

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH (SMC), SURAT  
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER

ITA No. 213/Srt/2022 (Assessment Year 2014-15)

*(Physical hearing)*

Amalsad Vibhag Kelvani Mandal, C/o-H.D.S.M. High School, Amalsad, Dist.-Navsari-396310. <b>PAN No. AAATA 3923 C</b>	Vs.	I.T.O., Exemption Ward, Room No. 105, Anavil Business Centre, Adajan Hazira Road, Adajan, Surat.
Appellant/ assessee		Respondent/ revenue

Assessee represented by	Shri Akshay Modi, C.A.
Department represented by	Shri SM Keshkamat, CIT-DR
Date of hearing	13/09/2023
Date of pronouncement	31/10/2023

**Order under Section 254(1) of Income Tax Act**

**PER: PAWAN SINGH, JUDICIAL MEMBER:**

1. This appeal by the assessee is directed against the order of National Faceless Appeal Centre, Delhi (NFAC)/learned Commissioner of Income Tax (Appeals) (in short, the Id. CIT(A)) dated 25/05/2022 for the Assessment Year (AY) 2014-15. The assessee has raised following grounds of appeal:

- “1. On the facts and in the circumstances of the case as well in law, the learned CIT(Appeals) has erred in confirming the AO’s action in not allowing the statutory deduction u/s 24(a) of the Act claimed for the amount of Rs. 1,09,069/- for the rent income earned from the properties of the trust and hence, not justified.*
- 2. On the facts and in the circumstances of the case as well in law, the learned CIT(Appeals) has erred in confirming the AO’s action in making disallowance of Rs. 2,86,530/- being the penalty compensatory in nature under the FCRA and hence, not justified.*
- 3. On the facts and in the circumstances of the case as well in law, the learned CIT(Appeals) has erred in confirming the AO’s action in making the addition of Rs. 18,96,725/- on account of the voluntary contributions of the donors made*

*with a specific direction that they shall form part of the corpus of the trust, treating it as the income, without considering in the right, lawful and proper perspectives, the claim of the appellant trust for such specific donations eligible for exemption u/s 11(1)(d) of the Act and hence, not justified.*

- 4. On the facts and in the circumstances of the case as well in law, the learned CIT(Appeals) has erred in confirming the AO's action in making addition of Rs. 16,73,830/- treating the deposits of amount in cash in the regular bank account of the appellant trust's educational branch namely Amalsad Mandal Prathmik Vibhag and hence, both the lower authorities have grievously erred in treating the accounted income of the trust as unexplained cash credit, arbitrarily ignoring the detailed audited statements of educational branch of the trust from the separate books of accounts furnished through various written submissions, being without jurisdiction, bad in law, illegal, perverse, arbitrary conjectural, capricious and hence, deserves to be deleted.*
  - 4. Your appellant further reserves its right to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal."*
2. Rival submissions of both the parties have been heard and record

perused. Ground No. 1 of the appeal relates to deduction under Section 24(a) of the Income Tax Act, 1961 (in short, the Act) at the rate of standard deduction of 30% of rent receipt. The Assessing officer was of the view that the assessee is a Trust registered under Section 12A and its income is subject to the provisions of Section 11, 12 and 13 of the Act. On the basis of such observation, the Assessing Officer issued show cause notice to the assessee to justify the claim of standard deduction under Section 24(a) of the Act. The assessee filed its reply dated 29/11/2016 and stated that as per provisions of the Act, the assessee is entitled for standard deduction @ 30% on the rent receipt of Rs. 3,72,479/-. The reply of assessee was not accepted by the Assessing Officer. The Assessing officer held that Section 11, 12 and 13 are special provisions, though, deals with the benefit of tax exemption. These

provisions override the general provisions of Income Tax Act and not required the assessee to follow normal accounting or commercial principle to determine income. The basic concept of this Section is gross receipt and its application, thus not entitled for standard deduction under Section 24(a) of the Act. On appeal before the Id. CIT(A), the action of Assessing Officer was confirmed. The Id. CIT(A) while confirming the action of Assessing Officer, following the decision of Mumbai Tribunal in the case of Nandlal Tolani Charitable Vs ITO(E) ITA No. 106/Mum/2016. Further aggrieved, the assessee is in appeal before the Tribunal.

