



**IN THE INCOME TAX APPELLATE TRIBUNAL,  
CUTTACK 'SMC' BENCH, CUTTACK**

**BEFORE SHRI CHANDRA MOHAN GARG, JUDICIAL MEMBER**

**ITA No.66/CTK/2021**

Assessment Year : 2014-15

Jeypore Evangelical Lutheran Church, Ground Floor, Pohl Bothmann Bhavan, Mission Compound, Jeypore	Vs.	ITO, Exemption Ward, Berhampur
PAN/GIR No.AAAAJ 2644 Q		
<b>(Appellant)</b>	..	<b>( Respondent)</b>

Assessee by : Shri P.K.Mishra, AR

Revenue by : Shri Sovesh Chandra Mohanty, Addl. CIT (DR)

**Date of Hearing : 07 /10/ 2021**

**Date of Pronouncement : 20/10/2021**

**ORDER**

This is an appeal filed by the assessee against the order of the CIT(A), National Faceless Appeal Centre, Delhi dated 20.4.2021 for the assessment year 2014-15, in the matter of order under section 154 of the Income tax Act, 1961.

2. The assessee has raised the following grounds:

"1. On the facts and circumstances of the case, the Id CIT(A) has erred in passing order exparte on 20.4.2021 i.e. when the area of the assessee and counsel of the assessee were lock down due to the spread of COVID 19. The order passed by the Id CIT(A) is without providing proper opportunity of being heard which is against the principle of natural justice, hence, the order passed by the AO is unjustified, unwarranted and uncalled for.

2. On the facts and in the circumstances of the case, the Id CIT(A) has erred in passing order without calling for the documents submitted with the AO in the original proceeding. Therefore, order passed without verifying the documents available with the department is unjustified, unwarranted and uncalled for.

3. On the facts and in circumstances of the case, the Id CIT(A) has erred in passing order without adjudicating the legal ground raised by assessee judiciously. Therefore, order passed in unjustified, unwarranted and uncalled for.

4. On the facts and in the circumstances of the case, the Id CIT(A) has erred in sustaining the order of the AO where in the AO has erred in considering the specific fund as general fund and treating it as revenue receipt while passing the order. The addition made by the AO and confirmed by Id CIT(A) is unjustified, unwarranted and uncalled for.”

3. Briefly stated the facts are that the assessee is a trust, filed its return of income on 28.9.2014, claiming exemption under section 11 of the Act. The return was processed u/s.143(1) of the Act by the CPC on 14.3.2016 on total income of Rs.1,54,10,132/- raising demand of Rs.66,50,150/-. Thereafter, a rectification petition was filed by the assessee u/s.154 of the Act alongwith audited income and expenditure account, receipt and payment account, balance sheet, on the ground that the CPC has not considered the expenses incurred during the year for running of the trust. The Assessing Officer, on verification of balance sheet, noticed that the assessee has shown special fund of Rs.2,09,36,028/- from various donors (the details are reproduced by the Id CIT(A) at page 4 6 of the impugned order) without routing through the income and expenditure account. The AO asked the assessee to explain as to why the special fund received through donation would not treated as revenue receipt. The secretary of the

trust produced the list of donors and amount of donation. The AO found that an amount of Rs.44,91,791/- has been donated for the specific purpose, therefore, same were considered to be genuine and balance amount of Rs.1,64,44,237/- was added to the total income of the assessee and determined the total income at Rs.19,83,850/-. Aggrieved by the order of the AO, the assessee trust went in appeal before the Id CIT(A), who passed the order exparte confirming the addition so made by the AO. Hence, the assessee is in appeal before the Tribunal.

4. Ld counsel for the assessee submitted that first of all the disallowances of special fund by the Id AO while considering the application under section 154 was beyond his scope. It was his submission that the appellant had submitted the rectification petition claiming for allowing of expenditure incurred by it while considering the receipts. Ld AO exceeded his jurisdiction in proceeding with examination of special fund. In addition to this submission, Id A.R. submitted that the receipts of special fund being capital in nature, need required to be routed through income and expenditure account. Further, he also submitted that the said receipts are not coming under the definition of income as defined under the Act. He submitted that since trust is registered under section 12AA of the Act, special fund received for specific purpose have to be exempted. Therefore, both the authorities below are not justified in taxing the special fund as revenue receipts. He submitted that the Assessing Officer has considered

the donations partly as specific direction and partly not received for specific purpose, whimsically without giving any reason thereof. Ld A.R. produced the following decisions in support of his case that the donations received by the trust are allowed being capital receipts.

- i) Decision of Hon'ble Karnataka High Court in CIT vs Bharatiya Samskriti Vidyapith Trust(2014) 43 taxmann.com 295 (Karnataka).
- ii) Mumbai Tribunal in the case of Chandraprabhu Jain Swetamber Mandir vs ACIT (2017) 82 taxmann.com 245 (Mum)
- iii) Surat Tribunal in DCIT vs Shree Surat Jilla Leuva Patidar Samaj Trust (2019) 103 taxmann.com 295 (Surat)
- iv) Visakhapatnam Tribunal in ITO (Exemption) vs Hosanna Ministries (2020) 119 taxmann.com 379 (Vis)

5. Replying to above, Id Sr DR dutifully supported the order of the Id CIT(A) but could not point out any distinguishing feature regarding the specific purpose of donation by the donors.

