

**IN THE INCOME TAX APPELLATE TRIBUNAL
COCHIN "SMC" BENCH, COCHIN**

Before Shri Chandra Poojari, Accountant Member

ITA No.731/Coch/2019 : Asst.Year 2008-2009

| | | |
|---|-----|--|
| M/s.Sneha Trust for Charity and Education, 10/532, Attayampathi, Govindapuram PO, Palakkad – 680 563. PAN : AAKTS5748K. | Vs. | The Asst.Commissioner of Income-tax, Circle -1 Palakkad. |
| (Appellant) | | (Respondent) |

Appellant by : Sri.T.M.Sreedharan

Respondent by : Sri.Mrithunjaya Sharma, Sr.DR

| | |
|-------------------------------------|---|
| Date of Hearing : 11.02.2020 | Date of Pronouncement : 11.02.2020 |
|-------------------------------------|---|

ORDER

This appeal filed by the assessee is directed against the order of the CIT(A), Thrissur, dated 14.10.2019 for the assessment year 2008-2009.

2. The assessee has raised various grounds, but the crux of the ground was that the CIT(A) erred in sustaining the addition of Rs.8,80,000 made by the Assessing Officer u/s 68 of the I.T.Act, though it was voluntary donation received by the assessee-trust towards corpus fund.

3. The facts of the case in brief are that the assessee has received following donations in various assessment years totaling to Rs.33,80,000 :-

| Sl. No. | Name of the Trustees | 2005-06 (FY) | 2006-07 (FY) | 2007-08 (FY) | Total |
|---------|----------------------|--------------|--------------|--------------|-----------|
| 1. | E.Abdurahim | 6,00,000 | 4,90,000 | 120,20,000 | 21,10,000 |
| 2. | P.Laila | 6,00,000 | -- | 1,70,000 | 7,70,000 |
| 3. | E.Raheema | 2,50,000 | -- | -- | 2,50,000 |
| 4. | E.Rahana | 2,50,000 | -- | -- | 2,50,000 |
| | Total | 17,00,000 | 4,90,000 | 11,90,000 | 33,80,000 |

3.1 The Assessing Officer was of the opinion that out of the total amount of Rs.33,80,000 received in above three assessment years, a sum of Rs.8,80,000 was unexplained income in the hands of the assessee for the assessment year under consideration, i.e., Asst.Year 2008-2009. Accordingly, the Assessing Officer made addition of Rs.8,80,000 u/s 68 of the I.T.Act. On appeal, the CIT(A) confirmed the addition by holding that the assessee has not proved the identity and creditworthiness of the persons advancing the amount to the assessee, the genuineness of the transaction and also non production of PAN of the donors. Against this, the assessee is in appeal before the Tribunal.

3.2 The learned AR submitted that the dispute in the appeal is against addition of Rs.8.80 lakh out of the corpus donations received by the assessee as on 31.3.2008. The above sum of Rs.8.80 lakh is assessed as income of the assessee for that year. The corpus donations to the Trust were made by the Trustees during the financial years 2005-06, 2006-07 and 2007-08. The "tabulation of the above would show that the contributions made by the Trustees Trustees for each of the above financial years are i.e., for F.Y.2005-2006 Rs.17,00,000, for F.Y.2006-2007 Rs.4,90,000, and for F.Y. 2007-2008 Rs.11,90,000, totaling to Rs.33,80,000. In the assessment order, the A.O. proceeded on the basis that out of Rs.33.80 lakh, the source was explained by the assessee for Rs.25 lakh and, therefore, the balance of Rs.8.80 lakh as on 31.3.2008 is assessed as income of the Trust for that year. The break-up of the corpus donations

made by the Trustees as furnished above would show that the contribution made during the financial year 2007-2008 relevant to the present assessment is Rs.10.20 lakh by Sri.E.Abdurahim and Rs.1,70,000 by Mrs.P.Laila. The aggregate is Rs.11,90,000. These trustees had already contributed during the previous year/years by way of corpus donation and had sufficient source for making such donation which had been accepted for those years. The sum of Rs.11.90 lakh received as Corpus donation for the financial year 2007-2008 is explained as per letter dated 20.9.2011. The above document was also considered by the A.O. However, on an ad-hoc basis, Rs.8.80 lakh was treated as assessable income. The confirmation letters were filed by Shri E. Abdurahim and Smt.P. Laila. They have explained the source for the corpus donations through letter dated 20.9.2011 and the same was also accepted by the A.O. in the hands of the Trustees. As such, the assessment of Rs.8.80 lakh as income of Trust for the asst. year 2008-09 cannot be justified. The assessment orders for the assessment years 2006-2007 and 2007-2008 as also for 2009-2010 all dated 20.12.2011, are also produced. All these assessment orders were passed on the same day on which the asst. order for 2008-2009 was passed. So much so, all the facts were available before the A.O. when he passed the assessment order, including the contributions for prior and subsequent years. It is, therefore, submitted that assessment of Rs.8.80 lakh as income for the present assessment cannot be sustained and the same is liable to be deleted.

3.3 Without prejudice to the above, it is also submitted that the A.O. vide para 3 of the asst. order now impugned in the present appeal, has considered the cumulative total of the corpus donations received upto 31.3.2008 and held that the source for Rs.25 lakh alone out of the total corpus fund of Rs.33.80 lakh as on 31.3.2008 was explained. There is no justification to consider the cumulative total for this purpose. In the notice dated 7.12.2011, the A.O. considered a sum of Rs.25 lakh received by Smt. P. Laila as available source to the credit of the four Trustees on a consolidated basis and treated the balance as unexplained. This estimate is contrary to the statutory provision and the settled principles. Copies of the balance sheet, etc. for prior years and bank statements of the Trust for prior years are submitted separately.

3.4 As regards the income tax assessment particulars of the Trustees, the learned AR submitted that the assessee has clarified that the Trustees are not having any taxable income and are not assessed to income tax. However, their PAN are furnished below :-

| | | |
|-------|-----------|------------|
| (i) | Abdurahim | BLKPA8641M |
| (ii) | Laila | ALUPL1816A |
| (iii) | Rehana E | BIYPR6849F |
| (iv) | Raheema E | ABKPE9768K |

3.3 The learned AR further submitted that it may be seen that the surplus income over expenditure for the asst. years 2006-07, 2007-08 and 2009-10 was allowed as exemption

u/s.10(23C)(iiiad) and the assessable income is treated as Nil. For this year also, this was considered as exempted income and the return of income was accepted. Part of the corpus fund amounting to Rs.8.80 lakh is assessed as income of the Trust.

3.4 The learned AR further submitted that according to the settled principles of law, the corpus donations cannot be assessed separately as income. Section 10(23C)(iiiad) would also cover corpus donations, if the gross income is below Rs.100 lakh. In the present case the eligibility for donations u/s. 10(23C)(iiiad) is admitted and accepted for the assessment years 2006-2007, 2007-2008 and 2009-2010 and as such, assessment of the corpus donation of Rs.8.80 lakh is unsustainable and is liable to be set aside. The learned AR relied on the judgment of the Hon'ble High Court of Kerala in (2012) 348 ITR 69 (Ker.) : CIT Vs. St. Mary's Malankara Seminary is also relevant. It was held there in that the term "Education" would enjoy wide connotation covering all kinds of coaching and training carried on in a systematic manner leading to personality development of an individual. It was held that religious teaching in the seminary is an education and seminary is an "educational institution" entitled for exemption u/s. 10(23C)(iiiad) of the Act. Donations for corpus funds are exempted u/s.11 of the Act. In a case where exemption is claimed u/s. 10(23C)(iiiad), the entire receipts would be exempted if the aggregate of annual receipts is not more than RS.100 lakh. Where the annual receipts of the Educational Institution are below Rs.100 lakh, exemption

u/s. 10(23C)(iiiad) would apply to the surplus and accordingly, is eligible for exemption. Accordingly, no part of the receipt is taxable: ACIT Vs. Shiksha Samiti : (2015) 38 ITR (Trib.) 616 (Delhi.).

4. The learned Departmental Representative, on the other hand, besides supporting the orders of the authorities below, submitted that the assessee is trying to do was to launder its unaccounted income by converting it into donations, which shall not be permitted.

5. I have heard the rival submissions and perused the material on record. It was held by the Hon'ble Supreme Court in the case of *S.R.M.M.C.T.M.Tiruppani Trust v. CIT* [(1998) 230 ITR 636 (SC)] that under section 11(1) of the Act, every charitable or religious trust is entitled to deduction of certain income from its total income of the previous year. The income so exempt is the income which is applied by the charitable or religious trust to its charitable or religious purposes in India. This is, of course, subject to accumulation up to a specified maximum which, in the present case, was 25%.

5.1 Further, to obtain the benefit of the exemption u/s 11 of the Act, the assessee is required to show that the donations were voluntary. In the present case, the assessee had only disclosed its donation, but failed to submit a list of donors. The fact that the complete list of donors was not filed or that the donors were not produced, does not necessarily lead to the inference that the assessee was trying to introduce

unaccounted money by way of donation receipts. In my opinion, section 68 of the I.T.Act have no application to the facts of the case if the assessee furnishes the name and address of the donors to the Assessing Officer. In the present case, the assessee has received Rs.33.80lakh in three assessment years as stated in the earlier paragraph that out of this, Rs.11.90 lakh was relating to assessment year 2008-2009. The Assessing Officer, out of this amount, considered Rs.8.80 lakh as unaccounted income of the assessee. The assessee stated before me that the said sum of Rs.11.90 lakh was received by the assessee from the following two persons, i.e., (i) Sri.E.Abdurahim Rs.10,20,000 and (ii) Smt.P.Laila Rs.1,70,000, totaling to Rs.11,90,000. However, the assessee has not filed the confirmation letters from the above two donors. If the assessee is able to file the confirmation letters stating that it was received the amount as donation towards corpus fund of the assessee-trust, then there cannot be any application of section 68 of the Act. Being so, if there is a disclosure of this income in the hands of the assessee as corpus fund and applied the same is for charitable purposes for which the assessee-trust is created, and also the assessee-trust is having due registration u/s 12A of the Act, the Assessing Officer cannot invoke the provisions of section 68 so as to sustain the addition. Accordingly, in the interest and equity, I remit the entire issue under dispute to the files of the Assessing Officer with a direction to the assessee to prove that it was received the amount as donation towards corpus fund of the assessee-trust. With these observations, I remit the

entire issue to the files of the Assessing Officer for fresh consideration.

6. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on this 11th day of February, 2020.

Sd/-
(Chandra Poojari)
ACCOUNTANT MEMBER

Cochin ; Dated : 11th February, 2020.
Devadas G*

Copy of the Order forwarded to :

1. The Appellant.
2. The Respondent.
3. The CIT(A), Thissur.
4. The Pr.CIT, Thrissur.
5. DR, ITAT, Cochin
6. Guard file.

BY ORDER,

(Asstt. Registrar)
ITAT, Cochin