

**आयकर अपीलीय अधिकरण, कोलकाता पीठ 'बी', कोलकाता**  
**IN THE INCOME TAX APPELLATE TRIBUNAL "B" BENCH KOLKATA**

**Before Shri Sanjay Garg, Judicial Member and Shri Sanjay Awasthi, Accountant Member**

**I.T.A. No.680/Kol/2024**  
**Assessment Year: 2013-14**

**Dr. B. G. Memorial Trust.....Appellant**  
**6/1, Sarat Chatterjee Avenue**  
**Rabindra Sarovar,**  
**Kolkata – 700029.**  
**[PAN: AAATD5235A]**

**vs.**

**ITO, Ward-1(2), Exempt, Kolkata..... Respondent**

**Appearances by:**

Shri S. M. Surana, AR and Sunil Surana, AR, appeared on behalf of the appellant.  
Shri Manas Mondal, Addl. CIT, Sr. DR, appeared on behalf of the Respondent.

Date of concluding the hearing : June 27, 2024

Date of pronouncing the order : September 13, 2024

**आदेश / ORDER**

**संजय गर्ग, न्यायिक सदस्य द्वारा / Per Sanjay Garg, Judicial Member:**

The present appeal has been preferred by the assessee against the order dated 18.03.2024 of the National Faceless Appeal Centre [hereinafter referred to as 'CIT(A)'] passed u/s 250 of the Income Tax Act (hereinafter referred to as the 'Act').

2. The brief facts of the case are that the assessee was registered as a charitable institution u/s 12 of the Act. The assessee claimed deduction of income being a charitable institution u/s 11 of the Act. During the assessment proceedings, the Assessing Officer noted that the CIT(Exemption) vide order dated 22.02.2016 u/s 12AA(3) of the Act has withdrawn and cancelled registration granted earlier to the assessee-trust. In view of the said cancellation of registration, the

Assessing Officer denied the deduction of income to the assessee u/s 11 of the Act and further also found discrepancies in relation to corpus donation on account of unexplained increase in assets and disallowance u/s 40(a)(ia) etc.

3. The Id. CIT(A) confirmed the addition so made by the Assessing Officer.

4. The assessee thus come in appeal with the following grounds of appeal:

*“1. For that the Ld. CIT(A) erred in confirming the order of the A.O denying exemption u/s 11 on the ground that certificate u/s 12AA was cancelled by the Ld. CIT(A) when the said order of the Ld. CIT(A) when the said order of the Ld. CIT was cancelled by the ITAT and the exemption to the trust was reinstated.*

*2 For that the Ld CITA) erred in confirming the order of the AO because some discrepancies were found in the original account submitted ignoring the fact that revised accounts were submitted by the assessee with clarification with regard to the changes/discrepancies in the figures of the original accounts and revised accounts wherein no discrepancies were pointed out by the Ld. AO or by the Ld. CIT(A) before whom also the said discrepancies were explained.*

*3. For that the Ld. CIT(A) erred in holding the view that the accounts cannot be revised in view of rule 6G and accounting standard SA 560 when the same were not applicable thereby confirming the addition of Rs.59,58,659/- ignoring the discrepancies duly explained with reference to the incorrect figures of the opening corpus and similar other discrepancies in the said original figures.*

*4. For that even otherwise the addition of Rs. 59,58,659/- should not have been confirmed since all the investments in asset side were disclosed investment with matching corpus and liability side of the balance sheet.*

*5 For that the Ld CIT(A) erred in confirming the addition of an amount of Rs 1,25,42,308/- as corpus donations when the addition made by the AO was of the amount of Rs. 75,43,613/- and not Rs.1,25,42,308/- on the ground that the assessee failed to establish the capacity of the corpus donation when the Ld A.O did not disallow the same on the ground that the assessee failed to establish the veracity of the corpus donation and all compliances were made by the assessee.*

6. For that the Ld CIT(A) erred in confirming the disallowance the donation of Rs. 24,00,000/- made by the assessee on the ground that the donation remained uncorroborated when the disallowance was never made by the A.O on the said ground but because of withdrawal of exemption, the notices were fully complied with and there was no justification in disallowing the same.

