आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL,
CHANDIGARH BENCH 'B, CHANDIGARH

श्री संजय गर्ग, न्यायकि सदस्य एवं श्रीमती अन्नपूर्णा गुप्ता, लेखा सदस्य
BEFORE SHRI SANJAY GARG, JUDICIAL MEMBER
AND SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No.899/Chd/2019**
निर्धारण वर्ष / Assessment Year : 2014-15

The J.C.I.T.(OSD), (Exemptions), Circle-2, Chandigarh.	बनाम	M/s Vishav Manav Ruhani Kendra, Nawan Nagar, Circle-2, Chandigarh.
स्थायी लेखा सं./PAN NO: AAFFV1981L		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

निर्धारिती की ओर से/Assessee by: Shri Ajay Jain, CA
राजस्व की ओर से/ Revenue by: Smt.Chanderkanta, CIT DR

सुनवाई की तारीख/Date of Hearing : 04 .03.2020
उदघोषणा की तारीख/Date of Pronouncement:. 21/05/2020

आदेश/ORDER

Per Annapurna Gupta, Accountant Member:

The above appeal has been preferred by the Revenue against the order of the Commissioner of Income Tax (Appeals), Panchkula [(in short referred to as 'CIT(A)'] dated 12.03.2019 relating to assessment year 2014-15, passed u/s 250(6)) of the Income Tax Act, 1961 (hereinafter referred to as 'Act'.

The Revenue has raised the following grounds of appeal:

"i. That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law in allowing the appeal of the assessee by allowing exemption o the assessee u/s 11/12 of the Income Tax Act despite the fact that the

activities of the assessee were not covered u/s 2(15) of the Act.

ii. That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law in allowing the appeal of the assessee ignoring the fact that the donations amounting to Rs.13,`8,82,040/- were not corpus donations as the same were received without any specific direction.

iii. That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law in allowing the claim of capital expenditure incurred during the year to the assessee ignoring that the exemption u/s 11/12 of the Act was rightly denied to the assessee.

iv. That on the facts and in the circumstances of the case, the Ld.CIT(A) has erred in law in deleting the amount of Rs.12,35,40,420/- assessed by the AO allowing exemption to the assessee u/s 11/12 of the Act which was rightly denied by the AO.

v. That the appellant craves to leave, add or amend any grounds of appeal on or before the appeal is heard or disposed of."

2. As is evident from the perusal of the grounds above, the grievance of the Revenue in the present appeal is against the order of the Ld.CIT(A) in allowing the assessee's claim of exemption u/s 11/12 of the Act, allowing its claim of corpus donations amounting to Rs.13.18 crores and further in allowing the claim of capital expenditure incurred by the assessee on acquisition of land under the provisions of section 11/12 of the Act. The issue involved in the present appeal therefore relates to the provisions under the Income Tax Act which grant exemption to incomes of charitable trust.

3. The brief facts relating to the case are that the assessee society is registered under the Haryana Registration and Regulation of Societies Act and has also been granted registration as a charitable trust by the Commissioner of Income Tax, Panchkula under section 12A of the Act, vide order dated 17.9.2007. During assessment proceedings for the impugned year, the AO noted that the aims and objects of the assessee society were of general nature and did not point to

any specific limb of charity as prescribed u/s 2(15) of the Act . He also noted that the society was preaching sermons through satsang, etc. and its main expenditure was towards lungar expenses, satsang expenses, honorarium sevadars and that its receipts were only in the form of donation on account of religious preachings. The AO after considering all these aspects held that the assessee was not eligible to exemption u/s 11/12 of the Act and denied the same to the assessee. The AO further noted that the assessee had shown receipts of corpus donation amounting to Rs.13,18,82,040/- alongwith other donations and had not reflected the same in its income and expenditure account. He further noted that the assessee had purchased several pieces of land during the year in cash and had claimed utilization of the same u/s 11/12 of the Act. The AO made enquiries vis-à-vis corpus donation received and found there was no specific direction from the donors for treating the donations as towards corpus of the assessee society, in the confirmations submitted by the assessee. Accordingly, he held that the donations did not qualify as corpus donation.Further the AO held that since the assessee had claimed utilization of the same for purchase of land, the assessee did not fulfill the conditions prescribed u/s 11/12 of the Act to avail the same. He accordingly, treated the entire corpus donation as the income of the assessee and further denied the claim of utilization for purchase of land to the assessee. Accordingly the AO assessed an amount of Rs.12,35,40,420/- as income of the assessee liable to taxation.

