration u/s 12A of the Act w.e.f. 2012-13 therefore section 11 has no application for the year under consideration i.e. A.Y. 2011-12; (ii) contribution has been received towards infrastructure development however no activity has been carried out during the year under consideration; (iii) as per judgment of Apex Court in the case of UP Forest Corporation Vs DCIT reported in 165 ITR 533 the society cannot claim benefit of section 11(1)(a) unless and until institution is registered u/s 12A of the Act; (iv) the appellant trust though not having benefit of registration u/s 12A is registered with Ministry of Home Affairs as a Charitable Trust for which permission under FCRA has been account; (v)since the trust is in existence for religious and charitable purpose, the income from property held in India including contribution or donation received by it would form part of total*

income for the purposes of IT Act; & (vi) the foreign contribution has not been utilized and the same has been given without any specific direction or instruction will definitely form part of total income."

6. Being aggrieved by the said order of the CIT(A), the assessee has come in appeal before us.

7. We have heard rival contentions and gone through the record. The ld. counsel for the assessee has made the following submissions in this respect:

"The issue whether the sum of Rs.57,25,000/- received by the assessee trust from ASOCIACION AKSHY', Patriarca, San Jose, 2 bis-1 D 28200, San Lorenzo de El Escorial, Madrid for infrastructural development and other development work in the hands of a trust not registered under Section 12A of the I.T. Act is capital in nature or revenue has been set at rest by the order of the Hon'ble 'B' Bench of ITAT, Mumbai in the case of Bank of India Retired Employees Medical Assistance Trust Vs. ITO (Exemption) reported in 172 ITD 78 (copy enclosed at page 5 -12 of the PB) wherein the Hon'ble Tribunal relying on the judgment of coordinate bench of Tribunal and Delhi High Court has held that corpus fund is in the nature of capital receipt and therefore the same cannot be brought to tax under section 2(24)(iia) of the Act even in absence of registration under the Income Tax Act. The relevant para from the said judgment is reproduced hereunder:-

> *"We have deliberated at length on the issue under consideration in the backdrop of the aforesaid judicial pronouncements and are of the considered view that as the issue involved in the present appeal before us is covered by the view taken by the Hon'ble High Court o Delhi in the case of DIT (Exemption) Vs. Smt. Basanti Devi and Shri Chakhan Lal Garg Education Trust [ITA No.927 of 2009, dated 23.09.2009] and the aforementioned orders of the coordinate benches of the Tribunal, therefore, respectfully follow the same. We thus, in terms of our aforesaid observations are of the considered view that as the amount of Rs.2,30, 00, 000/- received by the assessee trust from Bank of India towards corpus fund is in the nature of a ,,capital receipt", therefore, the same could not have been brought to tax as the income of the assessee under Sec. 2(24) (iia) of the Act. Before parting, we may herein observe that the revenue being aggrieved with the order of the High Court of Delhi in the case of DIT (Exemption) Vs. Smt. Basanti Devi and Shri Chakhan Lal Garg Education Trust [ITA No. 927 of 2009, dated 23.09. 2009], had assailed the same before the Hon'ble Supreme Court, which however was dismissed for non-prosecution by the Hon'ble Apex Court, vide its order dated*

28.01.2013 passed in civil appeal no. 7036 of 2011. We thus, in terms of our aforesaid observations delete the addition of Rs.2,30,00,000/- sustained by the CIT(A) in respect of the corpus donations received by the assessee trust from Bank of India".

The above said order of the Hon'ble Tribunal is squarely applicable to the facts of the appellant's case. The donation has been received for a specific purpose as would be evident from the confirmation of the donor i.e. for "infrastructural development and other development work" and thus forms part of corpus. The CIT(A) has also accepted the fact that the contribution was received towards infrastructure development as would be evident from findings at page-4 (just above para 3.7) of the order wherein it has been held that "the facts remain that though the contribution in question has been received towards infrastructure development no activity on this account whatsoever has been carried out though the fund was received well before the closure of the financial year." However, adverse inference was drawn merely on the ground of non-utilization of fund in the year under consideration. There is no requirement under law to utilize the corpus fund and/or donation for specific purpose in the year of receipt and the fact of non-utilization in the year of receipt will not convert a capital receipt / corpus fund/ donation received for specific purpose into a revenue receipt so as to attract taxation. The Ld. CIT has noticed the fact of utilization of the fund in A.Y. 2012-13 to the extent of Rs.36,42,963/- and utilization of the remaining in subsequent year for infrastructure development i.e. construction of the building in para 3.4 page-3 of its order.

