

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH “SMC”: NEW DELHI**

BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER

ITA No. 2123/DEL/2023
Assessment Year: 2016-17

Maa Bhagwati Charitable Trust, Vill. Maincha Ki Mandiya, Greater Noida, Gautam Budh Nagar-201310. PAN- AADTM2708G	<u>Vs</u>	Income-tax Officer, Exemption Ward, Ghaziabad.
APPELLANT		RESPONDENT
Appellant by		Sh. Subham Rastogi, CA
Respondent by		Sh. Om Parkash, Sr. DR
Date of hearing		20.12.2023
Date of pronouncement		22.12.2023

ORDER

PER KUL BHARAT, JM:

This appeal, by the assessee, is directed against the order of the learned Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi, dated 01.06.2023, pertaining to the assessment year 2016-17. The assessee has raised following grounds of appeal:

“(1) The Ld. CIT (A) NFAC failed to appreciate that Registration u/s 12AA of L. T. Act has been granted on 09.08.2018 from A. Y.- 2018-19 and on this date assessment proceedings for A. Y. 2016-17 are pending before Ld. A. O. Accordingly, as per First Proviso to Section 12A(2) and as per CBDT Circular No. 1 of 2015 dated 21.01.2015 the benefit of the section 11 has to be given in assessment proceeding of A. Y. 2016-17 as per Law.

(2) *The Ld. C. L. T. (A) failed to appreciate that statute provides that Registration u/s 12AA one granted in subsequent year, the benefit of the same has to be given in the earlier assessment year for which the assessment proceedings are pending before the Ld. A. O. Hence denial of benefit of section 11 by stating that in the absence of Registration u/s 12AA, no exemption u/s 11 can be granted and upholding the addition closing balance of Corpus Fund Rs. 33,32,646/- without considering that Rs. 28,11,371/- is opening Balance and only Rs. 5,21,275/- received during A. Y.-2016-17. Thus, the addition is invalid.*

(3) *The Ld. C.LT. (A) failed to appreciate that only Corpus Donation of Rs. 5,21,275/- has been received during the year and rest Rs. 28,11,371/- is the opening Balance of Corpus Fund which is duly shown in ITR-7 in Schedule-J and also submitted before him. However, ignoring this fact, upheld the addition of Rs. 33,32,646/- (Opening Balance Rs. 28,11,371.00 + Rs.5,21,275.00) received during the year) being Closing Balance of Corpus Fund which is invalid as per Law.*

(4) *The Ld. C.LT. (A) failed to appreciate that no addition to the extent of Rs. 28.11,371/- received as Corpus Donation up to 31.03.2015 can be made in A. Y-2016-17 which is verifiable from the ITR-7 in Schedule-J and also as per details submitted.*

(5) *The Ld. CIT. (Appeal) did not appreciate that Assessee submitted details regarding identity of donor, purpose of the Corpus donation of Rs. 5,21,275/- being Building material received and utilized in construction of School Building during the year. Hence addition of Rs. 33,32,646/- is invalid. Further, benefit of Section 11 of I. T. Act has to be allowed as per Law.”*

2. Facts, in brief, are that for A.Y. 2016-17 the assessee filed its return of income declaring NIL income. The case was selected for scrutiny. The assessee is a trust engaged in the business of running ITI in the name & style M/s Bhagwati Private Industrial Training Institute. The AO noticed that the assessee was not registered under section 12AA of the Income-tax Act, 1961 (the “Act”), therefore was not eligible for exemption u/s 11 of the Act. Further, the AO noticed that as

per P&L A/c, the assessee had declared income of Rs. 2,61,000/- which consisted of donation of Rs. 1,35,000/- and fee receipt of Rs. 1,26,000/- and claimed expenditure at Rs. 6,60,171/-. Thus, the assessee claimed loss of Rs. 3,99,171/-. However, the AO noticed that the assessee had also shown corpus fund of Rs. 33,32,646/-. The mode of receipt of donation was stated to be cash. Therefore, the AO treated the amount as anonymous donation and added to the income of the assessee. Thus, he assessed income at Rs. 33,32,646/-. Aggrieved against this the assessee preferred appeal before the learned CIT(Appeals), who dismissed the appeal by sustaining the addition in question. Aggrieved against this the assessee is in appeal before this Tribunal.

3. Apropos to the grounds of appeal learned counsel for the assessee submitted that the lower authorities did not provide adequate opportunity of being heard and the explanation along with evidences submitted by the assessee were not considered. It was further contended that the assessee has also been granted registration u/s 12AA of the Act. The amount was received as corpus donation. Further, he submitted that the donation received during the year was only Rs. Five lakh, but the lower authorities failed to consider the submission of the assessee.

4. On the other hand, learned DR supported the orders of the authorities below.

5. I have heard rival contentions and perused the material available on record. It is seen from the record that before the learned CIT(A), the assessee had filed certain evidences but while passing the impugned order, the contention of the assessee was not duly considered. Therefore, considering the totality of the facts and the fact that the assessee was granted registration post assessment proceedings, to sub-serve the interest of principles of natural justice, I deem it proper to set aside the impugned order and restore the assessment to the file of the AO to verify and

make further inquiry in respect of the claim of the assessee and pass assessment order afresh in accordance with law, of course, after affording adequate opportunity of being heard to the assessee. I order accordingly. Grounds of appeal are allowed for statistical purposes.

6. Appeal of the assessee is allowed for statistical purposes.

Order pronounced in open court on 22nd December, 2023.

**Sd/-
(KUL BHARAT)
JUDICIAL MEMBER**

MP

Copy forwarded to:

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

**ASSISTANT REGISTRAR
ITAT, NEW DELHI**