

आयकर अपीलिय अधिकरण
दिल्ली पीठ "एसएमसी", दिल्ली
श्री विकास अवस्थी, न्यायिक सदस्य

IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "SMC", DELHI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER

आअसं.1778/दिल्ली/2024 (नि.व. 2020-21)

ITA No.1778/DEL/2024 (A.Y.2020-21)

Nalwadi Charitable Trust,
B-60/61, C/O Bajaj Auto Limited,
Naraina Industrial Area Phase-II,
New Delhi 110028

PAN: AAATN-0324-N

..... अपीलार्थी/Appellant

बनाम Vs.

Assistant Director of Income Tax,
CPC, Post Bag No. 2, Electricity Post Office,
Bengaluru, Karnataka 560500

..... प्रतिवादी/Respondent

अपीलार्थी द्वारा/ Appellant by : Ms. Vasanti Patel, Advocate and
Shri Mahendra Gohel, Chartered Accountant
(Through VC)

प्रतिवादीद्वारा/ Respondent by : Ms. Shivani Bansal, Sr. DR

सुनवाई की तिथि/ Date of hearing : 10/09/2024

घोषणा की तिथि/ Date of pronouncement: : 30/10/2024

आदेश/ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of Commissioner of Income Tax (Appeals), Addl/JCIT(A), Aurangabad (hereinafter referred to as 'the CIT(A)') dated 21.02.2024, for assessment year 2020-21.

2. Ms. Vasanti Patel, appearing on behalf of the assessee submitted that the assessee is a Charitable Trust registered u/s. 12A of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') since 24.12.1974. The assessee has been availing benefit u/s. 11 & 12 of the Act from year to year till date and the same has been allowed to the assessee. For the impugned assessment year, the assessee filed e-return of income on 30.11.2020 within the time prescribed u/s.139(1) of the Act and as extended by the CBDT vide its various circulars consequent to outbreak of Covid-19 pandemic. In computation of income, the assessee had disclosed interest income from saving bank account and fixed deposit receipts aggregating to Rs.46,181/-, corpus donations received Rs.10 lakhs. The return of the assessee was processed u/s. 143(1) of the Act. The exemption claimed by the assessee in respect of corpus donations was denied by the CPC without issuing any notice or seeking any explanation from the assessee. Corpus donations being in the nature of 'capital receipts' are exempt u/s. 11(1)(d) of the Act. Thus, the gross income of the assessee during the relevant period is only Rs. 46,181/-. The assessee carried the issue in appeal before the CIT(A). The CIT(A) held that the assessee was required to get its account audited and file Form 10B along with the return of income. The CIT(A) held that since Form 10B was filed on 29.08.2022 i.e. beyond the due date, hence, the assessee is not eligible for claiming exemption u/s. 11 of the Act. Referring to provisions of section 12A(1) r.w.r 17B of the Act, she submitted that the taxable income of the assessee was less than maximum amount not chargeable to Income Tax in the previous year. Since, the income of assessee was less than the limit prescribed under the Act for Audit; there was no requirement for the assessee to get the

accounts audited. Despite that that assessee got the accounts audited & filed Form 10B albeit belatedly. The assessee had also filed an application before the Competent Authority for condoning delay in filing of Form 10B and the said application is still pending for final disposal. The CIT(A) has erred in recording the fact that the application for condonation delay was filed before the CIT(A). To buttress her contention that corpus donation is not an income, she placed reliance on the decisions in the case of *DCIT vs. Shree Saraswati Education Sansthan 203 ITD 668 (Ahd. Trib)*. To support her contention that filing of Form 10B belatedly sufficiently complies with the provisions of the Act, she placed reliance on the decision in the case of *Association of Indian Panelboard Manufacturer vs. DICT 157 taxmann.com 550 (Guj.)*

4. Per contra, Ms. Shivani Bansal representing the department vehemently supported the impugned order and prayed for dismissing appeal of the assessee. She submitted that it is evident from records that the assessee failed to furnish mandatory audit report in Form 10B before the due date in compliance of provisions of section 12(1)b of the Act. Filing of Audit Report alongwith the return of income before the due date is mandatory requirement. To support his agreement he relied on the decision in the case of *PCIT vs. Wipro Ltd. 140 taxmann.com 223 (SC)*.

