

**IN THE INCOME TAX APPELLATE TRIBUNAL,  
BENCH- A, BANGALORE**

**BEFORE SMT. ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER**

ITA No.1086 /Bang/2016  
(Asst. Year 2010-11)

The Dy. Commissioner of Income-tax (E),  
Circle-1,  
Bengaluru.

. Appellant

Vs.

M/s All India Granite Association,  
No.429/7, 12<sup>th</sup> Cross,  
Sadashivnagar,  
Bengaluru-560 080.

. Respondent

Appellant by : Shri DK Jha, Addl. CIT

Respondent by : Smt. Sheetal, Advocate

Date of Hearing : 25-08-2016

Date of Pronouncement : -09-2016

**ORDER**

**PER ASHA VIJAYARAGHAVAN, JUDICIAL MEMBER:`**

This appeal by the assessee is directed against the order of  
Commissioner of Income-tax (Appeals), Bengaluru – 14 dated  
22/3/2016 and it pertains to the assessment year 2010-11.

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2. The return of income was filed by the assessee on 27.09.2010 vide Acknowledgement No.1702001271 with ADIT(E), Circle-17(2), Bangalore. The return was processed on 13.04.2011 and it resulted in a refund of Rs.4,66,200/-. The case was picked up for scrutiny and a statutory notice U/S 143(2) of the Income Tax Act, 1961 dated 13.09.2011 was issued to the assessee and was duly served. Subsequently, a notice u/s 142(1) of the I.T. Act dated 22.06.2012 was issued to the assessee.

3. The assessee was asked to clarify the charitable activities in view of the amendment to sec 2(15) rws 13(8) of the Income Tax Act, 1961 and other details were also called for AY 2010-11.

4. The assessee has been granted 12AA registration vide order in No. Trust/728/10ANoI.AIA.62 dated 20.02.1987. The main objects of the association are:-

- (i) To promote Granite and other Natural Stones and Allied Industries.

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(ii) To promote auxiliary industries for Natural Stones i.e., Mining, Quarrying, Processing, Machineries, Tools, Equipment, Consumables etc.

(iii) To promote and exchange technological developments in the field of Natural Stone Industries of India i.e., technological upgradation.

(iv) To promote dynamic healthy and co-operative approach to Natural Stone Industry/Trade in India and abroad.

5. The learned AO observed that the assessee was asked to explain the activities and assessee has given the clarifications. It is seen that the assessee is mainly engaged in promotion of Granite and other Natural Stones and auxiliary industries for Natural Stones i.e., Mining, Quarrying, Processing, Machineries, Tools, Equipment, Consumables etc. The assessee has taken an amount of Rs. 33,19,036/- straight to the Receipts side and has not offered as income. Further it is noticed that this amount has been received from the members as life

membership and has been treated as corpus.

6. The Id. AO further held that assessee has not filed any confirmation to show that the amount has been received as corpus. However, in the computation of income, the assessee has claimed exemption u/s 11(1)( d) of the Income Tax Act. Which cannot be allowed to the assessee for the reason that specific confirmation from the donor stating that the amount towards the corpus has to be filed. And this amount is treated as income for the A.Y. 2010-11.

7. During the course of appeal before CIT(A) hearing the assessee produced the copy of the Ledger a/c of the association bank a/c details etc. wherein the receipts were identifiable to the person who has become life member in the ledger account and also the assessee contended as under:-

*The assessee has furnished the details of the names and address of the corpus donors who had become the life members of the society. The list is placed on record in Annexure-A for your kind perusal. In fact the Memorandum of Association and rules and*

*Regulations of the assessee, under Clause 6 which deals with Aims and Objectives, in sub-clause 'q' clearly states that one of the objective is "to maintain a corpus fund of all life membership fees". In other words one of the objectives of the assessee is to treat the life membership fees as the corpus fund of the assessee. This has been specifically stated, made part of the Rules and Regulations of the assessee's society. Accordingly all the life membership fees, which forms part of the capital fund of the assessee and accordingly it is excluded from the gross income of the assessee. It has to be appreciated that the list comprises of the names of the members, the type of the membership and the membership number allotted to them and their full postal address. Hence by no stretch of imagination, these fees can be equated with anonymous donations.*

