

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

BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER, AND  
MS ASTHA CHANDRA, JUDICIAL MEMBER

ITA No. 2001/DEL/2020 [A.Y. 2009-10]

The A.C.I.T  
Circle - 49(1)  
New Delhi

Vs.

M/s Financial Inclusion Trust  
302, Kirti Deep, Nangal Raya  
New Delhi

PAN: AAATF 2708 G

(Applicant)

(Respondent)

Assessee By : Shri K.V.S.R Krishna, CA

Department By : Shri T. James Singson, CIT-DR

Date of Hearing : 31.10.2023

Date of Pronouncement : 03.11.2023

**ORDER**

**PER N.K. BILLAIYA, ACCOUNTANT MEMBER:-**

This appeal by the Revenue is preferred against the order of the  
ld. CIT(A) - 40, Delhi dated 28.11.2019 pertaining to A.Y. 2009-10.

2. The solitary grievance of the Revenue is that the Id. CIT(A) erred in treating Rs. 44.25 crores as capital receipt instead of corpus donation since, during the year under consideration, as the assessee was not registered u/s 12A of the Income-tax Act, 1961 [the Act, for short] and, therefore, not eligible for exemption u/s 11(1)(d) of the Act.

3. Briefly stated, the facts of the case are that the assessee filed its return of income on 01.10.2009, which return was selected for scrutiny assessment and assessment was framed u/s 143(3) of the Act vide order dated 19.12.2011. Assuming jurisdiction conferred upon him by provisions of section 263 of the Act, the PCIT held that the assessment order is not only erroneous but also prejudicial to the interest of the Revenue and accordingly, set aside the assessment.

4. Pursuant to the directions of the PCIT, assessment proceedings were once again initiated and, accordingly, statutory notices were issued and served upon the assessee. While scrutinizing the return of income, the Assessing Officer noticed that the DIT, Exemption has rejected the application filed by the assessee for grant of registration u/s 12AA of the Act and exemption u/s 80G of the Act.

5. The Assessing Officer further found that the assessee has received corpus donation grant of Rs. 44.25 crores from another trust, namely, Bandhan-Konnagar, which is registered u/s 12A of the Act. The Assessing Officer was of the opinion that since the assessee trust was not registered u/s 12A of the Act, therefore, it is not eligible for exemption u/s 11(1)(d) of the Act in respect of corpus donation received by it and, accordingly, treated Rs. 44.25 crores as income of the assessee.

6. The assessee carried the matter before the Id. CIT(A) and reiterated its claim.

7. After considering the facts and submissions and drawing support from various judicial decisions, the Id. CIT(A) observed that the impugned receipt is a capital receipt which is to be kept on permanent basis and only accretions are to be used. The utilization of the grant is governed by the directions of the donor and since grant was not in the form of a corpus donation but was a specified grant given for utilization as per the directions of the donor, hence was a capital receipt and, accordingly, directed the Assessing Officer to delete the impugned addition.

8. Before us, ld. DR strongly supported the findings of the Assessing Officer. The ld. DR drew our attention to the decision of this Tribunal by which the co-ordinate bench has upheld the order of the CIT u/s 263 of the Act and read the operative part pointing out specific observations of the Tribunal in support of the order of the Assessing Officer.

9. Per contra, the ld. counsel for the assessee reiterated what has been stated before the lower authorities.

10. We have given thoughtful consideration to the orders of the authorities below. It would be pertinent to refer to the letter of Bandhan-Konnagar dated 30.03.2009 which reads as under:

Date: March 30, 2009

To,  
Mr. Yogesh Chand Nanda,  
Chairman,  
Financial Inclusion Trust.

Dear Sir,

Greetings!

This is in reference to your letter dated March 20, 2009 where in you have requested for a corpus grant of Rs. 5000 lacs.

We are pleased to inform you that we have sanctioned a corpus grant of Rs. 4425 lacs for your noble purpose.

Would request you to kindly confirm the receipt of the same.

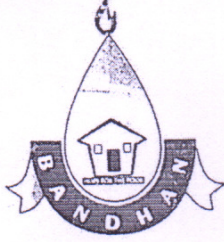
Thanking you.

