

IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT

BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
DR. ARJUN LAL SAINI, ACCOUNTANT MEMBER
ITA No. 213/Srt/2018 (Assessment Year: 2013-14)

Shri Ram Education & Graminvikas Charitable Trust, Jauagauri Park, Hathikhana, Dharampur, Valsad-396050. PAN No. AALTS 324 F	Vs.	I.T.O., (Exemption Ward) Aayakar Bhavan, Majura Gate, Surat.
Appellant/ assessee		Respondent/ revenue

Appellant represented by	Shri Akshay Modi, CA
Respondent represented by	Shri H.P. Meena / Sh Ashok B Koli CIT-DR
Date of hearing	20/10/2022
Date of pronouncement	16/01/2023

Order under Section 254(1) of Income Tax Act

PER: PAWAN SINGH, JUDICIAL MEMBER:

1. This appeal by the assessee is directed against the order of learned Commissioner of Income Tax (Appeals)-3, Surat (in short, the Id. CIT(A) dated 12/02/2018 for the Assessment year 2013-14. The assessee has raised following grounds of appeal:

"1. On the facts and in the circumstances of the case as well in law, the learned CIT(Appeals), Surat erred in confirming the order of the ITO, Exemption Ward, Surat confirming the additions for the aggregate amount of Rs. 29,20,312/- and hence, not justified.

2. On the facts and in the circumstances of the case as well in law, both the lower authorities have grievously failed to appreciate the fact that there is no contributions towards the corpus fund received during the relevant year and hence, the addition of Rs. 8,4,700/- made/confirmed on account of alleged fresh contributions towards the corpus fund, without appreciating the detailed explanations with evidences furnished, is without jurisdiction, perverse, bad in law and liable to be struck down.

3. On the facts and in the circumstances of the case as well in law, the learned CIT (Appeals) erred in confirming the

addition of Rs. 17,61,257/- for the alleged unexplained unsecured loans, in spite of the onus upon the appellant trust has fully been discharged to prove the identity, creditworthiness of the lenders as well as genuineness of the transactions and therefore, it deserves to be deleted.

4. On the facts and in the circumstances of the case as well in law, both the lower authorities have grievously failed to appreciate that the detailed explanations with cogent, authentic and believable evidences placed on the records for the expenses claimed towards the objects of the trust and hence, the adhoc disallowance at the rate of 10% to total expenses made/confirmed is without jurisdiction, arbitrary, baseless, perverse, unwarranted o facts, bad in law and hence, deserves to be deleted.

5. Your appellant further reserves its rights to add, alter, amend or modify any of the aforesaid grounds before or at the time of hearing of an appeal.”

2. Brief facts of the case as gathered from the orders of the lower authorities are that the assessee is a Public Charitable trust, registered under the provisions of Bombay Public Trust Act, on 08.07.2009. The assessee-trust is not having registration under section 12AA of Income-tax Act. The assessee-trust filed its return of income for the Assessment Year (A.Y.) 2013-14 on 17/11/2013 declaring income of Rs.6,82,500/-. The return was selected for scrutiny. The Assessing Officer while making assessment issued various notices under Section 142(1) of the Income Tax Act, 1961 (in short, the Act) for seeking certain information. The Assessing Officer recorded that no response was received from the office of assessee or from their Chartered Accountant. The Assessing Officer obtained information about the bank transactions from the bankers of the assessee as well as from the office of Charity Commissioner by issuing notice under Section 133(6) of the Act. Banker of assessee

as well as official of Charity Commissioner provided required details to the assessing officer. The Assessing Officer issued final show cause notice dated 26/6/2016, recording therein that if required information is not provided, no further opportunity will be given and the case will be decided on merit on the basis of material on record. In the notice, the Assessing Officer also recorded that the assessee has not furnished any information as to whether the assessee having registration under Section 12AA or under Section 10(23)(C) of the Act for claiming exemption under Section 11 and 12 of the Act. Bank statement received from the banker of assessee, in response to notice under Section 133(6) was also enclosed alongwith the said show cause notice. The Assessing Officer recorded that representative of assessee appeared, however, only part information was supplied in tapal, accordingly the Assessing Officer decided to complete the assessment on the basis of material on record.

