

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

**Before: Ms. Annapurna Gupta, Accountant Member
And Shri T.R. Senthil Kumar, Judicial Member**

**ITA No. 686/Ahd/2019
Assessment Year 2014-15**

The ACIT(Exemptions), Circle-1, Ahmedabad (Appellant)	Vs	Grow More Foundation, At- Berna, Ahmedabad-Udaipur Highway, Ta. Himmatnagar, Dist. Sabarkantha PAN: AABTG0049A (Respondent)
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**Appellant by : Shri V.K. Singh, Sr. D.R.
Respondent by : Shri A.C. Shah, A.R.**

Date of hearing : 01-08-2022
Date of pronouncement : 16-09-2022

आदेश/ORDER

PER : T.R. SENTHIL KUMAR, JUDICIAL MEMBER:-

The present appeal has been filed by the Revenue against the order dated 13.02.2019 passed by the Commissioner of Income Tax (Appeals)-4, Ahmedabad, as against the Assessment order passed under section 143(3) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act') relating to the Assessment Year (A.Y) 2014-15.

2. The brief facts of the case is that the assessee is charitable trust and has carried out educational activities running schools and colleges of different streams at Himmatnagar, Dist. Sabarkantha. The assessee trust has been granted registration U/s. 12A(a) since July 2007 and also obtained approval u/s. 80G(5) of the Act since May 2008. For the Assessment Year 2014-15, the assessee filed Nil Return. The case was selected for scrutiny assessment.

2.1. On perusal of the Balance Sheet, the Assessing Officer found the Assessee trust had paid Rs. 10 Lacs as advance to Kapila Infratech Pvt. Ltd. and also investments a sum of Rs. 82,518/- in 50 gms. Gold. Since both these assets were not investments has prescribed u/s. 11(5) of the Act, a show cause notice was issued calling for explanation.

2.2. The assessee replied that the advance of Rs. 10 Lakh given to Kapila Infratech Pvt. Ltd. for construction work, though they commenced the work, because of dispute the same could not be completed and the work got terminated and therefore the amount stands receivable and shown as advance in the books.

2.3. Investment in purchase of 50 gms. of gold, it is stated the same was purchased for making medals to be given to students on various competition arranged by the colleges. It is in furtherance of educational objects of the Trust only and in violation of provisions of Section 11(5) of the Act. The A.O. further noticed that the

assessee trust has claimed to have incurred expenses of Rs. 1,88,500/- towards other charitable objects. The assessee explanation that it had made donation to various other Government and Non-Government charitable institutions. The assessee trust had made Rs. 2,39,692/- to Chandansingh H Rajput who is a contractor for the construction work of the trust. Having not satisfied with the reply filed by the assessee, the assessing officer added these disallowances and determined the gross total income as Rs. 2,31,37,731/- and demanded tax thereon.

3. Aggrieved against the same, the assessee filed an appeal before the ld. CIT(A)-4. Ld. CIT(A) called for a remand report from the assessing officer. The ld. Assessing Officer reiterated the assessment orders and confirmed the additions made thereon and denying exemption u/s. 11 & 12 of the Act. The assessee vide its rejoinder stated that produced the copies of the recovery proceedings with Kapila Infratech Pvt. Ltd.

3.1. Regarding purchase of 50 gms. of gold purchased by the management only for the purpose of giving medals to meritorious students. The same cannot be doubted since the gold was purchased one year in advance because of the lower rate of gold, the same cannot be treated as an investment, but the intention of purchasing the gold was to award the gold medals to the meritorious students, which is part and parcel of the objects of the trust. On the construction of expenses of Rs. 2,39,692/- paid to contractor though the contractor could not response to the notice

issued u/s. 133(6) by the A.O. However the assessee produced confirmation of accounts having signature and PAN No. of the contractor, wherein appropriate TDS was deducted and balance was paid to the contractor. Regarding the donation of Rs. 1,88,500/- the assessee submitted the same were made to various Governmental and non-Governmental institution which is also one of the objects of the trust. Therefore it is application of income for objects of the trust, which is eligible for deduction u/s. 11 of the Act.

