

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

**Before Shri Duvvuru RL Reddy, Vice-President (KZ)**

**I.T.A. No. 558/KOL/2025  
Assessment Year: 2019-2020**

***Dilkhos Memorial Trust,.....Appellant  
97, Trimurti Apartment,  
Park Street, Kolkata-700016, W.B.  
[PAN:AABTD7407R]***

**-Vs.-**

***Income Tax Officer,.....Respondent  
Ward-1(2), (Exemption), Kolkata,  
10B, Middleton Row, Kolkata-700069***

**Appearances by:**

*Shri Anil Kochar, Advocate, appeared on behalf of the  
assessee*

*Shri Susanta Saha, Addl. CIT, Sr. D.R., appeared on  
behalf of the Revenue*

**Date of concluding the hearing: June 26, 2025**

**Date of pronouncing the order: July 31, 2025**

**O R D E R**

The present appeal is directed at the instance of assessee against the order of Id. Additional/ Joint Commissioner of Income Tax (Appeals)-2, Gurugram dated 10.02.2025 passed for Assessment Year 2019-2020.

2. Brief facts of the case are that the appellant Dilkhosh Memorial Trust is a Charitable Trust carrying on exclusively charitable activities in Kolkata and other areas too for the last

several years registered with Income Act under section 12A and 12AA on 08/10/2007 vide Approval No. DITE8E5040708182123 by DITE, Kolkata. The assessee-Trust filed its return of income on 31/10/2019 showing voluntary contributions other than corpus fund of Rs.3,46,450 and interest income by Rs. 1,02,267.00 respectively aggregating to Rs.4,48,717.00 as against actual expenses on the education to poor people and other charitable purposes incurred to Rs.31,61,946.00 in relation to the Assessment Year 2019-20. The assessment has been completed determining the total income at Rs.27,13,229.00- against returned income of Rs. NIL. While doing so, the Assessing Officer has made the addition of Rs.27,13,229/- as Income generated according to original return. The ld. Assessing Officer of CPC had issued intimation u/s 143(1) calculating tax and interest on Rs.27,13,229/- to Rs.7,75,704/- where the appellant was facing losses on which Tax could not be payable but the CPC issued tax burden. On being aggrieved, the assessee preferred an appeal before the ld. CIT(Appeals) with a request to delete the addition made and drop the tax burden arising out of this addition on the principle of natural justice and equity.

3. Ld. Addl./JCIT(Appeals) upheld the order of ld. Assessing Officer by saying that the ld. Assessing Officer at CPC was right in disallowing the expenses to the extent of Rs.27,13,229/- and considered as income in view of section 11(3) of the Act. On being aggrieved, the assessee-Trust preferred an appeal before the ITAT and raised the following grounds:-

*(1) For that the orders passed by the lower authorities are arbitrary, erroneous, without proper reasons, invalid and bad-in-law, to the*

*extent to which they are prejudicial to the interests of the appellant.*

- (2) For that the Ld. JCIT(A) ought to have properly considered the factual aspect of the case of the appellant with regard to the expenses incurred amounting to Rs.31,61,946/- which ought not to have been treated as assessable income of the Trust.*
- (3) For that the appellant had submitted return showing income at Rs. NIL and that since there were expenses incurred it could not be treated as income assessable under the Income Tax Act.*
- (4) For that the Ld. CIT(A) ought not to have confirmed the order u/s 143(1) of the CPC when in fact the appellant had incurred expenses which are in dispute out of his own funds and as such the amount of loss arising due to expenses incurred for the charitable purposes could not be assumed as income assessable under the Income Tax Act.*
- (5) Without Prejudice, in case the expenses are treated as income, the same having been made for charitable purposes, it could not be taken as assessable income.*

4. At the time of hearing, ld. Counsel for the assessee contended that during the year under consideration, voluntary contributions other than corpus fund of Rs.3,46,450/- and interest income of Rs.1,02,267/- was received, and total aggregating income of Rs.4,48,717/- was accrued. The ld. Counsel pleaded that actual expenses on the education to poor people and other charitable purposes incurred to Rs.31,61,946/-, but the ld. Assessing Officer wrongly determined the total income at Rs.27,13,229/- (Rs.31,61,946/- minus Rs.4,48,717/-) as deemed income under the provisions of section 11(3) of the Act. The ld. Addl./JCIT(Appeals) without going into the root of the matter, just upheld the order of ld. Assessing Officer. He, therefore, pleaded to set aside the orders of revenue authorities.

5. On the other hand, ld. Departmental Representative pleaded to uphold the order of ld. Addl./JCIT(Appeals).

6. I have heard both the sides and perused the material available on record. The ld. Counsel for the assessee pleaded that the ld. Assessing Officer wrongly determined the total income at Rs.27,13,229/- (Rs.31,61,946/- minus Rs.4,48,717/-) as deemed income under the provisions of section 11(3) of the Act. The main grievance of the assessee is that the ld. Assessing Officer/CPC had issued intimation under section 143(1) calculating tax and interest on Rs.27,13,229/- to Rs.7,75,704/- where the appellant was facing losses on which tax could not be payable. On perusal of the ld. Addl./JCIT(Appeals)'s order, he simply upheld the same without going into the merit of the case and dismissed the appeal of the assessee. Both the revenue authorities have not ascertained the total income of the assessee. Therefore, by considering the totality of the facts and circumstances of the case and in order to ensure the principle of natural justice, I am of the view that it is a fit case to provide one more opportunity to the assessee. Therefore, I remit the matter back to the file of ld. Assessing Officer to decide the total taxable income of the assessee afresh with a direction to dispose of the appeal without any inference on the observations of earlier order passed by him. At the same breath, I also hereby caution the assessee to promptly co-operate with the proceedings before the ld. Assessing Officer failing which the ld. Assessing Officer shall be at liberty to pass appropriate order in accordance with law and merits of the case, based on the materials available

on the record. Thus, the grounds raised by the assessee in the appeal are allowed for statistical purposes.

**7. In the result, the appeal of the assessee is allowed for statistical purposes.**

Order pronounced in the open Court on 31/07/2025.

Sd/-  
**(Duvvuru RL Reddy)**  
**Vice-President (KZ)**

**Kolkata, the 31<sup>st</sup> day of July, 2025**

*Copies to :(1) Dilkhos Memorial Trust,  
97, Trimurti Apartment,  
Park Street, Kolkata-700016, W.B.*

*(2) Income Tax Officer,  
Ward-1(2), (Exemption), Kolkata,  
10B, Middleton Row, Kolkata-700069*

*(3) Addl./JCIT(A)-2, Gurugram;  
(4) CIT - , Kolkata;  
(5) The Departmental Representative;  
(6) Guard File*

*TRUE COPY*

*By order*

*Assistant Registrar,  
Income Tax Appellate Tribunal,  
Kolkata Benches, Kolkata*

**Laha/Sr. P.S.**