

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
DIVISION BENCH, 'B', CHANDIGARH

**BEFORE SHRI A.D. JAIN, VICE PRESIDENT &
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.253/CHD/2024

निर्धारणवर्ष / Assessment Year : 2017-18

Asstt. Commissioner of Income Tax, Exemptions, Circle-2, Chandigarh	बनाम	M.R.S. Shri Prannath Parnami Education Society, 20KM Stone, Rajgarh Road, VPO Choudhariwas Hisar 125001
स्थायीलेखासं./PAN NO: AABAM1046N		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

(Hybrid Hearing)

निर्धारितकीओरसे/Assessee by : Sh. Kapil Goyal, Advocate
राजस्वकीओरसे/ Revenue by : Smt. Kusum Bansal, CIT, DR

सुनवाईकीतारीख/Date of Hearing : 19.09.2024
उदघोषणाकीतारीख/Date of Pronouncement : 14.10.2024

आदेश/Order

Per A.D. Jain, Vice President:

This is assessee's appeal against the order of the ld. CIT(A),
National Faceless Appeal Centre (NFAC), Delhi, dated 14.01.2024, for
the Assessment Year 2017-18, taking the following grounds of appeal:

1. *Whether on the facts and circumstances of the case and in law, the ld. CIT(A), NFAC has erred in deleting the addition of Rs.3,35,42,110/- made by the A.O. by treating the amount shown to be received as corpus donation as voluntary donation received during the FY 2016-17 relevant to AY 2017-18 without considering the facts of the case.*
- II. *Whether on facts and circumstance of the case and in law, the ld. CIT(A), NFAC has erred in genuineness of unsecured loan amounting to Rs. 42,00,000/- during the F.Y. 2016-17 relevant to A.Y. 2017-18 without considering the facts of the case.?*

2. Heard.

3. Apropos Ground No.1, during the year, the Assessee has shown addition of Rs. 335,42,110/- in Corpus Fund which was directly taken to the balance sheet. The A.O., on sample basis, issued notices u/s 133(6) of the Act to 8 donors out of total 285 such persons. Only one response was received by the A.O. which was found not acceptable by him as per his observations at page 3/4 of the Assessment Order. The ld. CIT(A) deleted the addition.

4. It is seen that there is no cogent material brought on record by the Assessing Officer to support his action in treating the amount of corpus donation received by the Assessee under specific directions. The A.O., as correctly observed by the ld. CIT(A), has not proved any other intent of the donors. The receipts issued by Assessee to

donors in regular course highlight the nature of donations as CORPUS which has been overlooked by A.O. There is no cogent material brought on record by the A.O. to support his action in treating the amount of corpus donation received by the Assessee under specific directions. The ultimate utilization of the donations was wrongly not taken into consideration by the Assessing Officer.

5. The books of account of the Assessee are audited, in which, corpus is directly credited to the balance sheet. There are copies of receipts issued by the Assessee to the donors, available on record, which specify that the impugned transactions are corpus donations. There is no material on record brought by the A.O. to contradict the claim of the Assessee, in so far as regards to the corpus. It is directly credited to balance sheet and this further establishes that donations were received as corpus and are capital receipt u/s 11(1)(d) of the Act. These facts are patent on record. The ld. CIT(A) has rightly taken note thereof. The Department has not been able to refute this position.

6. Further, as rightly observed by the ld. CIT(A), the Assessing Officer did not make any enquiry during the assessment or remand proceedings, except for sending notices u/s 133(6) to only 8 out of 285 donors. The plea that photocopies are not acceptable is unsustainable considering that the proceedings are conducted online. The ld. CIT(A) rightly dismissed this contention of the Assessing Officer.

7. Then, it is also not the case of the A.O. that the documents furnished by the Assessee were not genuine. The fact that the documents filed during the appellate proceedings could have been filed during the assessment proceedings cannot be a sufficient reason to return a positive finding that the donations are bogus in nature or not in the nature of corpus donations. Once the Assessee furnished all the documents related to the receipt of the donations, the onus was on the A.O. to establish that the Assessee was not being truthful. However, neither in assessment proceedings, nor at the stage of remand, the A.O. brought any material on record to justify the addition. These irrefutable observations have rightly been arrived at by the Id. CIT(A) and the Department has not been able to successfully challenge them before us. Therefore, the A.O. acted merely on assumptions without bringing any positive material to reject the explanation offered by the Assessee. Further, there is no material on record to show that the Assessee indulged in any other activity, to which, generation of the undisclosed money could have been attributed.

8. Also, while rejecting the A.O.'s observations, the Id. CIT(A) has rightly held that the onus of proof is not a static one. Though in Section 68 proceedings, the initial burden of proof lies on the assessee, yet once the Assessee proves the identity of the creditors/share applicants/donors by either furnishing their PAN or

income tax assessment number and shows the genuineness of the transaction by showing money in his books, either by account payee cheque, or by draft, or by filing other supporting documents, then the onus of proof would shift to the A.O. It is not a case where the A.O. was in possession of some information or material to establish that the parties which donated the money or indulged in providing accommodation entries. In fact, no enquiry to that effect was ever done by the A.O., nor did he allege such practices by the donors.

