

THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH

Before: Ms. Suchitra Kamble, Judicial Member

**ITA No. 349/Ahd/2023
Assessment Year 2016-17**

Shree Variya Prajapati Chovashi Gyati Samsth, Shree Variya Prajapati Gyati Bhavan Old Dumral Road, Nr. Shardamandir School, Nadiad-2 PAN: AABTS4995D (Appellant)	Vs	The Income Tax Officer, Ward Exemption Vadodara (Respondent)
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Assessee by: Written Submission

Revenue by: Shri Alpesh Parmar, Sr. D.R.

Date of hearing : 25-10-2023

Date of pronouncement : 20-12-2023

आदेश/ORDER

This is an appeal filed against the order dated 01-09-2021 passed by National Appeal Centre (NFAC), Delhi for assessment year 2016-17.

2. The grounds of appeal are as under:-

“1. The order passed by the Hon'ble Commissioner of Income Tax (Appeals)-(NFAC) is bad in law, contrary to legal pronouncement and same be quashed.

2. Your honor is requested to condone the delay in filling this Appeal, as there was global COVID-19 pandemic during the period 15.03.2020 to 28.02.2022. CA of our Trust, CA Amrish Shah was handling our Audit and Income Tax matters and our access on the e-filing portal was also with him and he expired on 23/03/2021 and hence, we are not aware about the Order passed by the Hon'ble Commissioner of Income Tax (Appeals)- NFAC. When we have received the intimation u/s 245 for the proposed adjustment on 01/04/2023, we came to know about the Appellate Order. The delay in filing the appeals is neither wiful nor wanton, but only for the genuine reasons stated as above. It is also submitted that the Appellant has a good case on merits and would be put to great loss and hanship if the delay is not condoned. Considering the genuine reason and in the interest of justice, your honor is requested to condone the delay and adjudicate the Appeal.

3. The Hon'ble CIT (A) has erred in confirming the addition of Rs 322314 by not allowing the deduction U/s 11(1) of the IT Act. Total amount of the corpus donation is of Rs 669213 (Milan Mandir Building Fund Rs 469613 and Sharda Mandir Building Fund Rs 199600), which is for the specific purpose, is not to be included in the Total Income as per the provisions of Section 11(1)(d) of the IT Act.

4. Ld CIT(Appeal) had nor considered the fact that, donation received for the specific purpose, which was credited in the Income and Expenditure account has only been transferred to the respective FUND account in the Balance Sheet. Any amount received for the specific purpose is not to be included in the total income as per the provisions of Section 11(1)(d) of the IT Act.

Your appellant craves for leave to alter/amend/withdraw/modify any of the above grounds before hearing.”

3. The assessee trust has e-filed its return of income for assessment year 2016-17 in ITR-7 on 30-09-2016 declaring total income at Rs. 1,27,541/-. The case was selected for

complete scrutiny to examine whether profit or gain from business shown by trust is correct. Notice u/s. 143(2) of the Act was issued on 10-08-2017 and the same was emailed to the assessee. Statutory notices and questionnaire was also issued and the same was emailed to the assessee. In response to the notice, the assessee trust submitted details/copy of audit report/balance sheet, income and expenditure account and other details called for as per questionnaire. The assessee is a public trust and registered under Bombay Public Trust Act as well as registered with Income Tax Department and obtained registration u/s. 12A of the Income Tax dated 30-05-2016. The object of the trust is medical activity by conducting blood donation camp, help to the poor people and also maintaining Wadi for social activities. The Assessing Officer observed that during the year under consideration, the trust received interest income, Wadi rent income and donation. The Trust has shown the gross receipt of Rs. 23,12,660/- and has applied amount of Rs. 13,17,418/- for the object of the trust. The Assessing Officer further observed that assessee has shown only interest income of Rs. 2,39,088/- but has not shown difference amount of income of Rs. 20,73,572/- in respect of rent, donation in cash or kind and income from other sources. After taking cognizance of the reply, the Assessing Officer added difference amount of income of Rs. 20,73,572/- to the total income of the assessee.

4. Being aggrieved by the assessment order, the assessee filed appeal before the CIT(A). The ld. CIT(A) dismissed the appeal of the assessee.

