IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JM & DR. A. L. SAINI, AM

आयकर अपील सं./ITA No.212/SRT/2023

निर्धारण वर्ष/Assessment Year: (2008-09)

(Physical Hearing)

Lok Bharati Mandal, Bharatia Vidhya Sankul, Opp. Terapanthi Bhavan, City Light Ropad, Surat – 395007.	**Vs.**	The ITO, (Exemption) Ward, Surat.
(Assessee)		**(Respondent)**
स्थायीलेखासं./जीआइआरसं./PAN/GIR No.: **AAATL2524Q**		

Assessee by	Shri Hiren Vepari, CA
Respondent by	Shri Vinod Kumar, Sr. DR
Date of Hearing	04/05/2023
Date of Pronouncement	16/06/2023

आदेश / O R D E R

PER DR. A. L. SAINI, AM:

Captioned appeal filed by the assessee, pertaining to Assessment Year (AY) 2008-09, is directed against the order passed by the Learned Commissioner of Income Tax (Appeals), [in short "the ld. CIT(A)"], National Faceless Appeal Centre (in short 'the NFAC'), Delhi, dated 24.02.2023, which in turn arises out of an assessment order passed by Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961 (hereinafter referred to as "the Act"), order dated 14.03.2016.

2. The grounds of appeal raised by the assessee are as follows:

"(I) ***Denial of benefit of section 11(1)(d) on Rs.51.38 lacs received as earmarked funds being corpus donation:***

1. The learned CIT(A) failed to appreciate the concept of corpus donation as envisaged u/s.11(1)(d) as interpreted by the courts, and failed to appreciate that earmarked funds constitute corpus donation.

2. On the facts and circumstances of the case, the learned CIT(A) ought to have allowed the following earmarked funds as corpus donations.

New Building Fund	*Rs.2,38,850*
Room Donation Account	*Rs.6,00,001*
School Namkaran Donation Fund	*Rs.13,00,000*
Campus Donation Fund	*Rs.30,00,000*
Total	*Rs.51,38,851*

3. Without prejudice to the above, if the learned CIT(A) were to hold view of confirming addition of the earmarked funds received for building, room and campus, he ought to have allowed corresponding application to the extent of Rs.1,80,44,368/- which were consciously not claimed by the assessee.

(II) ***Addition of Rs.2,00,000 received as unsecured loan:***

On the facts and circumstances of the case, the learned CIT(A) was not justified in confirming addition of Rs.2,00,000.

(III) ***Addition of Rs.3,80,657/- being excess cash deposit into the bank:***

1. The learned CIT(A) was not justified in confirming cash deposit of Rs.3,80,657/- particularly when the assessee could demonstrably show that there was source to support the cash deposits.

2. On the facts and evidences, the addition ought to have been deleted.

(IV) ***Alternate plea:***
Without prejudice to the above, the learned CIT(A) ought to have granted benefit of over application to the extent of Rs.5,53,016, which would have absorbed addition of Rs.2,00,000 and Rs.3,80,657 stated in Ground No.(II) and (III) respectively.

(V) The assessee craves leave to all, alter or vary any of the grounds of appeal."

3. At the outset, Learned Counsel for the assessee informs the Bench that assessee does not wish to press Ground Nos.2 and 4 raised by assessee, therefore we dismiss Grounds Nos.2 and 4 raised by the assessee, as not pressed.

4. Ground No.1 raised by the assessee relates to rejection of benefit of section 11(1)(d) of the Act of Rs.51,38,851/- received as earmarked funds, being corpus donation.