It is further submitted that the very perusal of confirmation of the said organization it is clear that the sum so given is not in the nature of any income accruing or arising to the appellant and hence it is earnestly prayed that the addition made by the Assessing Officer and sustained by the Ld. CIT(A) may kindly be ordered to be deleted.

8. The ld. counsel has further relied upon the following decisions of the Coordinate Benches of the ITAT:

i. ACIT vs. M/s A. Shama Rao Foundation in ITA No.1464/Bang/2018 (Bengaluru Tribunal)

ii. Chandraprabhu Jain Swetamber Mandir vs. ACIT in ITA No.230/Mum/2016 (Mumbai Tribunal)

9. The ld. DR, on the other hand, has relied upon the decision of the Hon'ble Supreme Court in the case of "U.P Forest Corporation vs.

DCIT" [2007] 165 Taxman 533 (SC) wherein, the Hon'ble Supreme Court has held that registration u/s 12A is a condition precedent for availing benefit u/s 11 and 12 of the Act. The ld. DR has further relied upon the decision of the Chennai Bench of the Tribunal in the case of "Veeravel Trust vs. ITO" [2021] 129 taxmann.com 358 (Chennai-Trib.), wherein, the Tribunal held that "where assessee charitable trust was not registered under section 12A, voluntary donations received by it with a specific direction to be formed part of corpus of trust would fall within ambit of income of a trust derived from property held under trust and hence includible in total income of trust".

10. Our attention has also been invited to the recent decision of the Patna Bench of the Tribunal in the case of "Gurukul vs. ITO", ITA No.43&44/Pat/2020, wherein, in the identical circumstances, the Tribunal has held as under:

> *"8. We have duly considered the rival contentions and gone through the record carefully. There is no dispute with regard to the fact that the assessee is not enjoying any registration with the Income Tax Department during the impugned Assessment Years. Section 2(24)(iia), Section 11(1)(d) and Section 12A of the Act, have a direct bearing on the controversy. Therefore, it is necessary to take note of these clauses. The same are reproduced below for ready reference:-*
>
> ***Section 2(24)(iia) :-***
>
> *"(24) "income" includes*
>
> *(i) ***************
>
> *(ii) ***************
>
> *[(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes [or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) [or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution*

referred to in sub-clause (iiiae) or sub-clause (via)] of clause (23C) of section 10[or by an electoral trust]].

Explanation.—For the purposes of this sub-clause, "trust" includes any other legal obligation;]

Section 11(1)(d) :-

***"11.** (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—*

****

*(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution **[**subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus**]**."*

Section 12A :-

***"12A.** [79][(1)] [80]The provisions of section 11 and section 12 shall not apply in relation to the income of any trust or institution unless the following conditions are fulfilled, namely:—*

(a) the person in receipt of the income has made an application for registration of the trust or institution in the prescribed form[81] and in the prescribed manner to the [82][***] [83][Principal Commissioner or] Commissioner before the 1st day of July, 1973, or before the expiry of a period of one year from the date of the creation of the trust or the establishment of the institution, [84][whichever is later and such trust or institution is registered under section 12AA] :

****

9. A bare perusal of the above provisions would indicate that the expression "income" for the purpose of Income Tax, includes voluntary contribution received by a trust created wholly or partly for charitable or religious purposes or an institution established wholly or partly for such purposes.

10. Therefore, any donation received by any trust or institution has to be treated as income. However, the scheme of Income Tax u/s 11 to 13 of the Act provides a mechanism for assessment of income from property held by a charitable or religious trust. A perusal of Section 11(1)(d) of the Act would indicate that if any voluntary contribution is being received by a trust or institution with a specific direction that such contribution will be part of corpus then, it will be credited to a separate account meant for construction of building or any infrastructure. In other

words, it can be treated as a capital contribution towards the corpus of the trust. But perusal of Section 12A of the Act would indicate that before claiming any exemption from taxability of income u/s 11 or 12 of the Act, the assessee should be registered with the Income Tax Department u/s 12A of the Act. Further Section 12AA of the Act provides a procedure for grant of registration. Since the assessee is not having any registration, the grant/non-grant of such registration is not in dispute, therefore, there is no necessity to make reference to Section 12AA of the Act. As far as the reliance placed by the ld. Counsel for the assessee on the order of the Delhi Bench of the ITAT in the case of Smt. Basanti Devi and Shri Chakhan Lal Garg Educational Trust (supra) is concerned, the ITAT Delhi Bench had given its finding relying upon the order of the Hon'ble Delhi High Court. The finding of the Tribunal reads as under:-

> *"11. The Hon'ble Delhi High Court, vide its order dated 23.9.2009, in ITA No. 927/09 (supra), have dismissed the Department's appeal against the aforesaid Tribunal order, by observing as follows:-*
>
> > *"The respondent/assessee is admittedly a Charitable Organization which is a trust registered under the Indian Trust Act which has also been granted registration under the Income Tax Act w.e.f. 1.4.2003. The assessee received certain donations towards its corpus which had been deposited in the bank and the money was admittedly spent for acquiring land for construction of a college. In these circumstances, we are of the opinion that the CIT(A) as well as ITAT rightly concluded that the donations received towards corpus of the trust would be capital receipt and not revenue receipt chargeable to tax.*
> >
> > *No question of law arises. Dismissed."*

11. A perusal of this finding would indicate that the Hon'ble High Court was dealing with an issue on 23/09/2009. The assessment order is not discernible from it but it revealed that the trust was registered with the Income Tax Department w.e.f. 1st April, 2003. Therefore, there was a registration in favour of the trust.

In other two decisions, this aspect has not been categorically examined and if we accept the proposition as canvassed by the ld. Counsel for the assessee, then the whole scheme of assessment of charitable institution/trust contemplated in Section 11 to 13 of the Act would become redundant. The arguments of the ld. Counsel for the assessee is that, it is not necessary that a trust/institution should be registered for availing benefit of Section 11(1)(d) of the Act. If an institution has demonstrated that donations were received towards corpus then automatically, it will become a capital receipt

> *which is not taxable. However, we do not agree with these submissions because nowhere in the Act this proposition has been provided. Therefore, in our understanding the case-laws relied upon by the assessee are not applicable on the facts of the present case and we do not find any merit in these appeals and dismiss them same as such.*

11. However, the ld. AR of the assessee relying upon the decision of the Mumbai Benches of the Tribunal in the case of "Bank of India Retired Employees Medical Assistance Trust Vs. ITO (Exemption)", the decision of the Benguluru Bench of ITAT in the case of "ACIT vs. M/s A Shama Rao Foundation" (supra) and further upon the decision of the Coordinate Mumbai Bench of the Tribunal in the case of "Chandraprabhu Jain Swetamber Mandir vs. ACIT" (supra) and further relying upon the CBDT Circular No.108 dated 20.03.1973, has submitted that as per the provisions of section 2(24)(iia) read in the light of CBDT Circular No.108 of 1973 would show that voluntary contribution received by charitable or religious trust or institution with a specific direction that it shall form part of the corpus of the trust or institution was not includible in the income of such trust or institution.

