

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
MUMBAI BENCH “E”, MUMBAI**

**BEFORE SHRI NARENDER KUMAR CHOUDHRY, JUDICIAL MEMBER  
AND  
SHRI RATNESH NANDAN SAHAY, ACCOUNTANT MEMBER**

**ITA No.860/M/2024  
Assessment Year: 2018-19**

<b>Income Tax Officer (Exemption) – 2(3)</b> 617, MTNL Building, Cumballa Hill, Dr. G. D. Deshmukh Marg, Pedder Road, Mumbai – 400026.	<b>Vs.</b>	<b>Supreme Foundation</b> 612, Raheja Chambers, 123, Nariman Point, Mumbai – 400021. <b>PAN: AAPTS4997P</b>
<b>(Appellant)</b>		<b>(Respondent)</b>

**Present for:**

**Assessee by** : Shri Nitesh Joshi

**Revenue by** : Shri P. D. Chougule, (Addl. CIT) SR. DR

**Date of Hearing** : 08 . 10 . 2024

**Date of Pronouncement** : 23 . 10 . 2024

**O R D E R**

**Per: Ratnesh Nandan Sahay, Accountant Member:**

1. This appeal has been filed by the department against the Order of the Ld. CIT (Appeals) passed u/s. 250 of the Income Tax Act [the ‘Act’ in short]



vide DIN & Order No. ITBA/NFAC/S/250/2023-24/1059166933(1)

Dated 28/12/2023 for the Assessment Year 2018-19.

2. Following grounds of appeal have been raised by the appellant:

1. *"Whether, on the facts and in the circumstances of the case and in law, the CIT(A) was justified in treating the donation of Rs. 2,81,00,000/- as general in nature. While on facts, the receipts issued by the assessee mention the nature of donation being received on account of corpus, thereby wrongly allowing relief towards the exemption claimed against it under section 11 of the Act."*
2. *"Whether on the facts and in the circumstances of the case and in law the CIT(A) was right in allowing the claim of the assessee of Rs. 2,50,89,844/-as allowable expenses in spite of the fact that the assessee has failed to discharge its onus to establish the genuineness of expenses incurred towards the charitable activity and accordingly has rightly been disallowed and added to the total income."*
3. *"Whether on the facts and in the circumstances of the case and in law the CIT(A) was right in allowing the relief to the assessee on evidences produced subsequent to assessment, when an opportunity should have been afforded under Rule 46A to the AO or at least the matter remanded back to the AO for verification and rebuttal of the same."*

3. The facts of the case, in brief, are that the assessee is a trust registered u/s.

12A of the Act and also u/s. 80G of the Act. The Trust is carrying out the

activities of spreading education and has entered into a MOU with

Government of Rajasthan. The case of the assessee was selected for

scrutiny. During course of assessment proceeding, the assessee has

received a total donation of Rs. 2,83,50,000/-from Supreme IndustriesLtd

as per their Corporate Social Responsibility (CSR) activities. During the



year under consideration, the assessee trust had applied a sum of Rs. 2,74,18,599 /- out of the total receipts of Rs. 2,83,50,000/- making surplus of Rs.9,31,401/-. The Trust received the entire contributions from the Supreme Industries Ltd. which meets its CSR obligations through the trust. The Ld. AO has noted in the assessment order that the assessee, during the assessment proceedings, has submitted that the donation of Rs. 2,83,50,000/- received from the supreme Industries Ltd. is towards non-corporate fund. However, the AO held that the nature of donation being received was on account of corporate fund. Further, the assessee trust has failed to discharge its onus to establish the genuineness of the charitable activities and failed to substantiate the genuineness of the expenses on payments made to the teachers.

4. Aggrieved by the order of the Ld. AO, the assessee trust preferred an appeal before the Ld. CIT(A). The Ld. CIT(A) vide impugned order allowed the appeal of the assessee on the ground that the appellant has submitted full details of payment of Rs.2,50,59,844/- including location, name of volunteers, their PAN, total amount paid to them alongwith supporting documents and bank details. The Appellant also submitted a copy of agreement with Divisional Sanskrit Education Officer, Ajmer, Rajasthan and thus, the addition of Rs. 2,50,89,844/- made by the Ld. AO cannot be



justified and accordingly, deleted the said addition. On the issue of surplus created out of the corpus, the Ld. CIT(A) has held that the Chief Finance Officer of Supreme Industries Ltd has already given an affidavit clarifying the word 'Corpus' was mentioned erroneously and inadvertently and this is only a general-purpose donation.

5. Aggrieved by the order of the Ld. CIT(A), this appeal has been preferred.

During the appellate proceedings before us, the appellant submitted as under:

*"A note in respect of donations received by the appellant trust from a listed company under Corporate Social Responsibility (CSR) Obligation.*

1. *The appellant trust was formed in or around 27th May, 2015 and is a Charitable Trust duly registered under section 12A of the Income tax Act, 1961 (the Act). The appellant is also registered under section 80G of the Act. The appellant trust was settled by Supreme Industries Limited for advancement of public charitable objects and fulfillment of its Corporate Social Responsibility (CSR) Obligations laid down under Companies Act, 2013. Copy of relevant trust deed is already furnished vide paper book submitted on 05/08/2024.*
2. *During the course of hearing of the impugned appeal, the Hon'ble Bench had inquired whether a company, to meet its CSR obligation, can incorporate its own trust.*

*In the matter, submissions of the appellant are as under:-*

3. *Section 135 of the Companies Act, 2013 contains provisions in relation to CSR obligation of a corporate entity. As per said provisions, CSR obligations are applicable to a company having:*
  - a) *Net worth of Rs. five hundred crores or more; or*
  - b) *a turnover of Rs. one thousand crore or more; or*
  - c) *a net profit of Rs. Five crore or more*



- in immediately preceding financial year.*
- 3.1. *As per said provisions, such company is required to spend in every financial year, at least 2% of the average net profits of the company made during 3 immediately preceding financial years.*
  - 3.2. *A copy of extract of the said section 135 of the Companies Act, 2013 is attached herewith (pages 1 to 2).*
  - 3.3. *Pursuant of above requirements, Supreme Industries Limited (SIL) made donations of a sum amounting in aggregate to Rs.2,81,00,000 to the appellant during the year under consideration.*
  4. *The Companies (Corporate Social Responsibility Policy) Rules, 2014 (CSR Rules, 2014) provides Rules for various activities like CSR Implementation, CSR Committee, CSR Expenditure CSR Reporting etc.*
    - 4.1. *Rule 4 of the said Rules is re-produced as under:*
      - (1) *The Board shall ensure that the CSR activities are undertaken by the company itself or through. –*
        - (a) *a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961 (43 of 1961), established by the company, either singly or along with any other company; or*
        - (b) *a company established under section 8 of the Act or a registered trust or a registered society, established by the Central Government or State Government; or*
        - (c) *any entity established under an Act of Parliament or a State legislature; or*
        - (d) *a company established under section 8 of the Act, or a registered public trust or a registered society, exempted under sub-clauses (iv), (v), (vi) or (via) of clause (23C) of section 10 or registered under section 12A and approved under 80 G of the Income Tax Act, 1961, and having an established track record of at least three years in undertaking similar activities.*

*A copy of the aforesaid Rules are attached herewith (Pages 3 to 10).*



- 4.2. *On perusal of Rule 4(1)(a) of the Rules, it is pertinent to note that a company can establish either a section 8 company or a public trust registered under section 12A of the Income tax Act, 1961 on its own either singly or along with any other company to meet its CSR Obligations*
- 4.3. *In view of the above Rules, SI. has established Supreme Foundation (i.e. appellant) through which it has been carrying out its CSR Obligations. Hence, it will be appreciated that the appellant trust which is settled by Supreme Industries Limited, is within the ambit of provisions of section 135 of the Companies Act, 2013 and CSR Rules, 2014.*
5. *Rule 8 of the said Rules requires a company to include a report on CSR in its annual report containing such particulars as may be prescribed. Accordingly. SIL has incorporated the same in its annual report for the financial year 2017-18. A copy of relevant report on CSR activities is attached herewith (pages 11 to 13).*
6. *It is further submitted that the appellant has received donations from SIL. Even if for argument's sake, if SIL meeting its CSR obligations through its own trust is violative of provisions of Companies Act, 2013, it is SIL which will be liable to consequences under the Companies Act, 2013. The appellant being registered under section 12A of the Act is well within the provisions of Income Tax Act, 1961 to receive donations and utilize it towards the object of the trust and which it has done during the financial year 2017-18.”*
6. The Ld. DR on the other hand placed reliance on the order of the Ld. AO.

We have considered the facts of the case and the rival submissions. It is found that the assessee trust has explained the nature of the activities carried out by it in detail and has also established the genuineness of the expenses carried out as a part of ‘CSR’ activity before the Ld. CIT (A).



Regarding the ground taken by the appellant that the Ld. CIT (A) has admitted additional evidence in violation of Rule 46A without affording the AO the opportunity of making necessary verification of the details submitted before the Ld. CIT (A), it is found from the order of the Ld. CIT (A) that he had asked for a remand report from the AO but the same was not submitted by the AO. Thus, considering all aspects of the case, we find no infirmity in the order of the Ld. CIT (A) and thus, there is no reason to defer with it. Accordingly, the appeal of the revenue is dismissed.

7. In the result, the appeal is dismissed.

**Order pronounced in the open court on 23.10.2024**

**Sd/-**  
**NARENDER KUMAR CHOUDHRY**  
**JUDICIAL MEMBER**

**Sd/-**  
**RATNESH NANDAN SAHAY**  
**ACCOUNTANT MEMBER**

Mumbai, Dated: 23.10.2024.

*Snehal C. Ayare, Stenographer*

Copy to: The Appellant  
The Respondent  
The CIT, Concerned, Mumbai  
The DR Concerned Bench

//True Copy//

By Order

Dy/Asstt. Registrar, ITAT, Mumbai.