

**IN THE INCOME TAX APPELLATE TRIBUNAL  
HYDERABAD BENCH "B", HYDERABAD**

**BEFORE SMT P. MADHAVI DEVI, JUDICIAL MEMBER  
AND SHRI S. RIFAUR RAHMAN, ACCOUNTANT MEMBER**

**ITA No. 1284/Hyd/2013  
Assessment Year: 2007-08**

M/s Care Foundation for  
Children and Aging,  
Secunderabad.

vs. Dy. Director of Income-tax,  
(Exemptions) – III, Hyderabad.

PAN – AAATC 2795 Q  
(Appellant)

(Respondent)

Assessee by : Shri A. Srinivas  
Revenue by : Shri K.J. Rao

Date of hearing : 21-07-2016  
Date of pronouncement : 05-08-2016

**ORDER**

**PER S. RIFAUR RAHMAN, A.M.:**

This appeal is preferred by the assessee against the order of the learned Commissioner of Income-tax(A) - IV, Hyderabad for AY 2007-08.

2. Briefly the facts of the case are that the assessee society filed its return of income on 30/08/2007 declaring 'NIL' income and claimed exemption u/s 11 of the IT Act. Assessment u/s 143(3) was completed on 09/11/2009 accepting the income returned by the assessee. Subsequently, notice u/s 148 was issued on 27/03/2012. The total income was assessed at Rs. 65,79,209/- holding that the assessee had failed to apply part of its income to charitable purposes.

2.1 The assessee had received a sum of Rs. 11,18,20,098 as foreign donations from Christian Foundation for Children and Ageing (CFCA-USA). As per the FC-3 Form submitted to the Ministry of Home Affairs, this donation was received for grant of stipend/scholarship/assistance in cash and kind to poor/deserving children. Out of this, the receipt and expenditure under two heads were the subject matter of the assessment:

Head	Receipt	Expenditure
Christmas Gifts	Rs. 57,80,930	Rs. 53,96,906
Special Gifts	Rs. 11,85,796	Rs. 11,64,127

2.2 The assessee submitted that CFCA-USA had sent festival gifts money on the occasion of Christmas which was a major festival in the USA and that the CFCA-USA distributed gifts within and outside USA on the occasion due to which the money had been titled as Christmas gifts but there was no religious significant to these gifts and the gifts had been distributed to all beneficiaries irrespective of caste, creed and religion as a part of discharging its noble charitable purpose and in accordance with the donor agencies wish. The assessee further submitted that the grants had been spent on purchase of blankets and plastic moulded Cello Tables on the basis of discussions with the SMG groups and children camps. The appellant submitted that the intention was that the gift should be useful not only for the children but also for their families. The assessee submitted that all the sponsored children participated with great enthusiasm in the celebrations where the gifts were given and that the assessee conducted such celebrations for Christmas, Sankranthi and other festivals in a secular spirit. The assessee also submitted that out of Rs. 11,85,796, a sum of Rs. 11,64,127 had been transferred to the bank accounts of the children as special gifts. The assessee submitted that the expenses had been incurred for a fully charitable purpose.

2.3 The Assessing Officer relying on few case laws held that payment of Christmas gifts and special Gifts was not for the objects of the society and that such gifts were also not in accordance with the purpose stated in the FC-3 Form.

3. On appeal, the CIT(A) after considering the submissions of the assessee observed that giving of gifts on the occasion of Christmas is a widespread practice in the West. The CFCA Financial Policies Manual specifying use of designated funds for Christmas gifts is in line with such practice. It is relevant in this regard to note that the donor agency itself is basically a Christian organization. However, the fact that the funds have been utilized in accordance with the wish of the donor agency is of no consequence. Neither is the fact that the recipients were delighted with or that they belonged to all religions of any consequence. What is of relevance for the purpose of sec.11 is that the funds should be utilized in accordance with the aim and objects of the appellant itself. The CIT(A) held that in assessee's case the funds have been utilized for giving of gifts on the occasion of a religious festival and this is neither a charitable purpose nor, certainly, in accordance with the aims and objects of the appellant. He, therefore, upheld the decision of the Assessing Officer in rejecting such utilization as amounting to application for charitable purpose.