5. Submissions made by rival sides heard, orders of the authorities below examined and the decisions on which the respective sides have placed reliance considered. It is an admitted position that the assessee has not filed Form 10B

along with the return of income but the same has been filed belatedly. Two fold submissions are made on behalf of the assessee before us.

(i) The 'Corpus donations' are in the nature of capital receipts, hence, do not partake the character of income of the assessee. Since, the income of the assessee during the period relevant to the assessment year under appeal was less than the threshold limit for getting the accounts audited, the assessee was not mandated to furnish Audit Report in Form 10B.

(ii) Even, though the assessee was not required to get the accounts audited, still the assessee got the accounts audited and furnished Form 10B subsequent to filing of return of income and the assessee had also filed application for condonation of delay before the concerned jurisdictional CIT, the said application is still pending for adjudication before the CIT for final disposal. Hence, during pendency of said application the CIT(A) could not have denied the benefit of exemption u/s. 11(1) of the Act on corpus donations which are capital receipts.

6. The Division Bench in the case of DCIT vs. Shree Saraswati Education Sansthan (supra), in turn placing reliance on catena of decisions held 'corpus donations' being in the nature of capital receipts could not be added to the total income of assessee. The relevant extracts of findings of the Division Bench in the aforesaid case are as under:-

15. The issue to be considered, on the aspect of computation of income as per normal provision is, whether corpus donations are to be treated as capital or revenue and accordingly its treatment as income in the hands of the assessee. Corpus donations by their very nature are towards the corpus of the trust. They are not freely available for utilization by the trust. There is plethora of decisions of the ITAT, and even Hon'ble Delhi High Court holding corpus donations to be capital in nature; some of which decisions cited before us are as under:

i) ITO Vs. Gaudiya Granth Anuvud Trust, 48 taxmann.com 348 (Agra-Trib.)

ii) ACIT Vs. Geetanjali Education Society, 22 SOT 15 (Jodh) (URO);

iii) Pentafour Software Software Employees Welfare Foundation Vs. ACIT, IT Appeal Nos.751 & 752/Mad/2007;

iv) ITO (Exemption) Vs. Smt. Basanti Devi & Shri Chakhan Lal Garg Education Trust, IT Appeal No.5082(Delhi) of 2010 dated 30.1.2009;

v) Shri Shankar Bhagwan Estate Vs. ITO, 61 ITD 196 (Cal.);

vi) Society for Integrated Development in Urban & Rural Areas (Sidur) Vs. DCIT, 90 ITD 493 (Hyd);

vii) Sri Dwarkadheesh Charitable Trust Vs. IT, 98 ITR 557 (All.)

viii) DCIT Vs. Nasik Gymkhana, 77 ITD 500 (Pune)

16. Further, we have noted that decision of Delhi Bench of the Tribunal in the case of Smt.Basanti Devi & Shri Chakhan Lal Garg Education Trust (supra) was confirmed by the Delhi High Court.

17. The Id.DR has solitarily referred to a contrary decision of the ITAT, Chennai Bench in the case of Veeraval Trust (supra). In view of overwhelming view of the ITAT in numerous decisions as above, uniform view on the issue is that corpus donations are capital in nature. We have even noted that decision relied upon by the ITAT, Chennai Bench while taking up contrary view of Hon'ble Supreme Court in the case of U.P. Forest Corporation (supra) has been considered by the ITAT, Delhi Bench in the case of R.D. Foundation (supra) and after considering the same, has still held that corpus donations to be capital in nature. In view of the same, therefore, we have no hesitation in confirming the finding of the Id.CIT(A) that corpus donations were capital in nature and could not be added, therefore, to the income of the assessee while computing the same as per normal provisions of the Act.