5. At the time of hearing, none appeared on behalf of the assessee despite giving notices but the Authorized Representative of the assessee has filed written submissions dated 05-08-2023 which are taken on record. Thus, we are proceeding on the basis of the submissions made by the assessee before the Assessing Officer, CIT(A) as well as written submission filed by the Authorized Representative of the assessee before the Tribunal.

6. There is a delay of 550 days in filing the present appeal for which the assessee has filed condonation of delay application and the delay is squarely due to the pandemic period as well as the demise of the earlier Authorized Representative/CA of the assessee trust during covid period. The reason appears to be genuine and therefore the delay is condoned.

7. The written submissions dated 05-08-2023 are as follows:-

“The appellant craves the privilege in addressing your honor on the subject captioned above and submits the following submission in respect of the appellate proceedings before your honor in the case of the appellant for the A.Y 2016-17.

Your appellant being dissatisfied with the order passed by the Hon'ble Commissioner of Income Tax (Appeals) NATIONAL FACELESS APPEAL CENTRE (NFAC) presents this appeal against the said order on the following amongst other grounds:-

Fact of the case and our arguments are as under:

1. Only ground of appeal is the disallowance of the donation received by the Trust of Rs 469613.

2. Trust has received the Donation of Rs 469613 and credited in the Income & Expenditure Account under the Head "Donation in cash or kind" and subsequently, it is transferred to the Milan Mandir Building Fund, as the said donation was received for the Milan Mandir Building Fund.

3. Ld CIT (A) has treated this donation as the application of the fund stating "Merely transferring the funds to other funds without actually spending the money is in violation to the provisions of section 11(1) of the Income Tax Act, 1961. In other words, Earmarking the funds would not suffice the statutory requirement of law

In fact, this is not the case of transferring the funds to other funds. We have just transferred the donation in the fund for which it was received. Instead of directly credited the donation in the balance sheet, appellant has, first credit it to income and expenditure account and subsequently transferred to the fund account for which it is received. And in the balance sheet also, it is reflected in the specific fund i.e. Milan Mandir Building Fund.

4. As the donation received is for the specific purpose, i.e. Milan Mandir Building Fund, and also invested the said Fund according to the provisions of Section 11(1)(d) r.w.s. 11(5) in the Schedule Bank (in support, we submit here with copy of the bank account), it is not to be included in the total income of the Trust as per the provisions of Section 11(1)(d) and hence requested to delete the addition made by the Ld AO.

5. Hence, request your honor to grant the deduction and delete the addition made by the Ld AO."

8. The ld. Departmental Representative relied upon the assessment order and the order of the CIT(A) more specifically para 6.1 of the order of the CIT(A).

9. Heard ld. D.R. and perused all the relevant material available on record including the written submissions filed by the Authorized Representative of the assessee. The contention of the assessee is that the Trust received donation of Rs. 4,69,603/- and credited the same in the income and expenditure account under the head donation in cash or kind and specifically it was transferred to the Milan Mandir Building Fund, as the said donation was received for Milan Mandir Building Fund. The assessee submitted that this is not case of transferring the funds to other funds and in fact the assessee trust have transferred the donation in the event for which it was received in respect of directly credited the fund in the balance sheet, the assessee has first credited it to income and expenditure account and subsequently transferred the said fund to the fund account for which it has received the said amount. In the balance sheet also, the same is reflected in the specific fund i.e. fund related to Milan Mandir Building Fund. Such donation received for the specific purpose i.e. Milan Mandir Building Fund and also invested for the said purpose/said fund as per the provisions of section 11(i)(d) r.w.s. 11(5) in the schedule bank for which the assessee has

submitted the bank account therefore this aspect was not taken into consideration by the CIT(A). In fact, the CIT(A) is doubting that there is a signature only one trust of income and expenditure account and no signature of any trustee on balance sheet is not justifiable for disallowing the genuineness of the funds. Thus, the Assessing Officer as well as the CIT(A) was not justified in making the addition.

10. In the result, the appeal of the assessee is allowed.

Order pronounced in the open court on 20-12-2023

Sd/-
(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Ahmedabad : Dated 20/12/2023

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद