

**INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCH "B": NEW DELHI  
BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER  
AND  
SHRI M. BALAGANESH, ACCOUNTANT MEMBER**

**ITA No. 632/Del/2023  
(Assessment Year: 2011-12)**

Fateh Chand Charitable Trust, 115 Km Mile Stone, NH 58, Delhi Dehradun Road, Meerut, UP (Appellant) <b>PAN: AAATF1445N</b>	Vs. DCIT (Exemption Circle), Ghaziabad  (Respondent)
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Assessee by :	Shri Ramit Kakkar, Adv
Revenue by:	Shri Vivek Kumar Upadhyay, Sr. DR

Date of Hearing	10/04/2024
Date of pronouncement	16/04/2024

O R D E R

**PER M. BALAGANESH, A. M.:**

1. The appeal in ITA No.632/Del/2023 for AY 2011-12, arises out of the order of the National Faceless Appeal Centre (NFAC), Delhi [hereinafter referred to as 'Id. CIT(A)', in short] in Appeal No. ITBA/NFAC/S/250/2022-23/1049761297(1) dated 15.02.2023 against the order of assessment passed u/s 143(3) r.w.s. 147 of the Income-tax Act, 1961 (hereinafter referred to as 'the Act') dated 29.11.2016 by the Assessing Officer, DCIT, Exemption Circle, Ghaziabad (hereinafter referred to as 'Id. AO').

2. The assessee has raised the following grounds of appeal before us:-

*"1. On the facts and in the circumstances of the case, the Learned CIT(A) has erred in upholding the action of the AO on Initiating the proceedings U/s 147 and issuing notice U/s 148 of the Income Tax Act. Observations made, inferences drawn and findings recorded in this regard are illegal and bad in law.*

*"2. On the facts and in the circumstances of the case the Learned CIT (A) has erred in not adjudicating the grounds of appeal number 3, 4 and 5 raised before him and treating them as infructuous. The grounds raised before CIT(A) are as under:-*

*Ground No 3 before CIT(A)-*

*That the Learned Assessing officer has erred in recording the findings that the assessee paid amount of Rs 1,00,00,000/- in cash to M/S Herbicare Healthcare and thereby purchased a donation from them. The alleged statement of Sh Swapan Das Gupta is neither with the AO nor has been confronted to the assessee and mere reliance on the same to record the above finding is arbitrary and illegal.*

*Ground No 4 before CIT(A)*

*That the donation from M/S Herbicare Healthcare at Rs 1,00,00,000/- has already been shown by the assessee in its Profit and Loss account and hence the question of considering it again as bogus or part of income is unjustified and uncalled for and would tantamount to double taxation.*

*Ground No 5 before CIT(A)*

*That the Learned Assessing officer has erred in disallowing diesel and petrol expenses at Rs 1,00,00,000/- although no discrepancy was ever pointed out during the course of examination of books of accounts nor any show cause or opportunity in this regard was given to the assessee Moreover the diesel and petrol expenses are at Rs 14,80,925/- only which shows that disallowance was not meant to be made and has inadvertently been made."*

3. We have heard the rival submissions and perused the materials available on record.
4. The assessee is a public charitable trust registered u/s 12AA of the Act. The registration of the trust was cancelled with effect from 1.4.2010 by the CIT(E) vide order dated 27.11.2015. The Id. AO received information about certain bogus donation transaction on account of survey proceedings in the case of M/s Herbicare Health Care of Kolkata. Accordingly, the Id. AO reopened the assessment u/s 147 of the Act and passed the reassessment order by denying the benefit of exemption u/s 11 of the Act.
5. The return of income for the Asst Year 2011-12 was filed by the assessee trust on 30.9.2011 declaring Nil income. The assessment was completed u/s 143(3) of the Act on 28.2.2014 determining Nil income. Based on the statement recorded on oath of Shri Swapan Ragan Das Gupta, Founder of M/s Herbicare Health Care of Kolkata during the survey proceedings conducted on 21.1.2015 the assessee has received donation of Rs 1,00,00,000/- from M/s Herbicare Health Care of Kolkata in Asst Year 2011-12 by paying amount of Rs 1 crore in cash to

M/s Herbicare Health Care of Kolkata. Reopening was made for this purpose as this information constituted tangible material for the Id. AO to form a belief that income of the assessee had escaped assessment. The Id. CIT(E) cancelled the registration u/s 12A of the Act vide order dated 27.11.2015 which was assailed by the assessee before the Lucknow Tribunal. The Lucknow Tribunal vide its order in ITA No. 792/LKW/2015 dated 18.3.2016 allowed the appeal of the assessee and set aside the order of the CIT(E) cancelling the registration u/s 12A of the Act. Since the Tribunal restored the registration u/s 12AA of the Act, the assessee would be consequentially entitled for benefit u/s 11 of the Act for the activities carried out by it. Accordingly, the Id. CIT(A) had allowed the Ground No.2 raised by the assessee challenging the denial of exemption u/s 11 of the Act. The Id. CIT(A) by following the order of Lucknow Tribunal had granted exemption u/s 11 of the Act by allowing Ground No.2 raised before him and in view of that decision, he held that the Ground Nos. 3 to 5 raised by the assessee were dismissed as infructuous. With regard to Ground No. 6 raised by the assessee before the Id. CIT(A), we find that the Id. CIT(A) had directed the Id. AO to consider the losses in the earlier returns of income and appellate orders and thereafter allow the claim of the assessee. We find from para 4 of the reassessment order, the very basis of making addition of Rs 1 crore was cancellation of registration u/s 12AA of the Act and consequentially non availability of exemption u/s 11 of the Act. Since this aspect has been rightly addressed by the Id. CIT(A), the original assessment framed u/s 143(3) of the Act stands restored. Hence we do not find any infirmity in the order of the Id. CIT(A) and the grounds raised by the assessee are allowed.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 16/04/2024.

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

-Sd/-  
**(M BALAGANESH)**  
**ACCOUNTANT MEMBER**

Dated: 16/04/2024  
A K Keot

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

ASSISTANT REGISTRAR  
ITAT, New Delhi