

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "B" NEW DELHI)
BEFORE SHRI G.D. AGRAWAL, HON'BLE VICE-PRESIDENT
AND SHRI RAJPAL YADAV: HON'BLE JUDICIAL MEMBER

ITA No. 4204/Del/2011

Assessment Year: 2008-09

Addl. Commissioner of IT,
Range-2,
New Delhi.

Vs. Chaudhary Raghubir Singh
Educational & Charitable Trust,
Shamli (MZN)
(PAN: AAATC8919N)

(Appellant)

(Respondent)

Appellant by: Shri UC Dubey, Sr. DR
Respondent by: S/Shri KL Aneja & Manvendra Verma,
Advocates

ORDER

PER RAJPAL YADAV: JUDICIAL MEMBER

The revenue is in appeal before us against the order of Learned CIT(Appeals) dated 29.06.2011 passed for assessment year 2008-09. The solitary grievance of the revenue is that Learned CIT(Appeals) has erred in deleting the addition of Rs.91,78,100 added by the Assessing Officer on the ground that donations received by the assessee were without any specific directions by the donors that such donations would become as a corpus funds and, therefore, it is an income of the assessee.

2. The brief facts of the case are that assessee is a trust. It has filed its return of income for assessment year 2008-09 on 30th September, 2008

declaring nil income. According to the Assessing Officer, the assessee trust was created by the settler Shri Surendra Verma vide trust deed dated 30.5.2007 with a contribution of Rs.5,000. During the year, assessee trust had received donations from six persons. Shri Manvinder Verma donated 10 acres of agricultural land having value of Rs.85,05,200. Apart from this donation, the assessee trust had received gifts from the following persons also:

(i)	Sh. Kuldeep Singh Verma	Rs.1,01,000
(ii)	Sh. Manveer Singh	Rs.2,02,000
(iii)	Smt. Sadhna	Rs.2,02,000
(iv)	Sh. Gajendra Singh	Rs.1,01,000
(v)	Other	<u>Rs. 67,000</u>
		<u>Rs.6,73,100</u>

3. Learned Assessing Officer on an analysis of the gift deed executed by Shri Manvinder Singh observed that the donor had not made any specific stipulation in the gift deed indicating that it would be towards corpus of the trust. The assessee is not enjoying registration under sec. 12A and, therefore, it would not be considered as applied for the objects of the assessee society. Hence, the gift received by the assessee is taxable and exemption under sec. 11 is not available to the assessee. Similar yard-stick has been applied on the other gifts received by the assessee. Learned Assessing Officer in this way,

worked out the taxable income of the assessee at Rs.91,78,100. He reproduced the gift deed as well as the correspondence between Shri Surendra Verma and Manvinder Singh. The gift deed is being reproduced on pages 2 and 3 of the assessment order, whereas letter of Shri Manvinder Verma is being reproduced on page 5.

4. Before Learned CIT(Appeals), it was contended that ITO Muzaffarnagar has recorded the statement of other donor, namely, Shri Kuldeep Singh Punia, Smt. Sadhana and Shri Gajendra Singh etc. These statements were not supplied to the assessee. The assessee has applied copies of the statement in January 2010 and the copies were supplied to it in November 2010 i.e. subsequent to the completion of the assessment. Assessee sought to lead additional evidence under Rule 46A of the Income-tax Rules, 1962. The assessee has contended that from the communication between the trustee and Manvinder Singh, it is discernible that the land was given to the trust for establishment of a management and engineering college. It was a corpus donation. Assessing Officer has given undue emphasizes to the alleged deed. Even in the deed, it has been pointed out that the land was given to Shri Raghbir Singh, an educational and charitable trust for the purpose of college. Learned first appellate authority has

recorded the facts elaborately and made a lucid analysis of the facts and law. His findings including permission to adduce additional evidence are as under:

“ The appellant in present proceedings has now filed an application under sub-rule-2 of Rule 46A of the I.T. Act contending therein that the appellant was prevented by sufficient cause in not producing such documents and AO's Order was passed without giving sufficient opportunity to adduce the evidence, which are relevant to the grounds of appeal taken in the memo of appeal. It is gathered from record that appellant had filed documents and written submission on 27,04.2010.