4. Before the Ld.CIT(A) detailed arguments were made by the assessee, reproduced at para 4.3 of the order, after considering which the Ld.CIT(A) allowed the assessee's appeal in entirety, including its claim of exemption u/s 11/12 of the Act, the

treatment of its donations claimed as corpus donations and the claim of utilization of donations for purchase of land.

5. Aggrieved by the same, the Revenue has come up in appeal before us.

6. In ground No.1 the Revenue has challenged the allowance of claim of exemption u/s 11/12 of the Act by the Ld.CIT(A), despite allegedly the findings of the AO that the activities of the assessee were not charitable.

The findings of the Ld.CIT(A) allowing the above claim of the assessee are at para 4.4 of the order, which are reproduced hereunder:

> *"4.4 I have perused the rival contentions and the various documentary evidences submitted in the appellate proceedings in the form of Aims & objects and Rules and Regulations of the appellant Society, the list of donations, receipt vouchers & records of corpus as well as general donations maintained by the appellant, copies of confirmations from donors and assessment orders of various years, all of which were also produced before the AO during assessment proceedings and the various case laws relied upon by the appellant. After considerations of all the facts and circumstances and evidences on record, I am of the considered opinion that the appellant's submissions against the additions made in the assessment order and its reliance on various judicial decisions as elaborated in its submissions has merit. The appellant Society is a religious cum charitable society which was granted registration u/s 12AA of the Act w.e.f. A.Y. 2006-07 vide order of CIT, Panchkula dated 17.09.2007 after due consideration given to aims and objects of the society. The registration has not revoked. The exemption u/s 11 has been allowed in previous as well as subsequent assessment years where orders u/s 143(3) were passed after scrutiny and charitable nature of activities has been accepted by the AOs. The facts of the current years in appeal with respect to nature of activities are not any different from earlier or subsequent years. The society has utilized the general donations and other receipts for aims and objectives given in memorandum of association of Society for which registration was granted i.e by incurring expenditure of Rs.20,02,167/- on running of school, Rs.18,67,527/- on charitable activities of running medical camps and old age homes which cannot be denied to have not been incurred for the purpose of education, medical relief and relief to the poor. The appellant has also rightly claimed that lungar expenses are another name for provision of food to attendees of medical camps, old age homes and Manav Seva Kendra Satsangs and suspicion of AO in this regard is unfounded. No other expenditure in violation of Aims and objectives has been pointed*

> *out by the AO. Further I find that the AO has e en contradicted himself and allowed exemption u/s 11 w.r.t revenue expenditure in computation of income. Therefore on facts and circumstances of the case and Principle of consistency, it is held that the appellant society is eligible for exemption u/s 11 of the IT Act."*

7. We do not find any infirmity in the order of the Ld.CIT(A). We find that the Ld.CIT(A) on appraising all the evidences placed before him has arrived at the finding that the assessee is eligible for exemption u/s 11/12 of the Act.The Ld.CIT(A) has noted that the assessee had been granted registration as charitable society u/s 12A of the Act on the basis of the same aims and objects which the AO has now found to be not in the nature of charitable as defined u/s 2(15) of the Act. He has also noted the fact that this registration has not been revoked till date. The Ld.CIT(A) has also found that the assessee has all along been allowed exemption u/s 11/12 in scrutiny assessment in the past and subsequent years also. He further also has noted that there is no change with respect to the nature of the activities in the impugned year as compared to the earlier and subsequent years. Even otherwise on merits, the Ld.CIT(A) has noted the fact that the assessee had been incurring expenditure of Rs.20,02,167/- on running of school which being for the purpose of education qualified as charitable activities u/s 2(15) of the Act and has spent Rs.18,67,527/- on the activities of running medical camps and old age homes which also qualified as charitable activities in the nature of medical relief to the poor u/s 2(15) of the Act. He has also noted that the lungar expenses are merely provision of food to the attendees of medical camps,in old age homes and Manav Seva Kender. The aforesaid facts have remained uncontroverted before us. Moreover, the Ld.DR has been unable to point out any infirmity in the same. In view of the same and on considering the factual findings of the Ld.CIT(A), we hold that there is no infirmity in the order of the Ld.CIT(A) holding the assessee as carrying out charitable activities within the

definition of the same u/s 2(15) of the Act and eligible for exemption u/s 11/12 of the Act. Ground No.1 raised by the Revenue is, therefore dismissed.