The ld. counsel, in this respect, has also relied upon the interpretation of section 2(24)(iia) made by the Kolkata Bench of the Tribunal in the case of "Shri Shankar Bhagwan Estate v. ITO [1997] 61 ITD 196(Cal)", which interpretation has been further relied upon in the subsequent decisions of the Tribunal as referred to above. The relevant part of the said observations of the Kolkata Bench of Tribunal is reproduced as under:

> *"So far as section 2(24)(iia) is concerned, this section has to be read in the context of the introduction of the present section 12. It is significant that section 2(24)(iia) was inserted with effect from 1-4-1973 simultaneously with the present section 12, both of which were introduced from the said date by the Finance Act, 1972. Section 12 makes it clear by the words appearing in parenthesis that*

contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall not be considered as income of the trust. The Board's Circular No. 108 dated 20-3-1973 is extracted at page 1277 of Vol. I of Sampat Iyengar's Law of Income-tax, 9th Edn. in which the inter-relation between section 12 and section 2(24)(iia) has been brought out. Gifts made with clear directions that they shall form part of the corpus of the religious endowment can never be considered as income. In the case of R.B. Shreeram Religious & Charitable Trust v. CIT [1988] 172 ITR 373/39 Taxman 28 it was held by the Bombay High Court that even ignoring the amendment to section 12, which means that even before the words appearing in parenthesis in the present section 12, it cannot be held that voluntary contributions specifically received towards the corpus of the trust may be brought to tax. The aforesaid decision was followed by the Bombay High Court in the case CIT v. Trustees of Kasturbai Scindia Commission Trust [1991] 189 ITR 5/57 Taxman 38. The position after the amendment is a fortiori. In the present cases the Assessing Officer on evidence has accepted the facts that all the donations have been received towards the corpus of the endowments. In view of this clear finding, it is not possible to hold that they are to be assessed as income of the assessees. We, therefore, hold that the assessment of the corpus donations cannot be supported."

The ld. Counsel, in this respect, has submitted that the Kolkata Bench of the Tribunal has interpreted the provisions of section 2(24)(iia) read with section 12 of the Act in the light of the CBDT Circular no.108 dated 20.03.1973 vide which the interrelation between the section 12 and section 2(24)(iia) has been brought out and it has been clarified that the voluntary contribution received by charitable or religious trust with specific direction that it shall form part of the corpus was not to be included in the income and hence, to be treated as capital receipt.

12. We find that the submissions of the ld. counsel, in this respect, are not correct. Even, we find that the ld. Kolkata Bench of the Tribunal and subsequent Benches of the Tribunal have missed a vital statutory amendment to section 2(24), while deliberating upon the said CBDT Circular No.108 of 1973. It is pertinent to mention here that section 2(24)(iia) was inserted w.e.f. April 1, 1973 which at that time read as under:

"(24) income includes –

(i) _____

(ii) _____

(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes, not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution.

Explanation – For the purposes of this sub-clause, "trust' includes any other legal obligation;"

13. Thus in section 2(24)(iia), as inserted vide Finance Act 1972 w.e.f. 01.04.1973, it was specifically provided that though voluntary contribution received by charitable trust will be part of the income but not being the contribution made with a specific directions that they shall form part of the corpus of the trust or institution. Thus, in view of the said provisions, the CBDT Circular No.108 dated 20.3.1973 was issued stating that any voluntary contribution received by charitable or religious trust or institution with a specific direction that it shall form part of the corpus of trust or institution was not includible as income of such trust or institution.

However, a very important development, which the ld. counsel missed and failed to bring before this Tribunal is that section 2(24(iia) has been further amended vide Direct Tax Laws (Amendment) Act 1987 further as amended by Direct Tax Laws (Amendment) Act, 1989, whereby, the words "not being contributions made with a specific direction that they shall form part of corpus of the trust or institution" were substituted/omitted. The CBDT Circular No.551 dated 23.01.1990 explains the position as under:

"Amendment to sub-section (1) of section 11 by the Amending Act, 1989 to exclude corpus donations from the total income of the

trust or institution and amendment of definition of income contained in section 2(24) by the Amending Act, 1987

4.2 *The Amending Act, 1989 has inserted a new clause (d) in sub-section (1) of section 11 to provide that income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution shall be excluded from the total income of the trust or institution. For understanding the background of this amendment, it will be relevant to discuss the amendment made to the definition of the term income in section 2(24) by the Amending Act, 1987.*