3. I have heard the submissions of the learned Authorised Representative (Id. AR) of the assessee and the learned Commissioner of Income Tax- Departmental Representative (Id. CIT-DR) for the revenue. The Id. AR of the assessee submits that this ground of appeal is covered in favour of assessee by the decision of Mumbai Benches of Tribunal in case of ADIT(E)(2) Vs Sri Sathya Sai Trust in ITA No. 7350/Mum/2011 order dated 25/03/2013.
4. On the other hand, the Id. CIT-DR for the revenue submits that the Id. CIT(A) relied upon the latest decision of Mumbai Tribunal in Nandlal Tolani Charitable Vs ITO(E) (supra) wherein the general provisions vis a vis, the special provision for trust prescribed under Sections 11, 12 and 13 were examined and the ratio of said decision is directly applicable on the facts of the present case. In ADIT (E)(2) Vs Sri Sathya Sai Trust

(supra), the Bench has not considered the provision of Sections 11, 12 and 13 of the Act.

5. I have considered the submissions of both the parties and have gone through the orders of the lower authorities carefully. I find that the Assessing Officer disallowed standard deduction by taking a view that income of assessee is subject to application of Sections 11, 12 and 13 of the Act which has overriding effect to the general provisions of Income Tax Act. The Id. CIT(A) confirmed the action of Assessing Officer by approving the view of Assessing Officer. The Id. CIT(A) also followed the decision of Delhi Tribunal in Improvement Trust, Fatehabad Vs ITO(Exemptions) wherein the decision of Mumbai Tribunal in Nandlal Tolani Charitable Vs ITO(E) (supra) was followed. I find that in the aforesaid decision, the Division Bench of Tribunal held that deduction @ 30% being standard deduction under Section 24(a) cannot be allowed as the income of assessee is subject to application under Section 11 and 13 of the Act. Section 11, the income of trust is exempt. Thus, respectfully following the decision of Division Bench of Delhi Tribunal in the case of Improvement Trust Fatehabad Vs ITO(E) (supra) and Nandlal Tolani Charitable Vs ITO(E) (supra), I do not find any merit in this ground of appeal raised by the assessee. So far as reliance in the case of ADIT(E)(2) Vs Sri Sathya Sai Trust (supra) by the Id. AR of the assessee, I find that the Tribunal in the said case, while granting relief to the assessee was not considered and discussed the applicability of

Section 11, 12 and 13 of the Act, which are special provisions for computation of income of trust. In the result, ground No. 1 of the appeal is dismissed.

6. Ground No. 2 of the appeal relates to disallowance of Rs. 2,86,530/- paid to FCRA. Facts relating to such disallowance are that during the assessment, the Assessing Officer noted that the assessee has claimed expenses of Rs. 2,86,530/- under the head "Education Expenses". The assessee has not claimed such expenses as application of income for the object of trust. On further perusal of details, the Assessing officer found that the penalty was paid for violation of provision of Foreign Contribution (Regulation) Act, 2010. The Assessing Officer issued show cause notice as to why penalty expenses should not be disallowed which was levied for the acceptance of foreign donations. The assessee filed its reply dated 26/12/2016 and explained that such penalty was levied on acceptance of foreign donation. Such donation was received in earlier years for building fund. Such expenses were claimed as educational expenses i.e. capital in nature. Reply of assessee was not accepted by the Assessing Officer by taking a view that such penalty was levied by the Ministry of Foreign Affairs, FCRA Division, New Delhi for infringement of law and same cannot be said to have been incurred for object of trust and thus not allowable. The penalty was paid for violation of Foreign Contribution (Regulation) Act and cannot be claimed as income for object of trust. Before the Id. CIT(A), the assessee made similar

submission that the expenses incurred for payment of penalty is allowable expenses which are not penal in nature. The Id CIT(A) upheld the order of assessing officer by taking view that penalty was levied by Ministry of Home Affairs (MHA) for infringement of law, thus, the same is not allowable. Further aggrieved the assessee has filed present appeal before Tribunal.