7 For that the Ld CIT(A) erred in confirming the disallowance of the payment of Rs.18,23,024/-, Rs.1,62,430/- and Rs 11,32,988/- which was made simply on the ground of violations of TDS provisions u/s 40A(ia) when the same were not applicable to the assessee and in any case the genuinity of the payments were not disputed.

8 For that the Ld CIT(A) should have considered the revised form no. 10 filed in the course of assessment proceeding and was not justified in totally rejecting both the original and revised forms.”

5. **Ground No.1** – Vide Ground No.1, the assessee has agitated against the action of the lower authorities in not allowing the deduction u/s 11 of the Act to the assessee on the ground that the registration u/s 12A of the Act has been withdrawn.

6. At the outset, the ld. counsel for the assessee has invited our attention to the order of the Coordinate Bench of the Tribunal passed in ITA No.516/Kol/2017 dated 15.09.2017, whereby, the Tribunal has reversed the order of the ld. CIT(Exemption) and has restored the registration of the assessee-trust as a charitable institution. In view of the decision of the Tribunal, Ground No.1 of this appeal is allowed and the Assessing Officer is directed to grant admissible deduction u/s 11 of the Act to the assessee. This Ground No.1 of the appeal stands allowed.

7. **Ground Nos.2 to 4** – The assessee through these grounds of appeal has agitated against the action of the CIT(A) in confirming the addition made by the Assessing Officer of Rs.59,58,659/- on account of discrepancy in the accounts of the assessee.

8. The ld. counsel, in this respect, has submitted that due to inadvertence, some discrepancy had occurred in the balance sheet furnished by the assessee for the year under consideration. That the revised balance sheet was furnished before the Assessing Officer explaining the discrepancy. It was explained that there was a mistake in taking the opening capital. The ld. counsel has invited our attention to page 11 of the paper-book, which is the copy of the balance sheet, wherein, the corpus donation under the head 'capital fund' as on 31.03.2013 has been mentioned as Rs.3,42,25,700/-. The ld. counsel has submitted that these figures were wrongly mentioned. Therefore, during the assessment proceedings, the revised balance sheet as on 31.03.2013 was filed, wherein, the opening balance of the corpus fund has been mentioned as Rs.4,48,23,001/-. On being asked to explain in this respect, the assessee explained that the accountant of the assessee inadvertently has taken wrong figure of the opening balance. It was demonstrated before the Assessing Officer that the closing balance of the corpus fund as on 31.03.2012 was the opening balance as on 01.04.2012, which was at Rs.4,48,23,001/-. It was also explained that the contribution to the corpus fund received during the year was at Rs.1,25,47,308/- and therefore, the total corpus donation was at Rs.5,73,65,309/- and after prior period adjustment, the final figure was at Rs.5,73,80,471/-. The Assessing Officer, however, ignored the aforesaid explanation given by the assessee and observed that the assessee had increased assets by way of concealment of income and inflated expenses etc. and added the difference of Rs.59,58,659/- in respect of closing balance of the corpus fund arrived at after comparing figures mentioned in the original balance sheet with the revised balance sheet. The ld. counsel, in this respect, has invited our attention to page 22 of the paper-book to submit that the assessee had shown the corpus

fund as on 31.03.2012 at Rs.4,48,23,001/-, which is the opening balance in the balance sheet as on 31.03.2013. The discrepancy, therefore, has been duly explained. The ld. counsel has, further, submitted that when the discrepancy on liability side of the balance sheet has been duly explained, the Assessing Officer was not justified in making the addition on the asset side of the balance sheet.