8. In ground of appeal No.2 the Revenue has challenged the order of the Ld.CIT(A) holding that the corpus donation claimed by the assessee qualified as such. The relevant findings of the Ld.CIT(A) in this regard, we have noted are at paras 4..6 and 4.7 of the order as under:

> *"4.6 Regarding the issue of claimed corpus donations of Rs. 13,18,82,040/- received for the purpose of land for setting up Manav Seva Kendra across the country , which were treated as normal donations and added to the receipts of the appellant by the A.O , I find upon perusal of submissions of appellant and the evidences placed on record that the contention of the appellant carries merit and the A.O. has made contradictory statements and not considered the submissions of appellant in totality in the assessment order. The appellant has submitted that corpus donations collections for land was started during the year as per resolution of the General Body for the purpose of purchase of land to be used for construction of new old age homes., hospital/dispensaries and Manav Kendra Across the country and all branches of appellant society were informed about raising of corpus fund for land in the branches and to deposit the donations received for the purpose on monthly basis to the head office for which a single monthly receipt was issued by head office. As against what has been alleged by A.O. in assessment order , the appellant was maintaining separate accounts of the corpus donation receipt and general donations and the audited books of account also show the bifurcation. I also find that it is not disputed that the donations for land were deposited in separate bank accounts designed for the purpose and later FDRs were made to maintain this corpus fund that was utilized for purpose of land and assets in subsequent years through cheques and drafts. I find that the appellant has maintained separate books for the general and corpus donation.The receipt books used for corpus donation were marked with stamp of "Bhoomi kharidaney hetu Dhan Sewa"and receipts where no purpose has been specified and only mention that amount is received towards Sewa, were credited under 'Satsang Sewa' or general donation. This receipts issued show the purpose for which donation is received.*
>
> *4.7 Further, as explained by appellant in its submissions reproduced above, out of a list of 10 donors mentioned in assessment order whose confirmations were sought by A.O, the A.O. selectively chose to reproduce confirmations regarding general donation received from two persons while ignoring the confirmations received from the others who have confirmed that the donation was made for the purpose of purchase of land. I*

> *also find that receipts of monthly corpus donation collected by branch Machiwara at no.931254 dated 09.06.2013 which has been quoted by A.O. includes all the details of names of donors, their addresses, mobile numbers and signatures as well and A.O has ignored to mention that that the amounts received are shown under the column heading 'Bhoomi Sewa'. Similar receipts for other branches at Bhabat, Derabassi, Kurali etc. which were produced before the A.O., also show that collection has been mentioned under the head 'Bhoomi Sewa' and details like names of donors, village and mobile number and signatures of donors are duly found maintained. Thus it is found that judicial view given in the decision of the Jurisdictional Tribunal's order in the case of Shree Mahadevi Tirath Sharda Ma Sewa Sangh (supra) would apply on the facts of appellant's case and the receipts would qualify as meeting the requirement for a specific direction regarding corpus donation. It is also not the case of the A.O. that the appellant was not able to give the particulars of the persons who have donated the amounts or the donors were not provided receipts against their voluntary contributions towards the land fund. The donors were not examined by AO to prove otherwise. This case law relied upon by the appellant support the view that once receipts are issued showing the purpose for which it is received, it would mean that the donor has issued a direction to utilize the amount donated for the purpose and the law does not contemplate that the specific directions of the donor should be in writing only. Therefore, in the absence of any material being brought on record by the AO by any independent enquiry that provisions of section 11(1)(d) have been misused by the appellant the denial of corpus donations and their treatment as ordinary donations based upon suspicion is not warranted particularly when the amount has undisputedly been used for the stated purpose in subsequent years. Thus relying upon the facts and circumstances of the appellant's case as discussed above, the material on record and the case laws cited , I consider that requirement of Section 11(1)(d) of the Act are fulfilled by the appellant and the impugned donations received at 13,18,82,040/-shall form a part of the corpus of the appellant society and treated as exempt u/s 11(1)(d) of the Act.* ***This ground of appeal is allowed."***

