

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद ।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SHRI P.M. JAGTAP, VICE-PRESIDENT
AND SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No. 422/Ahd/2020
Assessment Year : 2016-17

The Assistant Commissioner of Income-tax (Exemption) Circle-1, Ahmedabad	Vs	Blind Peoples Association India, Opp. IIM, Dr. Vikram Sarabhai Road, Andhajan Mandal Circle, Vastrapur, Ahmedabad PAN : AAAAB 0440 L
अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
Revenue by :		Shri S.S. Shukla, Sr. D.R.
Assessee by :		Shri S.N. Soparkar, Sr. Advocate, Smt. Urvashi Shodhan, AR & Shri Parin Shah, AR

सुनवाई की तारीख/Date of Hearing : 04/05/2022
घोषणा की तारीख /Date of Pronouncement: 04/05/2022

आदेश/O R D E R

PER P.M. JAGTAP, VICE-PRESIDENT :

This appeal is preferred by the Revenue against the order of learned Commissioner of Income-Tax (Appeals)-9, Ahmedabad ("CIT(A)" in short) dated 09.03.2020 on the following grounds:-

- 1. Whether, the ld. CIT(Appeals) has erred in the law and on facts in allowing the exemption u/s 11(1)(d) of the Act on the basis of the evidences and cross verification carried out by him, though the same were not produced before the Assessing Officer during the course of assessment proceedings.*
- 2. Whether, the ld. CIT(Appeals) has erred in the law and on facts in admitting the evidences and carrying out cross verification of the same, without giving Assessing Officer opportunity of examining the evidences, as per procedure laid out in sub-rule 3 to Rule 46A of the Income-tax Rule, 1962.*

2. The assessee, in the present case, is a Trust which is registered under Section 12A of the Income-tax Act, 1961 ("the Act" in short). It is established with the objects to encourage and foster development of acquaintance amongst the blind and promote and advance fellowship among them; to help persons who are totally blind or of deficient eye sight or handicapped to acquire literacy, industrial knowledge and training and to help them obtain suitable obey placement and employment and wherever necessary to grant loans and accord monetary and other assistance; to establish and maintain a home/house for accommodating and maintaining the blind who are either destitute or are out of employment and to look after their general welfare, to start or establish an institution or institutions for the promotion of integrated education and the promotion of employment of the blind by setting up on the job training workshops where all other categories of handicapped may also be included for those jobs where sight is required. The return of income for the year under consideration was filed by the assessee on 22.09.2016 declaring total income at Rs.NIL. The said return was selected for complete scrutiny as per selection criteria of CASS. During the course of assessment proceedings, it was noticed by the Assessing Officer that the assessee has received corpus donation of Rs.5,39,59,121/- in the year under consideration. The assessee-trust was called upon by the Assessing Officer to furnish the relevant details and documents in respect of the said corpus donation. As mentioned by the Assessing Officer in the assessment order, the assessee-trust however failed to furnish the same despite giving number of opportunities. The claim of the assessee for exemption on account of corpus donation amounting to Rs.5,39,59,121/-, therefore, was disallowed by the Assessing Officer and addition to that extent was made by him to the total income of the assessee

in the assessment completed under Section 143(3) of the Act vide an order dated 11.12.2018.

3. Against the order passed by the Assessing Officer under Section 143(3) of the Act, an appeal was preferred by the assessee before the learned CIT(A); and, after considering the submissions made on behalf of the assessee as well as the details and documents filed by the assessee during the course of appellate proceedings, the learned CIT(A) deleted the addition of Rs.5,39,59,121/- made by the Assessing Officer on account of corpus donation for the following reasons given in paragraph No.5.3 of his impugned order:-

"5.3 I have carefully considered the contentions as well as the various submissions along with enclosures filed by the appellant during the course of appellate proceedings and the observations made by the A.O. The disallowance has been made on account of the fact that the details were not furnished during the course of the hearing while completing the assessment. The appellant has submitted that the notice dated 16/11/2018 was under bonafide error and not verified on the sheet of mail. Once the issue was noticed, the concerned individual who deals with the case was out of the town and immediately the A.O. was requested to grant few days to furnish the reply. However, the assessment was already passed. The appellant has filed a paper book containing the details of the audit report alongwith balance sheet and consolidated income and expenditure account for the F.Y. 2015-16 and all its schedules. From the Income & Expenditure account, it is found that the trust has shown by donation receipts of various natures namely viz; endowment fund of Rs. 1,22,94,329/-, specific donation of Rs.3,43,30,759/- and earmarked funds of Rs.52,40,752/-. The details of which were as per Schedule- A, B and C respectively. These entries were cross verified. In the balance sheet the increase of these funds over the previous year was matched and found to be correct. Since these are corpus funds with specific directions for utilization, they are allowed to be capitalized and do not fall within the purview of income u/s. 11 as treated by the appellant. It is also seen that such corpus donations were excluded during previous years as well as for the A.Y. 2017-18 wherein order u/s. 143(3) was passed on 21/12/2019. Accordingly, the addition of Rs.5,39,59,121/- as corpus donation not treated as exempt by the A.O. is deleted and the contention of the appellant is accepted."

4. Aggrieved by the order of learned CIT(A), the Revenue has preferred this appeal before the Tribunal.

5. We have heard the arguments of both the sides and also perused the relevant material available on record. The learned Counsel for the assessee has taken us through the relevant documents placed in the paper-book to point out that the proper and sufficient opportunity was not afforded by the Assessing Officer to the assessee during the course of assessment proceedings to furnish specifically the details and documents in respect of corpus donation of Rs.5,39,59,121/- received during the year under consideration; and, keeping in view the same, we find merit in the contention of the learned Counsel for the assessee that the learned CIT(A) was fully justified in admitting the additional evidences produced by the assessee-trust in support of its case on the issue under consideration relating to exemption on account of corpus donation of Rs.5,39,59,121/- as per clause (d) of sub-rule (1) of Rule 46A of the Income-tax Rules, 1962. Even the learned DR has not raised any contention to dispute this position. He however has contended that the learned CIT(A), after having admitted the additional evidences, should have allowed reasonable opportunity to the Assessing Officer to examine the said evidences as per sub-rule (3) of Rule 46A of the Income-tax Rules, 1962. As specifically provided in sub-rule (3) of Rule 46A of Income-tax Rules, the CIT(A) shall not take into account any evidence produced under sub-rule (1) unless the Assessing Officer has been allowed a reasonable opportunity to examine the same. Since no such opportunity was allowed by the learned CIT(A) to the Assessing Officer in the present case to examine the additional evidences produced by the assessee and admitted by him, we set aside the impugned order of learned CIT(A) deleting the addition made by the Assessing Officer on account of corpus donation by relying on the additional evidences and restore the

matter to the file of the Assessing Officer for deciding the same afresh on merit after examining the additional evidences filed by the assessee and after giving the assessee proper and sufficient opportunity of being heard.

6. In the result, the appeal filed by the Revenue is treated as allowed for statistical purposes.

Order pronounced in the Court on 4th May, 2022 at Ahmedabad.

Sd/-

(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

Ahmedabad, Dated 04/05/2022

SR

Sd/-

(P.M. JAGTAP)
VICE-PRESIDENT

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

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

TRUE COPY

आदेशानुसार/ BY ORDER,

सहायक पंजीकार (Asstt. Registrar)
आयकर अपीलीय अधिकरण
ITAT, Ahmedabad