3. The Assessing Officer noted that the assessee in part compliance furnished the balance sheet of A.Y. 2012-13 and informed that there was no addition to the "trust or corpus fund" during the A.Y. 2013-14 as the closing balance of such funds as on 31/3/2012 was Rs. 13,34,700/-. The Assessing Officer recorded that on comparison of balance sheet furnished to the Charity Commissioner for A.Y. 2012-13 and closing balance reported as on 31/3/2013, the Assessing Officer found that the assessee reported closing balance as on

31/3/2012 at Rs. 5.00 lacs only, however, in the statement file before him it was shown 13,34,700/-. On the basis of such discrepancies, the Assessing Officer noted that the assessee has reported (received) fresh donation of Rs. 8,34,700 (13,34,700 – 5,00,000) during the A.Y. 2013-14 which is not included in the income and the assessee claimed exemption under Section 11 of the Act. The Assessing Officer further noted that no details of donors were furnished by the assessee for the corpus funds. To avail the benefits of Section 11, 12 and 13 of the Act, all conditions, as mentioned in Section 12A must be fulfilled including of getting registration under Section 12AA of the Act. Accordingly, the Assessing Officer was not allowed benefit under Section 11 and 12 of the Act and added Rs. 8,34,700/- in the income of assessee.

4. The Assessing Officer further noted that there was a fresh and unsecured loan as evident from the balance sheet furnished to the Charity Commissioner. The Assessing Officer made following details showing increase in unsecured loan:

Sr.	Name of the lender	Closing balance as on 31/3/2013	Closing Balance as on 31/3/2012	Increase in closing balance during AY 2013-14
1.	Ajitsinh M Thakkar	5,00,000	57,000	4,43,000
2.	Bhanjubhai M Gavit	5,00,000	50,000	4,50,000
3.	Vijaysinh G Parwar	10,03,257	1,35,000	8,68,257
	Total	20,03,257	2,42,000	17,61,257

5. The Assessing Officer further recorded that the assessee has not substantiated the identity, genuineness and creditworthiness of the

creditor, accordingly, made addition of Rs. 17,61,257/- as unexplained credit.

6. The Assessing Officer also noted that the assessee has shown total expenses of Rs. 1,40,21,342/- and most of the expenses were incurred in cash without furnishing books of account, original bills, vouchers etc. The Assessing Officer recorded that most of the expenses were in cash only, like labour expenses of Rs. 25,20,200/- were completely in cash with self-made vouchers and that too without mentioned name of the payees. The assessee has not submitted complete records and complete set of books of account despite being provided ample time and opportunities. The Assessing Officer also recorded that the genuineness and the expenses of all the expenses are not completely established by the assessee, therefore, 10% of total expenses i.e. Rs. 14,02,134/- is disallowed and added to the total income of assessee.
7. Aggrieved by the additions in the assessment order, the assessee filed appeal before the Id. CIT(A). The assessee filed his detailed written submissions before the Id. CIT(A). In its written submission, the assessee submitted that the assessee trust is registered under the Bombay Public Trusts Act, 1950 having registration No. F/1060/Valsad dated 08/07/2009. Since inception, the assessee-trust is carrying out various educational activities in the interest of public at large without any discrimination to the caste, community, cred,

class or colour for fulfilment of its objects. The main source of income of assessee is from Government grant and general donation/contribution which is used /applied for various activities carried out by the assessee. The assessee mainly undertakes agricultural education, training and training of skill development of youth and labourers in the surrounding remote area of the locality for operation of trust. During the assessment, the assessee complied various notices issued to them. The Assessing Officer made various additions/disallowances in arbitrary manner. On the allegation of Assessing Officer about the discrepancies in the balance sheet furnished to the Charity Commissioner and before the Assessing Officer, the assessee stated that the audit report furnished before Charity Commissioner is final and correct audited statement which is collected directly by the Assessing Officer by issuing notice under Section 133(6) of the Act. The assessee-trust due to oversight, filed projected balance sheet which has actually been prepaid to submit before the banker for future financial need. There is no case of different balance sheet as on 31/3/2012 as presumed by Assessing Officer. From the balance sheet as on 31/3/2012, filed before the Charity Commissioner, it is evident that there is no increase in the corpus donation during the year, it is shown as a balance as per last balance sheet for Rs. 5.00 lacs. The Assessing Officer failed to consider the same in a proper perspective and addition made is not

tenable. The Assessing Officer has not seen the books of account placed before him which clearly shows that the liability as per Annexure-D as on 31/3/2012 in aggregate amount of Rs. 52,37,093/- and cash in hand as on 31/3/2012 of Rs. 77/- has been carried forward as opening balance as on 01/4/2012 in the audited books of account. The Assessing Officer wrongly considered increase in the corpus donation of Rs. 8,34,700/-.