7. The Id AR for the assessee submits that penalty levied by MHA was not in the nature of fine, rather it was levied for accepting donation in breach of violation of FCRA. The penalty levied by MHA is compensatory in nature and allowable expenditure. Such penalty was paid as the assessee was not having permission of Ministry of Home Affairs to receive such funds. To support his submission, the Id. AR of the assessee relied upon the decision of Chandigarh Benches of Tribunal in Master Capital Services Ltd. Vs DCIT (2008) 23 SOT 60 (Chd).
8. On the other hand, the Id. CIT-DR for the revenue supported the order of Assessing Officer and Id. CIT(A). The Id. CIT-DR submits that the penalty was paid for infringement of law.
9. In short rejoinder, the Id. AR of the assessee submits that the penalty was not paid for any offence rather it was paid for regularization of fund received from foreign remittance.
10. I have considered the submissions of both the parties and considered the orders of lower authorities. As recorded above, the lower authorities disallowed the claim by taking a view that the expenses were incurred

by way of penalty for breach of law which cannot be considered as incurred wholly and exclusively for the purpose of business. Before me, the Id. AR of the assessee vehemently submitted that such expenses were incurred wholly and exclusively for the purpose of regularization of foreign remittance. To support his submission, the Id. AR of the assessee relied upon the decision of Chandigarh Tribunal in Master Capital Services Ltd. Vs DCIT (supra) wherein it was held that "wherein some violation of conditions prescribed by National Stock Exchange but such violation occurred in the regular course of business which cannot be considered as infringement of any statutory law, so the expenses incurred by the assessee in regular course of business were allowable. Considering the similar ratio, I do not find that the assessee has incurred expenses for regularization of foreign remittance, thus the same is allowed for the purpose of business. In the result, ground No. 2 of the appeal is allowed.

11. Ground No. 3 of the appeal relates to addition of Rs. 18,96,725/- received on account of foreign contribution. The Assessing Officer made addition by taking a view that the assessee has not shown the donation either in the income and expenditure account or in the computation of total income. The assessee has not furnished FCRA bank account for the relevant period, thus, the assessee was issued show cause notice. The assessee filed its reply and submitted that donation was received in earlier years and was treated as capital in

nature for construction of building. The reply of assessee was not accepted by the Assessing Officer by taking a view that assessee is not showing the donation received for specific expenditure nor shown in the computation of income and treated the foreign contribution as income of assessee. The Id. CIT(A) confirmed the action of Assessing Officer by holding that there is discrepancy in the statement of the assessee. The assessee is claiming to have received the donation for earlier years but as per letters were given to FCRA for registration of foreign contribution, the assessee admitted that they have received amount in FY 2013-14. The Id CIT(A) further noted that as per the submissions of the assessee the impugned amount was received in earlier years in FY 1997-98 and 198-99 but as the letter sent by the assessee to FCRA indicate that such amount was received in FY 2013-14. Thus, Id CIT(A) on recording such discrepancies confirmed the action of assessing officer. Further aggrieved, the assessee has filed appeal before tribunal.

12. The Id AR for the assessee submits that in fact such funds were not received in the financial year 2013-14, rather it was received in FY 1997-98 and 198-99. The details of donors with the amount of donation is filed as per page 81 of paper book. As no funds were received in the current financial year, so no additions can be made against the assessee in the assessment year under consideration. So far as observation of Id CIT(A) is concerned that the assessee admitted

that they have received amount in FY 2013-14, is incorrect and may be due to inadvertent mistake.

