

आयकर अपीलीयअधिकरण, विशाखापटणम SMC पीठ, विशाखापटणम  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
VISAKHAPATNAM SMC BENCH, VISAKHAPATNAM

श्री दुव्वूरु आर एल रेड्डी, न्यायिक सदस्य के समक्ष

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER

आयकर अपील सं./ I.T.A. No.164/Viz/2024  
(निर्धारण वर्ष / Assessment Year : 2017-18)

Behra Educational Trust,  
H.No. 14-7, RRV Puram,  
Gopalapatnam,  
Visakhapatnam-530027,  
Andhra Pradesh.  
PAN: AACTB5482D

(अपीलार्थी/ Appellant)

अपीलार्थी की ओर से/ Appellant by  
प्रत्यार्थी की ओर से / Respondent by

Vs. Income Tax Officer,  
Exemption Ward,  
Visakhapatnam.

(प्रत्यर्थी/ Respondent)

Sri GVN Hari, AR  
Dr. Aparna Villuri, Sr. AR

सुनवाई की तारीख / Date of Hearing : 10/10/2024  
घोषणा की तारीख/Date of  
Pronouncement : 30/10/2024

ORDER

PER DUVVURU RL REDDY, Judicial Member :

This appeal filed by the assessee is against the order of the Ld. Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi ["Ld. CIT(A)-NFAC"] in DIN & Order No. ITBA/NFAC/S/250/2023-24/1061231835(1), Dated 21/02/2024 arising out of the order passed U/s. 143(3) of the Income Tax Act, 1961 ["the Act"] for the AY 2017-18.

2. Briefly stated the facts of the case are that the assessee is a trust registered under the Indian Trusts Act, 1882 on 17/03/2015. The assessee filed its return of income for the AY 2017-18 on 28/03/2018 declaring NIL income after claiming exemption U/s. 11 of the Act. Subsequently, the case was selected for scrutiny under manual guidelines as the society is not having registration U/s. 12A of the Act but claimed exemption U/s. 11 of the Act in the return of income. Accordingly, notice U/s. 143(2) of the Act dated 25/09/2018 was issued and duly served on the assessee. In response, the assessee furnished the information / details as called for through e-proceedings. As per the information available before him, the Ld. AO observed that the assessee's application in Form-10A filed on 06/06/2017 seeking registration U/s. 12A of the Act was rejected by the competent authority. The Ld. AO also observed that in the absence of registration, the claim of the assessee for exemption U/s. 11 of the Act made in the return of income is not allowable and hence denied. The Ld. AO further observed that in the return of income the assessee had claimed to have received Rs. 39,89,900/- as voluntary contributions received as corpus donations during the relevant previous year 2016-17 and claimed the total amount to be exempt U/s. 11(1)(d) of the Act. During

the course of assessment proceedings, the assessee submitted confirmation letters from 73 of such donors said to have donated cash amounting to Rs. 8,47,000/-. However, the Ld. AO observed that the confirmation letters furnished electronically do not have any specific direction for which the amounts were donated, except saying that the amounts were donated to the trust with a specific condition. Further, the Ld. AO also observed that the assessee has not furnished any documentary evidence to the remaining amount of Rs. 31,42,900/- and therefore, the Ld. AO was of the opinion that the assessee's claim that the donations were made with specific direction to form part of the corpus of the trust is unsubstantiated. Accordingly, the Ld. AO observed that *the total income of the assessee during the relevant previous year was Rs. 40,44,800/- and the expenditure claimed was Rs. 1,25,513/- resulting in surplus income over expenditure amounting to Rs. 39,19,287/-*. Thus, the Ld. AO determined the total taxable income of the assessee at Rs.39,19,287/- and passed the order U/s. 143(3) of the Act dated 13/11/2019. Aggrieved by the order of the Ld. AO, the assessee preferred an appeal before the Ld. CIT(A)-NFAC.

3. On appeal, the assessee made various submissions before the Ld. CIT(A)-NFAC. However, after considering the submissions of the assessee, the Ld. CIT(A)-NFAC held that the donations amounting to Rs. 8,47,000/- are in the nature of capital receipts and would not form part of the total income of the assessee. Accordingly, the Ld. CIT(A)-NFAC held that the addition / disallowance made by the Ld. AO is reduced from Rs. 39,19,287/- to Rs. 30,72,287/- and partly allowed the appeal of the assessee. Aggrieved by the order of the Ld. CIT(A)-NFAC, the assessee is in appeal before the Tribunal by raising the following grounds of appeal:

- “1. *The order of the Ld. CIT(A) is contrary to the facts and also the law applicable to the facts.*
2. *That having regard to the facts and circumstances of the case, the Ld. CIT(A) erred on facts and in law in not allowing the appellant's claim for admission of additional evidences and further erred in not considering the evidences filed before him before adjudicating the appeal on the plea that the appellant had not made application requesting for admission of additional evidence as required under Rule 46A(1) of the Act.*
3. *That having regard to the facts & circumstances of the case, the Ld. CIT(A) erred on facts and in law in not reversing the action of the Ld. AO in not treating the donations received as forming part of corpus fund aggregating to Rs. 30,72,287/-.*
4. *That in any case an in any view of the matter, the order under appeal is bad in law and is against the facts and circumstances of the case in as much as the disallowance made by Ld. AO were not deleted by Ld. CIT(A) and therefore assessment order as well as appeal order passed by the Ld. CIT(A) are not sustainable on various legal and factual grounds.*

