

IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH, KOLKATA

Before

**Dr. Manish Borad, Accountant Member &
Shri Sonjoy Sarma, Judicial Member**

**I.T.A. No.1157/KOL/2024
Assessment Year: 2018-19**

**Tripura Housing & Construction Board Appellant
(PAN: AAAJT2581M)**

Vs.

**Assessing Officer, Respondent
National e-Assessment Centre, Delhi**

Appearances by:

Shri S. K. Kamaluddin, CA appeared for Appellant.

Shri Nicholash Murmu, Addl. CIT, DR appeared for Respondent.

Date of concluding the hearing : 22.08.2024

Date of pronouncing the order : 04.09.2024

ORDER

Per Dr. Manish Borad, Accountant Member:

This appeal filed at the instance of the assessee pertaining to the Assessment Year (in short “AY”) 2018-19 is directed against the order passed u/s 250 of the Income Tax Act, 1961 in short the “Act”) by Ld. Commissioner of Income-tax, (Appeals), National Faceless Appeal Centre (NFAC), Delhi [in short Ld. “CIT(A)”] dated 29.03.2024 arising out of the assessment order framed u/s. 143(3) r.w.s. 143(3A) & 143(3B) of the Act by Assessing officer, National e-Assessment Centre, Delhi dated 09.03.2021.

2. The only issue for our consideration is as to whether Ld. CIT(A) erred in confirming that the addition made by the AO for unexplained cash credit u/s. 68 of the Act.

3. At the outset, Ld. Counsel for the assessee submitted that the impugned addition is uncalled for as the Ld. AO has made the impugned addition for the difference between amount set apart by the Board during FY 2017-18 (to be utilised up to FY 2022-23) as against the amount available for the year under consideration to be set apart. In short, the assessee had sum of Rs.6,23,66,276/- available for being set apart and in form 10 e-filed by the assessee on 26.09.2018 the amount set apart for being utilised during FY 2022-23 is Rs.7 Cr. Ld. AO has treated the difference of the two as unexplained cash credit which is not in accordance with law.

4. On the other hand, Ld. DR supported the orders of the lower authorities.

5. We have heard the rival submission and perused the material placed before us. The only issue for our consideration is as to whether the Ld. CIT(A) was justified in confirming the addition of Rs.76,33,723/- made by Ld. AO invoking the provisions of sec. 68 of the Act. We observe that the assessee is a statutory body managed and controlled by the State Govt. of Tripura and is registered u/s. 12A of the Act. Return of income filed on 26.09.2018 for AY 2018-19 which is within the prescribed time limit. Assessee also filed Form 10 on 26.09.2018

for setting apart Rs. 7 Cr. to be utilised for charitable purpose as per the objects specified in the Act up to FY 2022-23. Now, during the year under consideration, the amount left with the assessee Board for being set apart is only Rs.6,23,66,276/-. The details of the same is mentioned below :

Statement of Utilization and application for financial year 2017-18

PARTICULARS	AMOUNT(Rs.)
Total Amount Received as per Receipt & Payment (A)	14,82,97,591
Less:-Accumulated u/s 11(1)(15% of Rs. 14,82,97,591) (B)	2,22,44,639
Amount need to be utilized (C)=(A-B)	12,60,52,952
Actual utilization made by Board (D)	21,51,27,086
Expenditure incurred under the Head Project Expenditure from Own Fund in F.Y 2017-18 (E)	15,14,40,411
Expenditure utilized against set apart amount(14,71,35,000) of F.Y 2012-13 against Expenditure Head Project Expenditure from Own Fund in the F.Y 2016-17 (F)	99,26,845
Expenditure utilized against set apart amount(14,71,35,000) of F.Y 2012-13 against Expenditure Head Project Expenditure from Own Fund in the F.Y 2017-18 (G)	13,72,08,155
Amount Remaining for application against set apart of 14,71,35,000 at the end of F.Y 2017-18(14,71,35,000-F-G)	Nil
Amount Remaining for application for F.Y 2017-18 (H)=(D-E)	6,36,86,675
Amount need to be set apart u/s 11(2) (I)= (C-H)	6,23,66,277

6. On perusal of the above detail, we note that the amount which the assessee could set apart was only Rs.6,23,66,277/- but in Form 10 filed by the assessee on 26.09.2018 the amount set apart is Rs. 7 Cr. This fact only indicates that the assessee had mentioned the higher amount to be set apart than the amount it was actually left over for setting apart. The only effect of such higher amount being set apart would be that the

assessee will be able to spend only up to Rs.6,23,66,276/-. However, by no canon of law there could be any situation for invoking sec. 68 of the Act in this case because sec. 68 of the Act is applicable for unexplained cash credit found in the books during the year. In the instant case, the alleged sum of Rs.76,33,723/- is not received by the assessee during the year. The observations of both the lower authorities are totally on a wrong footing and deserve to be set aside. We accordingly, find merit in the contention of the Ld. Counsel for the assessee and therefore, reverse the finding of Ld. CIT(A) and delete the impugned addition made u/s. 68 of the Act and allow the effective ground nos. 1 and 2 of the appeal raised by the assessee.

7. Ground No. 3 is general in nature and does not require any adjudication.

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

Order is pronounced in the open court on 04th September, 2024.

Sd/-

(Sonjoy Sarma)
Judicial Member

Sd/-

(Dr. Manish Borad)
Accountant Member

Dated: 04th September, 2024

J.D. Sr. PS.

Copy of the order forwarded to:

- 1. Appellant – Tripura Housing & Construction Board, Air Field Road, P.O. Kunjaban, Gurkhabasti, West Tripura, Tripura - 799006.**
- 2. Respondent - Assessing officer, National e-Assessment Centre, Delhi**
3. CIT(A), NFAC, Delhi
4. CIT-
5. Departmental Representative
6. Guard File.

True copy

By order

Assistant Registrar
ITAT, Kolkata Benches, Kolkata