10. On going though the above we find that the Ld.CIT(A has perused the records of the assessee produced before him and on perusing the same had given a categorical finding of fact that the corpus donations received were received with the specific direction as such. The Ld.CIT(A, we find, has noted that there were separate receipt books for collecting the corpus donations which was marked with the stamp "Bhumi Kharidane Hetu Dhan Seva" and all donations collected under these receipts had been categorized as corpus donations by the assessee, which amount was kept in a separate bank account,

separate from the general donation and also that FDRs had been made from the same which were subsequently used in subsequent years for purchase of land through issuance of cheques and drafts. The Ld.CIT(A) has also noted the fact that the assessee had maintained separate record of general donation and corpus donation and that its accounts were duly audited. The Ld.CIT(A), we find, has further noted that the observation of the AO that there were no specific directions by the donor for treating the donation as corpus donation, was based on mis-appreciation of facts since the receipts referred to by the AO for basing his observation were relating to general donations and not corpus and donations.

11. Before us the Ld.DR has been unable to controvert any of the above factual findings of the Ld.CIT(A). In view of the above since we find that the Ld.CIT(A) has given a categorical finding of fact, based on evidences produced before him, that the donations shown by the assessee as corpus donations were given with the directions that they qualified as such and which was the sole reason for the Revenue denying the claim, we do not see any reason to interfere in the order of the Ld.CIT(A) treating the corpus donations as such. The ground of appeal No.2 raised by the Revenue is, therefore, dismissed.

12. Ground of appeal No.3 raised by the Revenue relates to allowance of the claim of the assessee as expense incurred for purchase of land as utilization/application as per the provisions of section 11/12 of the Act. The findings of the Ld.CIT(A) in this regard allowing the assessee's claim, we find, are at para 4.5 of the order as under:

> *"4.5 Further the AO Misdirected himself and disallowed the capital expenditure incurred during the year in purchase of fixed assets out of income from property held under Trust. The AO is not clear as to the facts in this respect too. The purchase of fixed assets during the current year is out of receipts of*

> *general donation sand not out of the claimed corpus donations which were collected in the current year only for the first time and have been claimed to be used in subsequent assessment years and not in current year. The appellant is found to have separate accounts for general donations and these have been audited. The audited books show separate bifurcation of donations under general and corpus donations. There is no change in nature of the activities carried out by the society from earlier year and subsequent years, as is evident from the copies of returns of income submitted before the undersigned and the respective assessment orders where assessment has been framed u/s 143(3) after scrutiny and exemption has been allowed u/s11 and application of income on revenue expenditure as well as capital expenses has been allowed. Therefore, the application of income of the society from property held under Trust has to be allowed in respect of capital expenditure incurred during the year out of the receipts of the appellant while computing its total income u/s 11 to 13of the IT Act.* ***Thus these grounds of appeal are allowed. The AO is directed to give relief to appellant accordingly."***

13. On going through the same, we find that the Ld.CIT(A) has noted from the documents and evidences and books of accounts of the assessee produced before him that the utilization by the assessee for purchase of land was out of general donation received and not out of corpus donation and that the AO had misappreciated the facts in this regard while not allowing the claim of the assessee. The said factual findings of the Ld.CIT(A) have not been controverted before us, nor has the Ld.DR made any arguments before us as to why the disallowance be upheld. The AO, we have noted had made the disallowance noting that the same had been made out of corpus donation which did not qualify as such, but since the Ld.CIT(A) has given a finding of fact that the investment in land had been made out of general donations, which fact has remained uncontroverted before us, We see no reason to interfere in the order of the Ld.CIT(A) allowing the claim of the assessee of utilization of amount incurred for purchase of land for the purposes of claiming exemption u/s 11/12 of the Act. In view of the above, ground of appeal No.3 raised by the Revenue is also dismissed.

Ground of appeal No.4 is general in nature and needs no adjudication.

14. In the result, the appeal of the Revenue is dismissed.

Order pronounced on 21/05/2020.

Sd/-	Sd/-
संजय गर्ग	**अन्नपूर्णा गुप्ता**
(SANJAY GARG)	**(ANNAPURNA GUPTA)**
न्यायकि सदस्य/Judicial Member	**लेखा सदस्य/Accountant Member**

दिनांक /Dated: 21/05/2020

रती

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar