

आयकर अपीलीय अधिकरण
कोलकाता 'सी' पीठ, कोलकाता में
**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'C' BENCH, KOLKATA**

श्री राजेश कुमार, लेखा सदस्य
एवं
श्री प्रदीप कुमार चौबे, न्यायिक सदस्य
के समक्ष
Before

**SRI RAJESH KUMAR, ACCOUNTANT MEMBER
&
PRADIP KUMAR CHOUBEY, JUDICIAL MEMBER**

**I.T.A. No.: 848/KOL/2024
Assessment Year: 2013-14**

***Batanagar Education and Research Trust.....Appellant
[PAN: AABTB 3024 G]***

Vs.

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

Appearances:

Assessee represented by: Arvind Agarwal, Adv.

Department represented by: Ankur Goyal, JCIT, Sr. D/R.

Date of concluding the hearing : September 19th, 2024

Date of pronouncing the order : November 12th, 2024

ORDER

Per Pradip Kumar Choubey, Judicial Member:

This appeal filed by the assessee pertaining to the Assessment Year (in short 'AY') 2013-14 is directed against the order passed u/s 250 of the Income Tax Act, 1961 (in short the 'Act') by the Commissioner of Income Tax (Appeals)-1, Mumbai [hereinafter referred to as Id. 'CIT(A)'] dated 19.02.2024 arising out of the assessment order framed u/s 143(3) of the Act dated 22.03.2016.

1.1. The brief facts of the case of the appellant are that the assessee being a public charitable Trust engaged in running an educational institution in the

name of Batanagar Institute of Engineering, management and Science, de filed its return of income on 29.09.2013 declaring total loss of Rs. 6,41,07,639/-. The case of the assessee was selected for scrutiny, notice u/s 143(2) of the Act was issued and subsequently, notice u/s 142(1) of the Act along with questionnaire was issued. In response to the notice, Finance Officer of the Trust appeared and submitted his explanation to the Assessing Officer (hereinafter referred to as Id. 'AO'). A survey u/s 133A of the Act in the premises of BERT campus, Putkhali, Maheshtala, Kolkata and in course of recording statement one Sh. R.N. Lahiri, Vice Chairman deposed that a major part of the corpus donation received in the FY 2011-12 & 2012-13 were in the nature of accommodation entries and so bogus and not genuine. The Id. AO based on the facts and circumstantial evidences the following facts have been inferred:

- a) Assessee Trust has received a sum of Rs. 1,23,87,550/- as bogus donation from M/s. School of Human Genetics & Population Health and voluntarily offered as income. SHG & PH has admitted their bogus transactions by filing application before the Hon'ble Settlement Commission, Kolkata and through confirmation filed.
- b) They have received bogus corpus donation not only from SHG & PH but also from various parties in different years.
- c) Society/ Trust has grossly misused the provision of Sec 12AA and 80G(5)(vi).
- d) They have violated the objects of the Trust as converting cheque received through corpus donation in cash beyond the objects. The Society was found to be involved in Hawala activities.
- e) Corpus donation received is not voluntary, merely an accommodation entry and fictitious.
- f) Activities of the Trust are not genuine as well as not being carried out in accordance with its declared objects. Assessee's case is covered within the both limb of Sec 12AA(3).

g) Even ingenuine and illegal activities carried on by assessee thorough money laundering do not come within the conceptual framework of charity vis-a-vis activity of general public utility envisaged the Income Tax Act as laid down in Sec - 2(15).

1.2. The registration granted u/s 12AA of the Act to the institution has been withdrawn as Society was found to be involved in money laundering to receive bogus donation, ingenuine activities. The assessment is therefore completed under the status 'AOP'. The alleged corpus donation amounting to Rs. 2,45,29,550/- is considered as income in the hands of the Trust without giving cognizance to the corpus status to the said capital receipt. The ld. AO has also found that assessee Trust had furnished inaccurate particulars of receipt of Rs. 2,45,29,550/-. Accordingly, depreciation not allowed on the ground that total corpus fund amounting to Rs. 2,45,29,550/- which had been proved to be bogus donation and nothing but mere accommodation entries had been declared fully spent on building and other fixed assets. The income of the assessee has been computed and penalty notice u/s 271(1)(c) of the Act and demand notice has been has been issued. The said order has been challenged by the assessee before the ld. CIT(A) wherein appeal has been dismissed on account of non-compliance by the assessee.

Being aggrieved and dissatisfied with the impugned order, the present appeal has been preferred.

1.3. Ld. Counsel for the assessee challenges the impugned order thereby submitting that ITO (Exemption) erred in alleging that balance amount of donation of Rs. 1,21,42,000/- included in the total donation of Rs. 2,45,29,550/- was also bogus and further erred in not treating the said amount of donation of Rs. 1,21,42,000/- as having been received towards corpus of the Trust. The ld. Counsel for the assessee submits that his appeal has been dismissed only on the ground of non-compliance by the assessee. His submission is that he has been given an opportunity to place all facts before the ld. CIT(A). ld. Counsel for the assessee has filed petition stating the ground and reason for non-appearance before the ld. CIT(A). He has also filed

paper for granting of registration, re-registration u/s 80G of the Act under first proviso to Section 12 Clause 4 of the Act to the Society.

1.4. On the contrary, ld. D/R supports the impugned order.

2. We have gone through the order of the ld. CIT(A) and find the following facts:

a) The assessee is a charitable Trust constituted by Trust deed executed on 21.02.2007.

b) The assessee has been noticed through e-mail but there was no compliance on behalf of the assessee.

c) The appeal of the assessee has been dismissed on the ground that since the appellant is not interested in persuading its case and appellant did not submit anything before the ld. CIT(A), hence there is no reason to interfere in the order of the ld. AO.

2.1. It admits of no doubt that appeal before the ld. CIT(A) has been dismissed on the ground of non-compliance on behalf of the assessee. The appellant before us filed the affidavit stating the reason of non-compliance and the affidavit filed by the assessee is reproduced herein below:

“I, Rabindra Nath Lahiri, Son of Late Sital Prosad Lahiri, resident of B4 Trinayani 31/N/1, Siddhinath Chatterjee Road, Behala, Kolkata - 700034, Trustee of "Batanagar Education and Research Trust, having its registered office at Room 4 & 5, 12th Floor Chatterjee International Centre 33A, Jawaharlal Nehru Road, Kolkata 700©71. most respectfully beg to state as under:-

1. That, Batanagar Education and Research Trust, is regularly assessed to Income-tax under PA No: AABTB3024G.

2. That, our income-tax matters were being handled by CA P R Saha, having his office at BG-59, Sector-II, Salt Lake, Kolkata- 70.0091.

3. That, in the E-filing Portal of the Income-tax Department, under the Personal Profile e-mail ID which was mentioned was subrata.debnath@hotmail.com (Primary).

4. That, after receiving the order u/s 250 of the I.T. Act 1961 vide order issued by the Id. Addl/JCI (A)-1. Mumbai, dated 19th February 2024 under

DIN & Order No. ITBA/APL/S/250/2023-24/ 1061127406(1), it came to light that, the Id. Addl/JCI (A)-1, Mumbai, had issued various hearing notices u/s 250 (on 5 occasions) as mentioned in his order at page 7, and the same was served on the e-mail IDs, as referred to in para 3 hereinabove.

5. That, because of non-compliance to the notices u/s 250 which were served on the e-mail ID as mentioned in the Profile at that coin: of time, and there being no compliance thereto, the Id. Addl/JCI (A)-1, Mumbai, dismissed the appeal filed by the trust on 29th June 2019 under e-Acknowledgement No. 224360421290616 which was filed against the order u/s 143(3) dated 22nd March 2016 passed by the Id. Income-tax Officer (Exemp), Ward-1 (2), Kolkata.

6. That, the notices u/s 250 which were served on the e-mail DI which was on the e-Portal at that point of time, was not communicated to the trust by the persons who were looking after the income tax matter as mentioned in paragraph 2 above. No compliance could be made, as the trustees of the trust were not aware of the service of such 250 notice by the Appellate Authority.

7. That, the hearing notices issued by the Appellate Authority u/s 250 was not complied with, for the reason beyond the control of the management of the trustees of the trust.

8. That, the non-compliance to the Appellate Authorities hearing notices, was due to inadvertence and for the reason that the same was not communicated to the management of the trustees.

9. That, an appeal has been filed before the Hon'ble ITAT on 19th April 2024 under ITA No. 848/Kol/2024, which is fixed before the Hon'ble 'C' Bench on 19th September 2024.

10. That, it is prayed that, the non-compliance be condoned, and the appeal be set aside before the Appellate Authority.

11. That, the e-mail IDs have since been changed on the e-Portal, and such e-Mail IDs are active, and the management of the trustees undertake to comply with further hearing notices as and when issued by the Appellate Authority.

12. That, the statements made in paragraphs 1 to 11 above are true to my knowledge and belief.”

3. Keeping in view the above facts as well as considering the affidavit filed by the assessee, we are in this opinion to restore the case of the assessee before the Id. CIT(A) for fresh decision. Accordingly, the order of the Id. CIT(A) is hereby set aside, the case is restored to the file of Id. CIT(A), Id. CIT(A) is

directed to hear the assessee and pass a fresh order after considering the documents and submissions of the assessee.

4. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced in the open Court on 12th November, 2024.

Sd/-

[Rajesh Kumar]

Accountant Member

Sd/-

[Pradip Kumar Choubey]

Judicial Member

Dated: 12.11.2024

Bidhan (P.S.)

Copy of the order forwarded to:

1. **Batanagar Education and Research Trust, Room 4 & 5, 12th Floor, Chatterjee International Centre, 33A, Jawaharlal Nehru Road, Kolkata, West Bengal, 700071.**
2. **ITO, Ward-1(2), Exempt.**
3. CIT(A)-1, Mumbai.
4. CIT-
5. CIT(DR), Kolkata Benches, Kolkata.
6. Guard File

//True copy //

By order

Assistant Registrar
ITAT, Kolkata Benches
Kolkata