

**IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH MUMBAI**

**BEFORE HON'BLE SHRI SANDEEP GOSAIN, JUDICIAL MEMBER &
HON'BLE SHRI PRABHASH SHANKAR, ACCOUNTANT MEMBER**

**ITA No. 49/Mum/2025
(Assessment Year: 2012-13)**

DCIT(Exemptions) – 2(1) Room No. 608, 6 th Floor, MTNL, Peddar Road, Cumbala Hill, Mumbai – 400026.	Vs.	Shree Samsthan Gokarn Parthagali Jeevotham Math Mumbai – 400031.
PAN/GIR No. AAAAS6210M		
(Applicant)		(Respondent)

Assessee by	Shri GS Pikale
Revenue by	Shri Mahesh Pamnani, Sr. DR

Date of Hearing	20.02.2025
Date of Pronouncement	25.02.2025

आदेश / ORDER

PER SANDEEP GOSAIN, JM:

The present appeal has been filed by the revenue challenging the impugned order 07.11.2024, passed u/s 80G(5) of the Income Tax Act, 1961 ('the Act'), by the Commissioner of Income Tax (Exemption) for the assessment year 2012-13. The revenue has raised the following grounds of appeal:

- 1. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in allowing the appeal of the assessee by treating 'Shaswat Seva Fund and Earmarked Fund' as corpus donation aggregating to Rs. 2,06,96,221/- whereas the*

assessee failed to submit documentary evidence and substantiate the identity of donors as well as the existence of any specific directions from the donors that the donation shall be part of corpus; both being necessary conditions for claiming exemption u/s 11(1)(d) of the Act?

2. Whether, on the facts and in the circumstances of the case and in law, the Ld. CIT(A) is right in admitting the additional evidence in violation of Rule 46A(1) of the Income Tax Rules, 1962, ignoring the fact that the assessee failed to submit documentary evidence before the AO in support of the claim, despite sufficient opportunity being provided by the AO during the assessment proceedings?

2. The only ground raised by the revenue relates to challenging the order of Ld. CIT(E) allowing the appeal of the assessee by treating the amount received by the assessee as corpus donation in violation of Rule 46A of the Income Tax Rules, 1962

3. In this regard, we have heard the counsel for both the parties and perused the material placed on record, judgements cited before us and the orders passed by the revenue authority.

4. From the records, we noticed that assessee is a completely religious trust and was established several years ago and was registered u/s 12A of the A on 16.08.1975 and was also approved by the CBDT as a religious trust for exemption u/s 10(23C)(v) of the Act. The assessee's return was assessed by the AO on 26.03.2015 u/s 143(3) of the Act.

During the general consideration, the assessee received voluntary contribution of Rs. 2,67,83,691/- out of which the trust claimed that is sum of Rs. 2,06,96,221/- has been corpus donation with breakup of Rs.4,06,692/- towards Sashwat Seva fund and Rs. 2,02,89,523/- towards the earmarked corpus fund. The assessee claimed that the earmarked corpus donation and the Sashwat Seva fund were exempt from tax u/s 11(1)(d) of the Act.

5. During the assessment proceedings, the AO found that there was no documentary evidence, which suggest that the donation towards earmarked corpus fund or Saswat Seva fund were collected from donors with specific directions from the donors. Which is a prime condition for treating such voluntary donations as corpus fund. Moreover, the AO found that since the identity of the donors and the fact that the donations were voluntary in nature are not established with evidential proof. Therefore, such donations should be treated as anonymous donations as provided u/s 115BBC of the Act. Therefore, AO did not allow exemption to such donations, and treated them as income and finally assessed the total taxable income of the assessee.

6. Aggrieved by this order, assessee preferred appeal and consequently Ld. CIT(E) while referring to the explanatory memorandum to Finance Act, 2006, through which the

provisions of section 115 BBC of the Act treating anonymous donations as income of the trust has held that in such explanatory memorandum, it was clearly mentioned that anonymous donation to wholly religious trust or institutions will not be taxed therefore allowed the appeal of the assessee.

7. After having considered the entire facts and circumstances of the present case, we also found that it is an undisputed fact that assessee is a wholly religious trust. Therefore we are also of the view that the intent of the legislation in this regard is not to tax any donation made to any religious trust on the ground of anonymity. Moreover, any income exempt u/s 10 of the Act has to be excluded while computing income of religious institutions exempt u/s 11 of the Act, as has been held by jurisdictional High Court of ***Bombay in the case of Director of Income Tax (exemptions) Mumbai Vs Jasubhai Foundation [2015] 58 Taxmann.com 218 Bombay.***

8. Even the Ld. CIT(E) while allowing the appeal of the assessee had directed the AO to re-compute the income of the assessee and allow exemption u/s 10(23C)(v) of the Act

9. Before us, no new material or submissions have been filed to controvert or rebut the findings so recorded by Ld.

CIT(E). Therefore we find no reasons to interfere into or to deviate from the well reasoned findings so recorded by Ld. CIT(E). Consequently, the grounds raised by the revenue stands dismissed.

10. In the result the appeal filed by the revenue stands dismissed.

Order pronounced in the open court on 25.02.2025.

Sd/-

**(PRABHASH SHANKAR)
ACCOUNTANT MEMBER**

Sd/-

**(SANDEEP GOSAIN)
JUDICIAL MEMBER**

Mumbai, Dated 25/02/2025

KRK, PS

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त (अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुम्बई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

उप/सहायक पंजीकार (Asst. Registrar)
आयकर अपीलीय अधिकरण, मुम्बई / ITAT, Mumbai