9. We have heard the rival contentions and perused the record. We find that since the discrepancy stood explained by the assessee, therefore, in our view, the Assessing Officer was not justified in making the addition. So far as the observation of the CIT(A) that the accounts cannot be revised in view of Rule 6G of the Income Tax Rules is concerned, it has to be noted that Rule 6G speaks of the revised accounts in case of certain payments that have been made after furnishing of audit report which necessitates recalculation of disallowance u/s 40 or section 43B. This Rule, therefore, is not applicable to the facts and circumstances of the present case. To err is human, if a mistake, while noting down the figure has occurred and the assessee had duly explained the said mistake, there is no justification on the part of the Income Tax authorities to punish the assessee for a bona fide error. The Income Tax authorities are supposed to collect the legitimate taxes from the assessee. In view of this, the additions made by the lower authorities of Rs.59,58,659/- is not sustainable and the same is ordered to be deleted. Ground Nos.2 to 4 of the appeal stand allowed.

10. **Ground No.5** – Vide Ground No.5, the assessee has agitated against the action of the CIT(A) in making/confirming the addition of Rs.1,25,42,308/- as corpus donation on the ground that the assessee failed to establish the capacity of the corpus donors.

11. At the outset, the ld. counsel for the assessee has brought our attention to the assessment order to submit that no such disallowance was made by the Assessing Officer on account of failure of the assessee to establish the capacity of the donors. He has demonstrated from the assessment order that the Assessing Officer had picked the figure of corpus donation from the original return/accounts at Rs.75,43,613/- and disallowed the same on the ground that the assessee's registration u/s 12A stood withdrawn. The Assessing Officer separately made the addition of Rs.59,58,659/- in respect of difference of the corpus donation on comparison of original balance sheet with the revised balance sheet. So far as the issue of difference of figures is concerned, that has already been discussed while adjudicating Ground No.2 to 4 of the assessee's appeal. Having held that the assessee has explained the discrepancy, so the corpus fund of the assessee as on 31.03.2013 was at Rs.5,73,80,471/-, out of which a sum of Rs.1,25,47,308/- was received during the year. The ld. counsel for the assessee has invited our attention to page 31 of the paper-book, whereby, at page 33, the Assessing Officer vide point no.18 had asked the assessee to furnish the details of corpus donation. The ld. counsel, thereafter, has referred to page 53 of the paper-book, which is a copy of reply dated 02.12.2015, whereby, the assessee had furnished the relevant documents evidencing the contribution towards corpus donation through account payee cheques by the two donors. Photocopy of PAN card and letter of the donor stating clearly that the contribution made was towards corpus fund was also furnished. The ld. counsel has further referred to page 37 of the paper-book, whereby, the Assessing Officer asked the assessee to furnish the current address of the four donors. The ld. counsel has further invited our attention to page 41 of the paper-book, whereby, the name, address and PAN number of the

donors were duly furnished before the Assessing Officer. The ld. counsel has further referred to page 42 of the paper-book and reply to the query of the Assessing Officer and stated that the requisite documents including the name, address, PAN number etc. and letter stating that the donations towards corpus fund were duly furnished to the Assessing Officer. That, after the donations were received, there was no relation left of the assessee with the donors and that there was no information to the assessee in respect of current address of the four donors. It was submitted that the Assessing Officer may verify the details from the PAN card of the donors and verify about the said donations from them. However, the assessee, after making efforts, furnished the current address of the donor Pragati Viniyog (P) Ltd. It was also explained that out of four donors mentioned by the Assessing Officer, the assessee had not received any fund during the year from Global Initiative & Welfare Trust.

12. We have heard the rival contentions and perused the record. In our view, the assessee had duly furnished all the details of the donors who had made donations towards corpus donations to the assessee. Moreover, the Assessing Officer has not disputed the genuineness of the donations. The Assessing Officer had made the impugned additions only on the ground that the registration of the assessee as a charitable institution stood withdrawn on the date of assessment order. In view of this, the impugned addition made/confirmed by the lower authorities is not sustainable and the same is accordingly ordered to be deleted. Ground No.5 of the appeal stands allowed.

