

IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH 'B' NEW DELHI)

BEFORE SMT. DIVA SINGH, JUDICIAL MEMBER
AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

I.T.A. No.2906/Del/2010
Assessment year : 2006-07

Delhi State Aids Control
Society, Govt. of NCT of
Delhi Dharamshala Block,
Dr. BSA Hospital, Sector-6,
Rohini.

ITO,
Trust Ward-III,
New Delhi.

V.

(Appellant)

(Respondent)

PAN /GIR/No.AAATD-2304-A

Appellant by : Shri N.K. Sharma, C.A.

Respondent by : Ms. Archana S. Awasthi, Sr. DR.

ORDER

PER TS KAPOOR, AM:

This is an appeal filed by the assessee against the order of Ld CIT(A) dated 15.4.2010. The assessee has taken several grounds of appeals but the crux of the grounds of appeal is that assessee is aggrieved with the decision of Ld CIT(A) in which he had confirmed an addition of ₹.1,16,68,688/- on account of non application of income for charitable purposes to the extent of 85% of income derived during the year.

2. The brief facts of the case are that the assessee is a registered society u/s 12A of the Income Tax Act, 1961 and it is a Govt. organization under the Govt. of Delhi. The society has carried out national programmes for welfare of the masses in respect of

awareness of HIV / AIDS. The assessee has filed return of income declaring nil income on 7.8.2006. The case of the assessee was selected for scrutiny and during assessment proceedings the Assessing Officer observed that assessee had received grants from various sources. The Assessing Officer further observed that out of total grants a part of grant was directly taken to balance sheet instead of Income & Expenditure Account. Therefore, he held that grants directly credited in the balance sheet were not used for charitable purposes and hence the total use for charitable purposes was less than 85% of total income. The assessee in its reply had submitted that when any donation or grant is received for any charitable purpose then only the expenditure part of grant is taken to Income & Expenditure A/c and rest of the balance is taken in the balance sheet. The Assessing Officer then held that accounting procedure followed by the assessee was not correct. Therefore, he held that contribution/grant cannot be treated as corpus in the year of receipt and thereafter as income in the year in which these are spent and in view of the above, he made an addition of ₹.1,16,68,688/- being difference between amount required to be spent for charitable purposes and amount actually spent.

3. Dissatisfied with the order, the assessee filed appeal before Ld CIT(A) and submitted as under:-

- i) That for the purpose of computing exemption u/s 11(1)(a) of IT Act, the assessee has to compute the grant given by the assessee towards the purposes of the organization and in computing of grant applied by the assessee, the accounting entries were not to be given importance and the sole consideration was to see as to whether or not the grant was applied towards the purposes of the organization. It was further submitted that accounting procedure followed by the assessee should not be the factor in deciding whether or not

the exemption u/s 11(1)(a) of the Act should be granted or not. Reliance in this respect was placed on the following case laws:-

1. Commissioner Of Income Tax, Tamil Nadu I. v. Kannika Parameswari Devasthanam And Charities. 133 ITR 779 holding that any expenditure whether capital or revenue in nature would be treated as application if it serves the purposes or objects of the organization.
2. Satya Vijay Patel Hindu Dharamshala Trust. v. Commissioner of Income Tax, Gujarat I.
3. CIT v. St. George Forana Church 170 ITR 62.

4. It was further submitted that assessee was a Govt. organization and has to follow the accounting system as prescribed by the Govt. and as per the prescribed procedure the grant in aid given for charitable purposes by assessee to the peripheral units who itself were registered charitable institutions was to be shown as advance to be taken to balance sheet and the such advances were to be adjusted as expenses upon receipt of utilization certificates from such peripheral units. During the previous year, the assessee had paid advances of ₹.2,54,26,550/- to the peripheral unit for which utilization certificates were not received till 31.3.2006. It was further submitted that advances paid to the peripheral units constitute valid application of income from contribution in the light of direction of section 12(1) of the IT Act, 1961 read with section 11(1)(a) of Income Tax Act, 1961. Reliance in this respect was also placed on the CBDT Instruction No.1132 dated 5.1.1978.

5. The Ld CIT(A) after going through the submissions of assessee did not agree with the contentions of Ld AR and upheld the addition made by the Assessing Officer.

6. Aggrieved the assessee is in appeal before us.

7. At the outset, the Ld AR submitted that when assessee gives grant to other charitable society it makes a debit entry and reflects it as advance in the balance sheet and when the utilization certificate in respect of such grant is received from the receiving organization then expenses are booked and advances shown is reversed and the equivalent amount of such reversal is taken to income side as well as expenditure side. It was further submitted Assessing Officer made the additions on account of advances on the basis that these were not expenses. In this respect our attention was invited to Instruction No.1132 dated 5.1.1978 issued by CBDT stating that the payment of sum by one charitable trust to another for utilization by the donee trust towards its charitable object was proper application of income for charitable purposes in the hands of donee trust and donor trust will not lose exemption u/s 11 of the IT Act merely because the donee trust did not spend the donation during the year of receipt itself. He further argued that Ld CIT(A) had also held that these are loans but these are not loans and in this respect our attention was invited to paper book page 76 wherein a copy of sanction letter issued by the assessee in favour of Anchal Charitable Trust was placed. It was further submitted that advances are shown only to ensure proper control on the grants to charitable organizations so as to ensure that these grants are spent for the purposes for which these were given. The Ld AR further relied upon number of case laws including those relied before Ld CIT(A).

8. The Ld DR, on the other hand submitted that if assessee demanded utilization certificate from the donee then the payments cannot be said to be donation and therefore the Assessing Officer and Ld CIT(A) has rightly made and upheld the disallowance.

9. In his rejoinder, the Ld AR submitted that utilization certificate in respect of such advances were received later on and further submitted that if the contention of Ld DR is accepted then donation received by the assessee cannot be said to be an income of assessee but it is a liability.

10. We have heard the rival submissions of both the parties and have gone through the material available on record. We have observed that assessee received a total amount of ₹.13,72,27,537/- grant in aid for spending on charitable purposes. After reducing 15% which can be carried forward the 85% of amount comes out at ₹.11,66,43,407/-. Out of which ₹.10,49,74,719/- had already been spent during the year and therefore there was a dispute for a sum of ₹.1,16,68,688/- for which the Assessing Officer is of the view that it has not credited to Income & Expenditure A/c and thus has not been utilized during the year. There is no dispute about the fact that assessee had given amounts for charitable purposes to other charitable societies. The only dispute is with respect to treatment of such donation which should have been debited to Income & Expenditure A/c instead of showing it as advances. As per Instruction No.1132 of CBDT dated 5.1.1978 it is clear that when a sum has been disbursed to another entity carrying out similar object and registered u/s 12A then it is the application of income for purposes of section 11 & 12 of the Act. The accounting practice of the appellant is crediting various grants to the Income & Expenditure A/c only to the extent for which utilization certificates are

received which is a regular consistent practice and which is being implemented by the assessee on the directions of Govt. of India and which is for the purpose of having control over the proper utilization of grant given to other charitable organizations. The accounting practice followed by the assessee cannot come in the way of entitlement of exemption to the assessee as the sums were actually distributed to the charitable organizations as is apparent from paper book pages 76 to 87 wherein specimen copies of sanctions of grant in aid to various societies are placed. The recipients of grants are also registered societies as is apparent from paper book pages 52 to 75. Against taxable income determined by Assessing Officer at ₹.1,1,6,68,688/-, the assessee had advances of ₹.2,54,42,26550/-as on 31/03/2006 to various charitable institutions from which utilization certificates were not received by 31.3.2006, therefore, in view of CBDT Instruction No. 1132, these payments shown by assessee as advances are in fact a proper utilization of funds of the assessee for charitable purposes. In view of the above, we hold that assessee had utilized the funds for charitable purposes and therefore the appeal filed by the assessee is allowed.

11. In the result, the appeal filed by the assessee is allowed.

12. Order pronounced in the open court on 5th day of July, 2013.

Sd/-

(DIVA SINGH)
JUDICIAL MEMBER

Sd/-

(T.S. KAPOOR)
ACCOUNTANT MEMBER

Dt. 5.7.2013.
HMS

Copy forwarded to:-

1. The appellant
2. The respondent
3. The CIT
4. The CIT (A)-, New Delhi.
5. The DR, ITAT, Loknayak Bhawan, Khan Market, New Delhi.

True copy.

(ITAT, New Delhi).

Date of hearing	15.5.2013
Date of Dictation	27.6.2013
Date of Typing	27.6.2013
Date of order signed by both the Members & pronouncement.	05.07.2013
Date of order uploaded on net & sent to the Bench concerned.	