IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN BENCH, COCHIN

Before Shri Sanjay Arora, Accountant Member and
Dr. Seethalakshmi, Judicial Member

ITA No. 689/Coch/2022 &
SA No. 55/Coch/2022
(Assessment Year: 2016-17)

Carmel Convent Coton Hill, Vazhuthacaud Thiruvananthapuram 695014 [PAN:AAATC3967C]	vs.	Income Tax Officer (Exemption) Thiruvananthapuram 695003
(Appellant)		(Respondent)

Appellant by:	Shri Anil D. Nair, Advocate
Respondent by:	Smt. J.M. Jamuna Devi, Sr. D.R.

Date of Hearing:	20.12.2023
Date of Pronouncement:	07.03.2024

O R D E R

Per: Sanjay Arora, AM

This is an Appeal by the Assessee directed against the Order dated 04.04.2022 by the Commissioner of Income Tax (Appeals), Income Tax Department[CIT(A)], dismissing the assessee's appeal contesting it's assessment under section 143(3) of Income Tax Act, 1961 (the Act) dated 30/12/2018 for Assessment Year 2016-17.

2. The assessee-society, registered as a charitable institution u/s. 12AA of the Act, running a senior secondary school at Thiruvananthapuram, filed it's return of income for the relevant year, claiming exemption u/s. 11(1)(d) of the Act at Rs. 102.13 lacs, which was denied in assessment. The principal issue arising in the instant appeal is the validity of the assessee's claim for the said exemption. Section 11(1)(d), reading as under, exempts income received by way of voluntary contributions toward corpus of the trust/institution:

Income from property held for charitable or religious purposes.

11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income—

(*a*) ----------

(*b*) ----------

(*c*) ----------

(*d*) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution

The same is received from the students of the school toward, as claimed, development fund (DF) and employee's welfare fund (EWF), i.e., funds maintained for the development of the school buildings and running employee welfare schemes for it's employees, respectively. The relevant part of the order by the ld. CIT(A), confirming the impugned disallowance, reads as under:

4.1 Ground No.1 related to addition of Corpus fund consists of School Development Fund Rs.70,80,700/- and Welfare Fund Rs.31,31,850/-. The AO in his/her assessment order made this addition due to non-furnishing of written direction from the donors/contributors specifying the utilization of such fund. *The appellant has not furnished any documentary evidence to controvert the AO's objection* and only relied on finding of case law of Rajasthan High Court without showing that the facts of the present case and cited case law are same. In the cited case law, a specific scheme was undertaken by the trust and for that purpose, fund/contribution was received voluntary whereas the present appellant was registered for education of the child but collected fund for school development & welfare fund for employees in addition to tuition fees from the parents of the child by making it a part of school fees. Further, the Hon'ble ITAT, Jaipur in the case of ACIT Vs Scholars Education Trust of India [88 taxmann.com 158][2017] after considering the decision of Sukhdeo Charity Estate Vs ITO (192 ITR 615][Raj) has held that **"where assessee-society, running school, had received development fund alongwith tuition fees, term fee and other charges in a single receipt of fees which students were paying periodically and same was compulsory for students in nature of fee for studying and continuing study, same could not be classified as capital receipt, thus, same was chargeable to tax"**. So far as the decision of Hon'ble ITAT, Kolkata in the case of Vidya Bharti Society for Education & scientific advancement cited by the appellant is concerned, it is observed that there was a specific resolution passed by the society before collecting the development charges, wherein the purpose of collection was specified *but no such evidence is furnished by the appellant*. So this case law is not applicable in the present case.

After examination of submission and other documents furnished by the appellant, I find that the appellant *failed to show* that this contribution was voluntary in nature and the donors/contributors had contributed the fund separately. It is in practice that the school fees for education are shown on various counts such as tuition fees, term fees, admission fees,

development charges, library fees, computer fees, etc. *and the parents do not have any choice to deny any of these fees/charges*. In fact, the appellant did not furnish any information / document to show that school development fund and welfare fund was not collected from each & every child due to voluntary nature as section 11(1)(d) of the Act clearly provides that the receipts should be in the form of voluntary contributions with a specific direction to become a part of the corpus of the trust. Therefore, the appellant's contention is not supported by any independent evidence to show that it was collected voluntarily for a specific purpose. *In view of these factual and legal positions*, I am not inclined to interfere in the order of the AO on this issue. Thus, this ground of appeal is dismissed. (emphasis, supplied)

It's claim for exemption being denied, which stands confirmed in first appeal, aggrieved, the assessee is in second appeal.

