

IN THE INCOME TAX APPELLATE TRIBUNAL

(DELHI BENCH 'G' : NEW DELHI)

**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER
AND
SH. ANUBHAV SHARMA, JUDICIAL MEMBER**

ITA No.937/Del/2018, A.Y. 2014-15

M/s. Tirupati Educational & Welfare Trust , 208-A, Saket, Meerut	Vs.	Dy. Commissioner of Income Tax(Exemption) Ghaziabad
Appellant		Respondent

Assessee by	Sh. Mayank Patawari, Adv.
Revenue by	Ms. Sangeeta Yadav, Sr. DR

Date of hearing:	16.01.2023
Date of Pronouncement:	18.01.2023

ORDER

Per Anubhav Sharma, JM :

The appeal has been filed by the Assessee against order dated 31.08.2017 in Appeal No. 331/16-17 assessment year 2014-15 passed by Commissioner of Income Tax (appeals), Meerut (hereinafter referred to as the First Appellate Authority or in short 'Ld. F.A.A.') in regard to the appeal before it arising out of assessment order dated 02/11/2016 u/s 143(3) of the Income Tax Act, 1961 passed by DCIT(Exemption), Circle-Ghaziabad (hereinafter referred to as the Assessing Officer or 'AO').

2. The assessee has raised following grounds :-

“1. The Ld. CIT(Appeals) erred in law and on facts on both while partly allowing the appeal filed by the assessee.

2. The Ld. CIT(Appeals) erred in law and on facts in not considering the written submissions and relevant evidences filed by the assessee during the hearing of appeal in regard of the addition of Rs. 15,00,000/- on account of charity and donation and an addition of Rs. 262699/- on account of interest on late payment on govt. dues.

3. Any other ground of appeal which may be raised during the course of hearing of appeal.”

3. Heard and perused the record.

4. The Ld. AO has disallowed the charity donation by the assessee with observation that the assessee was unable to substantiate the charity and donation with any proof that the payment to the donee trust was used for charitable object and Ld. CIT(A) has sustained the same submitting that the Ld. AR of the assessee was unable to satisfy that the amount in question was indeed utilized for charitable purposes.

5. It appears that as with regard to giving the charity within the scope of the activities of the donor and donee trust is not disputed. The question of substantiality of the transaction by the end use of funds is a verifiable fact and actually the presumption would be that if the objects of the two trust are similar and the charity has been given for valid ends, then the amount in question should be considered to be utilized for charitable purposes only. The Ld. AO if wanted to rebut this presumption could have made inquiries on his end by examining the activities and the books of donee trust instead of casting onus on the assessee.

6. In the light of aforesaid the ground no. 2 with regard to addition of Rs. 15,00,000/- on account of charity and donation is restored to the files of Ld. AO

who can make a verification at it's end as per observation above and giving opportunity of hearing and then to pass fresh order.

7. As with regard to addition on account of Rs. 2,62,699/- on account of interest on late payment on government dues, it comes up that the same was with regard to TDS and WCT. A Co-ordinate Bench in ***Universal Energies Ltd. vs. DCIT, ITA no. 2761/Del./2018*** has considered the controversy and after taking into account various judicial pronouncements observed in para no. 16 as below:-

“16. Hence, we have no hesitation to hold that interest payment on late payment of TDS is not eligible business expenditure for deduction and it is not compensatory in nature. Payment of interest on late deposit of TDS levied u/s 201(1A) is neither an expenditure only and exclusively incurred for the purpose of the business and therefore the same is not allowable as deduction u/s 37(1) of the Act.”

In the light of same no interference is called in regard to addition of Rs. 2,62,699/-.

9. The appeal is allowed partly in terms of aforesaid observations and directions.

Order pronounced in the open court on 18th January, 2023.

Sd/-
(N.K.BILLAIYA)
ACCOUNTANT MEMBER

Date:- 18.01.2023

Binita, SR.P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

Sd/-
(ANUBHAV SHARMA)
JUDICIAL MEMBER

ASSISTANT REGISTRAR
ITAT, NEW DELHI