3.1 However, the CIT(A) observed that the above arguments do not apply to the expenditure of Rs. 11,64,127/- incurred on amounts transferred to the Bank accounts of children as special gifts as such expenditure could well fall within the following aims and objects of the assessee:

1. To serve the poor particularly the children and the aging through sponsorship and building relationship of mutual respect and support.
2. To ensure that a maximum amount of sponsorship funds are used for the benefit of sponsored children and aging.

3.2 The CIT(A) therefore upheld the expenditure of Rs. 53,96,906/- on the ground that the same is not applied for charitable purposes while the expenditure of Rs. 11,64,127/- is held to have been applied for charitable purposes in accordance with section 11 and the aims and objects of the assessee.

4. Aggrieved by the order of the CIT(A), the assessee is in appeal before us by raising the following grounds of appeal:

*1. The order of the Deputy Director of Income Tax, (Exemption), Hyderabad, being the AO is contrary to law, facts and circumstances of the case.*

*2. The AO erred in issuing a notice u/s.148, when no new facts have come to light, so as to have reason to believe that there was escapement of Income when the original assessment was completed u/s.143(3).*

*3. The issue of the notice u/s.148 is bad in law.*

*4. The AO erred in bringing an amount of Rs.53,96,906/- to tax denying the benefit of application of Income u/s. 11.*

*5. The AO erred in giving a finding that the amount of Rs.53,96,906/- is not applied for the aims and objects of the appellant.*

*6. The appellant commissioner erred in confirming in addition of Rs.53,96,906/- and giving a finding that the application of income was not for charitable purpose."*

5. Ld. AR of the assessee submitted that the assessment was completed u/s 143(3) on 09/11/2009 and subsequently, AO has changed his opinion on completed assessment and issued notice u/s 148 on the Christmas Gift. He submitted that all the relevant information was available at the time of assessment.

5.1 The Id. AR of the assessee invited our attention to the affidavit filed by the assessee wherein the assessee has stated that while preferring the appeal before the CIT(A), inadvertently under mistaken impression of law, did not directly challenge the reopening of assessment made u/s 147 of the Act. However, the assessee has raised a ground with respect to the reopening of the assessment u/s

147 of the Act for the first time directly before the ITAT. The Id. AR submitted that raising a question of law before the ITAT for the first time is permissible, for which several judgments support the said premise. Ld. AR relied on the following cases in support of assessee's case:

1. Usha International Ltd., 348 ITR 485 (Delhi Full Bench)
2. Kelvinator India Ltd. (Delhi), 256 ITR 1
3.            -do-                               (SC), 320 ITR 1

5.2 On merits, Id. AR submitted that the assessee has utilized the funds received from CFCA-USA on the occasion of Christmas. The same was utilized as per the directions of the donor. Further, he submitted that no doubt, the gifts were recorded as Christmas Gift, but, in reality, assessee has bought the blankets and plastic moulded cello tables on the recommendation of the SMG groups and distributed to all the children irrespective of the caste/creed.

6. Ld. DR, on the other hand, submitted that the assessment was reopened within four years and there is no change of opinion. He relied on the orders of AO and CIT(A).

7. Considered the submissions of the parties and perused the material facts on record as well as the orders of revenue authorities. Placing reliance on the Hon'ble Supreme Court's decision in the case of NTPC vs. CIT 229 ITR 383-387, we admit the ground pertaining to reopening of assessment u/s 147 raised by the assessee for the first time before us on the ground that the issue which is purely legal and which goes to the root of the matter and no new facts are required to be invoked, then, the same should be admitted for adjudication being legal objection of the assessee.