8. On the addition of unexplained cash credit, the assessee submitted that the assessee has taken an unsecured loan from three lenders namely Ajitsinh M. Thakkar, Bhanubhai M Gavit and Vijaysinh Gandabhai Parmar of Rs. 4,43,000/- 4,50,000/- and Rs. 8,68,257/- respectively. The assessee discharged its onus by furnishing complete details of the lenders including their PAN, land record in the form of 7/12 and 8A, bank statement, bank passbook and confirmation of Vijaysinh Gandabhai Parmar, confirmation of account by Ajitsinh M. Thakkar as well as confirmation by Bhanubhai M Gavit. The assessee has shown that all the lenders have their genuine source of income and out of their own capital; they have given temporary loan with a view to help the trust in day to day financial need and to carry out their charitable activities. The assessee prayed that the addition is liable to be deleted.
9. On the third addition of *ad hoc* disallowances of expenses, the assessee stated that despite making complete compliance of specific

queries of Assessing Officer, the Assessing Officer made disallowance of 10% of the expenses on the allegation that expenses were incurred through self-made vouchers in cash. Assessing Officer accepted that the total expenses of Rs. 1.40 crore were incurred for the object of the trust and nothing contrary to the claim of assessee was found. The assessee further stated that merely some expenses were incurred in cash and self-made vouchers were maintained, could not lead to a presumption that claim of expenses are at inflated rate and adhoc disallowance could not justify when the expenses were incurred exclusively for the fulfilment of object of the trust.

10. The Id. CIT(A) after considering the submission of assessee upheld the addition of corpus donation by taking a view that the assessing officer considered the financial statement before Charity Commissioner, which is admitted as correct and not the projected balance sheet filed before him during the assessment. Admittedly, the current balance sheets for the year ending on 31.03.2012 and 31.03.2013 shows the increase of corpus fund by Rs. 8,34,700/-. And that the written submissions and oral submissions lack clarity hence upheld the addition. The addition of unexplained cash credit was also upheld by Id CIT(A) by taking a view that creditworthy and genuineness of transaction is not proved. However, on the disallowance of 10% of total expenses, the Id. CIT(A) granted substantial relief to the assessee by taking a view that except the

expenses shown at serial number 1 to 9, 18 and 20 are by in cash and some of the expenses were paid by cheque. The expenses shown at serial number 1,4,5,6,7, are paid in cash are verifiable and do not call for any disallowance. The expenses shown at serial number 9 and 18 to 20 are not fully verifiable. Accordingly, the Id. CIT(A) restricted 10% of disallowance only on these items of expenses thereby worked out total expenses under serial number 8,9 and 18 to 20 of Rs. 32,43,550/- and 10% of which was worked out at Rs. 3,24,355/- and remaining disallowance was deleted thereby granted relief of Rs. 10,77,780/-. Further aggrieved, the assessee has filed by the present appeal before this Tribunal.

11. We have heard the submissions of the learned authorised representative (Ld. A.R) of the assessee and the learned Commissioner of Income Tax/Departmental Representative (CIT- DR) for the revenue and have gone through the orders of the authorities below. Ground No. 1 of the appeal raised by the assessee is general in nature and needs no adjudication and dismissed accordingly.

12. Ground No. 2 of the appeal relates to addition of corpus fund donation /contribution of Rs. 8,34,700/-. The Id. AR of the assessee submits that the Assessing Officer made addition on erroneous and misleading comparison of audited balance sheet as on 31/3/2012 and 31/3/2013. In fact, the audited balance sheet and income and

expenditure account ended on 31/3/2012 filed with Assistant Charity Commissioner, Valsad is the final and correct audited statement. Such audited statement received by Assessing Officer in response to notice under Section 133(6) of the Act. In the balance sheet filed before the Charity Commissioner, there is no increase in the corpus donation fund. However, it is seen in the last balance sheet of current assessment year of Rs. 5.00 lacs. There is no ambiguity in showing corpus donation fund. Such corpus donation fund is not taxable and as such no addition is liable to be made. To support his statement, the Id. AR of the assessee has relied upon the following decisions:

- Shri Shankar Bhagwan Estate Vs ITO (1997) 58 TTJ 7/(1997) 61 ITD 196 (Calcutta),
- ITO Vs Gaudiya Granth Anuvad Trust (2014) 48 taxmann.com 348/(2013) 28 ITR (T) 161 (Agra Trib) and
- ITO Vs Smt. Basanti Devi & Shri Chakkan Lal Garg Education Trust ITA No. 5082/Del/2010.