13. On the other hand, the Id CIT-DR for the revenue supported the finding of Id CIT(A).
14. I have considered the rival submissions of the parties and perused the record carefully. If find that Assessing Officer made addition of Rs. 18,96,725/- by taking a view that assessee is not showing the donation received for specific expenditure nor shown in the computation of income and treated the foreign contribution as income of assessee. The Id. CIT(A) confirmed the action of Assessing Officer by holding that there is discrepancy in the statement of the assessee. The assessee is claiming to have received the donation for earlier years but as per letters were given to FCRA for registration of foreign contribution, the assessee admitted that they have received amount in FY 2013-14. Before me, the Id AR for the assessee vehemently argued that no funds were received in impugned assessment year, so no addition can be made and has shown the details of such contributions received in this regards. Thus, considering the contention of both the parties I am of the view that if the contribution is not received in the assessment year under consideration no addition is warranted, therefore I am in principles agreed that that no such addition be sustained against the assessee. As there is some discrepancy in explaining facts before Id CIT(A), so I direct the assessing officer to

verify the fact and allow relief to the assessee. In the result, this ground of appeal is allowed for statistical purpose.

15. Ground No. 4 relates to the additions of Rs. 16,73,830/- on account of deposits in bank. The assessing officer made additions by taking view that assessee made deposit in Central Bank of India. The details furnished by the assessee shows that bank account is in the name of Amalsad Mandal Prathmik Vibhag having PAN of assessee. Then perusal of Income & expenditure accounts shows that the assessee has shown rent income, SB interest income FD Income and donation and in response to show cause notice no proper explanation was given by the assessee. The assessee furnished information through couriers only in Tapal, so such deposits remained unexplained. Before Id CIT(A) the assessee explained that source of deposits was from tuition fee which was received in cash and were deposited on various dates. The copy of bank account was filed. The Id CIT(A) confirmed the additions by taking view that bank account in Central Bank of India is not reflected in schedule –H of P & L, which is extracted in the order.
16. The Id AR for the assessee submits that the assessing officer made addition without appreciating the facts and only on the basis of AIR information. The assessing officer treated branch of assessee namely Amalsad Mandal Prathmik Vibhag as separate and independent entity without appreciation the real fact and only on the basis of AIR information. The whole of the amount was received on account of

- tuition fee and deposited throughout of the year. The bank account is duly disclosed to the department. The Id CIT(A) confirmed the action of assessing officer by relying and referring the part of profit and loss account of assessee-trust. The schedule –H, which is considered by the Id CIT(A) is not related to the school. The assessee has placed on record the audit report of Amalsad Mandal Prathmik Vibhag and the copy of bank statement. The credit in the bank consist of tuition fee of Rs. 15,76,960/-, term fee of Rs. 93,900/- admission fee of Rs. 1,100/- and Rs 1870/- on account of recovery, aggregating of Rs. 16,73,830/- . Thus, entire credit in the bank is explained. The books of accounts are duly audited. There is no unexplained credit in such bank account.
17. On the other hand, the Id DR for the revenue supported the order of lower authorities.
18. I have considered the contention of both the parties and perused the orders of lower authorities carefully. I have also seen the various evidences filed by the assessee. I find that the assessing officer made addition on account of deposits in the bank by taking view that the assessee not furnished required details to him rather reply was sent through courier. The Id CIT(A) confirmed the action of assessing officer by relying of the Schedule-H of profit and loss account of the assessee-trust. We find that the assessee has furnished complete bifurcation of all the credit in the impugned bank account with Central bank of India. The assessee has filed complete statement of bank account as well as

the ledger of fees of student. The books of the assessee are duly audited. The bank account is not undisclosed account. The said bank account is regularly used and maintained by the assessee for the purpose of its primary wing of school. In the bank account the assessee has mentioned the PAN of assessee- trust. Thus, the bank account is not the undisclosed bank account. The assessing officer made addition solely on the basis of AIR information without actual verification of facts. Hence, I do not find any justification of making addition on account of credit as unexplained credit. The assessing officer is directed to delete the entire addition. In the result, this ground of appeal is allowed.

19. In the result, the appeal of the assessee is partly allowed.

Order announced in open court on 31<sup>st</sup> October, 2023.

Sd/-  
**(PAWAN SINGH)**  
**JUDICIAL MEMBER**

Surat, Dated: 31/10/2023

*\*Ranjan*

Copy to:

1. Assessee –
2. Revenue –
3. CIT
4. DR
5. Guard File

By order

Sr. Private Secretary, ITAT, Surat