18. As for the argument of the Id.DR that since section 11(d) specifically exempts corpus donation , therefore corpus donations are to be treated as income in terms of section 2(24)(iia) of the Act need not to be dealt with by us, considering the uniform view taken by the ITAT on the issue as above treating it as capital in nature.

19. In conclusion, on the first aspect of the income of the assessee computed by the AO by including voluntary donations, we find, the same to be in accordance with law. Corpus donations however have been rightly held to be capital in nature by the Ld.CIT(A). The grounds raised by the Revenue in ground no.1 & 2 are partly allowed.

7. The second plank of argument is that even, though, the assessee was not required to furnish audit report in Form 10B, the assessee has still complied with the requirement and has furnished Form 10B, though after due date for filing return of income. Furnishing of Form 10B is procedural in requirement, hence, benefit of section 11(1) of the Act cannot be denied to the assessee on corpus donations. The CIT has denied the benefit of section 11(1) of the Act to the assessee, as the assessee failed to furnish Form 10B along with return of income within the due date alongwith return of income u/s. 139(1) of the Act.

8. In the case of *Xavier Kelavani Mandal P Ltd. 41 taxmann.com 184, (Gujarat)*, the assessee failed to file Audit Report in Form 10B which was necessary to claim the benefit of section 11 of the Act. The CIT(A) permitted the assessee to file Audit Report at appellate stage and allowed exemption u/s. 11 of the Act. The Department assailed the action of First Appellate Authority before the Tribunal, but remained unsuccessful. The Department carried the issue to Hon'ble High Court. The Hon'ble High Court upholding the decision of Tribunal observed as under:

“3. The question whether it is permissible to the assessee to produce the audit report at the appellate stage, has already been answered by this court in CIT v. Gujarat Oil and Allied Industries Ltd. [(1993) 201 ITR 325], wherein it is held that the provision regarding furnishing of audit report along with the return has to be treated as a procedural provision. It is directory in nature and its substantial compliance would suffice. In that case, the assessee had not produced the audit report along with the return of income, but produced before completion of the assessment. The Punjab and Haryana High Court in CIT v. Shahzadanand Charity Trust [228 ITR 292] has

reiterated the same principle holding that the benefit of exemption should not be denied merely on account of delay in furnishing the same, and it is permissible for the assessee to produce the audit report at a later stage either before the Income Tax Officer or before the appellate authority by showing a sufficient cause. This decision of Punjab & Haryana High Court has been relied on by the Tribunal.”

9. In the instant case it is not in dispute that the assessee has furnished Form 10B, though belatedly. Thus, the mandatory condition of furnishing Audit Report in prescribed form is complied with. In light of the judgment rendered in the case of Xavier Kelavani Mandal P. Ltd. (supra), I am of considered view that the assessee has complied with the provisions of the section, hence, the benefit of section 11(1)(d) of the Act as was applicable in the impugned assessment year, is allowable the assessee. I hold and direct, accordingly.

10. The Revenue has placed reliance on the decision PCIT vs. Wipro Ltd. (supra). After examining the same, I am of considered view that the said decision does not support the cause of Revenue as the same is distinguishable on facts.

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

Order pronounced in the open court on Wednesday the 30th day of October, 2024.

Sd/-

(VIKAS AWASTHY)

न्यायिक सदस्य/JUDICIAL MEMBER

दिल्ली/Delhi, दिनांक/Dated /10/2024

NV/-

प्रतिलिपि अग्रेषितCopy of the Order forwarded to :

1. अपीलार्थी/The Appellant ,
2. प्रतिवादी/ The Respondent.
3. The PCIT
4. विभागीय प्रतिनिधि, आय.अपी.अधि., दिल्ली /DR, ITAT, दिल्ली
5. गार्ड फाइल/Guard file.

BY ORDER,

//True Copy//

(Dy./Asstt. Registrar) ITAT, DELHI