Yours sincerely,



Amitava Sanyal  
President

11. Corpus grant was to be utilized as per will /wish of the donor trust, which can be seen from the following letter:



# Bandhan - Konnagar

(An organization - "HOPE FOR THE POOR")

A-4

To  
**The Board of Trustees,**  
 Financial Inclusion Trust,  
 302, Kirti Deep, Nangal Raya,  
 New Delhi -110 046

Date: March 30, 2009

Dear Sirs,

Ref:- Your request for Corpus / Capital Grant of Rs. 50.00 crores.

This has reference to your request following by several visits and discussions by your trustees with our society Secretary and its Board members. After detailed discussion and based on your representations the Society, is pleased to offer a Corpus Grant of Rs.44.25 crores which is agreed to be used in the following manner:

1. Rs. 44.00 crores to be maintained as a special fund in your books, differentiating from other funds, legacies and donations you may receive and used for the purposes and objectives herein below stated.
2. Rs. 0.25 crores to be used for initial setting up, maintaining the funds and other administrative costs until the fund balances start provided returns to meet such expenses.

*Purpose and objectives:*

1. Bandhan-Konnagar, grant funds may be expended only for charitable, scientific, literary, or educational purposes. Any grant funds not invested, expended or committed in accordance with the terms of this letter or for the purpose of this grant as described herein in this letter and in the document described above will be returned to the Society. Until such time as the Society notifies your organization otherwise, the restrictions on the use of the fund set forth herein shall remain operative. In addition, the fund shall be managed and operated so as to comply with all applicable Indian laws.
2. The fund shall be exclusively used to promote micro finance among the poor, so as to financially include them into the mainstream financial markets, with a sole view to reduce poverty among the poor in India and that the fund may be used to exclusively invest in different projects which may meet the above objective.
3. Grant funds will be available immediately and shall be held in a separate endowment fund account.
4. Payment of grant funds will be made in full by electronic transfer following receipt by the Society Representative in Kolkata of the countersigned copy of this letter.

*Management of the fund:*

5. The Fund shall be managed in accordance with the investment guidelines and policies determined from time to time by your Board. The Fund's management shall be overseen by the investment committee of your Board. Unless the Society agrees otherwise in writing, the Fund's investment guidelines and policies shall at all-time require
  - (1) 100% of the Fund to be invested in India and
  - (2) The Fund to be denominated in Indian Rupees.



6. The investment of grant fund contributed by the Society to the fund shall be bound by the law of the Government of India with respect to investment by non -profit entities.
7. The Fund's managers are required to exercise ordinary business care and prudence with respect to the fund under the facts and circumstances prevailing at the time of making an investment in providing for the long and short term financial needs of your organization to carry out its exempt purposes. In the exercise of the requisite standard of care and prudence, the fund's managers may take into account
  - (1) the expected return (including both income and appreciation of capital),
  - (2) the risks of rising and falling price levels, and
  - (3) the need for diversification within the investment portfolio (for example with respect to type of security, type of industry, maturity of company, degree of risk, and potential for return).
8. The determination whether the investment meets the foregoing standard will be made on an investment by investment basis, in each case taking into account the fund as a whole.
9. The fund shall be maintained by your organization on a permanent basis. In addition, the fund, including all interest and dividends earned thereon and all net appreciation, both realized and unrealised in the fair market value of the assets of the fund, shall be used only for the purposes set forth in this letter on a permanent basis.
10. Your organization's spending policies shall be designed to maintain the purchasing power of the fund over time.
11. Until such time as the Society otherwise consents in writing, withdrawals from the fund shall be confined to interest, dividends and the net appreciation in the value of the fund may not be expended. The principal of the fund may not be expended.
12. Your organization may not pledge, mortgage or otherwise encumber, in any way, the fund or any part thereof without the written consent of the Society.