9. The ld. CIT(A) has correctly relied on :
- i) 'DIT v. Ramakrishna Seva Ashram', [2012 / 205 Taxman 26 (Karnataka)].
 - ii) 'JCIT (Osd) (Exemptions), Circle-2, Chandigarh vs. M/s Vishav Manav Ruhani Kendra, Nawan Nagar, Circle-2, Chandigarh', ITA No. 899/Chd/2019 (Assessment Year: 2014-15), 2020 (6) TMI 129
 - iii) 'CIT v. Orissa Corpn. (P.) Ltd.', [1986] 25 Taxman 80F/159 ITR 8(SC);
 - iv) 'CIT vs. Kamdhenu Steel and Alloys Ltd., & Ors'. 361 ITR 220 (Del. HC);
 - vi) 'CIT v. Divine Leasing and Finance Ltd.', 2008 299 ITR 268 (Del. HC);
 - vi) 'CIT vs. Dwarkadhish Investment P. Ltd.', [2011] 330 ITR 298 (Del. HC)
 - vii) 'DIT (Exemptions) vs. Keshav Social & Charitable Foundation', [2005] 278 ITR 152 (Del. HC) which is affirmed by the Hon'ble Supreme Court reported in 394 ITR 496 (SC).

No rebuttal to such case laws has been put forward before us by the Department.

10. Accordingly, the well-reasoned order of the Id. CIT(A) on this issue is upheld and Ground No.1 is rejected.

11. Regarding Ground No. 2, the A.O. in his order has observed that:

"A show cause notice was issued to the assessee on 28.11.2019 for compliance by 02.12.2019 vide which it was specifically conveyed that in absence of reply the case will be assessed on the basis of material facts available on record. The show cause is reproduced as under:

.....As per Schedule 'B' of Balance sheet, you have shown unsecured loans amounting to Rs. 1,81,55,000/- raised from certain individuals/ entities. Please furnish the details as per format given below:

.....

3.4 The reply to point No. ii) of show cause notice regarding 'unsecured loans' amounting to Rs.1,81,55,000/-is not acceptable as the assessee could not established creditworthiness of the persons/entities from whom the loan has been raised. The assessee has simply filed the ledger account confirmation of the above loans. To the natural justice, 33% of unsecured loans i.e. Rs.59,91,150/- (33% of Rs.1,81,55,000/-) is added to taxable income of the assessee during the year under consideration."

12. Before the Id. CIT(A), the Assessee contended that:

"...it is now being provided for all the other relevant documents possible in respect of the loans taken from NDR Promoters Pvt. Ltd. and NDR Realtors Pvt. Ltd. The documents includes confirmed ledger accounts, ITR, Bank Statement, financials, PAN. The same is placed in Additional PB Pg54 onwards. The details in respect of all other parties which already have been provided for during the assessment proceedings is placed in PB Pg 37 onwards..."

13. The A.O. in his Remand Report observed that:

"...Thus, the assessee had raised unsecured loan of Rs.42,00,000/- only during the year under consideration and the AO had to verify the genuineness of these unsecured loans only. However, the matter may kindly be decided on merits keeping in view the facts mentioned in the assessment order and also the facts as narrated above from the record."

14. We find that as correctly observed by the Id. CIT(A), it remains undisputed that the A.O. simply disallowed 33% of the total unsecured loans as unexplained, without ascribing any reason for his action. Either a loan transaction can be genuine, or it is not; there is no scope for an in between finding in an adhoc manner. Furthermore, no comments have been made by the A.O. on the documents submitted by the Assessee to establish the genuineness of the loans and creditworthiness of the lenders. There is no material whatsoever on record to establish that the loan transactions were not genuine; in

fact, no attempt has also been made by the A.O. to that end. As observed from the assessment order, there is no enquiry made by the A.O. from any of the lenders from whom the Assessee had received unsecured loans.

16. The ld. CIT(A) has rightly relied on the following decisions:

- i) *'PCIT vs. Hi-Tech Residency (P.) Ltd.'*, (2018) (Delhi HC) 157 Taxmann 390 (SLP of Revenue dismissed in Supreme Court);
- ii) *'CIT v. Orissa Corpn. (P.) Ltd.'*, [1986] 25 Taxman 80F/159 ITR 78(SC)
- iii) *'CIT vs. Kamdhenu Steel and Alloys Ltd., & Ors.'*, 361 ITR 220 (Del. HC)

17. Again, no contra decision has been cited by the Department before us. Therefore, Ground No.2 is also rejected while confirming the well-reasoned order passed by the ld. CIT(A).

18. In the result, the appeal is dismissed.

Order pronounced on 14.10.2024.

Sd/-
(KRINWANT SAHAY)
Accountant Member

“आर.के.”

Sd/-
(A.D. JAIN)
Vice President

आदेशकीप्रतिलिपिअग्रेषित / Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent

3. आयकरआयुक्त/ CIT
4. विभागीयप्रतिनिधि, आयकरअपीलीयआधिकरण, चण्डीगढ़/ DR, ITAT,
CHANDIGARH
5. गार्डफाईल/ Guard File

आदेशानुसार/ By order,
सहायकपंजीकार/ Assistant Registrar