

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'C' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"C" BENCH, AHMEDABAD

BEFORE MRS. ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER

ITA No. 227/Ahd/2021

निर्धारण वर्ष/Assessment Year: 2016-17

Dawoodi Bohra Musafirkhana Trust, 1, Dawoodi Bohra Musafirkhana, Opp. Bus Stand, Khambhat, Gujarat-388620 PAN : AAATD 2007 L	Vs.	Income-Tax Officer, Ward (Exemption), Vadodara
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अपीलार्थी/ (Appellant)		प्रत्यर्थी/ (Respondent)
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Assessee by :	Shri Ankit Chokshi, AR
Revenue by :	Shri Ashok Kumar Suthar, Sr DR

सुनवाई की तारीख/Date of Hearing : 08.02.2024
घोषणा की तारीख /Date of Pronouncement: 03.05.2024

आदेश/ORDER

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER:

Present appeal has been filed by the assessee against order of the Commissioner of Income-tax (Appeals), National Faceless Appeal Centre (NFAC) [hereinafter referred to as "CIT(A)" for short] dated 03.08.2021 passed under Section 250 of the Income-tax Act, 1961 [hereinafter referred to as "the Act" for short], for the Assessment Year (AY) 2016-17.

2. Ground raised is as under:-

"1. On the facts and circumstances of the case of your appellant, Ld. CIT(A) has erred in confirming the disallowance made by the Ld. AO of capital expenditure of Rs.99,12,380/-. Therefore your appellant prays your honour to allow the capital expenditure of Rs.99,12,380/- as application of income."

3. At the outset, it was stated that there was a solitary issue in the present appeal, being the allowance of claim of exemption to corpus donation

received/ utilized for capital purposes u/s 11(1)(a) of the Act, considering that the said corpus donation had also been claimed as exempt by the assessee in terms of Section 11(1)(d) of the Act. The Assessing Officer and the Id. CIT(A) had held the assessee's claim of exemption u/s 11(1)(a) of the Act, on account of utilization of this corpus donation, as not tenable, as it tantamounted to double exemption claimed by the assessee. It is against this denial of exemption u/s 11(1)(a) of the Act that the assessee has come up in appeal before us.

4. The facts, to put it briefly, are that the assessee is a trust registered u/s 12A of the Act and hence entitled to exemption u/s 11 of the Act. The object of the Trust, as noted in the assessment order, is religious activity.

5. During the impugned year the assessee had shown gross receipts of Rs.1,08,46,787/- and applied an amount of Rs.76,203/- for the objects of the Trust. The assessee had claimed exemption u/s 11(1)(d) of the Act of Rs.1,08,37,253/- on account of corpus donation received for construction of building. Further, since the assessee had utilized this corpus donation by incorporating capital expenditure to the tune of Rs.99,12,380/-, the assessee claimed exemption on account of utilization of its income for charitable purposes in terms of Section 11(1)(a) of the Act. Thus, while the corpus donation of Rs.1,08,37,253/- was claimed as exempt u/s 11(1)(d) of the Act, Rs.99,12,380/- of the corpus donation utilized for capital purposes was also claimed as exempt u/s 11(1)(a) of the Act. It is in this background of facts that both the Assessing Officer and the Id. CIT(A) held that the assessee had claimed double exemption of the same income and the exemption claimed u/s 11(1)(a) of the Act was accordingly held not allowable.

6. We have heard the contentions of both the parties.

The Ld. Counsel for the assessee has referred to various decisions of the ITAT and hon'ble High Courts in support of his claim of exemption of corpus funds utilized for charitable purposes u/s 11(1)(a) of the Act. He also contended that it is only with effect from 01-04-22, that the law has been amended, inserting Explanation 4 & 5 to section 11(1) of the Act, denying deduction u/s 11(1)(a) of the Act to corpus donations. That the amendment does not have retrospective operation.

7. We, however, find no merit in the contention of the Ld. Counsel for the assessee. We have carefully gone through the relevant provisions of law as applicable to the impugned year, A.Y. 2016-17, and we find that the law is clear and unambiguous in denying exemption u/s 11(1)(a) to corpus donations. Corpus donations, even prior to the amendment made to the Act w.e.f. 01-04-22, were not entitled to exemption u/s 11(1)(a) of the Act.

8. Section 11(1)(a) of the Act grants exemption only to **"Incomes derived from Property held under Trust"** and corpus donations, as per law, do not qualify as such Incomes as per section 12(1) of the Act.

The provision of section 11(1)(a) is reproduced hereunder :

11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income –

(a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;"

9. As evident from a bare perusal of Section 11(1)(a), it grants exemption to **Incomes** of Charitable / Religious entities which is **derived from property held under Trust** wholly for the said purposes, to the extent so utilized.

10. Corpus donations are admittedly separately exempted from tax u/s 11(1)(d) of the Act. The same is reproduced hereunder:-

“Income from property held for charitable or religious purposes.

11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income –

(a)

.

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(b)

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(c).

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d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution

11. Section 12(1) of the Act is reproduced hereunder :

“Income of trusts or institutions from contributions.

12. (1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.”