*Reporting to the Society and Monitoring by the Society:*

13. For a period of five years from the date of disbursement, and thereafter until the Society notifies fit otherwise, your Trust annually will provide reports to the Society at the close of each of your fiscal years as described below and the restriction on the use of the fund set forth herein will remain operative.
14. A narrative account of what was accomplished by the expenditure of proceeds from the fund. Including a description of progress made toward achieving the goals of the grant.
  - (1) A financial statement, including an audited financial statement of FIT and of the fund.
  - (2) A statement of the income and expenditure of the fund, including a schedule of the fund's investments during the period of the report;
  - (3) A description of any material changes in the management or operation of the fund; and.
  - (4) Such other reports as the Society shall reasonably request.
15. Such accounting records, as well as copies of the reports submitted to the Society, be kept by your organization for at least seven years after completion of the use of the grant funds and made available to the Society for examination upon request.




16. The Society may monitor and conduct a review of operations under this grant, which may include a visit from Society personnel to observe your program, discuss the program and finances with your personnel and review financial and other records and materials connected with the activities financed by the grant.
17. The Society is authorized to conduct audits, including on-site audits, at any time during the term of the grant, and within four years after completion of the grant.
18. The Society will include information on this grant in its periodic public reports;

*Restrictions on the usage of fund:*

19. It is understood that Society grant funds may not be used for any of the following purposes;
  - (1) to attempt to influence legislation or the outcome of any public election to conduct programs to register voters;
  - (2) to undertake any activity for any purpose which is not exclusively charitable, scientific, literary, or educational; to make grants to individuals; or to make grants to other organization.
20. By countersigning this grant letter, you agree that your organization will not promote or engage in violence, terrorism, bigotry or the destruction of any State nor will it make sub grants to any entity that engages in these activities.
21. In the application of its resource to serve the public interest, the Society gives high priority to the realization of equality of opportunity for all members of society. The Society works to implement this policy in a variety of ways, in India with due respect for the great diversity of situations in different states and cultural contexts. It is the Society's expectation that serious attention will be given to the needs and well-being of women and disadvantaged groups in India and to their participation in this Society supported programs.
22. Failure to comply with the terms of this letter may result in immediate cessation of funding and/or support from the Society. In addition, if your organization expends or commits any part of the grant funds for purposes or activities other than the purposes and activities for which this grant is made, your organization must repay the Society an amount equal to the amount of grant funds so expended for other purposes or activities.
23. The society specifically assumes all the powers vested in section 3 of the Charitable and Religious Trust Act, 1920, for the trustees of your declare their concurrence.
24. No change in the terms and conditions of the grant, shall be executed without the written permission of the society.

Thanking You,

Yours sincerely,  
For Bandhan-Konnagar

  
Amitava Sanyal  
President



12. The only quarrel is in respect of non-registration of the assessee u/s 12A of the Act. Similar situation arose before the co-ordinate bench at Vizakapatnam in the case of Hosanna Ministries in ITA No. 558/VIZ/2018, 286/VIZ/2019. The relevant findings read as under:

"6.3. Now, the question arises whether such corpus donation is taxable as Income or not, even in the cases in which the trust is not registered u/s.12AA of the I.T. Act because for those trusts which are registered u/s.12AA, exemption to corpus donation has been provided as per provisions of section 11(1)(d) For such trust to which registration u/s 12AA has not been provided, it's tax liability is required to be decided with reference to the scheme of the I.T. Act as held in the case of M/s. Pentafour Software Employees Welfare Foundation and further in the case of Smt Basantidevi and Shri Chakan Lala Garg Education Trust, by Delhi High Court in ITA No.5082/2010. In both the cases, it has been held that corpus donation being in the nature of capital receipt are not chargeable to income tax. So far as section 2(24)(iiá) is concerned, this section has to be read in the context of the introduction of the present section 12. It is significant that section 2(24)(iia) was inserted w.e.f. 01-04-1973 simultaneously with the present section 12. Section 12 makes it clear by the words appearing in parenthesis that contributions made with a specific direction that they should form a part of the corpus of the trust or institution shall not be considered as income of the trust. In the case of RB. Shriram Religious and charitable Trust v. CIT[19881 172 ITR 373/39 Taxman 28 (Born.) Hon'ble Bombay High Court held that even ignoring the amendments to section 12, which means that even before the words appearing to parenthesis in the present section 12, it cannot be held that voluntary contributions specifically received towards the corpus of the trust may be brought to tax. The aforesaid decision was followed by the Hon'ble Bombay High Court in the case of Trustees of Kasturbai Scindia Commission Trust 189 ITR 5. In the present case, the A.O. on evidence has

accepted the fact that the impugned donation has been received towards the corpus of the endowment.

