

**IN THE INCOME TAX APPELLATE TRIBUNAL
CIRCUIT 'SMC' BENCH, VARANASI
BEFORE SHRI.VIJAY PAL RAO, JUDICIAL MEMBER**

**ITA No.218/VNS/2019
Assessment Year: 2009-10**

The Central Institute of Higher Tibetan Studies, Sarnath, Sarnath, Varanasi-221007 PAN-AABTT2912K	v.	Income Tax Officer, (Exemption), Varanasi
(Appellant)		(Respondent)

Appellant by:	Sh. Hari N. Singh Bisen, CA
Respondent by:	Sh. A.K. Singh, Sr. D.R.
Date of hearing:	05.07.2022
Date of pronouncement:	02.08.2022

ORDER

SHRI VIJAY PAL RAO, JUDICIAL MEMBER:

This appeal by the assessee is directed against the order dated 22.07.2019 of CIT(A) for the assessment year 2009-10.

2. The assessee is a University and enjoys exemption under section 10(23C)(iiiad) of the Income Tax Act. The Assessing Officer issued notice under section 148 on 29.3.2016 to assess the income on account of cash deposit of Rs. 45,55,746/- in the bank account. In response, the assessee, vide letter dated 14.7.2016 requested the Assessing Officer to drop the proceedings in view of the status of the assessee enjoying the benefit of section 10(23C)(iiiad) of the Income Tax Act. The assessee also submitted before the Assessing Officer that the amount in question was donation given to Dalai Lama Charitable Trust Dharmshala by the devotees of Dalai Lama who visited Varanasi for teachings on BODDHICHARYAVATARA which was transferred to Charitable Trust at Dharmshala by getting the demand draft from the bank account of the assessee in question. The Assessing Officer did not accept this explanation for want of supporting documents and made the addition in the hands of the assessee.

Accordingly, the Assessing Officer assessed the total income of the assessee Rs. 45,55,750/- in the status of the AOP. The assessee challenged the action of the Assessing Officer before the CIT(A) but could not succeed.

3. Before the Tribunal, the learned AR of the assessee has submitted that assessee has given details of the demand draft through which the amount was transferred to Dalai Lama Trust. He has also filed a confirmation of Dalai Lama Trust confirming the amount being transferred from the assessee's bank account to the bank account of the Dalai Lama Trust through demand draft got issued. The learned AR has also filed the cash book of the assessee University showing the various amount and entries regarding the amount depositing in the bank account and also transferred to Dalai Lama Trust by issuing the demand draft. He has also filed the bank account statement of the assessee wherein these deposits were made and transferred the amount to Dalai Lama Trust. The learned AR has also filed the audited annual financial statements and submitted that the accounts of the assessee University are audited by the CAG of India and therefore, all the transactions including the deposits made in the bank account and transferred to the Dalai Lama Trust are subjected to audited by the CAG. The learned AR has further submitted that the Dalai Lama Trust is registered under section 12A and therefore, eligible for exemption under section 11 and 12 of the Income Tax Act. He has also submitted that the Dalai Lama Trust has also filed the return of income and included this amount of donation in its income which is subjected to verification and assessment. These transfers were made as per the request of the Dalai Lama Trust, a copy of the request letter of the Dalai Lama Charitable Trust to the Vice Chancellor of the University is also filed by the learned AR of the assessee. Thus, he has contended that this amount represents the donation received by the Dalai Lama Charitable Trust during the visit of Dharmshala at Varanasi and assessee has only felicitated the transfer of that donation from Varanasi to Dharmshala. Thus, the learned AR has submitted that the addition made by the

Assessing Officer in the hand of the assessee is not justified when the said amount belongs to Dalai Lama Charitable Trust and also declared by the said trust as its income in the return of income filed by them.

4. On the other hand, the learned DR has submitted that the assessee did not file return of income under section 139 of the Act. The Assessing Officer issued notice under section 148 to assess the income on account of deposit of cash of more than 55,00,000/- in the bank account of the assessee. Though the assessee has claimed that this amount represents the donation received by the Dalai Lama Charitable Trust however, since the amounts were deposited in the account of the assessee therefore, the assessee was under obligation to produce the identity and details of the donors. The assessee failed to furnish the details of the donors and consequently the Assessing Officer has made the addition in the hands of the assessee. He has relied upon the orders of the authorities below.

