

आयकर अपीलीय अधिकरण, कोलकाता पीठ “ए”, कोलकाता
IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA
श्री राजेश कुमार, लेखा सदस्य एवं श्री संजय शर्मा न्यायिक सदस्यके समक्ष
[Before Shri Rajesh Kumar, Accountant Member & Shri Sonjoy Sarma, Judicial Member]

I.T.A. No. 751/Kol/2022
Assessment Year: 2012-13

Dr. B.G. Memorial Trust (PAN: AAATD 5235 A)	Vs.	ITO, Exemption, Ward-1(2), Kolkata
Appellant / (अपीलार्थी)		Respondent / (प्रत्यर्थी)

Date of Hearing / सुनवाई की तिथि	03.04.2023
Date of Pronouncement/ आदेश उद्घोषणा की तिथि	21.04.2023
For the Appellant/ निर्धारिती की ओर से	Shri S. M. Surana, Advocate Shri Abhishek Bansal, A.R
For the Respondent/ राजस्व की ओर से	Smt. Ranu Biswas, Addl. CITDR

ORDER / आदेश

Per Rajesh Kumar, AM:

This is the appeal preferred by the assessee against the order of the Ld. Commissioner of Income Tax(Appeals) –NFAC, Delhi (hereinafter referred to as the Ld. CIT(A)”) dated 28.11.2022 for the AY 2012-13.

2. The only issue raised by the assessee is against the order of Ld. CIT(A) wherein the reopening has been quashed by the ld CIT(A) but despite quashing the reopening a direction was given in para 6.1 to verify the documents/directions of the donors qua corpus donation.

3. Facts in brief are that the assessee is a charitable trust and during the year filed return of income on 31.07.2012 declaring gross income of Rs. Nil. The case of the assessee was selected for scrutiny under CASS and the statutory notices were duly issued and served upon the assessee. The case was finally assessed u/s 143(3) r.w.s. 11 of the Act on 25.03.2015 with total income of Rs. 41,40,516/-. Thereafter the case was reopened u/s 147 of the Act by issuing notice u/s 148 of the Act dated 21.03.2016 on the ground that the Ld. CIT(E), Kolkata has invoked the provisions of Section 12AA(3) of the Act and has withdrawn the registration granted u/s 12AA of the Act w.e.f. 1.4.2011 by CIT(E) Kolkata vide order dated 22.02.2016 on the ground that society has found to be engaged in non genuine activities and not carrying out activities as per the object of the trust vide order dated 22.02.2016. The said action was consequent to the findings of a survey u/s 133A of the Act on 04.12.2015 conducted on M/s Quadeye Securities Pvt. Ltd. by the Directorate of Income Tax, Investigation, Kolkata. The assessee complied with the notice by filing a letter dated 30.03.2016 submitting that the return originally filed on 31.03.2012 may kindly be treated in response to notice u/s 148 of the Act. Finally the AO framed the assessment by making an addition of Rs. 1,62,95,000/- on account of corpus donation by treating the same as general donation on the ground of registration u/s 12AA of the Act was withdrawn and cancelled w.e.f 01.04.2011 by passing an order u/s 143(3)/147/12AA(3) dated 29.12.2016.

4. The Ld. CIT(A) in para 6 allowed the appeal of the assessee by observing and holding as under:

“6. After going through the order of the AO, contentions of the appellant and case laws relied upon, I am of the considered opinion that appellant society is eligible for exemption u/s 11 of the Act. Therefore, in respect of GsOA No. 1 to 4, the Assessing Officer is directed to verify and give effect to the order of the CIT(E), Kolkata dated 10.11.2017, passed pursuant to the order of the tribunal and allow the claim of exemption.

6.1. So far Ground No. 5 of this appeal is concerned, it was noticed that ‘corpus donations’ were added back by the AO. With restoration of the status of the appellant as an exempt entity, such donations should be allowed as per provisions of Section 11(1)(d) of the Act. However, before allowing the same, the Assessing Officer is directed to verify written documents bearing specific directions from the donors for acceptance of impugned donations as corpus in nature.”

5. After hearing the rival contentions and perusing the material on record, we find that in this case the tribunal restored the registration of the trust by quashing the order of CIT(E) . The Ld. A.R vehemently submitted before us that though the Ld. CIT(A) has allowed the appeal of the assessee by directing the AO to allow the claim of exemption however direction was given to the AO to verify the documents/directions given by the donor in respect of corpus donations. We find that the Ld. CIT(A) allowed the claim of exemption to the assessee in para 6 supra however in para 6.1 a direction was given to the AO to verify the documents/directions from donors for acceptance of impugned donation as corpus donation. In our opinion, the said finding of the Ld. CIT(A) in para 6.1 directing the AO to verify the documents/directions for corpus donation is not correct. In our opinion when the Ld CIT(A) has quashed the reopening of assessment by the AO then no further direction can be given. Accordingly we modify the order of Ld. CIT(A) to above extent by reversing the direction given in para 6.1.

6. In the result, the appeal of the assessee is allowed.

Order is pronounced in the open court on 21st April, 2023

Sd/-

Sd/-

(Sonjoy Sarma /संजय शर्मा)
Judicial Member/न्यायिक सदस्य

(Rajesh Kumar/राजेश कुमार)
Accountant Member/लेखा सदस्य

Dated: 21st April, 2023

SB, Sr. PS

Copy of the order forwarded to:

1. Appellant- Dr. B. G. Memorial Trust, 6/1, Sarat Chatterjee Avenue, Rabindra Sarovar, Kolkata-700029.
2. Respondent – ITO, Exemption, Ward-1(2), Kolkata
3. Ld. CIT(A)- NFAC, Delhi
4. Ld. PCIT- , Kolkata
5. DR, Kolkata Benches, Kolkata (sent through e-mail)

True Copy

By Order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata