

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "SMC", MUMBAI**

BEFORE SHRI S. RIFAUR RAHMAN, HON'BLE ACCOUNTANT MEMBER

ITA NO.360/MUM/2023 (A.Y: 2013-14)

Khidmat Charitable Trust P.T. Mane Udyan Garden Mirza Galib Marg, OPP. Rolex Hotel Clare Road, Nagpada Junction Mumbai- 400008 PAN: AAATK7563N (Appellant)	v.	ACIT (E)- 1(1) MTNL Cumballa Hill Tel Exchange Building G.D. Deshmukh Lane, Tardeo Mumbai- 400026 (Respondent)
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Assessee Represented by	:	Shri Jayesh Chugh
Department Represented by	:	Shri S N Kabra
Date of Hearing	:	06.04.2023
Date of Pronouncement	:	18.04.2023

ORDER

PER S. RIFAUR RAHMAN (AM)

1. This appeal is filed by the assessee against order of the Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi [hereinafter in short "Ld.CIT(A)"] dated 14.12.2022 for the A.Y.2013-14.

2. Assessee has raised following grounds in its appeal: -

"A. The CIT (Appeals)- National Faceless Appeal Centre (NFAC), Delhi has erred in confirming the addition made by learned A.O. on account of anonymous donations amounting to Rs.11,20,880/-for the A. Y. 2013-14 and the assessee prays to delete the said additions on the following grounds:

a. The CIT(A) erred in understanding that assessee has not furnished the list of the donors which was duly furnished indicating names and addresses of all the donors on 07.07.2022. The said list of donors is enclosed herewith at Exhibit-1.

b. The CIT(A) erred in appreciating the fact that assessee has duly complied with the provisions of Section 115BBC(3) of the Income Tax Act, 1961. In support of the said provision of Income Tax Act, the assessee would like to place its' reliance on the judgment of Hon'ble ITAT Hyderabad delivered in case of DCIT V/s. Vaishnavi Educational Society in ITA No. 1209/HYD/2014. Copy of the said judgement is enclosed herewith at Exhibit-2.

The Appellant Trust craves leave to add or amend any grounds of appeal that may be considered necessary."

3. Brief facts of the case are, assessee filed its return of income on 31.03.2015 for the A.Y. 2013-14 declaring total income of ₹. Nil. Assessee is a registered charitable organization with CIT (Exemption), Mumbai u/s.12A of the Act vide registration dated 11.12.2001. The case was selected for scrutiny under CASS and notices u/s. 143(2) and 142(1) of Income-tax Act, 1961 (in short "Act") were issued and served on the assessee. In response Authorised Representative of the assessee attended and submitted the relevant information as called for.

4. During the assessment proceedings, Assessing Officer observed that assessee has received anonymous donation of ₹.30,23,300/-. Assessee has not maintained any account with respect of the above said donation. Accordingly, provisions of section 115BBC is applicable. He observed that assessee has received total donation of ₹.3,80,48,403/- and consequently an amount of ₹.19,024,20/- being 5% of the total donation is allowable as the deduction from the total anonymous donation and consequently balance amount of ₹.11,20,880/- is disallowed u/s. 115BBC and taxed @30%.

5. Aggrieved, assessee preferred an appeal before the Ld.CIT(A) and before the Ld.CIT(A) assessee has made the submissions and also filed the list of anonymous donations before First Appellate Authority vide acknowledgement No. 758227621070722 dated 07.07.2020. However, while passing the order Ld.CIT(A) not considered the above informations filed by the assessee and Ld.CIT(A) decided the issue against the assessee with the observation that assessee has made the only above mentioned submissions that assessee is a registered trust u/s. 12A of the Act, it is not a religious but charitable trust and assessee has not filed any list of anonymous donation in order to claim the benefit, mere assertion that

such a list is available is not valid. Accordingly, he dismissed the appeal filed by the assessee.

6. Aggrieved assessee is in appeal before us and Ld. AR of the assessee brought to our notice the required information was submitted by the assessee through the acknowledgement dated 07.07.2022. However, due to oversight Ld.CIT(A) has not considered this information and passed the order. Ld. AR of the assessee prayed that this issue may be remitted back to the file of the Ld.CIT(A) to consider the plea of the assessee.

7. On the other hand, Ld. DR relied on the order of the Ld.CIT(A). However, submitted that he has no objection to remit this issue back to the file of the Ld.CIT(A).

8. Considered the rival submissions and material placed on record, on a perusal of the Ld.CIT(A) order, I find that even though the Ld.CIT(A) provided opportunity on multiple occasions assessee could not appear before the Ld.CIT(A) and has not filed any submissions as sought for by the Ld.CIT(A). However, I observe that on 07.07.2022, the assessee has filed the relevant information before Ld.CIT(A) which missed his attention while passing the order. Considering the totality of facts and circumstances of the case and keeping in view the additions/disallowance

made by the Assessing Officer, in the interest of justice I am of the opinion that assessee should be given one more opportunity of being heard. Thus, this appeal is restored to the file of the Ld.CIT(A) for denovo adjudication in accordance with law. Assessee is directed to make submission before the Ld.CIT(A) and shall cooperate with the appellate proceedings without taking unnecessary adjournments. Thus, this appeal is restored to the file of the Ld.CIT(A) accordingly.

9. In the result, appeal filed by the assessee is allowed for statistical purpose.

Order pronounced in the open court on 18th April, 2023

Sd/-
(S. RIFAUR RAHMAN)
ACCOUNTANT MEMBER
Mumbai / Dated 18/04/2023
Giridhar, Sr.PS

Copy of the Order forwarded to:

1. The Appellant
2. The Respondent.
3. CIT
4. DR, ITAT, Mumbai
5. Guard file.

//True Copy//

BY ORDER

(Asstt. Registrar)
ITAT, Mum