

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**(DELHI BENCH 'B' : NEW DELHI)**  
**BEFORE SH. N.K.BILLAIYA, ACCOUNTANT MEMBER**  
**AND**  
**SH.ANUBHAV SHARMA, JUDICIAL MEMBER**  
ITA No. 2789/Del/2022, A.Y.

Global Research Forum on Diaspora and Transnationalism 40/55, First Floor, C.R.Park, New Delhi-110019 PAN : AACAG0032H	Vs.	CIT (Exemption) New Delhi
Appellant		Respondent

Assessee by	Sh. Sudhir Kumar Dash, CA
Revenue by	Sh. Vivek Kumar Upadhyay, Sr. DR

Date of hearing:	13.07.2023
Date of Pronouncement:	25.07.2023

**ORDER**

**Per Anubhav Sharma, JM :**

The assessee is in appeal challenging the order dated 29.09.2022 of Ld. CIT(E), Delhi whereby the application of the assessee u/s 12A(1)(ac)(iii) of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) was dismissed.

2. Heard and perused the records.

3. The facts in brief are the assessee has claimed to the Consortium of researchers and policymakers drawn from national and international universities, institutes and organizations. It is registered in India with members

and partners spread across various countries. It is stated that the assessee is initiated to be the largest network of migration governance experts focusing specifically on the issues related to migration, Diaspora and transnationalism.

4. The assessee applied for registration under Section 12A(1)(ac)(iii) of the Act and Ld. CIT(E) has sought certain information and based upon the replies, has rejected the application primarily for the reason that the receipt of Rs. 9,500/- GBP (equivalent Rs. 12,57,005/-) from Queen Mary University of London against the project of Migration, Pandemic and Responses from the Third Sector: Lessons from Brazil and India was considered to be a donation and as assessee admittedly did not have registration under Foreign Contribution Regulation Act (hereinafter referred to as "FCRA 2010"), there were breach of provisions of said act. Ld. CIT(E) also observed that even if this amount is considered to be a receipt, the same is qua the services provided by the appellant which fall under the purview of business and the applicant was required to maintain separate books of account for the same. However, the applicant has booked it a general donation / contribution. Ld. CIT(E) was also not satisfied with certain non compliances of information sought and expenditures.

5. Ld. AR has submitted that on 28.09.2022 the assessee has filed submissions and without considering the same the impugned order has been passed on 29.09.2022. It was submitted that Ld. CIT(E) had directed assessee to file original and certified copy of Memorandum of Association as the one filed was not found to be updated and every page not sealed, accordingly on 28.09.2022, assessee had applied for reissue of the certified copy of the Memorandum of Association. It is submitted that as some amendments were pending for approval from the office of Registrar of Societies, the certified copy of amended Memorandum of Association could not be filed.

6. Further, it is submitted on behalf of the assessee that Ld. CIT(E) has failed to take into cognizance, the aims and objectives of the assessee which primarily indicate that assessee is a non-profit organization working in the field related to the areas of larger public interest. The Ld.AR submitted that Ld. CIT(E) failed to appreciate that objectives require contribution from different stake holders in society in order to ensure quality studies, researches and training programs.

7. It was submitted that Ld. CIT(E) has fallen in error in treating the receipt from Queen Mary University of London to be in violation of FCRA and otherwise the business receipt. It was submitted that appellant is in the research and studies of Diaspora and the amount was received against the project for 'Migration, Pandemic and Responses from the Third Sector: lessons from Brazil and India'. It was submitted that it is not a donation or contribution for the purpose of Section 2(1)(h) of FCRA2010. It was submitted that assessee has asked fee researchers to conduct the aforesaid mentions study for the University during the pandemic outbreak. Ld. Counsel took the bench across the tax invoices, the study report, the IEC, copy of the GST Registration Certificate and payment advice from the University available on page no. 115 to 117 of the paper book to contend that amount received was not donation. Ld. Counsel also relied extract of FAQ from the website of Ministry of Home Affairs wherein the it is mentioned that the Explanation 3 to Section 2(1)(h) of FCRA 2010 'foreign contributions' excludes earnings from foreign clients by person in lieu of goods sold or services rendered by it as this is a transaction of commercial nature. It was submitted that the accounting classification of service income as general donation/ contribution has created confusion and the receipt was in the nature of service income and not in form of donation.

7.1 It was further submitted that Ld. CIT(E) has fallen in error in not appreciating that honorarium paid to the members was not remuneration but

amounts were paid to specific projects and at very nominal price. If external services were hired, a huge amount would have been paid. It was submitted that no monthly/ fixed money in any form has been paid to any member or committee thereof.

7.2 It was also submitted that certain expenditures in the form of subscription paid on zoom meetings were necessary to achieve the objectives. It was submitted that as a normal practice member use to make payments from their pockets and subsequently reimbursed by the society. It was submitted that the expenditures made by members on zoom meetings platform are more in the nature of contribution of members.

8. Ld. DR however, supported the findings of Ld. CIT(A).

9. Appreciating the matter on record it comes up that Id. CIT(E) giving conclusive findings has observed that assessee has failed to file details / information required by the notices to verify the genuineness of the activities and the compliances of any other law being FCRA 2010 the conditions for grant of registration in the case is not satisfied. The body of order indicates that Ld. CIT(E) was not satisfied with the copy of Memorandum of Association and Para 7(a) and (b) of the order makes it clear that Ld. CIT(E) was not sure of the objects of society and that to the mind of the Bench goes to the root of the matter.

10. The Assessee has successfully canvassed before us that some amendments were pending approval with the Registrar of the Societies due to which amended MOA as desired by Ld. CIT(E) could not be filed.

11. The question as to if the amount received from Queen Mary University of London was in the forum of donation or receipt against services is also connected with the examination of Memorandum of Association which would

clarify to Ld. CIT(E) as to if the assessee is incorporated with objectives to provide such services of academic nature and that to attain its primary objectives, give services in lieu of consideration and so the amount were in the nature of fee and not donations. Mere mention of the amount in books as donation cannot be basis to prejudice the rights of assessee if otherwise it is established from the documents what transaction was of nature of providing services for consideration allowed by the MOA.

12. The expenditure as justified on behalf of the assessee also requires consideration within the scope of the powers and duties of the members and if the same were within the scope of the objectives of the society.

13. Thus the Bench considers it justified to let the issues examined by Ld. CIT(E), to be restored to the files of Ld. CIT(E) for examination of these issues, on the basis of aforesaid observation of the Bench and after giving an opportunity to the assessee to place on record amended Memorandum of Association or any other information, further sought by the Ld. CIT(E). **The grounds and appeal stands allowed for statistical purposes.**

**Order pronounced in the open court on 25<sup>th</sup> July, 2023.**

**Sd/-**

**(N.K.BILLAIYA)  
ACCOUNTANT MEMBER**

**Sd/-**

**(ANUBHAV SHARMA)  
JUDICIAL MEMBER**

*Date:- 25<sup>th</sup> .07.2023*

*\*Binita, SR.P.S\**

Copy forwarded to:

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

ASSISTANT REGISTRAR  
ITAT, NEW DELHI