

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

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

ITA No. 5833/Del/2017
Asstt. Year 2011-12

Mohini Chandani Charitable Trust PAN No.- AAATM8374K	Vs.	DY DIT(E), Inv Circle-I, N. Delhi.
(Appellant)		(Respondent)

Assessee by:	Shri Baldev Raj, CA Shri Manish Upneja, CA
Revenue by:	Shri Muneesh Rajani, Sr. DR
Date of Hearing:	23.01.2024
Date of pronouncement:	23.01.2024

ORDER

PER ASTHA CHANDRA, JM

This appeal filed by the Assessee is directed against the order dated 05.05.2017 of the Ld. Commissioner of Income Tax (Appeals)-36, New Delhi, (**"CIT(A)"**) pertaining to Assessment year (**"A.Y."**) 2011-12.

2. The appeal has been filed late by 27 days. The request to condone the delay has been filed. For the reasons stated therein, the delay is condoned.

3. The assessee has taken originally the following grounds:

"1. That on the facts and in the circumstances of the case the Learned CIT (A) was not justified in sustaining the action of the Learned Assessing officer in denying exemption u/s 11 & 12 of the Act.

1.1 That the exemption ought not to have been denied in view of the fact that the exemption u/s 12A was subsisting and in force & not withdrawn.

1.2 That the Learned CIT (A) erred in law in denying application of Income being fixed assets acquired during the year amounting to Rs. 5,17,27,120.

2. That the order of Learned CIT (A) is bad in law being made on surmises, conjectures, unrelated media reports, without application of mind and without affording an opportunity of hearing to the appellant society.

2.1 That the Learned CIT(A) has passed the order without considering the submissions made and the material on record.

2.2 That the additional grounds raised before the Learned CIT(A) ought to have been accepted by the Learned CIT(A).

2.3 That no notices from CIT(A) were received after 12'th February 2016.

3. That the Learned CIT(A) grossly erred in law in not considering that the appellant society was engaged in the activity of running a school, a charitable activity as defined u/s 2(15) of the Act.

4. That the Learned CIT(A) has made observations contrary to the material on record & relied upon statements made in the case of another Assessee without affording an opportunity of cross examination.

5. That the Learned CIT(A) and the Assessing officer failed to appreciate that no donations were received by the Appellant society for the year under review.

6. That the appellant craves for leave to reserve to itself the right to add, alter or modify any of the grounds of appeal mentioned above at time of hearing.”

4. Briefly stated, the assessee trust filed its return for A.Y. 2011-12 on 30.09.2011 declaring income at Rs. Nil. The case was selected for scrutiny. Statutory notice(s) were issued/ served upon the assessee. The same were responded to and called for details and explanations were filed and books of account produced were test checked by the Ld. Assessing Officer (“AO”).

5. In the assessment order it is mentioned that the assessee is registered under section 12A of the Income Tax Act, 1961 (**the “Act”**) since 17.09.2002

and also approved under section 80G of the Act valid for the period to 01.04.2007 to 31.03.2010.

6. However, it is stated in the assessment order that during the course of assessment proceedings information was received from the Joint Director of Income Tax (Exemption), Range-I, New Delhi vide letter dated 20.03.2014 that the assessee and its sister-society, namely Chadha Education Society are coercing the parents of children seeking admission in assessee's school to make donation of Rs. 30,000/- to that society. Explanation was sought from the assessee. Reply was filed on 25.03.2014, reproduced in assessment order at page 5-6 thereof. The explanation was not acceptable to the Ld. AO, who held that the assessee is carrying on activity of education not for charity but with profit motive. He, therefore denied exemption under section 11 & 12 of the Act and completed the assessment on total income of Rs. 2,24,93,900/- in the status of AOP vide order dated 29.03.2014 under section 143(3) of the Act.

7. The assessee appealed before the Ld. CIT(A). During the appellate proceedings on 12.02.2016, the assessee filed before the Ld. CIT(A) revised grounds of appeal which has been reproduced by the Ld. CIT(A) in para 6 of his appellate order. It is observed from para 7 of the CIT(A)'s order that he did not decide the appeal on the basis of the revised grounds. The assessee is aggrieved and is before the Tribunal.

8. We have heard the Ld. Representatives of the parties, considered their submissions and perused the records. It is admitted by the Ld. Sr. DR that revised grounds taken by the assessee have not been adjudicated by the Ld. CIT(A). We are of the view that for the sake of natural justice and fair play, the Ld. CIT(A) ought to have decided the revised grounds on merits which he failed to do for no valid reason at all. We, therefore set aside the order of the Ld. CIT(A) and restore the matter to his file with the direction to him to adjudicate

the revised grounds after allowing adequate opportunity of being heard to the assessee. We order accordingly.

9. In the result, appeal of the assessee is treated as allowed for statistical purposes.

Order pronounced in the open court on 23rd January, 2024.

**Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**Sd/-
(ASTHA CHANDRA)
JUDICIAL MEMBER**

Dated: 23/01/2024

Pooja, Sr.PS

Copy forwarded to -

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	20.02.24
Date on which the typed draft is placed before the dictating Member	20.02.24
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	