

**IN THE INCOME TAX APPELLATE TRIBUNAL  
[ DELHI BENCH: 'G' NEW DELHI ]**

**BEFORE DR. B.R.R. KUMAR, ACCOUNTANT MEMBER**

**AND**

**SHRI YOGESH KUMAR US, JUDICIAL MEMBER**

**I.T.A. No. 2129/DEL/2016 (A.Y. 2002-03)**

<p>Sadhana Foundation, A-41, Usha Bhawan, MCIE, Badarpur, New Delhi – 110 044. <b>PAN No. AAETS2813B</b> <b>( APPELLANT )</b></p>	<p>Vs.</p>	<p>DCIT, Central Circle : 9, New Delhi.  <b>( RESPONDENT )</b></p>
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**Assessee by :**                      **N o n e;**

**Department by :**                **Shri Narpat Singh,**  
   **Sr. D. R.;**

<b>Date of Hearing</b>	<b>02.03.2023</b>
<b>Date of Pronouncement</b>	<b>16.03.2023</b>

**ORDER**

**PER YOGESH KUMAR US, JM**

1. This appeal is filed by the assessee against the order dated 11.03.2016 of the Id. Commissioner of Income Tax (Appeals)-27

(hereinafter referred to CIT (Appeals) New Delhi, for assessment year 2002-03.

2. The assessee has raised the following substantive grounds of appeal :-

*“1. On the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in making addition of corpus donation of Rs. 2, 94,00,000/- received by the appellant from the donor companies / person by holding the same to be in the nature of income without invoking any provision of Income Tax Act, 1961. The same is liable to fully deleted.*

*2. On the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) has erred in confirming the action of the Assessing Officer in not taking cognizance of the confirmations letters / statement recorded by the Assessing Officer in response to summon u/s 131 of Income Tax Act, 1961 who produced their identification papers, statement of accounts and other documents for confirming corpus donation having been given to the appellant Trust. The corpus donation of Rs.2,94,00,000/- is liable to be excluded from Total income as per the provisions of section 11(1)(d) of Income Tax Act, 1961.*

*3. On the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) has erred in not admitting the affidavits of the directors / accountant of the donor companies who appeared before the Assessing Officer in response to the summon u/s 131 of Income Tax Act, 1961 as additional evidence for confirming the facts of having given corpus donation to the appellant trust.*

*4. The Commissioner of Income Tax (Appeals) has erred in relying on the observations of the Assessing Officer that the donor companies are bogus companies floated to transfer*

*funds from one entity to the other for siphoning off of money from flagship concern in order to evade tax without bringing any material on record.*

*5. On the facts and in the circumstances of the case, the Commissioner of Income Tax (Appeals) has erred in relying on the observations of the Assessing Officer regarding search and seizure operations carried on Usha Group on 14th February, 2001 without appreciating the fact that said search operation was carried out in earlier assessment year i.e. Assessment Year 2001-02 and do not have impact on the transactions of the appellant trust.*

*6. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and facts and has not found anything wrong on ITAT directions as to circumstances establishing to the contrary about the receipt of donations or the money having gone back to the donors or some other attending circumstances.*

*7. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and facts and has not decided the matter on affidavits filed before the CIT (A) and the material produced and brought on record as per directions of ITAT.*

*8. That the addition made by the Assessing Officer are based on suspicion and surmises without appreciating the fact that the complete identity of the donors were made available and there was no reason to assume that confirmations filed by the Appellant during the course of assessment proceedings are incomplete.*

*9. That the Ld. Commissioner of Income Tax (Appeals) has illegally erred in confirming the observations of the Assessing Officer without examining the facts of the case.*

*10. That the Ld. Commissioner of Income Tax (Appeals) has erred in law and facts and not followed the directions of the ITAT vide their order dated 10th July, 2009.”*

3. None appeared for the assessee. The assessee remained absent continuously right from filing of the appeal till this date. The notices

sent by the Registry returned with endorsement “un-claimed”. Therefore, we are constrained to decide the appeal after hearing the Ld. DR.

4. Brief facts of the case are that the assessee is a trust registered u/s 12A of the Act and eligible for exemption u/s 11 of the Income Tax Act, 1961. The original assessment order came to be passed making addition of corpus donation of Rs.2,94,00,000/- received by the assessee and assessed total income of the assessee at Rs.2,94,00,000/-. In the appeal the Ld.CIT(A), New Delhi upheld the addition made by the Assessing Officer by dismissing the appeal filed by the assessee. The said order of the Ld.CIT(A) was called in question before this Tribunal in ITA No. 1875/Del/2018 and this Tribunal vide order dated 10.07.2019, remanded the matter to the file of AO to decide afresh after affording opportunity of being heard to the assessee. During the reassessment proceedings since there was no new material brought on record by the assessee, the AO once again made the addition of Rs.2,94,00,000/- vide assessment order dated 31.12.2010.

5. Aggrieved by the assessment order dated 31.12.2010, the assessee preferred an appeal before the Ld.CIT(A) and the Ld.CIT(A) vide order dated 11.03.2016 dismissed the appeal filed by the assessee, which is called in question by the assessee in the present appeal.

6. We have heard the Ld. DR, perused the material on record.

7. During the second round of litigation before the AO, the assessee has not produced any new material or evidence, therefore, the AO once again made the addition of Rs.2,94,00,000/-. During the appeal proceedings, while dismissing the appeal filed by the assessee the CIT(A) has held as under: -

*“4. I have considered the facts of the case and the written submissions of the appellant. The appellant has raised ground against the addition of Rs.2,94,00,000/- to the total income of the assessee which was claimed as exempt being corpus donation under the provisions of section 11 (l)(d) of the Income Tax Act, 1961.*

*4.1 It is seen that the income of Rs.2,94,00,000/- for A.Y. 2002-03 was assessed u/s 143(3) in this case on 28.03.2005 as against returned income of Rs. NIL. While completing the assessment, the AO added back the corpus donation of Rs.2,94,00,000/- received by the assessee trust during the previous year relevant to assessment year 2002-03 to the total income. The assessee trust, feeling aggrieved, went in appeal before the CIT(A) against this assessment. The CIT(A) upheld the whole of the addition of Rs.2,94,00,000/- made by the AO. The assessee trust thereafter went in appeal before the ITAT. The Hon'ble ITAT, Delhi Bench vide order dated ITA No. 1875/Del/2008 set aside the matter of CIT(A) as well as of the assessing officer and remitted the matter back to the file of the Assessing Officer to examine the matter afresh after affording an opportunity of being heard to the assessee and for a final view after taking into consideration the material produced by the assessee and brought on record.*

*4.2 The issue was remanded to the Assessing Officer as the appellant contended that the assessment order was not finalized as per the directions of the Hon'ble ITAT, and the Assessing Officer was directed to send his comments on the contention that the Assessing Officer should take a final view after taking into consideration the material produced by the*

*appellant and brought on record. The Assessing Officer submitted a remand report dated 11.2.2016 wherein it was submitted as under:*

*“It is seen that in compliance to the direction given by the Hon’ble ITAT, the assessing officer gave opportunity to the appellant to be heard. In compliance, Sh. P. S. Kanodia attended the proceedings and filed documentary evidences. However, after going through the submissions of the assessee along with details, documents and information placed on records, it was seen that the assessee had not produced any fresh material evidence other than those already submitted and produced during original assessment proceedings and before the appellant authorities. Therefore, vide assessment order dated 31.12.2010, the addition of Rs.2,94,00,000/- was again made to the total income of the assessee.”*

*4.3 The reason for the same as summed up from the original Assessment order and the Appellate order dated 31.03.2008 are as under:*

- 1. Simply because the amounts were received by cheque and the parties are assessed to cheques does not establish the genuineness of the donations claimed to have been received from them.*
- 2. The persons produced by the assessee in response to summons u/s 131 claiming that they were directors of the above named companies, did not have any identification papers or books of account.*
- 3. The search and seizure operation was carried out on Group USHA of Sh. Vinay Rai on 14.2.2001. Detailed investigation by the Investigation Wing and post search enquiries established the fact of having floated around 250 bogus companies by the group. As many as 9 flagship concerns were identified and the name of all the three Donor Companies in the present case figures out in the list. Involvement of Sh. Vinay Rai in promoting bogus companies has also been established with the help of the seized documents.*

4. Affidavits by Sh. M. N. Choudhary, Sh. Sanjay Gupta, Sh. Dinesh Gupta and Sh. Vinay Rai were filed during the assessment proceedings which were duly considered but not found tenable.”