5. *That the appellant craves the leave to add, modify, amend or delete any of the grounds of appeal at the time of hearing and all the above grounds are without prejudice to each other."*

4. At the outset, the Ld. Authorized Representative ["Ld. AR"] submitted that in support of the assessee's claim that the donations were given with specific direction that they form part of the corpus of the Trust, the assessee has furnished the additional documentary evidences in the form of confirmation letters from the donors which the assessee could not be produced before the Ld. AO. However, the Ld. CIT(A)-NFAC did not consider the submissions of the assessee and as well as the confirmations given by the donors (a list of 93 donors) by holding that since the assessee has produced additional confirmation letters from the donors and these documents were not produced during the assessment proceedings, the details produced for the first time in the present appellate proceedings would amount to additional evidence. The Ld.AR further submitted that the additional evidence / documentary evidence submitted by the assessee were rejected by the Ld. CIT(A)-NFAC by holding that the assessee has not made any application requesting for the admission of additional evidence which is unsustainable in law. Therefore, the Ld. AR pleaded that the matter may be remitted

back to the file of the Ld. CIT(A)-NFAC in order to consider the documentary evidence / additional submitted by the assessee in support of its claim.

5. On the other hand, the Ld. Departmental Representative ["Ld. DR"] heavily relied on the orders of the Ld. Revenue Authorities and argued in support of the same.

6. I have heard both the sides and perused the material available on record as well as the orders of the Ld. Revenue Authorities. It is an undisputed fact that during the assessment proceedings, before the Ld. AO the assessee has submitted confirmation letters from 73 donors who donated cash amounting to Rs. 8,47,000/- but could not submit the documentary evidence for the remaining amount of Rs. 31,42,900/-. For non-submission of the confirmation letters / documentary evidence from the remaining donors, the assessee has stated that since there was a restriction on attachment of the website, the assessee could not upload the details of other donors, and therefore the assessee had physically furnished a letter dated 9/11/2017 by enclosing the explanation and the supporting documentary evidence. However, the Ld. AO did not consider

them by holding that the assessee has not furnished any supporting documentary evidence for the remaining amount of Rs. 31,42,900/-. On appeal, before the Ld. CIT(A)-NFAC, the assessee has filed the confirmation letters / documentary evidence of all the 93 donors which includes the confirmations letters of 73 donors filed before the Ld. AO and another 20 confirmations letters of donors which the assessee could not be uploaded in the website. After considering the submissions of the assessee, the Ld. CIT(A)-NFAC held that the donations amounting to Rs. 8,47,000/- are in the nature of capital receipts and would not form part of the total income of the assessee. But the Ld. CIT(A)-NFAC did not admit the additional evidence / additional confirmation letters from the 20 donors produced by the assessee by simply holding that no request for admission of additional evidence under Rule-46A was filed by the assessee neither in Form-35 nor by adducing separate application under Rule-46A of the IT Rules, 1962. In this situation, I am of the view that the Ld. CIT(A)-NFAC ought to have consider the confirmation letters / additional evidence submitted by the assessee because there is no difference in the confirmation letters accepted by the Ld. CIT(A)-NFAC and that of the confirmation letters rejected by the Ld. CIT(A)-NFAC as they are similar in nature and carried the

identical information. Furthermore, the reason advanced by the assessee for non-submission of the confirmation letters from the remaining donors for the amount of Rs. 31,42,900/- is also found reasonable and acceptable. Under these circumstances, I have no hesitation to come to a conclusion that before the Ld. CIT(A)-NFAC the assessee has clearly explained that all the donations are in the nature of capital receipts for specific reason ie., corpus of the Trust and substantiated its claim of donations as corpus donations. Therefore, I hereby delete the addition of Rs. 31,42,900/- sustained by the Ld. CIT(A)-NFAC by treating the same as capital receipts and set-aside the order of the Ld. CIT(A)-NFAC. It is ordered accordingly.

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

Pronounced in the open Court on 30<sup>th</sup> October, 2024.

Sd/-  
(दुव्वूरु आर.एल रेड्डी)  
(DUVVURU RL REDDY)  
न्यायिकसदस्य/JUDICIAL MEMBER

Dated :30/10/2024  
OKK - SPS

आदेश की प्रतिलिपि अग्रेषित /Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee – Behra Educational Trust, H.No. 14-7, RRV Puram, Gopalapatnam, Visakhapatnam-530027, Andhra Pradesh.

2. राजस्व/The Revenue – Income Tax Officer, Exemption Ward, O/o. ITO, Infinity Towers, Sankaramatam Road, Visakhapatnam – 530016, Andhra Pradesh.
3. The Principal Commissioner of Income Tax,
4. आयकर आयुक्त (अपील)/ The Commissioner of Income Tax (Appeals),
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, विशाखापटणम/ DR, ITAT, Visakhapatnam
6. गार्ड फ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary  
ITAT, Visakhapatnam