6.4. The ITAT, Chennai in *Indian Society of Anaesthesiologists V. 8 ITA Nos. 558 /VIZ/2018 ITA No.286/VIZ/2019 (M/s. Hosanna Ministries) ITO* in decision reported in (2014) 47 taxmann.com 183 (Chennai-Trib.) held that specific funds created for fulfilling specific objectives for which these separate funds are constituted remain as capital funds as the funds can be used for fulfilling specific objectives for which these funds are constituted and hence to be treated as corpus funds and to be excluded from computation of Income.

6.5. The ITAT, Bangalore in *ITO v. Vokkaligara Sangha* in a decision reported in (2015) 44 CCH 0509 (Bang. Trib.) whereby the Tribunal held that voluntary contributions received for a specific purposes cannot be regarded as income u/s 2(24)(iia) of the Act since they were capital receipts being corpus fund and tied up grants for specific purposes.

6.6. In the instant case, the A.O., in his Assessment Order, has not doubted/disputed the nature of funds received-/purpose of funds utilized by the appellant society as to whether they are of Corpus and Capital Receipts or not or as to whether they have been utilized for the specified purposes. In fact, he had only treated such donations/voluntary contributions received by the appellant society as liable to tax during the period prior to the Registration of the appellant society u/s.12AA of the Income-tax Act, 1961. The appellant got registered its Society u/s.12AA of the Income-tax Act,

1961 before the concerned authority of the Income Tax Department and the Order granting Registration u/s.12AA of the I.T. Act, 1961 was passed by the Commissioner of Income Tax (Exemptions), Hyderabad on 25/09/2017 and copy of the same is filed by the appellant during the course of appellate proceedings.

6.7 Reliance is placed on the decision of Hon'ble ITAT Pune Bench 'B' in the case of ITO (Exemptions), Ward-2, Pune Vs. Serum Institute of India Research Foundation wherein it is held that corpus specific voluntary contribution being in nature of capital receipt, are outside scope of income under section 2(24)(ia) and, thus same cannot be brought to tax even in case of trust not registered u/s. 12A / 12AA of the I.T. Act.

6.8 In view of the above and as the appellant got registered u/s.12AA of the Act and as the donations/voluntary contributions received of Rs.3,33,11,930/- by the appellant society are of Corpus and Capital nature, same are to be treated as exempt from tax liability, as the principles relating to judicial discipline assume significance and the priority. Accordingly, following the ratios of the judicial pronouncements mentioned supra, it is treated that the donations/voluntary contributions received by the 9 ITA Nos. 558 /VIZ/2018 ITA No.286/VIZ/2019 (M/s. Hosanna Ministries) appellant society are outside the taxations, even for the period prior to its registration u/sec. 12AA. Hence, the Assessing Officer is directed to delete the disallowance/addition made of Rs.3,33,11,930/- in this regard." 8. In view of the above, we find no reason to interfere

with the order passed by the Id. CIT(A). Thus, this appeal filed by the Revenue is dismissed."

13. Similar view was taken by the Tribunal Pune Bench in the case of Serum Institute of India Research Foundation ITA No. 621/PUN/2016.

14. On finding parity of facts, respectfully following the decision of the co-ordinate bench [supra], we decline to interfere with the findings of the Id. CIT(A).

15. In the result the appeal of the Revenue in ITA No. 2001/DEL/2020 is dismissed.

The order is pronounced in the open court on 03.11.2023.

Sd/-

**[ASTHA CHANDRA]  
JUDICIAL MEMBER**

Sd/-

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

Dated: 03<sup>rd</sup> NOVEMBER, 2023.

VL/

Copy forwarded to:

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	