4.4 All these facts were reported by the Assessing Officer in the remand report dated 11.2.2016. The Assessing Officer concluded as under:

*“The assessee failed to establish the genuineness of transaction and the source of donation. In view of the fact that Sh. Vinay Rai had floated a number of bogus entities and the name of donor companies were in the list of such bogus companies, the contention of the assessee should be rejected.”*

4.5 The appellant again contended that the Assessing Officer did not ask for the books of account from the directors from whom the money was received and therefore, nothing against them can be implied. In view of the facts and circumstances being the same as at the time of original assessment against which the erstwhile CIT(A) passed order, the finding of the erstwhile CIT(A) in appeal no. 111/07-08 dated 31.03.2008 stands reiterated-

*“2.3 I have considered the submissions made by the Id. AR and have perused the material on record. It has been claimed that the donations from, these parties were received by account payee cheques. Simply because the amounts were received by cheque and the parties are assessed to cheque does not establish the genuineness of the donations claimed to have been received from them. As regards the production of the representatives/directors of three parties before the AO in response to summons u/s 131, I have perused the statements of these persons recorded by the AO on 24.3.05. Sh. M.N. Choudhary, director of Information Technologies India Ltd. in his statement had no knowledge about filing of Income-tax return of the company after asstt. year. 1995-96. He stated that he had joined the company w.e.f. 16.6.03 and the earlier aspect was not known to him. He further stated that all the records of the company were lying in the registered office at Lucknow. He also stated that he was not aware of the taxation matters and regarding filing of the returns*

*of income for which he will have to consult the auditors. He also could not produce any evidence to support that he was the director or principal officer of the company. The records also show that no books of account or other identification papers were produced before the AO. Similar is the position in respect of Sh. Sanjay Gupta, who appeared before the AO as a director of M/s Koshika Telecom Ltd. and Information Technologies India Ltd. Sh. Dinesh Gupta who appeared on behalf of M/s Gordon Herbert (India) Ltd stated himself to be an accountant in School of Management and Science at 12/1, Mathura Road, Faridabad. He also did not have any Power of Attorney or other evidence authorising him to appear before the AO on behalf of the company. In fact, he had no locus standi at all to appear before the AO. As regards affidavits of these three persons filed during the course of appellate proceedings, these affidavits not only state that these persons appeared before the AO but they are stating so many other facts which were not stated by them during the course of their deposition before the AO on 24.3.05. Therefore, these affidavits are additional evidence and none of the conditions of rule 46A is satisfied for admission of additional evidence. Therefore, these affidavits are not admitted as additional evidence. Further, no comments have been offered with regard to the observations of the AO wherein it is stated that the above named parties along with the assessee are some of the many companies and floated by Usha Group in order to siphon off money from one party to another thereby evading taxes. The AO has also stated that these companies are obviously bogus companies floated to transfer funds from one entity to the other. These findings of the AO are very crucial to decide the issue and no comments were offered on the same. The issue regarding floating of bogus companies and trusts for siphoning off of funds had also come up prominently in the case of Mis Usha Foundation, another trust of Usha Group in the asstt. year 2001-02 and similar addition in respect of corpus donations made in the case of that trust was upheld by CIT(A). In the light of these facts and circumstances stated above, I am of the considered view that the sum credited in the books of account in the appellant trust in the garb of corpus donations amounting*

*to Rs.2,94,00,000/- does not get proved and, therefore, the AO was justified in making addition of Rs. 2,94,00,000/- and the same is upheld.”*

4.6 *As the facts and circumstances of the case remain the same and as the issue was also remanded to the Assessing Officer in compliance to the direction given by the HonTale ITAT, a report to that effect was submitted by the Assessing Officer after considering all the aspects stated by the appellant in their contention, which was subjected to appellant company’s rejoinder, and has been duly considered by me, I hold an opinion that the amount of Rs.2,94,00,000/- is taxable income of the appellant. All the ground raised in appeal are dismissed and the addition of Rs.2,94,00,000/- is confirmed.*

8. By considering the above facts and circumstances, since the assessee has not brought any fresh evidence/material before the AO or before the CIT(A) and also before us. Considering the fact that in compliance of the Tribunal’s order the report was submitted by the AO after considering all the contentions of the assessee in the rejoinder, the order has been passed by the AO and in the absence of any new material brought before us, we do not find any infirmity or error in the findings of the lower authorities. Accordingly, the grounds of appeal of the assessee failed and the appeal filed by the assessee is dismissed.

Order pronounced in the open court on : **16/03/2023**.

**Sd/-**  
**(DR. B.R.R. KUMAR )**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**(YOGESH KUMAR US)**  
**JUDICIAL MEMBER**

Dated : 16/03/2023

*\*MEHTA\*/ \*Kavita Arora*

Copy forwarded to :-

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

ASSISTANT REGISTRAR  
ITAT NEW DELHI