3. We have heard the parties, and perused the material on record.

3.1 The basis of the Revenue's denial of the assessee's claim, as a perusal of the impugned order shows, is:

(a) the contributions received from the students or, for that matter, their parents, cannot be regarded as voluntary; and

(b) there is no written direction from the donees for the same to be regarded as corpus donation.

3.2 There is, to begin with, no conflict between a receipt being capital in nature and, by fiction of law, being an income chargeable to tax under the Act: *Punjab Distilling Industries Ltd. v. CIT* [1965] 57 ITR 1 (SC). The assessee claiming exemption u/s. 11(1)(d), the burden to though prove that the receipt is on capital account – a matter of fact, is on it, as indeed that the ingredients of the exemption provision, implying satisfaction of the essential conditions of the section, are met. Exemptions provisions, as indeed tax statutes, are to be strictly construed: *CC v. Dilip Kumar & Co*. [2018] 6 GSTR-OL 46 (SC); *Banarsi Debi v. ITO* [1964] 53 ITR 100 (SC); *Ramnath & Co. v. CIT* [2020] 425 ITR 337 (SC), affirming [2016] 388 ITR 307 (Ker); *Ajmera Housing Corporation v. CIT* [2010] 326 ITR 642 (SC).

3.3 The assessee's case before us, as before the Revenue authorities, who found it as wholly unsubstantiated, was that there is nothing to infer that the contributions, received once a year, are not voluntary and, further, there is nothing in law to indicate that the direction accompanying the contribution is to be in writing. We are wholly unimpressed. Going by it's version, the assessee means to say that *all* the students or, more correctly, their parents, come together, once a year, at a specified time, and agree to contribute a specific sum toward corpus donation to the assessee, one each for the school building and EWS, and of course *de hors* the assessee, who has therefore no role therein. The amount fixed may, further, vary from (say) lower to middle to senior school students. Further, they do this religiously each year, without fail, and irrespective of:

(a) financial standing of the recipient-society;

(b) their individual financial position at the relevant time, particularly considering that they would also be burdened at the relevant time, i.e., the commencement of the academic session, to paying other mandatory charges to the school (for the services (to be) rendered), along with which the voluntary contribution is being paid;

(c) the number of their school/college going wards; and

(d) the need for the funds by the assessee for these two avenues of investment.

This becomes all the more quizzical, considering that:

(a) the contributions are stopped immediately on a student graduating from the school;

(b) the same is constant across years and irrespective of the number of students studying (during the relevant period) in the assessee's school; and

(c) the need for funds by the school for these two avenues of investment.

This is as bizarre as it can get, and the assessee's case, clearly a make-believe, only needs to be stated to be rejected. It is apparent – from the various unproved incidences afore-noted, that would otherwise need to be shown, as indeed the manner of collection of the 'contributions' annually from the students, that they are called upon, at the beginning of the academic session, to contribute mandatorily, i.e., as a

part of the fee-structure, to the various funds maintained by the school, and which therefore these students have necessarily to. That is, there is nothing voluntary about the said contributions, and there is *quid pro quo*; the students paying the same as a part of their annual charge to the assessee, which allocates the same to different heads of account or, rather, specifies the same, as it does the other elements of the school fee, viz. tuition fee, laboratory fee, sports fee, extra-curriculum activity fee, etc.

As regards the assessee's claim of the law not contemplating a written direction, the same, to be valid, must therefore also show as to how the direction stands communicated to the assessee. The said direction is a positive action by or on behalf of the contributor, which has to be strictly adhered to, forming a part of the terms and conditions where-under, and subject to which, the contribution/s is given.

The burden in law to prove his return, or the claims preferred thereby, is on the assessee, case law on which is legion (*CIT v. Calcutta Agency Ltd*. [1951] 19 ITR 191 (SC); *Lakshmiratan Cotton Mills Co. v. CIT* [1969] 73 ITR 634 (SC)); and which can further only be on the basis of proper materials (*CIT v. R. Venkataswamy Naidu* [1956] 29 ITR 529 (SC)). The law gets more strict in case of exemption provisions (*H.E. Nizam Religious Endowment Trust v. CIT* [1966] 59 ITR 582 (SC); *CIT v. Joseph John* [1968] 67 ITR 74 (SC)). In *Udaipur Sahkari Upbhokta Thok Bhandar Ltd. v. CIT* [2009] 315 ITR 21 (SC), it stands clarified that the onus to show that it's claim/s falls within the four corners of the exemption provision is on the assessee, which agrees with the latest decision by the constitutional bench decision of the Apex Court in *Dilip Kumar & Co*. (supra).

3.4 The assessee's claim is a bald one, without anything to show the various incidences afore-noted concomitant to the contributions, substantiating it's claim. The impugned orders are explicit on this, i.e., of the assessee's claim being *sans* any material, which aspect remains unchallenged even before us. Why, much less any substantiation, there is no iota of an explanation, at any stage, *qua* the various aspects

of the transaction afore-noted, as indeed *qua* the basis on which the contributions are stated to be received as corpus donations. The matter, it needs to be appreciated, given the clear law in the matter, is principally factual. The students are the beneficiaries of the services being delivered, for a consideration, of which the impugned sums are a part. The same are a part of the assessee's regular receipts. We find the Revenue's reliance on the decision in *Asst. CIT v. Scholars Education Trust of India* [2017] 88 taxmann.com 158, as apposite, and draw support from the same.

3.5 We, in view of the fore-going, have no hesitation in confirming the impugned orders and, accordingly, uphold the disallowance of exemption u/s. 11(1)(d) of the Act. The impugned receipts would nevertheless form part of the assessee's regular receipt, i.e., from the activity of running the school and, accordingly, liable for exemption u/s. 11(1)(a), i.e., if otherwise exigible, in accordance with law. Toward this, we find the AO has considered the same, including the impugned sum as part of income derived from property held under trust. He computes exemption u/s. 11(1)(a), i.e., on account of application of income, accordingly, at Rs.54.22 lakhs. The assessee, before the ld. CIT(A) objects thereto, stating as:

(a) though depreciation (Rs.24.47 lakhs) has rightly not been taken into account in computing the income (s. 11(6)); the same having not been in fact claimed by it, the AO ought to have taken into account the fact of addition to fixed assets at Rs.17.13 lakhs, deductible u/s. 11(1)(a);

(b) it having incurred an excess expenditure over income in the past (at Rs.1842.42 lakhs), which therefore ought to have been taken into account by the AO in computing income (Ground E before us);

(c) addition on application of s. 2(24)(x) r/ws. 36(1)(va) of the Act. (Gd. D).

The ld. CIT(A) mistook the assessee's grievance (a) before him to imply non-grant of depreciation allowance (at Rs.24.47 lakhs) and allowed the same. Item (b) being not raised before him per a specific ground, but only by way of an alternate claim on being denied the claim u/s. 11(1)(d) (for Rs. 102.13 lacs), which he confirms, was accordingly not considered by him. Item (c) was decided by him, confirming the

addition. While adjustment *qua the* employee's contribution is an independent one, the former two are integral to the assessee's claim u/s. 11(1)(a), which thus has not been, as he was required to on the denial of assessee's claim u/s. 11(1)(d), examined by the ld. CIT(A). The matter, accordingly, goes back to his file for adjudication thereof, considering each of the assessee's claims in its respect, and decision in accordance with law, issuing specific findings upon hearing the parties before him. No doubt, the assessee does not before us specifically agitate the non-allowance of capital expenditure, i.e., by way of addition to fixed assets, claimed at Rs.17.13 lakhs. This, as apparent, is for the reason of it having been, albeit unwittingly, allowed a higher claim. It is, however, the correct legal position that is relevant, and not the view that the parties may take of their rights in the matter: *CIT v. C. Parakh & Co. (India) Ltd*. [1956] 29 ITR 661 (SC) (also see: *Kedarnath Jute Mfg. Co. Ltd. v. CIT* [1971] 82 ITR 363 (SC)). Once the issue of computation of deduction u/s. 11(1)(a) in wake of denial of that u/s. 11(1)(d), unaddressed by the ld. CIT(A), is open before him, all aspects thereof, in issue or otherwise integral thereto, would require being looked into. Why, these issues were not raised before us by the assessee's ld. counsel, Shri Nair limiting his arguments to it's claim u/s. 11(1)(d). So, however, ignoring the same, despite specific claims by the assessee, would be, to our mind, both unlawful and unjust. As explained time and again by the Hon'ble Apex Court, as in *CIT v. Walchand & Co. (P.) Ltd*. [1967] 65 ITR 381 (SC), that the Tribunal is to deal with and determine questions which arise out of the subject-matter of the appeal in the light of the evidence, and consistently with the justice of the case.

3.6 The matter accordingly goes back to the file of the ld. CIT(A) for the purpose. The onus to prove it's claims though would be on the assessee. We may though, before parting, highlight certain aspects of the matter, of which the ld. CIT(A) shall have regard in adjudicating the matter, as follows:

(a) The assessee claims carry forward of excess expenditure (over income), at Rs. 1842.42 lakhs, also describing it *as excess application of income* – which is a

contradiction in terms. As it appears to us, the assessee, as for the current year, presumes exemption u/s. 11(1)(d), while yet claiming capital expenditure/depreciation (a capital allowance). Two, an excess of expenditure is unfeasible except through borrowings, financing expenditure or, as the case may be, application of income. Repayment of borrowings would, in such a case, as is well settled, qualify as an application of income, except where the same is itself through borrowings. Financing through borrowings, it may be appreciated, cannot be regarded as an application of income. This would equally apply to capital expenditure incurred during the year. Without doubt, where financed by own funds, capital expenditure, as indeed revenue, would be an application of income *S.RM.M.CT.M Tiruppani Trust v. CIT*[1998] 230 ITR 636 (SC).

(b) The set aside of current income for future application, which can be at a maximum of 15% thereof, is only for computing the total income for the year. It does not imply that the assessee is not obliged to apply the same in future. As such, a claim of excess application (?) is inconsistent with reserving 15% for future application; again, a contradiction in terms. The same may have to be recomputed for the earlier period/s as well inasmuch as the computation of Rs.1842.42 lakhs being not on record.

(c) How, we wonder, could the investment of funds in securities, yielding income, i.e., to secure terminal benefits to it's employees, and understandably to be paid to the retiring employee at the time of his retirement, can be regarded as either expenditure or an application of income for the current year, except of course where the amount is credited to the employee's account with a Fund. The same would constitute an expenditure of the year in which it is incurred/paid. It is the cash flow of a charitable/religious institution, as against it's accounts, where maintained on mercantile basis, that would, in terms of provisions of the Act, govern the computation of it's income (s. 2(24)(iia) r/w ss. 11 & 12).

4. Finally, as regards the addition of income u/s. 2(24)(x) r/w s. 36(1)(va), there is, as afore-stated, no scope, therefore, in computing income of a charitable or religious institution, which is to be u/s. 2(24)(iia), applying the principles of commercial accounting inasmuch as the exemption there-from is with reference to the application of income, implying real income. The same is accordingly deleted.

5. We decide accordingly. The assessee's stay application, in view of we having decided it's appeal, becomes infructuous.

6. In the result, the assessee's appeal is partly allowed and partly allowed for statistical purposes, and it's stay petition is dismissed.

Order pronounced on March 07, 2024 under Rule 34 of The Income Tax (Appellate Tribunal) Rules, 1963

Sd/-	Sd/-
(Dr. Seethalakshmi)	(Sanjay Arora)
Judicial Member	Accountant Member

Cochin, Dated: March 07, 2024
n.p.

Copy to:

1. The Appellant
2. The Respondent
3. The Pr. CIT concerned
4. The Sr. DR, ITAT, Cochin
5. Guard File

By Order

Assistant Registrar
ITAT, Cochin