5. The facts necessary for disposal of the appeal are stated in brief. During the course of re-assessment proceedings, it was observed by the assessing officer that assessee had reported total additions of Rs.51,38,851/- towards various earmarked funds and claimed the same exempt u/s 11(1)(d) of the Act, treating the same as corpus donations. Details of such funds and donations received are as under:

Sr	Name of the fund	Amount of addition Rs.
1	New Building Fund	2,38,850
2	Room Donation Account	6,00,001
3	School Namkaran Donation Fund	13,00,000
4	Campus Donation Fund	30,00,000
	TOTAL	51,38,851

On this issue the A.O has gone further and observed that the earmarked fund claimed as corpus fund only involve various receipts/donations received by the assessee from donors on account of New Building fund of Rs.2.38 lakhs, Room donation A/c. of Rs. 6 lakhs, School Namkaran donation fund of Rs.13 lakhs and campus donation funds for Rs.30 lakhs. All these funds together were referred as earmarked fund by the assessee in the Balance Sheet and accordingly requested the A.O to treat the same as eligible corpus donations as received from various donors with the specific purposes for which it has been accounted against these names of new building fund, room donation account, school Namkaran fund etc. Accordingly, assessee requested A.O, to treat the same as eligible claim u/s. 11(1)(d) of the I.T. Act. The AO further examined and held that the assessee trust deed nowhere mentions any such earmarked funds to be treated as corpus fund / part of corpus fund of the trust. Accordingly, when the corpus fund is not so specified precisely to say what constitutes a corpus fund of trust, the same cannot be treated as corpus fund as qualified for exemption u/s 11(1)(d) of I.T. Act by its general meaning and understanding, as per the observations of the A.O. in the assessment order.

Therefore, the assessee was asked, vide notice of assessing officer u/s 142(1) of the Act, dated 05-02-2016, to show cause, as to why the same should not be treated as normal donations and taxed accordingly.

6. However, in response to the notice of the assessing officer, the assessee submitted its reply on 15-02-2016, which is reproduced as under:

> *"The above said donation received for the specific purpose shown in "Earmarked Fund" in Balance sheet. Kindly take the note of the above and oblige".*

7. However, assessing officer observed that as per the provisions u/s 12 of the Act and u/s 11(1)(d) of the I.T. Act a corpus fund means a voluntary contribution made by any donor with a specific direction, that such donation as paid, shall form part of corpus and accordingly, the A.O. is of the view that in the absence of such specific direction from relevant donor-assigning it the status and purpose of corpus fund, the same would not qualify for such exemption u/s 11(1)(d) of the Act. Holding to such view, the A.O has denied the exemption on these earmarked fund donation receipts as not qualified as the same do not have any such specific directions in this regard while giving such donations. Therefore, assessing officer rejected the contention of the assessee and held that earmarked donations or specific expenditure donations are not corpus donations. Further, in the balance sheet, the trust, has reported Trust fund or corpus separately from these "Earmarked Funds". Thus, the assessee itself has differentiated these funds and, therefore, has reported these "Earmarked Funds" as non-corpus fund. In view of the above, the said donations of Rs.51,38,851/- was treated by the assessing officer as general donations and added to the total income of the assessee.

8. Aggrieved by the order of the Assessing Officer, the assessee carried the matter in appeal before the Ld. CIT(A) who has confirmed the action of

the Assessing Officer. Aggrieved by the order of the Ld. CIT(A), the assessee is in appeal before us.

9. We heard both sides in detail and also perused the records of the case including the paper book filed by the assessee. The Learned Counsel argued that these donations were received as part of earmarked funds as reflected in the Balance Sheet of the trust by this name. Accordingly, further claims that these were received from various donors with specific purposes of new building, room account and campus improvements etc., only is the contention of the assessee. Further, with reference to AO's contention that trust not having specified in Trust deed what kind of funds will constitute corpus into trust, the earmarked funds cannot be treated as forming part of corpus is not acceptable and the same is unfair, as the trust deed is only a constitution and further details of nature and character of donation will be decided by the donor. It is the will of the doner that he wants to donate to the corpus of the fund or he wants to make a general donation to the trust. Thus, ld Counsel negates the contention of AO that by a simple resolution of a trust, any receipt of donation can be equated as a corpus donation, as any trust speaks only through its resolutions, when the same is not defined in the trust deed as in this case, hence, in this analogy the assessee has negated all contentions of A.O and held to the view that earmarked funds are only corpus funds eligible for claim of exemption u/s 11(1)(d) of I.T. Act. Thus, ld Counsel contended that earmarked funds are only corpus funds eligible for claim of exemption u/s 11(1)(d) of I.T. Act.

10. On the other hand, the Ld. DR for the Revenue submitted that in the instant case, assessee could not provide any substantial evidences confirming these receipts as corpus donations as confirmed by donors with specified purpose of such corpus fund spending activity, therefore, ld DR

prays the Bench that addition made by the assessing officer should be sustained.

11. We find merit in the submission of ld Counsel. We note that assessee is a registered Pubic Charitable Trust registered under 'the Bombay Public Trust Act' The assessee-trust is also registered u/s 12A of the Income Tax Act vide registration number E149451074. The assessee is having 80G registration vide registration number SRT/CIT-I/ITO/TECH/104/L-5/2008-09/244. The assessee-trust furnished the following information on the Earmarked funds received from various donors vide letter dated 15-2-2016 (Page 118 of Paper book).

(i) On date-wise, donor-wise, amount-wise, details of donation received from various donors, (page No.119 of paper book)

(ii) Receipts showing that donations received from various donors were only for specific purpose (from Page No.120 to 127 of paper book).

12. We note that such clear evidence on donations received from the donors for specific purpose, and we note that Trust Deed is only constitution. The nature and character of donation can be decided based on the intention of the donor and the direction given by the donor. To find which kind of donation would form part of the Earmarked funds into the Trust Deed is unprecedented. We note that the donors' intention can come through receipt or letter by the donor or sometimes by resolutions as the trusts speak only by resolutions. Therefore, the contention of the AO is unfounded because it is not necessary that kind of donation must be defined in Trust Deed, rather it is a will of the doner whether he wants to make a general donation or donation to the corpus fund. Hence, the AO does not succeed on this score. It is an established law that when a Trust receives a particular sum which is earmarked for a specific purpose, it

constitutes nothing but capital receipt which needs to be treated as forming part of the corpus. For this ld Counsel relied on the following authorities:

Sr. No.	Name	Citation
1.	Shri Ramakrishna Seva Ashrama	258 CTR 201 (Karnataka)
2.	J.B. Educational Society	98 DTR 347 (Hyderabad)
3.	Indian Society of Anesthesiologists	47 taxmann.com 183 (Chennai Tribunal)
4.	St. Ann's Home for the Aged	13 TTJ 185 (Banglore)
5.	Shri Satya Kabir Sahabani Gadi	50 TTJ 501 (Ahmedabad Tribunal)
6.	Jaipur Golden Charitable Clinical Laboratory Trust	7 DTR 350 (Delhi)

13. The ld Counsel also states that earmarked funds have been utilized only for the specific purposes for which they are received and the utilization has not been claimed by the assessee as application u/s.11 of the Act in the return of income. The ld Counsel also submits Table C (Page No. 139) to demonstrate that the assessee has not claimed utilization towards application of funds against the earmarked funds as application u/s11 of the Act. Therefore, without prejudice, ld Counsel argued that in the worst- case scenario for the assessee, if the earmarked funds were to be treated as non-exempt u/s11(1)(d) of the Act, the assessee logically needs to be allowed application against the earmarked funds as deduction.

14. We note that assessee- trust being a public charitable trust, runs a school primarily to address students from the very lower strata of the society and relying on donors to fund the school. The assessing officer has grossly erred in treating the Earmarked funds as revenue receipts particularly when the clear evidence before the assessing officer had demonstrated that what the donors had given was nothing but Earmarked funds for new building, room and campus developments. We note that stand taken by the Assessing Officer is not tenable in law, reason being that trust deed is only constitution of the trust and the nature and character

of donation can be decided based on the intention of the donor and the direction given by the donor. We note that intention of the donor can be judged through receipt given by the donee or letter of the donor to the effect that he is donating the amount in the corpus fund. We note that it is a well-settled position in law when a trust received a particular sum, which is earmarked, for a specific purpose, it constitutes nothing but a receipt to be treated as forming part of the corpus. For this, reliance can placed on the decision of the Hon`ble High Court of Karnataka in the case of Shri Ramakrishan Seva Ashrama, [2012] 18 taxmann.com 37 (Karnataka), wherein it was held that Where donation received by assessee-trust is kept in deposit account and income earned therefrom is utilized for charitable purposes, assessee is entitled to benefit of exemption under section 11(1)(d) in respect of said income. Based on these facts and circumstances, we allow ground No.1 raised by the assessee.

