

IN THE INCOME TAX APPELLATE TRIBUNAL, DELHI 'G' BENCH,
NEW DELHI

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND
SHRI YOGESH KUMAR U.S, JUDICIAL MEMBER

ITA No. 534/DEL/2023 [A.Y 2017-18]

Sahachari Foundation
33, 2nd Floor, Mayur Vihar
Phase - I, Pratap Nagar,
New Delhi

Vs.

The I.T.O
Ward -2(1)
Exemption
New Delhi

PAN : AAITS 4213 M

(Applicant)

(Respondent)

Appellant by : Shri K.V.S.R. Krishana, Adv

Department By : Shri H.K. Choudhary, CIT- DR

Date of Hearing : 10.08.2023

Date of Pronouncement : 17.08.2023

ORDER

PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-

This appeal by the assessee is preferred against the order of the CIT(E), Delhi dated 24.03.2022 framed u/s 263 of the Income-tax Act, 1961 [the Act, for short] pertaining to Assessment Year 2017-18.

2. The sum and substance of the grievance of the assessee is that the CIT(E) erred in law in assuming jurisdiction u/s 263 of the Act and further erred in holding the assessment order dated 27.12.2019 passed by the Assessing Officer is not only erroneous but also prejudicial to the interest of the Revenue.

3. The appeal is barred by limitation. Reasons for delay in appeal duly considered and delay is condoned.

3. Representatives of both the sides were heard at length. Case records carefully perused. Relevant documentary evidence brought on record duly considered in light of Rule 18(6) of the ITAT Rules.

4. Briefly stated, the facts of the case are that the assessee-society is registered u/s 12 AA of the Act, with of the following objects:

“(i) To help the community and nation at large and also to undertake activities relating to organization of welfare, art, cultural and social activities and involvement in other programmes of local/national/international significance.

(ii) To encourage people to be self reliant and to undertake and assist projects, programmes and schemes for upliftment of the women and children of the nation in educational and social aspects;

(iii) To provide relief and benefit in such form and manner as the Trustees may in their absolute discretion deem proper to the inhabitants of India or any other country displaced and distressed as a result of natural or other calamities such as earthquakes, tornado, famine, floods, fire epidemics, war, civil war or any other calamities and rehabilitate their families and dependents;

(iv) To grant relief on the occasion of earthquakes, floods, famine and other occasions of calamities and general distress and to give assistance and donations to other - institutions or Institutions doing similar relief works;

(v) To establish, support, maintain or grant aid to schools, colleges and educational institutions for public benefit which impart education and promote study of Culture and Languages and to libraries, reading rooms, museums, sports & cultural academies or other institutions, established for public for the promotion of culture and diffusion and spread of arts, science and other branches of knowledge or for the collection of works of art,

natural history, or for the encouragement of economical and scientific research, inventions and designs for public benefit;

(vi) To establish, support, maintain or grant aid to hospitals, medical schools and colleges, nursing houses, babies or old age homes, hospices, orphanage, gaushala, animal welfare and such other institutions or societies for public benefit as the Trustees may think fit and proper for the purpose of relief or aid to poor or needy and deserving persons;

(vii) To establish, maintain and grant scholarships, prizes, stipends and grants-in-aid and loans with or without interest and with or without security 'as the Trustees may deem proper to poor or deserving persons;

(viii) To establish, support, maintain and aid boarding houses and hostels and other institutions for boarding, lodging and needy and deserving persons;

(ix) To establish, support and maintain and aid alms houses and other public charitable institutions and also to open and maintain rest houses, parks, recreation grounds and public amenities for public benefit and to supply water and electricity either from or at concessional rates for public benefits;

(x) To establish, maintain and support homes for poor or needy widows, destitutes, orphans or old or aged persons or otherwise to support them and to do all acts, deeds and things for their relief and uplift;

(xi) To establish and assist any programme, scheme or project having the object of enabling the poor and the needy through diffusion of useful knowledge to earn their livelihood by giving them vocational and professional training and rehabilitating them;"

5. Return for the year under consideration was filed electronically on 30.10.2017 declaring NIL income after claiming of application of income u/s 11 of the Act. Return was selected for scrutiny assessment and assessment was completed accepting the returned income of the assessee vide order dated 27.12.2019. Assuming jurisdiction u/s 263 of the Act, the CIT(E) issued a show cause notice to the assessee, which reads as under:



GOVERNMENT OF INDIA
MINISTRY OF FINANCE
INCOME TAX DEPARTMENT
CIT(EXEMPTION), DELHI

To,
SAHACHARI FOUNDATION
33,2ND FLOOR MAYUR VIHAR PHASE-I,
PRATAP NAGAR
DELHI 110091 , Delhi
India

PAN/TAN:
AAITS4213M

AY:
2017-18

DIN & Notice No :
ITBA/REV/F/REV1/2021-
22/1040907136(1)

Dated:
16/03/2022

NOTICE FOR THE HEARING

M/s/Mr/Ms

Subject: Notice for Hearing in respect of Revision proceedings u/s 263 of the **THE INCOME TAX ACT, 1961 – Assessment Year 2017-18.**

In this regard, a hearing in the matter is fixed on **22/03/2022 at 03:30 PM**. You are requested to attend in person or through an authorized representative to submit your representation, if any alongwith supporting documents/information in support of the issues involved (as mentioned below). If you wish that the Revision proceeding be concluded on the basis of your written submissions/representations filed in this office, on or before the said due date, then your personal attendance is not required. You also have the option to file your submission from the e-filing portal using the link: incometaxindiaefiling.gov.in

Please refer to the subject cited above.