13. **Ground No.6** – Vide Ground No.6, the assessee has agitated against the action of the CIT(A) in making/confirming the addition of

Rs.24,00,000/- on account of donations made by the assessee to charitable institutions.

14. The ld. counsel has invited our attention to the impugned assessment order to submit that the only reason for making the impugned addition was that the registration of the assessee was withdrawn on the date of assessment order. However, the said registration stood restored by the order of the Tribunal dated 15.09.2017. The ld. counsel has relied upon the provisions of section 11 of the Act to submit that the donation to the charitable institutions was to be treated as application of income. The ld. counsel has invited our attention to page 44 of the paper-book, whereby, at point no.25, the Assessing Officer asked for the details of donations made by the assessee along with the details of donee-trust, copy of registration certificate of donee-trust and copy of memorandum of association of the donee-trust. The ld. counsel has further invited our attention to page 52 of the paper-book to submit that the Assessing Officer was duly explained that the assessee, during the year, has given donation of Rs.24,00,000/-.

15. We have heard the rival contentions and perused the record. We find that the details of the donee and the copies of their registration etc. as a charitable institution have not been placed in paper-book. We, therefore, restore this issue to the file of the Assessing Officer to verify the genuineness of the donations made by the assessee of Rs.24,00,000/- during the year.

16. **Ground No.7** – Vide Ground No.7, the assessee has agitated against the action of the CIT(A) in confirming the disallowance of

payments made by the assessee on the ground of non-deduction of TDS u/s 40(a)(ia) of the Act.

17. The ld. counsel for the assessee has invited our attention to section 11 of the Act to submit that the provisions for application of section 40(a)(ia) in section 11 was introduced w.e.f. A.Y 2019-20. That before this amendment, there was no provision to deduct TDS on the payments made by a charitable institution. He has further submitted that the said provisions were applicable only when there was profit from business or profession. That since the assessee has no income from business or profession, therefore, the provisions of section 194C were not applicable. He, in this respect, has relied the following case laws:

*a. Mahatma Gandhi Seva Mandir vs. DDIT (Exemptions) Mumbai (2012) (5250726 Mumbai (URO)*

*b. ITO Wd 3 Panchkula vs. Balaji Technical Education Society, ITA No.759/CHD/2014, ITAT Chandigarh Bench*

*c. CIT vs. Sushila Mullick 36 taxmann.com 537 (Allahabad High Court)*

*d. Bombay High Court in the case of Bombay Stock Exchange 365 ITR 181 has held that where the income of the assessee is computed u/s 11 the provisions of section 40(a)(ia) are not applicable.*

18. The ld. DR, on the other hand, has relied upon the findings of the lower authorities.

19. We have heard the rival contentions and perused the record. A perusal of the provisions of section 11 of the Act would show that the applicability of the provisions of section 40(a)(ia) of the Act to the said section has been introduced w.e.f. A.Y 2019-20, therefore, the said provisions were not applicable for the year under consideration. In view of this, the aforesaid disallowance made by the lower authorities cannot

be held to be justified. The additions contested vide Ground No.7 of the appeal, are, therefore, ordered to be deleted.

20. **Ground No.8** is general in nature.

21. In view of our findings given above, the appeal of the assessee is treated as allowed for statistical purposes.

**Kolkata, the 13<sup>th</sup> September, 2024.**

Sd/-

**[Sanjay Awasthi]**

लेखा सदस्य/Accountant Member

Sd/-

**[Sanjay Garg]**

न्यायिक सदस्य/Judicial Member

Dated: 13.09.2024.

RS

*Copy of the order forwarded to:*

1. Dr. B. G. Memorial Trust
2. ITO, Ward-1(2), Exempt, Kolkata
3. CIT (A)-
4. CIT- ,
5. CIT(DR),

//True copy//

By order

Assistant Registrar, Kolkata Benches