

**IN THE INCOME TAX APPELLATE TRIBUNAL
'SMC' BENCH, BANGALORE**

BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER

ITA No. 2618/Bang/2024
Assessment Year: 2017-18

Moinia Hasnia Abul Ulaya Shikshan Sansthan, Sultanpur, Digod, Kota, Rajasthan – 325 204. PAN – AACAM 1264 D	Vs.	The Income Tax Officer, Ward – 1(2)(1), Bangalore. .
APPELLANT		RESPONDENT

Assessee by	:	Shri Lavish Jain, CA
Revenue by	:	Shri Ganesh R Gale, Standing Counsel for Dept. (DR)

Date of hearing	:	06.03.2025
Date of Pronouncement	:	28.05.2025

ORDER

PER WASEEM AHMED, ACCOUNTANT MEMBER:

This is an appeal filed by the assessee against the order passed by the NFAC, Delhi dated 29/10/2024 in DIN No. ITBA/NFAC/S/250/2024-25/1070028600(1) for the assessment year 2017-18.

2. The only issue raised by the assessee is that the learned CIT (Appeals) erred in treating the corpus donation amounting to ₹ 21,87,961 as income of the assessee in the absence of registration under section 12AA of the Act.

3. The necessary facts are that the assessee in the present case is a society and claims to be engaged in charitable educational activities. The assessee was affiliated with the District Primary Education Officer, Kota. The assessee, in the year under consideration, filed the return of income claiming exemption under section 10(23C)(iiiad) of the Act. The assessee, in the return of income, showed corpus fund donation amounting to ₹21,87,961.00 which was treated as income by the CPC in the intimation generated under section 143(1) of the Act on the reasoning that the assessee claimed exemption of the corpus fund under section 11 of the Act, whereas the assessee has not been registered under section 12AA of the Act. The assessee filed an application for rectification under section 154 of the Act against the intimation, but the same was rejected, stating that there is no evidence available on record suggesting that the aggregate receipt of the assessee is less than ₹1 crore, to claim the benefit of exemption under section 10(23C)(iiiad) of the Act.

4. On appeal, the learned CIT-A confirmed the rectification order passed by the CPC under section 154 of the Act by observing as under:

"4.2 The ground no. 2 to 5 are against the adjustment made by the CPC by disallowing exemption of corpus donation received for building construction. The appellant has filed return of income u/s 10(23C)(iiiad) of the IT Act as it is not registered u/s 12AA of the IT Act. During the year, the appellant claimed the exemption of corpus donation of Rs.21,87,961/-

received for the building construction. The CPC has given the reason for disallowance of exemption that the appellant is not registered u/s 12A/12AA of the IT Act but the appellant has claimed exemption u/s 11(1)(d) of the IT Act. I have gone through the provisions of Income Tax Act and found that the section 11 is applicable only when the person is registered u/s 12A/12AA of the IT Act. The necessary condition for applicability of section 11 is that the person in receipt of income shall be registered u/s 12A/12AA of the IT Act. In view of this legal position, I am of the considered view that the adjustment made by the CPC is correct and hence, the grounds of appeal of the appellant are hereby dismissed."

5. Being aggrieved by the order of the learned CIT (Appeals), the assessee is in appeal before me.

6. The learned AR before me filed written submissions stating that the assessee did not claim any exemption under the provisions of section 11 of the Act. Instead, the return was filed claiming exemption under section 10(23C)(iiiad) of the Act. Accordingly, the learned AR contended that there is no requirement for the assessee to have registration under section 12AA of the Act, as was erroneously held by the CPC and the learned CIT (Appeals).

7. On the other hand, the learned DR vehemently supported the orders of the authorities below.

8. I have heard the rival contentions of both parties and perused the materials available on record. From the preceding discussion, I note that the entire proceedings by the CPC and the learned CIT (Appeals) have been carried out on the premise that the assessee claimed exemption under section 11 of the Act. However, according to the learned AR, the assessee did not claim any exemption under section 11 of the Act, but under the provisions of section 10(23C)(iiiad) of the Act. Accordingly, I am of the view that there is a mismatch in the facts, and therefore, it

appears to me that the order of the learned CIT (Appeals) is based on a wrong assumption of facts.

9. In addition to the above, on perusal of the order passed under section 154 of the Act by the CPC, it transpires that the fact that the assessee claimed exemption under section 10(23C)(iiiad) of the Act is clearly arising. However, the CPC denied the benefit of exemption under section 10(23C)(iiiad) of the Act on the reasoning that the assessee could not prove that the aggregate receipt of the assessee was less than ₹1 crore. Accordingly, it appears that the order of the learned CIT (Appeals) holding that the assessee is not registered under section 12AA of the Act and consequently denying the benefit of exemption claimed by the assessee with respect to the corpus donation is not free from error.

10. Considering the above, I find that the Id. CIT-A should have specifically recorded a finding that the corpus donation is a capital receipt in the hands of the assessee and, even otherwise, is eligible for exemption under section 10(23C)(iiiad) if the conditions are met, regardless of registration under section 12AA of the Act.

11. Be that as it may, I am inclined to restore the issue to the file of the AO for fresh adjudication in light of the provisions of section 10(23C)(iiiad) of the Act. The assessee is directed to cooperate and furnish the necessary details during the proceedings and avoid any unwarranted adjournments. With these observations, the ground of appeal of the assessee is allowed for statistical purposes.

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

Order pronounced in court on 28th day of May, 2025

Sd/-
(WASEEM AHMED)
Accountant Member

Bangalore
Dated, 28th May, 2025

/ vms /

Copy to:

1. The Applicant
2. The Respondent
3. The CIT
4. The CIT(A)
5. The DR, ITAT, Bangalore.
6. Guard file

By order

Asst. Registrar, ITAT, Bangalore