2. Income tax return for A.Y. 2017-18 declaring Nil income was e-filed by the assessee. The case was selected for complete scrutiny. A Notice u/s 143(2) was issued on 16.08.2018 and the case was completed u/s 143(3) on 27.12.2019 at returned income.

3.1 On perusal of the assessment records, it is noticed that during the year under consideration, as per the details of amount accumulated/set apart within the meaning of section 11(2) declared in schedule I of ITR 7 for A.Y. 2017-18, it is noticed that amounts of Rs.3,50,000/-, Rs.9,00,000/-, Rs.3,00,000/- & Rs.25,50,000/- totaling to Rs.41,00,000/- accumulated/set apart within the meaning of section 11(2) during F.Y 2015-16 has been utilized/consumed as donation given to four other trusts. Amount of Rs.3,50,000/- was given to Life Trust India on 21.04.2016, Rs.9,00,000/- to ISKCON Food Relief Foundation on 20.02.2017, Rs.3,00,000/- to Population First on 06.09.2016 & Rs.25,50,000/- to ApneAap

Note: If digitally signed, the date of digital signature may be taken as date of document.
CIVIC CENTRE, MINTO ROAD, MINTO ROAD, NEW DELHI, NEW DELHI, Delhi, 110002
Email: DELHI.CIT.EXMP@INCOMETAX.GOV.IN, Office Phone:011-23234643

Women's Collective (AAWC)-Victoria on 06.01.2017.

3.2 Further, on perusal of Schedule-I (Details of amounts accumulated/set apart within the meaning of section 11(2) of ITR filed for A.Y. 2017-18, it is revealed that all the above amounts have been accumulated for the purpose of "1. Welfare of Women & Children & 2. Medical & Educational."

3.3 As per Explanation to section 11(2) of the Act, any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the Explanation to that sub-section, which is not applied, but is accumulated or set apart, to any trust or institution registered under section 12AA or to any fund or institution or trust of any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause(v) or sub-clause(vi) or sub-clause(via) of clause (23C) of section 10, shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter.

3.4 Further, as per section 11(3) of the Act states that any income referred to in sub-section (2) which is credited or paid to any trust or any trust or institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause(vi) or sub-clause(via) of clause (23C) of section 10 shall be deemed to be the income of such person of the previous year in which it is so applied or ceases to be so accumulated or set apart or ceases to remain so invested or deposited or credited or paid, as the case may be, or of the previous year immediately following the expiry of the period aforesaid.

3.5 As per Explanation to section 11(2) of the Income Tax Act, 1961 and section 11(3)(d) of the Income Tax Act, 1961 discussed above, donations given out of accumulated funds u/s 11(2) of the Act of earlier previous years are not allowable as application of income for charitable or religious purposes and the same shall be deemed to be income of the assessee of the previous year 2016-17.

3.6 In view of the above, it is clear that amount of Rs.41,00,000/- utilized for purpose of giving donation to the NGOs out of accumulated income u/s 11(2) of the Act, mentioned supra, should have been disallowed and liable to be added to the income for A.Y. 2017-18.

4. Therefore, I am of the opinion that the assessment order u/s.143(3) of the Income Tax Act 1961 for A.Y. 2017-18 dated 27.12.2019 is erroneous in so far as it is prejudicial to the interest of the revenue and therefore, you are hereby given an opportunity of being heard to explain as to why the order passed by the AO should not be considered to be erroneous in so far as it is prejudicial to the interest of the revenue and why an order enhancing or modifying the assessment or cancelling the assessment or directing fresh assessment should not be passed in terms of provision of section 263 of the I.T. Act, 1961.

5. You may produce any documents and other evidences, if any, in support of your claim on or before 22.03.2022. The date of hearing in your case has been fixed for **22.03.2022 at 3:30 P.M.** at my office, in case you may like to avail opportunity of being heard personally.

RAMAN KANT GARG
CIT(EXEMPTION), DELHI

(In case the document is digitally signed please refer Digital Signature at the bottom of the page)

6. It is the say of the Id. counsel for the assessee that during the assessment proceedings itself, the issues raised by the CIT(E) have been explained and considered by the Assessing Officer. Referring to the relevant para of the assessment order, the Id. counsel for the assessee read the relevant part and vehemently stated that what the CIT(E) is considering as donation, is not donation, but contribution in tandem with the deserving NGOs whose aims and objects matches with the objects of the trust and in collaboration with them, the said contribution was made,

which the Id. CIT(E) is considering as donation, hit by the provisions of section 11(2) of the Act.

7. The Id. counsel for the assessee vehemently stated that the assessment order is neither erroneous nor prejudicial to the interest of the revenue and, therefore, the assumption of jurisdiction u/s 263 of the Act by the CIT(E) is bad in law. Reliance was placed on certain judicial decisions.

8. Per contra, the Id. DR strongly supported the findings of the CIT(E). It is the say of the Id. DR that any contribution to deserving NGOs who, even if working in collaboration with the assessee is nothing but donation and therefore, there was an error in law in the assessment order dated 27.12.2019 framed under section 143(3) of the Act, making it erroneous and prejudicial to the interest of the revenue.

9. We have given thoughtful consideration to the orders of the authorities below. The assessee trust was formed on 28.04.2009. The main activities of the trust is to help the poor children by providing education, medical treatment to help the community and nation at large

and to undertake activities relating organization of welfare, art, cultural and social activities and involvement in other programmes of local/national and international significance etc and many other similar charitable objects.

10. It is not in dispute that during the course of assessment proceedings itself, the assessee was asked to provide details of expenditure out of corpus fund of Rs.41 lakhs, and it is also not in dispute that on perusal of the details, submitted by the assessee, the Assessing Officer found that the assessee has donated Rs.3.50 lakhs to Life Trust of India. Rs. 9 lakhs to ISKCON Food Relief Foundation, Rs.3 lakhs to Population First and Rs. 25 lakhs to ApneAap Women's Collective - Victoria.

11. It is also true that the assessee was asked to explain why the donations should not be disallowed in light of provisions of section 11(2) of the Act. The assessee explained that with deserving NGOs whose aims and objects that matches with objects of the trust, applies accumulated funds on the activities of the general public, utilities under the control and monitoring of the trustees.

12. This reply of the assessee was accepted by the Assessing Officer.

13. Before proceeding further, let us see the provisions of section 11(2) of the Act, which read as under:

"Any amount credited or paid, out of income referred to in clause (a) or clause (b) of sub-section (1), read with the *Explanation* to that sub-section, which is not applied, but is accumulated or set apart, to any trust or Institution registered under section 12AA or to any fund or institution or trust or any university or other educational institution or any hospital or other medical institution referred to in sub-clause (iv) or sub-clause (v) or sub-clause (VI) or sub-clause (via) of clause (23C) of section 10 shall not be treated as application of income for charitable or religious purposes, either during the period of accumulation or thereafter."

14. The bone of contention is the donations made to Life Trust of India, ISKCON Food Relief Foundation, Population First and ApneAap Women's Collective - Victoria - Whether these donations can be considered as not to be donations as contended by the Id counsel and whether such donations can be considered as contributions to collaborators, who are working in tandem with the assessee.

15. At the outset, we fail to understand any difference between contribution and donation. Admittedly, the assessee has accepted that the amounts given to above persons are donations out of the accumulated funds of the assessee. Therefore, there should not be any dispute in so far as applicability of provisions of Section 11(2) of the Act are concerned.

16. There is no evidence brought on record by the assessee neither before the lower authorities nor before us to demonstrate how the alleged contribution was accounted for by the recipients and what treatment they have given in their books of account.

17. Provisions of section 11(3) are very clear wherein it has been mentioned that donations given out of accumulated funds u/s 11(2) of the Act of earlier previous years are not allowable as application of income for charitable or religious purposes and the same shall be deemed to be income of the assessee. Therefore, in our considered opinion, an error has crept in the assessment order dated 27.12.2019, framed u/s 143(3) of the Act which has made the assessment order erroneous in law. Since there is a revenue leakage in so far as utilization of corpus fund of Rs. 41

lakhs, the assessment order is also prejudicial to the interest of the revenue.

18. Considering the facts in totality, we do not find any error or infirmity in the assumption of jurisdiction by the CIT(E) u/s 263 of the Act. The appeal of the assessee is dismissed.

19. Before parting, the learned counsel has relied upon several judicial decisions, but none of the decision is on the facts of the case in hand, and, therefore, clearly distinguishable.

20. In the result, the appeal of the assessee in ITA No. 534/DEL/2023 is dismissed.

The order is pronounced in the open court on 17.08.2023.

Sd/-

Sd/-

**[YOGESH KUMAR U.S]
JUDICIAL MEMBER**

**[N.K. BILLAIYA]
ACCOUNTANT MEMBER**

Dated: 17th August, 2023.

VL/

1. Appellant
2. Respondent
3. CIT
4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi

Date of dictation	
Date on which the typed draft is placed before the dictating Member	
Date on which the typed draft is placed before the Other Member	
Date on which the approved draft comes to the Sr.PS/PS	
Date on which the fair order is placed before the Dictating Member for pronouncement	
Date on which the fair order comes back to the Sr.PS/PS	
Date on which the final order is uploaded on the website of ITAT	
Date on which the file goes to the Bench Clerk	
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the Order	