

**IN THE INCOME TAX APPELLATE TRIBUNAL  
RAJKOT BENCH, RAJKOT  
(Conducted through E-Court at Ahmedabad)**

**BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &  
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.116/Rjt/2021  
(Assessment Year: 2015-16)

Shri Osham Jain Temple Trust, At: Patanav, Dist: Dhoraji, Rajkot, Gujarat-360410	Vs.	The Commissioner of Income Tax (Exemptions), Ahmedabad
[PAN No.AAATS9437P]		
<b>(Appellant)</b>	..	<b>(Respondent)</b>

<b>Appellant by :</b>	Shri Darshak Thakkar, A.R.
<b>Respondent by:</b>	Shri Shramdeep Sinha, CIT DR

<b>Date of Hearing</b>	10.08.2023
<b>Date of Pronouncement</b>	23.08.2023

ORDER

**PER SIDDHARTHA NAUTIYAL, JM:**

This appeal has been filed by the assessee against the order passed by the Ld. Commissioner of Income Tax(Exemptions), (in short “Ld. CIT(E)”), Ahmedabad in Order No. CIT(E)/AHD/263/SOJTT/2019-20 vide order dated 26.02.2020 passed for Assessment Year 2015-16.

2. The assessee has taken the following grounds of appeals:-

*“1. That the order u/s 263 of the Income Tax Act, 1961 passed by the Honorable Commissioner of Income Tax (Exemptions), Ahmedabad is invalid and dead in law.*

*2. That the learned Commissioner of Income Tax (Exemptions), Ahmedabad ought to have allowed the claim of corpus fund of Rs.*

*26615497/- u/s 11(1)(d) of the Income Tax Act, 1961 for A.Y. 2015-16 considering the fact that during the course of original assessment proceedings the issue of corpus donation has been examined by the learned Assessing Officer.*

*3. That the learned Commissioner of Income Tax (Exemptions), Ahmedabad ought to have accepted the original assessment carried out by the learned Assessing Officer.*

*4. The appellant craves leave to add and / or to amend and / or to delete the ground of appeal upto and at the time of hearing of appeal.”*

3. The brief facts of the case are that the assessee trust filed its return of income for A.Y. 2015-16 on 29.03.2016 declaring total income at Rs. NIL after claiming exemption under Section 11 of the Income Tax Act, 1961 (“Act”). The case of the assessee was selected for complete scrutiny with the reason to examine open “large corpus donation received by the assessee trust” and thereafter assessment was completed under Section 143(3) of the Act on 02.05.2017 determining total income at Rs. NIL by accepting the returned income as assessed income.

4. Thereafter, 263 proceedings were initiated in which the Commissioner of Income Tax (Exemptions), Ahmedabad observed that Assessing Officer, in the assessment proceedings had allowed deduction under Section 11(1)(d) of the Act without proper verification of identity, genuineness and mode of payment of corpus donation amounting to Rs. 2,66,15,497/- during the course of assessment proceedings. Accordingly, the Assessment Order was set-aside on the ground that in the assessment

proceedings, the Assessing Officer completed the assessment without examining the issue of corpus donation and allowing deduction under Section 11(1)(d) of the Act.

5. The assessee is in appeal before us against the aforesaid order passed by Ld. CIT(E) holding that the assessment order is erroneous and prejudicial to the interest of the Revenue. At the outset, we observe that the present appeal is time barred by 513 days. Before us the Counsel for the assessee submitted that the date of service of order sought to be appealed against was on 04.03.2020 and appeal was filed by the assessee on 28.09.2021. Accordingly, the Counsel for the assessee submitted that the appeal of the assessee was filing within the Covid Pandemic period and hence the same was not time barred. We note that the assessee company received the order of Ld. CIT(Appeals) on 12.02.2020. However, in view of the nation-wide lockdown from 24<sup>th</sup> March 2020, the Apex Court in **Cognizance for Extension of Limitation, In re[2021] 127 [taxmann.com](http://taxmann.com) 72 (SC)**, took *suo motu* cognizance of the situation arising out of the challenge faced by the country on account of COVID-19 Virus and resultant difficulties that could be faced by the litigants across the country. Consequently, it was directed vide order dated 23.03.2020 that the period of limitation in filing petitions/applications/suits/appeals/all other proceedings, irrespective of the period of limitation prescribed under the general or special laws, shall stand extended with effect from 15.03.2020 till further orders. The *suo motu* proceedings were, disposed of issuing the directions as to in computing the period of limitation for any suit, appeal, application or proceeding, the period from 15.03.2020 till 14.03.2021 shall

stand excluded. Consequently, the balance period of limitation remaining as on 15.03.2020, if any, shall become available with effect from 15.03.2021. Thereafter, in the case of **Cognizance for Extension of Limitation, In re [2022] 134 [taxmann.com](https://www.taxmann.com) 307 (SC)**, held that in view of spread of new variant of COVID-19 and drastic surge in number of COVID cases across the country, period from 15.03.2020 till 28.02.2022 shall stand excluded for purpose of limitation as may be prescribed under any general or special law in respect of all judicial or quasi-judicial proceedings. in cases where limitation would have expired during period between 15.03.2020 till 28.02.2022, notwithstanding actual balance period of limitation remaining, all persons shall have a limitation period of 90 days from 01.03.2022; in event actual balance period of limitation remaining, with effect from 01.03.2022, is greater than 90 days, that longer period shall apply In view of the above, since the delay of 513 days in filing appeal is falling within the Covid pandemic period, the delay is hereby being condoned.