It is also submitted by the appellant that the A.O granted no hearing thereafter, nor sought to remove his doubts if any, entertained on perusal of documents filed on 27.04.2010. The AO passed the impugned Order on 28,04.2010 without giving an) further opportunity to the appellant, which is subject matter of present appeal before me.

The appellant has included the following documents along with application u/r 46 A of Income Tax Rules.

- (i) Copy of Petition dated 22/5/2010 in Suit No. 188/2010 before the C'ivil Judge, Kairana and Order dated 21/7/2010 passed by Civil Judge, Senior Division, Kairana, directing cancellation of the Gift Deed dated 5/6/2007 and recording the' necessary entry or cancellation in the record of the Sub-registrar, Shamli.

(jj) Copies of Affidavits of S/Shri Manbir Singh, Ms. Sadhna Singh, Sh. Kuldeep

Singh & Ft.Lt.Gajendra Singh, along with receipts or donations received & Submissions of three persons recorded in proceedings u/s 12AA and utilized by the A.O. without providing any opportunity to the appellant to controvert or rebut. The copies or statements were received by the appellant only in November 10 I 0, even though an application was made and usual charges deposited as early as 4.01.2010.

(iii) Copies of donation receipts issued to 20 petty Donors making donations

towards corpus of the Trust aggregating to RS.67,000I-along with their Affidavits, which could not be adduced before the A.O. in as much as he never doubted, nor asked to produce them, but adverse view was taken in the Assessment framed.

A copy of the application u/r 46 A along with the complete set or paper book filed by the appellant was sent to the A.O. for his comments. The A.O. has in his remand report dated 28.03.2011 conceded that the certificate under section 12AA has since been granted to the Appellant w.e.f. 11/12.05.2007 and as such the appellant is entitled to exemptions under section I J/12 subject to the condition of application of income.

After considering the remand report and submissions of the appellant the application under rule 46A of the I.T Act was allowed on 13.04.2011. The A.O was also directed to conduct further enquiries on the documents filed under section 250(4) of the IT Act.

The A.O however reiterated its position by the second remand report dated 16.06.20 I J . Considering that the A.O has nothing to add and the affidavits filed by the appellants have gone unrebutted, the same are taken to be expressing the correct factual position.

The perusal of documents at pages 59 to 68 of the paper book and background of the sequence of facts, norms prescribed by AICTE for establishment of Technical Institute, the correspondence exchanged between the setter Surendra Verma and the donor Manvendra Verma and minutes of the meeting of the Board of Trustees, it is evident that the donor had gifted the impugned land for specific purpose i.e. for setting up a Management/Engineering College within a specific time/period. This clearly shows that the land donated was towards the corpus of the trust and did not come within the meaning of section 12 of Income tax Act. Subsequent events also do not change the character of the donation having been received towards corpus as aforesaid and rather confirm donor's intention.

The perusal of statements of Sh. Kuldeep Singh, Manbir Singh and Smt. Sadhna recorded by the officials of CIT on 03.09.2008 reveals that they were specifically asked as to whether the donation made were towards corpus or the trust or general in nature. Only general questions were put as to how the amounts donated by them were to be utilized. The affidavits of such donors along with other donors submitted in appellate proceedings together with copies of donation receipts were forwarded to the A.O for necessary comments and also inquiry, but the AO did not give any adverse comments nor disputed the factual position stated by the Appellant. The A.O also did not call any donor to examine appellant's contentions that the donation received were towards corpus of the trust as also visible from the donation receipts. The AO has wrongly stated in his remand report that copies of donation receipts were not filed by the appellant in the course of assessment proceedings, when they were actually filed on 27.04.2010 and were to be taken into consideration by AO in assessment framed, which is subject matter of present appeal before me.

