

**IN THE INCOME TAX APPELLATE TRIBUNAL
AMRITSAR BENCH, AMRITSAR.**

**BEFORE DR. M. L. MEENA, ACCOUNTANT MEMBER
AND SH. ANIKESH BANERJEE, JUDICIAL MEMBER**

**I.T.A. No.344/Asr/2016
Assessment Year: 2010-11**

Guru Govind Singh Educational Society, (G.N. Convent School), VPO Bhaloor, Distt. Moga. [PAN:AABTG2865L] (Appellant)	Vs.	ITO, Ward-1, Moga. (Respondent)
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Appellant by	Sh. P.N. Arora, Adv.
Respondent by	Sh. Radhey Shyam Jaiswal, Sr. DR

Date of Hearing	09.05.2023
Date of Pronouncement	15.05.2023

ORDER

Per:Anikesh Banerjee, JM:

The instant appeal of the assessee was filed against the order of the Id. Commissioner of Income Tax (Appeals),-4Ludhiana,[in brevity the CIT (A)] order passed u/s 250 (6) of the Income Tax Act 1961[in brevity the Act], for A.Y. 2010-

11.The impugned order was emanated from the order of the Id. Income Tax Officer, Ward-1,Moga,[in brevity the AO] order passed u/s 143(3) of the Act.

2. The assessee has taken the following grounds: -

“1.That Ld CIT (A) has erred in facts and Law in confirming addition of Rs. 97,42,782/- toward the income as against nil income declared by Assessee.

2. That the Ld CIT (A) erred in confirming the aforesaid addition, whereas the appellant had duly submitted its reply to the satisfaction of assessing authority and also furnished the required evidence as demanded by the assessing authority during the assessment proceedings in support of the claim of donation being exempt in terms of section 11(1) d of the Income Tax Act and confirmation of Addition by Ld CIT (A) is bad in Law.

3. That the appellant had legitimate source of donation of Rs. 97,42,782/- received as corpus fund of the society and also submitted detailed list of all the donors along with their names and addresses as required by the assessing authority and all the donors had also admitted before the assessing authority that they made corpus donation supported by the affidavits along

with relevant evidence of donation made by them to the society to the assessing authority during the assessment proceeding and Ld CIT(A) erred in confirming in the same.

4. That the amount of donations received as corpus fund were duly utilized for construction of school building as per the objects of the society and confirmation of addition by Ld CIT (A) is opposed to facts and law and circumstances of case.

5. Ld CIT (A) completely ignored the facts, supported with decided case law that corpus donations are capital receipts and confirmation of addition is bad in law.

6. That order pass by Ld CIT (A) is bad in Law.”

3. Brief fact of the case is that the assessee is an educational society and running school in the name and style of G.N. Convent School, Village, Bhaloor, Distt. Moga. During impugned assessment year the assessee's total receipt is Rs.91,40,108/-. Assessee has claimed exemption u/s 10(23C) (iiiad) of the Act. During assessment proceeding the ld. AO found that the assessee received corpus fund amounting to Rs.97,42,782/-. The investigation was carried out by the ld. AO against the investment of corpus fund. Being dissatisfied on outcome of

investigation, the Id. AO added back the corpus fund received by the assessee from the party the amount of Rs.97,42,782/- & calculated tax accordingly. The Id. AO also claimed that after treating this corpus fund amounting to Rs.97,42,782/- as income the assessee's turnover is re-calculated amount to Rs.1,88,82,890/-. The assessee was not registered u/s 12A of the Act. So, the exemption u/s 11 and 12 of the Act was rejected for violation of Section 12AA of the Act. Being aggrieved assessee filed an appeal before the Id. CIT(A). The Id. CIT(A) upheld the order of the Id. AO. Being aggrieved assessee filed an appeal before us.

4. The Id. AR of the assessee filed a written submission and first pointed out that the assessee's turnover was less than Rs.1 Crore during the impugned assessment year. So, the assessee is eligible for exemption u/s 10(23C) (iiiad). The Id. AR relied on the order of the jurisdictional High Court of Punjab and Haryana in the case of **CIT (Exemption) vs. Smt. Shanti Devi Educational Trust, 409 ITR 522 (P & H)**. As per the order of Hon'ble jurisdictional High Court, the assessee has not barred for taking corpus donation related to claim of exemption u/s 10(23C) though the assessee has not registered u/s 12AA. The Id. AR pointed out that the assessee's gross receipt is below Rs. 1 crore. So, the assessee is eligible to take corpus donation without availing the registration U/s 12AA of the Act.

5. The Id. DR argued & first pointed out that the entire corpus donation amount to Rs.97,42,782/- was added back due to lack of verification. The Id. DR invited our attention in assessment order page no. 5. The relevant paragraph is extracted as below:

*“The counsel of the assessee filed 36 affidavits confirming the payment of donations without any documentary evidence of payment. **From the above it is clear that the society could not prove the genuineness of the transactions also.**”*

6. The Id. DR has further drawn our attention in the appeal order page 38 para 3.22 which is extracted as below:

“3.22 Keeping in view the aforesaid factual and legal position, as the trust is having gross receipts above Rs. 1 crore, in absence of any exemption u/s 12A or u/s 10 (23C), it is held that the AO was fully justified in adding the amount of Rs.97,42,782/- to the total income of the appellant. However in view of other additional facts as discussed in above paragraphs in detail, the corpus donation of Rs.97,42,782/- is also disallowed u/s 68, as although the AO has discussed all the aspects of his findings in detail however has simply disallowed on account of non-registration of appellant trust u/s 12A or

u/s10 (23C). The appellant has also requested for stay in ground no. 6, in view of the disposal of appeal against the appellant this ground of appeal also is decided against the appellant.

3.23 Since it is seen that the appellant has failed badly, to explain corpus donation voluntary donation received by it during the year, the assessing officer is directed to take appropriate action in other years, after due verification, where any proceedings are pending.”

7. We heard the rival submission and relied on the documents available in the record. The Id. AR filed a paper book which is kept in the record. The Id. AR submitted that the assessee is eligible the exemption u/s 10(23C) as the gross receipt is below the Rs.1 crore during impugned assessment year. The assessee is eligible the corpus donation though the assessee is not holding the registration u/s 12AA. From the factual matrix and considering the order of the revenue authorities, it is found that the grievance of the revenue is related to unverified corpus donation. The entire corpus donation was taken in the total income and was taxed accordingly. There is no point that the assessee cannot take the corpus donation without availing the registration u/s 12AA. But the unverified corpus donation is the moot point of the grievance of the revenue. The assessee filed a

written submission with details of the payment and assessee is also interested re verification of the evidence before the Id. assessing authority. The Id. DR had not made any strong objection against this assessee's submission. Accordingly, the matter is remitted back to the Id. AO for further verification of the corpus donation amount to Rs.97,42,782/-received by the assessee for this impugned assessment year.

8. In the result, the appeal of the assessee bearing **ITA No. 344/Asr/2016** is allowed for statistical purposes.

Order pronounced in the open court on 15.05.2023

Sd/-

(Dr. M. L. Meena)
Accountant Member

Sd/-

(ANIKESH BANERJEE)
Judicial Member

AKV

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order