15. In the result, ground No.1 raised by the assessee is allowed.

16. Coming to ground No.3 raised by the assessee, which relates to addition of Rs.3,80,657/- being excess cash deposits into the bank account.

17. Succinct facts qua the issue are that ground No.3 of the assessee relates to excess cash deposited in its School's Bank Account of Rs.3,80,657/- over and above the school cash fees received. The assessee argued before the assessing officer that the cash fees received from the school was much higher than the cash deposited, as same being the net amount of cash fees from these schools, after debiting expenses incurred against these school cash fees receipts. However, the A.O has rejected the contention of the assessee and held that the assessee has deposited a total cash fees from three schools at Rs.46.87 lakhs as against the reported cash

fees of Rs.43.06 lakhs thereby reflecting an excess cash deposit of Rs.3,80,657/- hence A.O. made addition to the tune of Rs.3,80,657/-.

18. On appeal, ld CIT(A) has confirmed the action of the assessing officer. The ld CIT(A) observed that except making the argument that assessee has claimed net of expenses, the assessee could not give any comprehensive reconciliation of total cash fees as received during the year and total expenses debited against these cash fees to arrive at correct / net cash fees deposited in Bank Account i.e. for Rs. 46.87 lakhs. Hence, ld CIT(A) dismissed this ground of the assessee. Aggrieved by the order of ld CIT(A) the assessee is in further appeal before us.

19. We have heard both the parties. Learned Counsel submitted before us that it is a very old matter of 10 years, therefore it would be difficult to reconcile completely to match the cash receipts and cash deposits and requested to consider by placing reliance on regular audited books of account as genuine. The ld Counsel submitted the reconciliation of fees before the Bench and as per said reconciliation difference of Rs.3,80,657/- narrows down to Rs.95,146/-. The ld Counsel submits that the computer fees received particularly of Kishor Vihar and English Medium School, vide ledger accounts **(Page No.140 to 147- English translation on Page. 140A to 147A),** the assessee had debited expenditure incurred against the computer fees by cheque and only net amount of fees was taken to the audited income and expenditure account refer **Page No.60 and 74).** These ledger accounts were produced before the AO as mentioned at para 17 of letter dated 21-1-2016 **(page No. 9 and 10).** On the other hand, ld DR for the revenue states that on this issue, assessee could not give any further evidence with due reconciliation to establish the excess cash deposited as attributable to accounted school fee receipts thereby matching the total cash fees collected with total cash fees deposited in the assessee's bank

account during the year, therefore addition made by AO may be sustained. We note that the position taken by the AO is that since total cash deposits into the bank account exceeded the total fees received, the excess needs to be treated as income of the assessee. However, we note that reconciliation filed before the Bench clearly states that there should not be any difference. We note that it is second round of appeal before this Tribunal on the same issue, hence we note that third inning should not be given to the assessee for this small addition. Therefore, taking into account the reconciliation filed by the assessee before the Bench, we are of the view that addition to the tune of Rs.95,146/- should be sustained, and balance addition of Rs.2,85,511/- (Rs.3,80,657- Rs.95,146) is directed to be deleted. Therefore, ground No.3 raised by the assessee is partly allowed.

20. In the result, appeal filed by the assessee is partly allowed in above terms.

Order pronounced on 16/06/2023 in the open court.

Sd/-	**Sd/-**
(PAWAN SINGH)	**(Dr. A.L. SAINI)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

सूरत /Surat
दिनांक/ Date: 16/06/2023
SAMANTA
Copy of the Order forwarded to

1. The Assessee
2. The Respondent
3. The CIT(A)
4. CIT
5. DR/AR, ITAT, Surat
6. Guard File

By Order

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Assistant Registrar/Sr. PS/PS
ITAT, Surat