The facts of the case, submissions made by the appellant, remand reports of the A.O. and rejoinder of the appellant. It is observed that the CIT, Muzarfarnagar has granted registration u/s 12AA of the Act with effect from 22-05-2007. From the discussion made in the preceding paras. it is proved that gifts/donations are admittedly part of the corpus fund and as such. there is no ground/reason to treat such gifts/donations as

income of the appellant under section 12(1) of the Act. The same is directed to be deleted. Ground Nos. 1 to 5 are allowed

3.1 Ground of appeal No.6 is general in nature so as to require separate adjudication”.

5. Before us, Learned DR relied upon the order of the Assessing Officer. He pointed out that in the gift deed, there is no specific mention by the donor that gift is being made towards corpus of the trust. On the other hand, Shri Manvendra Verma, appeared in person along with his counsel. They pointed out that subsequent to the order of the Learned CIT(Appeals), a registration under sec. 12AA of the Act has been granted to the assessee w.e.f. the creation of the trust i.e. 25.5.2007. They drew our attention towards page 26 of the paper book wherein order of Learned CIT dated 17.10.2011 granting registration to the assessee under sec. 12AA w.e.f. 22.5.2007 is available. The learned counsel for the assessee has drew our attention towards the receipt issued by the trust indicating the fact that donations were received towards trust corpus. A specific mention was there in all the receipts. They also drew our attention towards letter of Shri Manvinder Verma dated 30.5.2007 wherein he has specifically observed that he would donate a land of 10 acres from his agricultural land for establishing a college in the

name of his grand-father. On acceptance of this offer, the gift deed was executed. The learned counsels for the assessee have pointed out that ultimately college could not be constructed and gift deed was cancelled and land was returned. Learned DR in rebuttal submitted that sub-section (2) of sec. 12A provides that where an application has been made on or after 1st day of June 2007, the provisions of sections 11 and 12 shall apply in relation to the income of such trust or institution from the assessment year immediately falling the financial year in which such application is made. He pointed out that assessee had moved an application in Form No.10A on 12.5.2008. The registration could not be granted w.e.f. 22.5.2007 as per this clause. Because the application has been moved after 1st day of June 2007. According to the Learned DR, this order of the Learned CIT(Appeals) is without jurisdiction and cannot be given effect.

6. We have heard the rival contentions and gone through the record carefully. As far as objections of the Learned DR with regard to the registration granted under sec. 12AA is concerned, we are of the view that it is an order passed by competent authority and if any irregularity crept in the order, the same can be rectified by the competent authority itself. No appeal has been provided for the revenue against this order before the ITAT.

Therefore, Learned DR cannot raise any objection qua the irregularity, if any, crept in the order of the Learned CIT while granting registration. As far as the present litigation is concerned, it is to be decided in the light of the fact that assessee was having registration under sec. 12AA of the Income-tax Act. On an analysis of the facts, we find that the case of the revenue is that the intention of the donor apart from the gift deed not to be seen for concluding that it was a corpus donation. On the other hand, case of the assessee is that if discussion between the donor and the donee in the shape of correspondence etc. is seen then it would reveal that donation was made by the donor in order to establish an engineering and a management college in the name of his grand-father. The donor has specifically mentioned in this connection. The learned counsel for the assessee also pointed out that the trust had put a proposal to the donor for establishing a college in the name of his grand-father which the donor accepted and accordingly gift deed was made. Thus, the gift deed alone is not to be looked into. We find that the learned first appellate authority has considered all these aspects before arriving at a conclusion that it was a corpus donation at the end of donor and it is not a taxable income in the hands of the assessee. With regard to the other donations, we find that all the donors have filed their affidavit indicating the fact that they have donated the funds towards corpus even in

the receipt it was observed that a corpus donation was received. On due consideration of the facts and circumstances and the detailed order of the Learned CIT(Appeals), we do not see any reason to interfere in the order of the learned first appellate authority.

7. In the result, the appeal filed by the revenue is dismissed.

Decision pronounced in the open court on 22.06.2012

Sd/-
(G.D. AGRAWAL)
VICE-PRESIDENT

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Dated: 22/06/2012
Mohan Lal

Copy forwarded to:

- 1) Appellant
- 2) Respondent
- 3) CIT
- 4) CIT(Appeals)
- 5) DR:ITAT

ASSISTANT REGISTRAR