6. I have heard the rival submissions and perused the record of the case. First of all, I may point out that although the assessee in its petition u/s.154 of the Act, has agitated to consider expenditure for running of the trust but the Assessing Officer has left out the same and proceeded to consider the donations partly for specific purpose and others not for the specific purpose. I find that both the AO and Id CIT(A) has reproduced the details of donations received by the assessee trust, which are as under:

SI No	Name of donor	Amount of grant/ donation	Purpose of donation
01	ZMOe, Germany	16,88,787/-	Renovation/ construction of SCS Baoding School and widow Asharam, Kotapada
02	Compassion East India	7,56,617/-	Project support for Month of March,2014
03	ZMOe, Germany	22,50,000/-	Campus renovation/ construction of ACS Hostel
04	ZMOe, Germany	10,00,000/-	Regular maintenance, electricity, water and sanitation
05	Church's Auxiliary for Social Action	55,380/-	Project social action for life transformation
06	Compassion East India	7,66,016/-	Project support for Month of January, 2014
07	Compassion East India	4,54,270/-	Project support for Month of September,2013
08	Church's Auxiliary for Social Action	40,106/-	Project social action for life transformation
09	ZMOe, Germany	41,698/-	JELC Golden Gate, P. Suku
10	Church's Auxiliary for Social Action	53,858/-	Project social action for life ' transformation
11	Compassion East India	3,38,924/-	Project support for Month of July,2013
12	Compassion East India	7,05,820/-	Project support for Month of June,2013
13	ZMOe, Germany	15,25,332/-	ACS donation retreat centre
14	Church's Auxiliary for Social Action	40,350/-	Project social action for life transformation

15	ZMOe, Germany	5,53,004/-	ACS School/ boarding water Heater, renovation/ construction etc.
16	ZMOe, Germany	5,98,541/-	Matching grant pension
17	ZMOe, Germany	8,25,000/-	Education program
18	Compassion East India	3,13,654/-	Project support for the month of December, 2013
19	Compassion East India	12,69,843/-	Project support for the month of December, 2013
20	ZMOe Germany	2,32,129/-	Afforestation program
21	ZMOe Germany	2,53,773/-	Afforestation program
22	ZMOe Germany	58,208/	Widow Ashram
23	Compassion East India	6,37,707/-	Project support for Month of April,2013
24	Compassion East India	6,67,589/-	Project support for Month of August,2013
25	Compassion East India	6,82,477/-	Project support for Month of October,2013
26	Compassion East India	3,57,130/-	Project support for September,2013
27	Compassion East India	7,59,292/-	Project support for Month of November,2013
28	Compassion East India	8,19,094/-	Project support for Month of February,2014
29	L.W.F Geneva	5,06,060/-	New life project
30	L.W.F Geneva	3,35,064/-	Agriculture Development project
31	L.W.F Geneva	1,63,190/-	New life project and agriculture Development project
32	L.W.F Geneva	6,66,465/-	New life project

33	L.W.F. Geneva	2,78,407/-	Agriculture development
34.	Compassion East India	3,54,183/-	Project Support for month of May, 2013
35.	Compassion East India	3,65,661/	Project Support for month of May, 2013
36.	Interest from Bank	3,34,093/-	Medical Aid
37	Interest from bank	1,56,484/-	BD college Hostel construction
38.	Interest from bank	21,822/-	CDC

7. From the narration given in the list of donations, it is observed that the amount of donation has been given for the specific purpose. The Assessing Officer has bifurcated three donations as specific purpose and left out other donations not being specific purpose without giving any reason. The donations are being specific purpose and being capital receipts are not coming within the ambit of definition of income as defined under section 2(24)(ii) of the Act. It being a capital receipts, there is no necessity of routing through income and expenditure account, as claimed by the Assessing Officer. I also find that the some donations have been received for the special project undertaken by the trust and, therefore, same cannot be treated as revenue receipt. It is not the case that the assessee trust has not disclosed the donation and have not accounted for. The amount received clearly demonstrates for the purpose of various project development and building construction. In view of above, I am of the considered view that the amount received by the assessee trust for specific direction to use the same for different project undertaken by the

assessee and is entitled for deduction u/s.11 of the Act. I also find that the decisions relied by Id A.R. of the assessee, as reproduced above, support the case of the assessee, wherein, the corpus funds received by the trust are considered as capital receipts, not includible in income of the trust. Therefore, I am of the considered opinion that the issue is covered in favour of the assessee by the various decisions (supra). Hence, I allow the appeal of the assessee and direct the AO to delete the disallowance of Rs.1,64,44,237/-.

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

Order pronounced on 20 /10/2021.

Sd/-  
**(Chandra Mohan Garg)**  
**JUDICIAL MEMBER**

Cuttack; Dated 20 /10/2021  
B.K.Parida, SPS (OS)

**Copy of the Order forwarded to :**

1. The Appellant : Jeypore Evangelical Lutheran Church, Ground Floor, Pohl Bothmann Bhavan, Mission Compound, Jeypore
2. The Respondent. ITO, Exemption Ward, Berhampur
3. The CIT(A), National Faceless Appeal Centre (NFAC), Delhi
4. Pr.CIT-, Bhubaneswar
5. DR, ITAT, Cuttack
6. Guard file.  
//True Copy//

**By order**

Sr.Pvt.secretary  
**ITAT, Cuttack**