4.3 *Under the old provisions of sub-clause (iia) of clause (24) of section 2, any voluntary contribution received by a charitable or religious trust or institution with a specific direction that it shall form part of the corpus of the trust or institution was not included in the income of such trust or institution. Since this provision was being widely used for tax avoidance by giving donations to a trust in the form of corpus donations so as to keep this amount out of the regulatory provisions of sections 11 to 13, the Amending Act, 1987 amended the said sub-clause (iia) of clause (24) of section 2 to secure that all donations received by a charitable or religious trust or institution, including corpus donations, were treated as income of such trust or institution. However, under the provisions of the new section 80F, also introduced by the Amending Act, 1987, such corpus donations, along with other income of the trust or institution would have been exempt if spent for charitable purposes or invested in specified assets mentioned in section 80F.*

4.4 *As already pointed out, the Amending Act, 1989 omitted the new section 80F introduced by the Amending Act, 1987 and revived the old section 11. Consequently, corpus donations to trusts, etc., would also be governed by the provisions of section 11. Since stipulations in clauses (a) and (b) of sub-section (1) of section 11 that 75% of the income of the trust should be spent during the year and only 25% can be accumulated for application to its purposes in future could not have been made applicable to corpus donations, the Amending Act, 1989 has further amended section 11 to exclude corpus donations from the total income of the trust, as explained in para 4.2 above.*

4.5 *The effect of the amendment of definition of 'income' contained in section 2(24) by the Amending Act, 1987 and the amendment of sub-section (1) of section 11 by the Amending Act, 1989 is that although corpus donations would be treated as income in the hands of the recipient, in the case of trusts or institutions, which comply with the requirements for exemption under section 11, these will be excluded from their income. However, in case the trust or institution loses the exemption under section 11, either by not complying with the conditions laid down in section 12A or by falling within the mischief of section 13, corpus donations will be included in its income and taxed.*

14. As reproduced above, the present definition of income as provided u/s 2(24(iia), in no manner exclude voluntary contribution received with a specific direction that they shall form part of the corpus of the trust, rather the same are liable to be included into the income of the assessee, however, subject to the provisions of section 11 and 12 as quoted and discussed by Coordinate Patna Bench of the Tribunal in the case of 'Gurukul vs. ITO' (supra). Thus, all type of voluntary contributions received by a trust created wholly or partly for charitable or religious purpose or an institution established wholly or partly for such purposes are included in the income of such trust or institution. However, as per the provisions of section 11(1)(d) of the Act, if any, voluntary contribution is received by a trust or institution with a specific direction that such contribution will be part of the corpus then it will be invested or deposited as per the prescribed modes maintained specifically for such corpus fund then it will not be treated as income but capital contribution. However, subject to the conditions as prescribed u/s 12A that before claiming any exemption from taxability of income u/s 11 or 12 of the Act, the assessee should be registered with the Income Tax Department u/s 12A of the Act. Admittedly, the assessee for the year under consideration has not been registered u/s 12A of the Act, therefore, the exemption from taxation as provided u/s 11 and 12 of the Act would not be available to the assessee for the year under consideration. The assessee cannot take benefit of the pre-amended section 2(24)(iia) at the time of its insertion from 1st April 1973. The said section has been amended first in the year 1987 and further by amended Act of 1989 and thereby, the prevalent law is that although, corpus donation would be treated as income in the hands of the recipient charitable trust or institution, however, if such trust or institution comply with the requirements of

exemptions u/s 11 and 12 and subject to registration u/s 12A, then such corpus donations will be excluded from their income. However, in case such trust or institution is not eligible for exemption u/s 11, either by not complying with the conditions laid down in section 12A or by falling within the mischief of section 13, corpus donation will be included in the income of such trust or institution. In view of this, the reliance of the ld. counsel in the aforesaid case laws is misplaced as in the aforesaid case laws, the original provision of section 2(24)(iia) as inserted w.e.f. 01.04.1973 and subsequent amendments as brought out by Direct Tax Laws (Amendment) Act, 1987 and Direct Tax Laws (Amendment) Act, 1989 have been missed out.

15. Even otherwise, we are not inclined to accept the contention that the donation received by the assessee trust was with a specific direction that the same will form part of the corpus of the trust. The assessee, in this respect, has placed on file the copy of confirmation letter from the donor, which read as under:

> *"This is to certify that ASOCIACIÔN AKSHY, with address main office at Patriarca San Jose, 2bis-1°D, 28200 San Lorenzo de El Escorial, Madrid, Spain, with Registration Number 588315 in Association Register belonging to Home Affair Ministry in Spain*
>
> *Asociación Akshy after being satisfied with the object of the Akshay Educational and Social Welfare Charitable Trust- Bodhgaya, has agreed to extend financial support and sponsor the program and Project of the AECT-Bodhgaya and utilized exclusively for the purpose of the Trust activities and its development of the poor children and students in that area be done in the best manner.*
>
> *This further certified 80,000 Euros (equivalent to Rs.57,25,000) sent by way of donation during the year 10-11 for infrastructural development and other development work, and in case of other necessity the Trustee in consultation with the Chairman can use the fund for the development of Trust activities."*

16. A perusal of the aforesaid confirmation reveals that firstly it has been mentioned that the said donor has agreed to extend financial

support and sponsor the program and project of the assessee and to be utilized exclusively for the purpose of the trust activities. However, in the second part, it has been mentioned that 80,000 euros (equivalent to Rs.57,25,000) were sent by way of donation for infrastructural development and other development work and in case of other necessity, the trustee in consultation with the Chairman can use the fund for the development of trust activities. Therefore, it has been provided that the trustees in consultation with the chairman can use the fund for trust activities. Hence, it cannot be said that it is a clear direction that the donation will form part of the corpus fund, rather, a liberty has been given to use it for trust activities in consultation with the chairman. Under such circumstances, even otherwise, the said donation, in our view, does not strictly conform as the donation towards corpus fund.

Even, for the sake of arguments, if it is taken that the said fund was for infrastructural development or to say it was towards corpus fund of the trust, still as per the amended provisions of section 2(24)(iia) as amended vide Finance Act 1987 and further amended vide Amendment Act 1989, the trust being not registered u/s 12A for the year under consideration, the corpus donation will form part of the taxable income of the assessee trust. In view of the above decision, Ground Nos.1 to 7 of the assessee's appeal are hereby dismissed.

17. **Ground No.8** – Vide Ground No.8, the assessee has agitated the action of the CIT(A) in upholding disallowance @20% out of expenditure incurred under the head 'food and beverages'.

18. The brief facts relating to the issue are that during the assessment proceedings, the Assessing Officer observed that the assessee had debited Rs.4,47,990/- in income & expenditure account

which also remained unverified and unvouched as the assessee had not furnished bills and vouchers to substantiate the expenses. Hence, 20% of Rs.4,47,990/- i.e. Rs.89,598/- was disallowed by him and added back to the total income of the assessee.

19. The ld. CIT(A) confirmed the disallowance so made by the Assessing Officer observing that the assessee has neither maintained nor produced bills and vouchers relating to the aforesaid expenditure before the Assessing Officer.

20. Before us, the ld. counsel for the assessee has pleaded that the Assessing Officer has not made any query with regard to the aforesaid expenses. However, no bills and vouchers have been furnished in respect of the aforesaid claim of expenditure. Since no bills and vouchers have been maintained for the aforesaid expenditure, we do not find any infirmity in the order of the CIT(A) on this issue also. Accordingly, Ground No.8 is hereby dismissed.

21. In the result, the appeal of the assessee is hereby dismissed.

Kolkata, the 11th January, 2023.

Sd/-	Sd/-
[राजेश कुमार /Rajesh Kumar]	**[संजय गर्ग /Sanjay Garg]**
लेखा सदस्य /Accountant Member	**न्यायिक सदस्य /Judicial Member**

Dated: 11.01.2023.
RS

Copy of the order forwarded to:
1. Akshay Educational & Social Welfare Charitable Trust
2. DCIT, Circle-3, Gaya
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches