

**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"SMC" BENCH, MUMBAI**

**BEFORE SHRI SANDEEP SINGH KARHAIL, JUDICIAL MEMBER AND**  
**SMT. RENU JAUHRI, ACCOUNTANT MEMBER**

**ITA no.51/Mum./2024**  
**(Assessment Year : 2017-18)**

**Trimurti Pawan Pratisthan**

Newsphata, Tal-Newasa,  
Ahmednagar-414603  
PAN – AAATT4559M

..... Appellant

v/s

**DCIT, Exem-Circle-2**

Room No. 601, 6<sup>th</sup> Floor,  
Cumballa Hill MTNL  
Building, Pedder Road,  
Mumbai-400026

..... Respondent

Assessee by :Shri Bhupendra Karkhanis

Revenue by :Shri R. R. Makwana, Sr. DR

Date of Hearing – 31/07/2024

Date of Order –06/08/2024

**ORDER**

**PER SANDEEP SINGH KARHAIL, J.M.**

The present appeal has been filed by the assessee challenging the impugned order dated 07/11/2023 passed under section 250 of the Income Tax Act, 1961 (*"the Act"*) by the learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, [*"learned CIT(A)"*], for the assessment year 2017-18.

2. In this appeal, the assessee has raised the following grounds:-

*"1a. The National Faceless Appeal Centre (the Id. CIT(A), NFAC) erred in upholding the disallowance of Rs. 26,00,000/made by the Id. Assessing*

*Officer (Id. AO), inspite of the fact that list of donors containing name address and their respective PAN along with direction letters were submitted during appellate proceedings which satisfies the mandate of section 115BBC, which is wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961 and the Rules made thereunder.*

*b. On the facts and in the circumstances of the case and in law, the learned Assessing Officer erred in confirming the addition without appreciating the facts that:*

*i. Identity of donors were proved by individual letters of corpus fund containing name, address and PAN from the donors for donations received.*

*ii. Genuineness of transaction was proved by submission of Bank statements and completion certificate on finalization of construction.*

*2. The learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (the Id. CIT(A), NFAC) erred in upholding the disallowance Rs. 26,00,000/- made by the Id. Assessing Officer (Id. AO), being donation received, and the reasons assigned for doing so are wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961 and the Rules made thereunder.*

*3. The National Faceless Appeal Centre (the Id. CIT(A), NFAC) erred in upholding the disallowance of Rs. 26,00,000/- made by the Id. Assessing Officer (Id. AO) though said amount was spent towards making payments to contractors for construction of Food Centre/ Mess /Canteen Buildings for girls studying in the school run by appellant trust, which is wrong and contrary to the facts and circumstances of the case, the provisions of the Income Tax Act, 1961 and the Rules made thereunder."*

3. The only grievance of the assessee is against the addition made on account of donation received by the assessee trust.

4. We have considered the submissions of both sides and perused the material available on record. The brief facts of the case are that the assessee is a charitable trust established in 1995-96 and is engaged in the activities of providing education with residential/with hostels and mess facilities through running various primary, secondary schools as well as colleges in remote rural areas. For the year under consideration, the assessee filed its return of income on 04/10/2017 declaring a total income at Rs. Nil. The return filed by the assessee was selected for scrutiny and statutory notices under section 143(2)

as well as section 142(1) of the Act were issued and served on the assessee. In response to the said notices, the assessee filed the details and upon perusal of the same, it was noticed that the assessee has claimed corpus donation amounting to INR 26 lakh. Accordingly, the assessee was asked to submit the details of corpus donation. In absence of details regarding the identity, PAN, proof of address of donors and corpus donation letters, etc., the Assessing Officer ("AO") vide order dated 27/12/2019 passed under section 143(3) of the Act treated the donation of INR 26 lakh as anonymous donation and taxed the same under section 115 BBC of the Act.

5. In appeal before the learned CIT(A), the assessee submitted that its tax consultant at Mumbai was collecting all the donations as almost all the donors are from Mumbai. It was further submitted that the entire donation amount was credited in the bank account of the trust maintained in Dena Bank, Mumbai. The assessee submitted that at the time of assessment, the tax consultant was out of the country and hence there was a delay in submitting the details, and the assessment was completed before the submissions could be filed before the AO. The assessee further submitted that all the details of donations are available with PAN of donors and the donation is received either by cheque or NEFT/RTGS.

6. The learned CIT(A), vide impugned order, after considering the details filed by the assessee held that the funds received through donations are immediately withdrawn in cash in all the cases and in most of the cases the very next day. Accordingly, the learned CIT(A) held that the donation received has not been utilised as corpus for future capital expenditure and the assessee

has also not given the reasons for such huge cash withdrawals. The learned CIT(A) further held that this raises the suspicion that the donations in question were not used as corpus as claimed by the assessee. Accordingly, the learned CIT(A) denied the claim of exemption under section 11(1)(d) of the Act for the corpus donation and upheld the addition of INR 26 lakh made by the AO. Being aggrieved, the assessee is in appeal before us.

7. During the hearing, the learned Authorised Representative ("*learned AR*") submitted that the learned CIT(A) did not issue any notice to the assessee seeking details of cash withdrawn by the assessee and therefore the impugned findings were rendered without granting any opportunity of hearing to the assessee. The learned AR submitted that the cash was withdrawn for construction of mess by the assessee trust. In support of the aforesaid submission, the learned AR filed additional evidences and sought admission of the same under Rule 29 of the ITAT Rules, 1963. The learned AR made a reference to the summary of cash withdrawals from Dena Bank, Mumbai for incurring of expenses for construction of mess, forming part of the paper book on pages 12-14. The learned AR also referred to the photographs of the aforesaid mess, forming part of the paper book from pages 5-11, which was constructed by withdrawal of money from the bank account in which the donation money was deposited. The learned AR also made a reference to various vouchers/bills towards incurring of expenditure for construction of mess, forming part of the paper book from pages 12-191. Therefore, the learned AR submitted that there is no basis in the findings of the learned CIT(A) that the amount was withdrawn for returning the amount to donors in

cash, and rather the money was used for construction of mess by the assessee for the students.

8. Having considered the details filed by the assessee by way of an application seeking admission of additional evidence and perusal of the orders passed by the lower authorities, we find that no notice was issued to the assessee to examine the purpose of withdrawal of money from the bank account and nature of expenditure incurred by the assessee. Therefore, the additional evidences now filed by the assessee before us are admitted. Since, the documents/evidence now furnished by the assessee were not examined by either of the lower authorities, we deem it appropriate to set aside the impugned order and restore this issue to the file of the AO for *de novo* adjudication after examining the details/documents/evidence filed by the assessee. The AO shall be at liberty to seek any other information from the assessee for complete adjudication of this issue. We also direct the assessee to fully co-operate with the AO in the completion of the assessment proceedings. Needless to mention no order shall be passed without reasonable opportunity of hearing to the assessee. As a result, the grounds raised by the assessee are allowed for statistical purposes.

9. In the result, the appeal by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 06/08/2024.

**Sd/-**

**RENU JAUHRI  
ACCOUNTANT MEMBER**

**MUMBAI, DATED: 06/08/2024**

**Sd/-**

**SANDEEP SINGH KARHAIL  
JUDICIAL MEMBER**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The PCIT / CIT (Judicial);*
- (4) *The DR, ITAT, Mumbai; and*
- (5) *Guard file.*

Vijay Pal Singh, (Sr. PS)

By Order

Assistant Registrar  
ITAT, Mumbai