*Before answering to the observation that "no confirmation to show that the amount has received as corpus" it is hereby explained the real intention of Sec.11(1)(d) of the Act for exempting corpus donations from the income of the charitable institution.*

*Section 11(1)(d) grants exemption to donations made with a specific direction that they shall form part of the corpus" it is hereby explained the real intention of Sec.11(1)(d) grants exemption to donations made with*

*a specific direction that they shall form part of the corpus, but the benefit of this section is available only to trusts enjoying the benefit of exemption U/s.11. Kindly note that the assessee is registered U/s.12A of the Act, enjoying the benefit of exemption U/s.11.*

*In the case of Hakmuddin Mulla Hassubhai Singaporewala Charitable Trust vs.ITO(1985)23TTJ(Bom)43, the Bombay bench of the Tribunal held that in the case of a trust whose deed contains a stipulation that the donations received shall form a part of the corpus of the trust, it shall not be necessary for the trust to obtain separate direction letter from the donor.*

*In Director of Income tax (Exemptions) & ANR vs. Sri Ramakrishna Seva Ashrama (2013) 258 CTR 0201, in Para 17, the High Court of Karnataka (the Jurisdictional High Court held that “The argument that the persons who made these contributions does not specifically direct, that they shall form part of the corpus of the Trust is concerned, was rejected. In view of the language employed in Clause (b) of the Sub-Section (a) of Section 11, the requirement is that the voluntary contributions have to be made with a specific direction. The law does not require that the said*

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*direction should be in writing. In the absence of the direction in writing, the only way that one can find out whether there was a specific direction and to find out how the money so paid it is utilize.*

*In view of the aforesaid factual and legal position, we submit that the corpus donation of Rs.33,19,036/- cannot be treated as income of the assessee liable tax and we request you to set aside this disallowance.*

8. The CIT(A) stated that he had gone through the arguments, ledger, statement of bank a/c copies filed by the assessee where the ledger extract and bank account clearly reflects the cheque details, name of the person who has paid and who has become life member and all the receipts are clearly accounted to the corpus as per the By-laws of the association, confirmation per say, again, from these members does not have much relevance. Therefore, the CIT(A) agreed with the view of the assessee and the Assessee's appeal allowed.

9. Aggrieved the department has filed the following grounds of appeal:-

*(i). Whether the CIT(A) has failed to appreciate the fact that the provisions of Sec.11(1)(d) is clear about the nature of receipt being 'voluntary contribution' and not anything else in whatever name called.*

*(ii). Whether the CIT(A) has failed to appreciate the fact that the voluntary contribution made should be with a specific direction to treat the contributed amount as a part of the corpus, for the same to be qualified for exemption u/s.11(1)(d).*

*iii). Whether the CIT(A) has failed to appreciate the fact the assessee has no power/discretion to treat and classify the life membership fee as corpus.*

*iv). Whether, in the given facts and circumstances, the CIT(A) is correct in allowing the appeal filed by the assessee based on the ledger extracts and bank account details on which names of the persons who have paid and become life members, are appearing without going into the provisions of Sec.11(1)(d).*

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10. We heard both parties. In the case of Hakumddin Mulla Hassubhai Singaporewala Charitable Trust Vs. ITO(1985) 23 TTJ(Bom) 43, the Bombay bench of the Tribunal held that in the case of a trust whose deed contains a stipulation that the donations received shall from a part of the corpus of the trust, it shall not be necessary for the trust to obtain separate direction letter from the donor.

11. Respectfully following the ratio of the Bombay Tribunal we dismiss the departmental appeal.

In the result, the appeal of the Department is dismissed.

Order pronounced in the open court on **21st September, 2016.**

**Sd/-**  
**(ASHA VIJAYARAGHAVAN)**  
**JUDICIAL MEMBER**

Bangalore  
Dated : 21/09/2016

Vms

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Copy to :1. The Assessee  
2. The Revenue  
3.The CIT concerned.  
4.The CIT(A) concerned.  
5.DR  
6.GF

By order

Asst. Registrar, ITAT, Bangalore.