As is evident from a bare perusal of the section it **deems voluntary contributions received by Trusts to be Income derived from property held under Trust for the purpose of section of section 11 of the Act, but categorically excludes corpus donations from voluntary contributions for the said purpose.** Section 12(1) of the Act, therefore, **categorically states corpus donations to be not in the nature of Income derived from property held under Trust.**

12. Since Section 11(1)(a) of the Act grants exemption only to Income derived from property held under Trust, in view of the categorical denial of this status to corpus donations, there is no doubt and no ambiguity in law of corpus donations not being entitled to exemption u/s 11(1)(a) of the Act. It is as clear as crystal, therefore, that exemption u/s 11(1)(a) of the Act is not available to corpus donations. Section 11(1)(a) r.w.s. 12(1) of the Act brings out very clearly the position of law that corpus donations are not entitled to exemption u/s 11(1)(a) of the Act. There is no ambiguity in law.

13. Further the provisions of law clearly bring out that the corpus donations are distinct and separate from “Incomes derived from Property held under Trust” and accordingly both incomes are granted exemptions separately u/s 11(1)(a) and 11(1)(d) of the Act. There is no overlapping of exemption granted to corpus donations therefore both u/s 11(1)(a) and 11(1)(d) of the Act.

A bare reading of the provisions of Section 11(1)(a) to Section 11(1)(d) of the Act reveal that it lists different categories of incomes which are exempt from tax.

“Income from property held for charitable or religious purposes.

11. (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income –

- (a) income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;*
- (b) income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent*

to which the income so set apart is not in excess of fifteen per cent of the income from such property;

(c) income derived from property held under trust –

(i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and

(ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India:

Provided *that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;*

(d) income in the form of voluntary contributions made with a specific direction that they shall form part of the corpus of the trust or institution ³⁶], subject to the condition that such voluntary contributions are invested or deposited in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus].”

14. Sub-clauses (a) to (c) of Section 11(1) of the Act deals with income derived from property held under Trust wholly or partly for charitable purposes, created on or after the 1st day of April, 1952. Thus, Section 11(1)(a) to Section 11(1)(c) exempts income derived from property held under Trust for charitable purposes, to the extent prescribed in the said clauses. Clauses (a) to (c) of Section 11(1) of the Act, therefore, exempts one class/species of income, which is income derived from properties under Trust.

15. Clause (d) refers to incomes in the form of voluntary contributions made with the specific directions that they shall form corpus of the Trust or Institution. Clause (d) deals with a different class/species of income of charitable trust, which is received by way of voluntary contribution with the specific direction that they shall form corpus of the trust.

16. Thus, Section 11, which lists the different incomes which are exempt from tax, prescribes only two categories of such income; first, income derived from property under Trust, and second, income in the form of voluntary contributions received by charitable trust with the direction that they shall form corpus of the trust. It is amply clear that income listed in clause (d) is not overlapping and, is distinct and different from income listed in clause (a) of Section 11(1) of the Act.

17. This is further reinforced by the fact that the definition of income provided in Section 2(24) of the Act specifically lists voluntary contributions received by trusts created wholly or partly for charitable or religious purposes as being in the nature of income. Section 2(24) is reproduced hereunder: -

“2 (24) "income" includes –

(i) profits and gains ;

(ii) dividend ;

(iii) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiie) or sub-clause (vii) of clause (23C) of section 10 or by an electoral trust.

Explanation. – For the purposes of this sub-clause, "trust" includes any other legal obligation;

Income by way of voluntary contributions are clearly, therefore, a distinct and separate category of income, different from income derived from property held under Trust and have been specifically listed as included in the definition of income u/s 2(24) of the Act.

18. Section 12(1) of the Act further fortifies this position that the income by way of corpus donation is distinct and separate from Income derived from property held under Trust, when it deems voluntary contributions received by a charitable entity to be Income derived from property held under Trust and thereafter categorically includes corpus donations for the said purpose. Thus it is only by virtue of Section 12(1) of the Act that voluntary donations are treated as Income derived from property under Trust. Meaning thereby clearly that de hors Section 12(1) of the Act voluntary donations do not enjoy this status.

The provisions of Section 12(1) of the Act are reproduced hereunder: -

“12. (1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.”

19. Corpus donations, therefore, being identified and recognized in law as distinct and separate from Incomes derived from property held under Trust and both being granted exemption separately u/s 11(1)(a) and 11(1)(d) of the Act, there arises no question of overlapping exemption. Different incomes recognized for exemption have been separately granted exemption in law. There arises no question therefore of corpus donations claiming exemption in law both under sub-clause (d) and sub-clause (a) of section 11(1) of the Act.

20. The above interpretation of law was confronted to the Ld. Counsel for the assessee during the course of hearing before us who was unable to point out any infirmity in the same. He however relied on various decisions but when asked whether any of the said decisions had interpreted the position of

law considering section 11(1)(a) r.w.s. 12(1) of the Act, as above, he was unable to point out any.

21. The decisions relied upon by the Ld. Counsel for the assessee, we have noted are all either distinguishable on facts or have been rendered without considering the clear provision of law as noted above by us. The decisions therefore are of no assistance to the assessee.

22. In view of the above, we see no reason to allow the ground raised by the assessee before us, seeking exemption u/s 11(1)(a) of the Act of corpus donations received by it amounting to Rs.99,12,380/-. In view of the above, the appeal of the assessee is dismissed.

23. In the result, the appeal filed by the assessee is dismissed.

Order pronounced in the open Court on 03/05/2024 at Ahmedabad.

Sd/-

Sd/-

(SIDDHARTHA NAUTIYAL)
JUDICIAL MEMBER

(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER

Ahmedabad; Dated 03/05/2024

BT

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधिअधिकरण अपीलीय आयकर , /DR,ITAT, Ahmedabad,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,

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