7.1 It is a settled position of law that the assessment can be reopened under section 147/148 on the basis of 'reason to believe' and not 'reason to suspect'. As held by the Coordinate Bench of this Tribunal in the case of Deputy Director of income Tax (International

Taxation)-21, Mumbai –vs.- Societe International De Telecommunication 2012 (11) TMI 948 - ITAT MUMBAI, unless the reasons to believe about the escapement of income exist, no recourse can be taken to the provisions of section 147. It was held that where an Assessing Officer ventures to initiate reassessment proceedings with an object of finding some material about the escapement of income, such reassessment cannot legally stand and the law does not permit the Assessing Officer to conduct inquiries after the initiation of reassessment proceedings, to find if there is an escapement of income. It was held that the scope of section 147 cannot encompass such an action under which certain examination is to be conducted for forming a reason to believe as to the escapement of income. If the facts of the present case including especially the reasons recorded by the Assessing Officer for reopening the assessment are considered in the light of the decision of the Coordinate Bench of this Tribunal in the case of Deputy Director of income Tax (International Taxation)-21, Mumbai –vs.- Societe International De Telecommunication, We are of the view that the initiation of reassessment proceeding itself was bad in law and the assessment completed by the Assessing Officer under section 143(3) read with section 147 in pursuance of such invalid initiation is liable to be cancelled.

7.2 In the case of Usha International Ltd., the Hon'ble Delhi High Court has held as under:

*“The assessment proceedings cannot be validly reopened under section 147 of the Act even within four years, if an assessee has furnished full and true particulars at the time of original assessment with reference to the income alleged to have escaped assessment, if the original assessment was made u/s 143(3). So long as the assessee has furnished full and true particulars at the time of original assessment and so long as the assessment order is framed under section 143(3) of the Act, it matters little that the assessing officer did not ask any question or query with respect to one entry or note but had raised queries and questions on other aspects. Section 114(e) of the Evidence Act can be applied to an assessment order framed under section 143(3) of the Act, provided that there has been a full and true disclosure of all material and primary facts at the time of original assessment. In such a case if the assessment is*

*reopened in respect of matter covered by the disclosure, it would amount to change of opinion."*

7.3 Respectfully following the ratios laid down by the said Courts, we are of the opinion that the AO has not brought any new material on record so as to have reason to believe that there was escapement of income when the original assessment was completed u/s 143(3). We observe that the financial statement submitted by assessee is placed on record, which discloses the receipt of gift as well as utilization clearly and apparently on record. The AO has completed the 143(3) assessment. It clearly demonstrates that AO intends to reassess the income. Therefore, the reopening of assessment made by the AO would amount to change of opinion, which cannot withstand in the eye of law. Hence, we quash the reassessment made by the AO u/s 147 of the Act. Since we have quashed the reassessment u/s 147 of the Act, there is no need to go into the merits of the case.

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

Pronounced in the open court on 5<sup>th</sup> August, 2016

**Sd/-**  
**(P. MADHAVI DEVI)**  
**JUDICIAL MEMBER**

**Sd/-**  
**(S. RIFAUR RAHMAN)**  
**ACCOUNTANT MEMBER**

Hyderabad, Dated: 5<sup>th</sup> August, 2016

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Copy to:-

- 1) *M/s Care Foundation for Children and Aging, 12-13-1231, CFCA House, Street No. 9, Tarnaka, Secunderabad.*
- 2) *DDIT (Exemptions) - III, Aayakar Bhavan, Hyd.*
- 3) *CIT(A) - IV, Hyderabad*
- 4) *DIT(Exemptions) , Hyderabad*
- 5) *The Departmental Representative, I.T.A.T., Hyderabad.*

S.No.	Description	Date	Intls	
ds1.	Draft dictated on			Sr.P.S./P.S
2.	Draft placed before author			Sr.P.S/PS
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