

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G': NEW DELHI**

**BEFORE,
SHRI S.RIFAUH RAHMAN, ACCOUNTANT MEMBER
AND
SHRI YOGESH KUMAR U.S., JUDICIAL MEMBER**

**ITA No.3256/Del/2023
(ASSESSMENT YEAR 2015-16)**

DCIT Circle-2(1) New Delhi	Vs.	Sheriff Foundation L-18, Green Park New Delhi-110016 PAN-AACTS6504M
(Appellant)		(Respondent)

Assessee by	Shri Ajay Wadhwa, Adv. & Ms. Aayushi Gupta, Adv.
Respondent by	Shri Anuj Garg, Sr. DR
Date of Hearing	09/05/2024
Date of Pronouncement	29/05/2024

ORDER

PER S.RIFAUH RAHMAN, AM:

1. This appeal has been filed by the Revenue against the order of Learned Commissioner of Income Tax (Appeals), National Faceless Appeal Centre (NFAC), Delhi ["Ld. CIT(A)", for short], dated 29/09/2023 for Assessment Year 2015-16.

2. The revenue has raised the following grounds in its appeal:

"1. On the facts and in the circumstances of the case, the Ld. CIT(A) has erred in law and on facts in allowing exemption u/s 11 to the assessee

despite the facts that some part of income was applied on objects which are not in compliance to the objects of the assessee.

2. On the facts and in the circumstances of the case. the Ld. CIT(A) has erred in law and on facts in allowing appeal of the assessee without appreciating that the assessee has applied some parts of its income towards non-charitable objects which is violation of condition of granting registration u/s 12A of the I.T. Act.

3. The appellant craves leave to add, to alter or amend any ground of appeal raised above at the time of hearing.”

3. The brief facts of the case are, Sherif Foundation (referred to as "assessee trust") is a trust registered under section 12A of the Income Tax Act, 1961 (referred to as "the Act") vide order dated 12.02.1997. The main objects of the trust, inter alia, are

(a) to work for development of education, art, science, health and social causes, to grant scholarships to deserving students, to establish and run schools, colleges, reading rooms,

(b) to disseminate knowledge, work for equality and fraternity, promotion of fundamental rights and in particular rights of religious and linguistic minorities enshrined in the constitution of India,

(c) to extend monetary aid to poor, sick and disabled persons, orphans, widows etc.

(d) to establish, liason and develop mutul areas of co-operation with different organization-international, national, regional, state, local whether voluntary or official, and with specialised institutions, groups and individual associations in furtherance of the aims and objects of the trust.

4. For the impugned assessment year, the assessee trust had filed its return of income on 19.09.2015 declaring total income at Rs. Nil after claiming exemption under section 11 of the Act.

5. The case of the assessee was selected for "Limited Scrutiny" and the notice under section 143(2) of the Act was issued on 28.07.2016 for examination of:

- (i) Accumulation of income by trust;
- (ii) Receipts of Trust;
- (iii) Transaction of trust with specified persons and
- (iv) Charity expenses.

Subsequently, notices under section 143(2) and 142(1) were issued and served on the assessee. In response, the assessee trust

has duly complied with by filing the relevant information as called for.

6. During the course of assessment proceedings, the assessee trust was asked to provide the details of funds applied for charitable purposes to claim exemption under section 11 of the Act.

7. The assessee trust vide its reply dated 10.03.2015 explained to the AO that during the relevant assessment year the assessee trust made donations of Rs. 7,31,34,190/-. Party-wise details of such donations were also provided to the AO.

8. In order to verify the above said donations made by the assessee trust, the AO issued notice u/s 133(6) of the Act and called for the information from the recipient parties to whom the assessee trust made donations.

9. Out of the total donation given by the assessee trust of Rs. 7,31,34,190/-, the AO had only raised questions relating to the donation of Rs. 6,60,000/- made to All India Milli Council (referred to as "AIMC"), an organization carrying out similar activities as of the objects of the assessee trust. The main reasons were that the

above said AIMC has not obtained any registration u/s 12A, the above facts came to light only on the verification of response to the notice issued u/s 133(6) of the Act and also they failed to file any return of income in response to above said notice.

10. Subsequently, the AO had asked the assessee to provide the copy of board resolution in respect of decision taken for making donation to AIMC and also show caused the assessee on 04.12.2017 as to why the exemption under section 11/12 should not be withdrawn for violation on of Section 2(15) of the Act since the AIMC does not have a registration as trust under Income Tax Act. Therefore, it does not fall under inter trust donation given by the assessee trust and cannot be considered as application of income.

11. In response to the above show cause notice, the assessee trust inter alia, submitted that the assessee trust is a charitable trust and the entire income of the trust is applied for furtherance of objects of the trust. The assessee trust has given donation to AIMC, an organization in accordance with its objects. It also filed Original affidavit of the General Secretary of the AIMC stating that

the AIMC had received donation of Rs. 6,60,000/- from the assessee trust which was used in furtherance of objects of assessee trust. Further in the above affidavit, it is also stated that AIMC had received donation from a large section of the society and no part of the receipts are being used for the personal gain of any member. Its activities have also been elaborated in the Affidavit.

12. The AO rejected the above said submissions made by the assessee trust and passed his order dated 11.12.2017 under section 143(3) of the Act by denying the benefit of exemption claimed by the assessee trust under section 11 of the Act and taxed the income of the assessee at minimum marginal rate treating the assessee trust as AOP by observing as under:

- i. AIMC is not registered society under the Income Tax Act, 1961
- ii. While going through the balance sheet and income and expenditure account of AIMC, nowhere the application has been on activities which are charitable in nature.
- iii. AIMC do not submit its ITR.

iv. The expenditure incurred by the AIMC are not as per the object of Sheriff foundation.

v. The assessee has not produced the bill, vouchers to establish that the said donation was utilized for the charitable purpose.

Therefore, he denied the exemption claimed by the assessee u/s 11 of the Act and proceeded to complete the assessment by making following adjustment to the income of the assessee.

11. With this exemption is withdrawn and income is being re-calculated as follows:

<i>Income as per Income & Expenditure (A)</i>	
<i>Less:</i>	<i>Rs</i>
<i>Revenue Expenditure</i>	<i>Rs.10,35,85,885/-</i>
<i>Less Depreciation</i>	<i>Rs.81,49,685/-</i>
<i>Net Expenditure (B)</i>	<i>Rs.9,54,36,200/-</i>
<i>Assessable Income (A-B)</i>	<i>Rs.3,67,44,636/-</i>

13. Aggrieved with the above order, the assessee preferred an appeal before Ld.CIT(A) and submitted a detailed submissions. After considering the detailed submissions of the assessee, the Ld. CIT(A) allowed the appeal filed by the assessee with the following observation:

*“The fact shows that the appellant has been allowed the benefit of exemption u/s. 11 & 12 of the Act in AY 2013-14 & 2014-15 despite of the fact that it has given donation to All India Milli Council (AIMC) in those years also. Since there is no material change happened in this AY 2015-16. So the AO could not have arrived at a different conclusion. At the most, if he had found that the donations to the entity All India Milli Council is not as per the provision of the law. Then in that case he could have treated the amount of donations of Rs.6,60,000/- as non-application of income for charitable activity and he could have disallowed the amount of Rs.6,60,000/-. The Hon’ble ITAT, Delhi in the case of **IILM Foundation (1142/D/2011)** has held that: “Where there was violation of the provision of section 13, the entire exemption under section 11 would not be denied instead expenditure which could not be treated as application of income and in violation under section 13, the same should alone be disallowed.”*

Therefore, considering the merit in the submission of the appellant and the law pronounced by various Courts on this issue, the action of the AO in denying the benefit of exemption u/s. 11 & 12 to the appellant is not found in accordance with the law. Hence, the AO is directed to allow the benefit of exemption available u/s. 11 & 12 of the Act in AY 2015-16. However, the AO is also directed to treat the donation of Rs. 6,60,000/- given to All India Milli Council (AIMC) as expenditure not made for the charitable activity as the entity AIMC was not found filing ITR for AY 2015-16.”

14. Aggrieved with the above order, the Revenue is in appeal before us and at the time of hearing, the Ld. DR submitted that the assessee is registered u/s 12A of the Act and it claims exemption u/s 11 of the Act. He submitted that the assessee makes the donations to AIMC, in fact, which is not a registered trust u/s 12A of the Act and also a notice was issued u/s 133(6) of the Act, in response, AIMC has refused to submit the return of income before the Assessing Officer. In this regard, he brought to

our notice para-7 to 8.1 of the assessment order and also brought to our notice the observations of the Assessing Officer for denial of the exemption u/s 11 of the Act to the assessee trust. and he supported the findings of the Assessing Officer. Further he submitted that the assessee is making the donation to an entity which does not have objects/activities similar to the activities of the assessee, which contravenes the condition on which to earlier registration was granted to the assessee, therefore, he submitted that the findings of the Assessing officer are proper and just. He objected to the relief granted by the Ld CIT(A).

15. On the other hand, the Ld. AR objected to the submissions of the Ld. DR and submitted that the Assessing Officer has not brought on record how the conditions of Section 13 are violated by the activities of the assessee by merely giving donation to the similar trust having similar objects. The AO has grossly rejected the claim of the assessee u/s 11(1) of the Act. As a principle of consistency and approved by the managing trustees, the assessee trust was making the donation to AIMC every year to support their activities and submitted that the AIMC may not be registered trust

under the Act, however, in principle to support the another trust, assessee is consistently supporting them by giving donation every year. In this regard, he brought to our notice page 38 and 40 of Paper Book in which the assessment order passed u/s 143(3) of the Act for Asst. Year 2013-14 & 2014-15 respectively were enclosed. He brought to our notice that no addition was proposed by the respective Assessing Officers. Further, he brought to our notice assessment order u/s 143(3) for AY 2017-18 (copy filed at the bar) wherein the claim of the assessee u/s 11 are allowed and donation made to AIMC of Rs.6.6 lakhs alone was disallowed. Further, he brought to our notice page 49 of the Paper Book, in which the General Secretary of AIMC has given an affidavit explaining their activities and utilization of funds received from assessee trust. He also submitted that the assessee also approved the above said donation by passing a resolution of Board of Trustees an 'Extracts of the Minutes' are placed on record. He prayed that the findings of the Ld. CIT(A) are justified and mere donation to a non-registered trust cannot be a reason to reject the whole claim of the assessee and the whole functions of the

assessee trust are to promote the charitable objects of the trust, therefore, he submitted that the findings of the Ld. CIT(A) are just and proper.

16. Considered the rival submissions and material placed on record. We observe that the assessee trust as a policy to support the trust namely AIMC, according to the assessee trust, AIMC having objects and functions similar to the assessee trust therefore, they are donating every year a sum of Rs. 6.60 lakhs to the AIMC. We observe that the revenue has allowed the same in the assessment years 2013-14 and 2014-15, may be without verification. However this assessment year, on verification, it came to the notice of the AO that the above said trust is not registered under Income Tax and donating to such unregistered trust is not treated as valid donation. With the above findings, he has proceeded to reject the whole claim of exemption u/s 11 of the Act, without bringing on record how the donation given to the unregistered trust is violation of objects and functions of the assessee trust. He has proceeded to grossly reject the claim over-

looking the actual charitable activities carried on by the assessee during the impugned year.

17. After careful consideration of the findings of Ld CIT(A) and relief granted to the assessee trust in the subsequent assessment year, the AO himself has allowed the claim of the assessee u/s 11 of the Act and restricted the donation paid to AIMC alone for disallowance. Therefore, in our view, there is no merit in denying the benefit u/s 11 of the Act without considering the actual charitable activities of the assessee trust. With the above observations, we do not see any reasons to disturb the findings of the Ld CIT(A). Accordingly, the grounds raised by the revenue are, accordingly, dismissed.

18. In the result, appeal filed by the revenue is dismissed.

Order pronounced in the open court on 29th May, 2024.

Sd/-

**(YOGESH KUMAR U.S.)
JUDICIAL MEMBER**

Dated: 29/05/2024

Pk/sps

Copy forwarded to:

1. Appellant

Sd/-

**(S.RIFAUR RAHMAN)
ACCOUNTANT MEMBER**