6. Before us, the Counsel for the assessee submitted that the sole reason for opening the case was to examine the large corpus donation received by the Trust during the impugned assessment year. Further, it was submitted that the Assessing Officer called for justification for large corpus donation on 23.03.2017 and reply of the assessee was also kept on record. Further, the Counsel for the assessee drew our attention to Page 2 of the Assessment Order wherein the Assessing Officer made a specific observation that justification for corpus donation and bills for fixed assets were called for during the course of assessment proceedings and the reply of the assessee was kept on record. Accordingly, it was submitted that this issue was

examined in detailed during the course of assessment proceedings, as is evident from the contents of the assessment order.

7. In response, Ld. D.R. relied on the observations made by the CIT(E) in the 263 order.

8. We have heard the rival contentions and perused the material on record. We observe that from the assessment records, it is evident that the case of the assessee was selected for scrutiny under CASS to examine the “large corpus donation received by the assessee” trust during the year under consideration. Further, the contents of the assessment order also specifically point out to the fact that this issue was examined by the Assessing Officer during the course of assessment proceedings. It would be pertinent to note reproduce the relevant extracts of the assessment order for reference:-

*“2. In response to the said notice Shri Hemal Doshi, C.A. & AR and duly authorized representative of the assessee trust attended and filed the submission on requisite details as called for, which are placed on records. The assessee trust is registered as trust with the Charity Commissioner and is engaged in running Jain Temple and in Public Charitable Activities without for charity and religious purpose without any difference of cast and creed. **The reason for scrutiny is large corpus donation received by the trust during the year. Corpus Donation Rs. 2,66,15,497/- is reflected in the balance sheet. Justification for Corpus Donation called for on 23/03/2017 provided and kept on record.** The exemption u/s. 12A(a) registration vide C.I.T.*

R./65-0-3/91-92 dated 20/11/1991 has been furnished by the AR in view of the claim made by the trust.

**Audit report, Form No. 10B, Cash book, Bank book, I edger of expenses provided verified on test check basis kept on record. No adverse inference has been drawn and income of the assessee accepted as such.**

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Office note:

**1. The case was selected for scrutiny through CASS. The reason for scrutiny is large corpus donation received by the trust during the year. Corpus Donation Rs.2,66,15,497/- is reflected in the balance sheet. Justification for Corpus Donation & Bills of the fix asset called for on 23/03/2017 provided and kept on record. Cash book, Bank book, Audit report, Form No. 10B, Ledger of expenses provided verified on test check basis kept on record. No adverse inference has been drawn and income of the assessee accepted as such.**”

9. Accordingly, we are in agreement with the arguments put forth by the Counsel for the assessee that this issue was examined by the Assessing Officer during the course of assessment proceedings. However, we also observe that despite several opportunities of hearing, none appeared on behalf of the assessee before the CIT(E) during the course of 263 proceedings. Before us, the Counsel for the assessee has not been able to give any justifiable reason for non-appearance by the assessee in the 263 proceedings before Ld. CIT(E), despite the assessee having been granted a large number of opportunities to cause appearance. Accordingly, looking

into the totality of the facts in the instant case, the matter is being restored to the file of the CIT(E) for denovo consideration after giving due opportunity of hearing to the assessee. Before us, the Counsel for the assessee has assured us that the assessee trust shall duly comply with the notices issued by CIT(E) and file necessary details as called for in 263 proceedings. In the result, the matter is being set-aside to the file of the CIT(E) with the aforesaid directions.

10. In the result, the appeal of the assessee is allowed for statistical purposes.

**This Order pronounced in Open Court on**

**23/08/2023**

**Sd/-**  
**(WASEEM AHMED)**  
**ACCOUNTANT MEMBER**

Ahmedabad; Dated 23/08/2023

TANMAY, Sr. PS

**TRUE COPY**

**आदेश की प्रतिलिपि अद्येषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, राजकोट / DR, ITAT, Rajkot
6. गार्ड फाईल / Guard file.

**Sd/-**  
**(SIDDHARTHA NAUTIYAL)**  
**JUDICIAL MEMBER**

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार Dy./Asstt.Registrar)  
आयकर अपीलीय अधिकरण, राजकोट / ITAT, Rajkot