13. On the other hand, the Id. CIT-DR for the Revenue supported the orders of the lower authorities. The Id. CIT-DR submits that the assessee has not furnished details of donors, thus it is not established that such donations were for corpus fund. The assessee is not having any registration under section 12AA of the Act to seek the exemption of such corpus donation fund. For seeking exemption of section 11(1)(d), the assessee must fulfil the conditions prescribed under section 12A.

14. We have considered the rival contentions of both the parties and have gone through the orders of authorities below carefully. The

Assessing Officer made addition by taking a view that the audited balance sheet for the A.Y. 2012-13 and 2013-14 filed before the Charity Commissioner, Valsad is different than the audited balance sheet for A.Y. 2012-13 and 2013-14 filed before him. On comparison of both the balance sheet, the Assessing Officer found that there was difference of corpus donation fund and on comparison of both the audited balance sheets filed before the Charity Commissioner i.e. for the A.Y. 2012-13 and 2013-14, the Assessing Officer was of the view that there was increase in the corpus fund. As no detail was furnished by the assessee, therefore, in absence of any detail, the Assessing Officer made addition of Rs. 8.34 lacs by denying the exemption under Section 11 of the Act. The Id. CIT(A) upheld the addition with similar view in the corpus fund. Before us, the Id. AR of the assessee vehemently submitted that the audited balance sheet filed before the Charity Commissioner, Valsad is true and correct audited balance sheet and that the receipt of corpus donation is not taxable. We find that the assessee has taken a stand before Id CIT(A) that there is no increase in the corpus donation. The Id CIT(A) rejected the submissions of the assessee that here is no increase in the corpus donation. The Id. CIT(A) held the balance sheets for the year ending on 31.03.212 and 31.03.2013 shows the increase of corpus fund by Rs. 8,34,700/-. Before, us the assessee has again raised the ground against the addition and Id AR argued

that the corpus donation is not taxable. The assessee is not clear in its stand, whether, they received corpus donation. First, the assessee must clarify whether or not they received any such corpus donation, then if received if it is exempted under which provisions of law, particularly in absence of registration under section 12AA, which is condition precedent for seeking such exemption after amendment in section 12A by Finance Act 2007 applicable w.e.f. 01.06.2007. Thus, we do not find any merit in the stand of the assessee. The ratio of case laws relied by the Id AR for the revenue is not helpful to the assessee after the decision of Hon'ble Supreme Court in U.P. Forest Corporation Vs DCIT (2007) 297 ITR 1 SC/165 Taxman 533(2008). The Hon'ble Apex Court clearly held that conjoint reading of section 11,12 & 12A makes it clear that registration under section 12A is a condition precedent for availing benefit under section 11&12. Similar view was taken by Chennai Tribunal in Veeraval Trust Vs ITO (2021) 129 taxmann.com 358 (Chennai-Trib) holding that where assessee trust charitable trust was not registered under section 12AA, voluntary donation received by it with a specific direction to be formed part of corpus of trust would fall within the ambit of Income of trust. In the result, ground No.2 of the appeal is dismissed.

15. Ground No. 3 of the appeal relates to confirming the addition of unexplained unsecured loan. The Id. AR of the assessee submits that during the assessment as well as before the Id. CIT(A), the

assessee furnished complete details of lenders including their names, address, PAN number and copy of ownership of land holdings. All three lenders have given very meagre amount. The amount was given from their own savings. The assessee substantiated the identity, creditworthiness and proof of genuineness of transaction. The genuineness of transaction was proved by the fact that it was given for day to day need of assessee trust for achieving its object.

16. On the other hand, the Id. CIT-DR for the Revenue submits that neither the lenders were proved their creditworthiness nor the genuineness of transaction was proved. The Id. CIT-DR for the revenue submits that the assessee has furnished the details of all three lenders as per details filed on page No. 52 and 53 of the paper book. The Id. CIT-DR for the revenue by referring the dates of lending the money as per details recorded on page No. 52 & 53 of the paper book and shown us the entry in cash ranging from Rs. 10,000/- to 19,000/- on more than 50 occasions. Similar transaction in cash of unsecured loan from Ajitsinh M. Thakkar, Bhanubhai M Gavit and Vijaysinh Gandabhai Parmar received in cash. Details of which are available at page No. 93, 94, 96 and 97 of the paper book respectively. The Id. CIT-DR submits that all the entries of unsecured loans are sham transaction received by way of other than banking mode. The circumstances of cash transaction are

suspicious and cannot be treated as genuine. All the entries of the alleged loan are shown in cash. Thus, from the entries neither the creditworthy nor genuineness of transaction is proved.

17. We have considered the rival contentions of both the parties and have gone the entries of the loan received in cash. We find that, though the assessee has proved the identity of the lenders and their capacity by filing the record of agriculturists holding, showing sufficient land holding in their names. However, the entire transaction of unsecured loan is received in cash. Not a single instance of receiving loan through banking transaction is shown to us, the assessee has shown alleged unsecured loan on daily basis. From the figure of unsecured loan ranging from Rs. 10,000/- to 19,000/- on more than 50 occasions is shown only to avoid the rigorous of section 269SS, therefore, such transaction does not inspire our confidence, hence, we are in agreement with the submission of Id. CIT-DR for the revenue that the genuineness of transaction is doubtful. Thus, all three conditions of Section 68 are not substantiated simultaneously by the assessee. So, we do not find any merit in the ground No. 3 of appeal. And we uphold the order of Id. CIT(A) qua this issue. In the result, ground No.3 of the appeal is dismissed.

18. Ground No. 4 of appeal relates to disallowance of expenses. The Id. AR of the assessee submits that the genuineness of expenses is not

doubted by the Assessing officer. The Assessing officer made *ad hoc* disallowance without verifying the nature of expenses and specifying any defect either in the accounts or in the voucher or receipt of expenses. Though, the Id. CIT(A) restricted the disallowance of certain expenses to the extent of 10%. The disallowance of 10% of such items is on higher side, when the nature of expenses and the objects of the trust were not doubted.

19. On the other hand, the Id. CIT-DR for the revenue submits that the assessee has shown expenses of Rs. 1.40 crore. Most of the expenses are incurred in cash. The Id. CIT(A) has also granted substantial relief to the assessee and restricted the *ad hoc* disallowance only on certain items, thus, the assessee is not entitled for further relief.

20. We have considered the rival contentions of both the parties and have gone through the orders of authorities below carefully. We find that the Assessing Officer has made *ad hoc* disallowance by taking a view that all the expenses were incurred in cash with self made vouchers or purchases are made after withdrawing cash from the bank. Before the Id. CIT(A), the assessee furnished detailed ledger account of all the expenses alongwith copy of bills and vouchers. The Id. CIT(A) directed the assessee to prepaid summary of head-wise expenses. The assessee furnished head wise summary of all the expenses which is recorded in para 6.3 of order of Id. CIT(A).

The Id. CIT(A) on perusal of such details noted that expenses shown at serial number 1, 4 to 9, 18 and 20 are paid in cash and the expenses shown at serial number 19 it is transportation expenses of Rs. 4,85,900/- is some time in cash and some time by way of cheque. The Id. CIT(A) further find that the expenses shown at serial number 1 is accountant salary of Rs. 74,000/-, at serial number 4 is salary to filed assistant of Rs. 48,000/-, at serial No. 5 is labouring salary of Rs. 18,000/-, serial No. 6 is electricity bills expenses of Rs. 26,350/- and at serial No. 7 is office rent expenses of Rs. 48,000/- though paid in cash but verifiable and do not call for any disallowance. The expenses shown at serial No. 8 Misc. expenses of Rs. 46,356/-, serial No. 9 printing and stationary of Rs. 12,526/-, serial No. 18 is travelling expenses of Rs. 1,78,574/- and at serial No. 19 is transportation expenses of Rs. 4,85,900/- and serial No. 20 labour expenses of Rs. 25,20,200/- are not fully verifiable and accordingly, the Id. CIT(A) restricted the disallowance @ 10% only of these expenses thereby granted substantial relief to the assessee of Rs. 10,77,780/-.

21. Before us, the Id. AR of the assessee urged that the disallowance of 10% on limited item are on higher side and may be reasonably restricted. We have perused each and every item of expenses, in our view, the Id. CIT(A) after considering each and every item of expenses has already granted sufficient relief and reasonably

restricted the disallowance only those expenses which are not verifiable, thus we do not find any justification for further reducing the disallowance. Thus, ground No. 4 is also dismissed.

22. In the result, this appeal of the assessee is dismissed.

Order pronounced in the open court on 16th January, 2023.

Sd/-
(Dr. ARJUN LAL SAINI)
ACCOUNTANT MEMBER

Sd/-
(PAWAN SINGH)
JUDICIAL MEMBER

Surat, Dated: 16/01/2023

**Ranjan*

Copy to:

1. Assessee –
2. Revenue -
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

Sr. Private Secretary, ITAT, Surat