5. I have considered the rival submissions as well as relevant material on record. The Assessing Officer has made the addition of Rs. 45,55,746/- which includes some of the amounts deposited in the bank account of the assessee from the sale of books as well as advance received for University work. The assessee explained the details of the amount deposited in the bank account which are reproduced by the Assessing Officer in para 4 as under:-

“4. On 12.08.2016, the assessee has filed return of income for A.Y. 2009-10 alongwith bank statement. Accordingly notice u/s 143(2) was also issued. Again, vide notice u/s 142(1) dated 17.09.2016 the assessee was asked to give following explanation.

“On going through the statement of account of the UBI(41463020116003), it is noticed that following cash deposits have been credited, you are directed to substantiate the source of such deposits by supporting documents. You are also requested to explain why this amount be not treated as unexplained money and may not be treated as deemed to be your income u/s 69A of the I.T. Act, 1961 for A.Y. 2008-09.”

S. No.	Date	Amount deposited in cash
1.	17.01.2009	21,33,123
2.	17.01.2009	10,00,000
3.	19.01.2009	1,00,000
4.	22.01.2009	15,118
5.	22.01.2009	64,127
6.	22.01.2009	7,07,773
7.	22.01.2009	282
	Total	40,20,423

Vide reply dated 21.09.2016 the assessee has submitted his reply which is quoted as under:

We have enclosed a detailed list for all the deposits and specific explanation of the Registrar of the University on deposits of Rs. 21,33,123/- dated 17.01.2009. Rs. 10,00,000/- dated 17.01.2009 and Rs. 1,00,000/- on dated 19.01.2009, copy of the letter dated enclosed alongwith supporting documents. Sir, Rs. 15,118/- and Rs. 64,127/- dated 22.01.2009 are receipts from sale of books and Rs. 7,07,773/- and Rs. 282/- dated 22.02.2009 are amount received against advance for University work."

Vide reply dated 29.09.2016 the assessee has submitted his reply which is quoted as under:

"We have enclosed the detailed list for amount deposited on dated 17.01.2009 amounting Rs. 21,33,123/- & Rs. 10,00,000/- and dated 19.01.2009 amounting to Rs. 1,00,000/- in the University Account. The said amount is of H.H. Dalai Lama Trust Fund."

Therefore, the assessee has explained that Rs. 21,33,123/- belongs to Dalai Lama Charitable Trust which was also transferred through demand draft to the Dalai Lama Charitable Trust and rest of the amount in the bank account of the assessee was on account of sale of books and advance received for University work. The Assessing Officer has made the addition of the entire amount in para 5 to 7 as under:-

5. I have considered the assessee's reply but do not agree with the same. The assessee has utilized its bank account to deposit the money though it is exempt institution and need not to use its account for any other person since the amount has been deposited in the account of the assessee and onus lies on the assessee to give the list of the persons with complete address from whom the donation has been taken on the basis of which account is added to the total income of the assessee u/s 69A of the I.T. Act, 1961. Penalty proceeding u/s 271(1)(c) is initiated on this issue.

6. After above discussion assessment is completed as under:

Returned income	Nil
Add: Addition as discussed in para 5 above	Rs. 45,55,746/-

7. After discussion, assessment is completed at 45,55,750/- in the status of AOP. Give credit to prepaid tax. Issue notice of demand. Penalty notice u/s 271(1)(c) issued separately. Tax calculation in ITNS -150 is enclosed.

6. Thus, the Assessing Officer while making the addition has not even considered the deposits explained by the assessee as representing the sale proceeds of the books and advance received for the University work. The CIT(A) though called for a remand report from the Assessing Officer wherein the Assessing Officer has reiterated its stand by giving the reasons that the list of the donors alongwith complete address was not furnished by the assessee. The CIT(A) has confirmed the addition in para 7 and 8 as under:-

"7. I have gone through the submissions of the appellant as well as the facts of the case. Although the appellant has submitted that the amount has been received at the time of teachings of his holiness the Dalai Lama, but the appellant had not been able to submit the list of persons who have made contributions for this purpose. The cash has been deposited in the bank account of the appellant and the appellant is not in possession of any particular to show the nature and source of these deposits. Even the name and addresses of the persons who allegedly contributed were also not submitted.

8. In view of these facts, I am satisfied that the A.O. has correctly treated the amount of cash deposited in the bank account as unexplained deposit made by the appellant and the addition made by the A.O. u/s 69A of the IT Act is held to be proper. Accordingly, the addition made amounting to Rs. 45,55,746/- is sustained and the appeal is dismissed."

7. Thus, neither the Assessing Officer nor the CIT(A) has taken any steps to examine the record to verify the correctness of claim of the assessee. The assessee has filed the details of deposits of Rs. 40,20,423/- which was explained as under:

<i>Date</i>	<i>Amount (Rs.)</i>	<i>Particulars of Cash Deposits Replied by us</i>
<i>17.01.2009</i>	<i>21,33,123</i>	<i>Cash deposits against DD made for The Dalai Lama Trust</i>
<i>17.01.2009</i>	<i>10,00,000</i>	<i>Cash deposits against DD made for The Dalai Lama Trust</i>
<i>19.01.2009</i>	<i>1,00,000</i>	<i>Cash deposits against DD made for The Dalai Lama Trust</i>
<i>22.01.2009</i>	<i>15,118</i>	<i>Cash deposits against Sale of Book by publication department of the Institute</i>
<i>22.01.2009</i>	<i>64,127</i>	<i>Cash deposits against Sale of Book by publication department of the Institute</i>
<i>22.01.2009</i>	<i>7,07,773</i>	<i>Cash deposits against Adjustment of Advance</i>
<i>22.01.2009</i>	<i>282</i>	<i>Cash Deposit against Adjustment of Advance</i>
<i>Total</i>	<i>40,20,423</i>	

The supporting documents in respect of these deposits and explanation is available in the paper book filed by the assessee. The assessee has also filed the confirmation of the Dalai Lama Charitable Trust as well as a request letter dated 17th January, 2009 of Secretary, Holy Teachings Organizing Committee donating a sum of Rs. 31,33,123/- to Dalai Lama Trust and requested the assessee to make arrangement to transfer this amount through University account to the Dalai Lama Charitable Trust. They have also given the confirmation of receipt of the said amount. Another sum of Rs. 1,61,045/- was also requested to be transferred by using the bank account of the assessee University. All these details of deposits and transfer to Dalai Lama Trust are available in the bank account statement of the assessee as well as cash book of the assessee. From these documentary evidence, it is clear that the amount deposited in the bank account was immediately transferred to the Dalai Lama Trust account at Dharmshala from Varanasi. The

Dalai Lama Trust has also owed this amount as donation receipt during the visit of Dalai Lama at Varanasi for a lecture and teaching on the BODDHICHARYAVATARA. This program was organized by Holy Teachings Organizing Committee and donation was also collected by the said committee during the period from 8th January, to 14th January, 2009. There is no dispute about the fact that this amount was deposited in the bank account of the assessee for making the demand draft in the name of Dalai Lama Charitable Trust. Once this amount being donation is owned by the Dalai Lama Charitable Trust and also claimed to have been considered and declared in its income then the same cannot be assessed in the hand of the assessee. Accordingly, in the facts and circumstances of the case when the Assessing Officer has not even verified how much of the amount deposited in the bank account of the assessee represents the donation and how much is the assessee's own amount from the sale of books and other resources, the addition made by the Assessing Officer of the entire amount is not justified. Further, once the amount is owned by the Dalai Lama Charitable Trust and also reflected from the material available on record that the said amount was received as donation by the Dalai Lama Charitable Trust during the visit of Dalai Lama at Varanasi to deliver the teachings from 8th January, to 14th January, 2009, then without verifying these facts about the said amount which was transferred by the assessee to the Dalai Lama Charitable Trust which is also declared as income by the Dalai Lama Charitable Trust the addition made by the Assessing Officer and sustained by the CIT(A) is not justified. Accordingly, the matter is remanded to the record of the Assessing Officer to re-adjudicate the same after considering all these details and evidence to verify the fact that this amount being donation received by the Dalai Lama Charitable Trust is owned and declared by the said trust as its income. If the said amount was owned and declared by the Dalai Lama Charitable Trust then the same is required to be considered in the assessment of Dalai Lama Charitable Trust

and not in the assessment of the assessee. Needless to say, the assessee be given an appropriate opportunity of hearing before passing the fresh order.

8. In the result, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 02.08.2022 at Allahabad, U.P. in accordance with Rule 34(4) of Income Tax (Appellate Tribunal) Rules, 1963.

Sd/-
[VIJAY PAL RAO]
JUDICIAL MEMBER

DATED: 02/08/2022

Varanasi/Allahabad

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Copy forwarded to:

1. Appellant-
2. Respondent-
3. CIT(A), Varanasi
4. CIT
5. DR

By order
Sr. P.S.