3.2. The Ld.CIT(A) held that the advance to Kapila Infratech Pvt. Ltd of Rs. 10 lakhs and purchase of 50 gms of gold are not an investment but are incurred for attainment of the objects of the trust. The Ld. A.O's objection that it is in violation of Section 11(5) is found to be not within the meaning of investment and therefore on this ground the section 13(1)(d) cannot be applied, accordingly, the accumulation of 15% of the gross total income should also be granted as there is no violation of section 11(5) of the Act.

3.3. Regarding the amount paid to the contractor for construction of work on which the TDS has been deducted and a fresh confirmation having signature of Chandansingh along with PAN No. etc. were produced and this amount is incurred for the furtherance of the objects of the trust. Therefore the A.O. is not justified in making the addition. Similarly the donation of Rs. 1,88,500/- which was paid to various trusts/institutions, for which the assessee has proved the genuineness of the payments, together

with the receipts and explanation under which clause of the constitution of the assessee trust the amount paid has direct nexus. Therefore, it cannot be said that the same amount was not applied for the objectives of the trust and hence the same amount cannot be treated to be incurred in violation of section 11 and accordingly this ground of appeal is also allowed.

4. Aggrieved against the same, the revenue is in appeal before us raising the following Grounds of Appeal:

1. *The Ld CIT(A) has erred in the law and on facts in allowing the benefit of exemptions u/s. 11 without considering the fact that the assessee has violated the provisions of section 11(5) and AO has correctly invoked the provisions of section 13(1)(d) of the Act.*

2. *The Ld. CIT(A) has erred in law and facts in allowing the claim of exemption without appreciating the factual findings of the Assessing Officer. ;*

3. *The Ld. CIT(A) has erred in law and facts in holding that advances given are for furtherance of objects of trust and cannot be treated as investment without appreciating the factual findings of the Assessing Officer.*

4. *The Ld. CIT(A) has erred in law and facts in holding that gold purchased are furtherance of objects of trust and cannot be treated as investment without appreciating the factual findings of the Assessing Officer.*

5. *The Ld. CIT(A) has erred in law and facts in holding that contract expenses claimed are for furtherance of objects of trust and are therefore allowable without appreciating the factual findings of the Assessing Officer.*

6. *The Ld. CIT(A) has erred in law and facts in holding that donations made are for furtherance of objects of trust and cannot held to be in violation of provision of section 11 of the Act, without appreciating the factual findings of the Assessing Officer.*

7. *On the facts and circumstances of the case, the Ld. Commissioner of Income-Tax (Appeals) ought to have upheld the order of the Assessing Officer.*

8. *It is, therefore, prayed that the order of the Ld. Commissioner of Income-tax (Appeals) may be set aside and that of the Assessing Officer be restored.*

9. *The Revenue craves to add, alter, amend, modify, substitute, delete and/or rescind all or any Grounds of Appeal on or before the final hearing, in necessity so arises.*

5. The Revenue filed three sets of Paper Books running to 651 pages which are nothing but the notices issued by the A.O., replies filed by the assesseees, notice issued u/s. 133(6), assessee's reply

assessment order, etc.. The Ld. D.R. supported the order passed by the Assessing Office and pleaded to allow the Revenue's appeal.

5.1. Per contra, the ld. Counsel for the assessee filed a Paper Book consisting of 55 pages, consisting of Annual Reports and Statement of Income for the Assessment Years 2011-12 to 2014-15 and Agreement dated 17.08.2010 entered with Kapila Infrateck Pvt. Ltd., Ledger account and Correspondence for recovery of advance with Kapila Infrateck Pvt. Ltd. The assessee also filed the purchase bills of gold and list of students who have been awarded gold medals during the academic year 2015-16. This list carries the name of students the percentage of mark scored and the education streams where the respective engineering degrees and diplomas. Ld. Counsel for the assessee supported the order of the Ld. CIT(A) and reiterated the same arguments and requested to dismiss the appeal filed by the Revenue.

6. Heard both sides and perused the materials available on record. The grounds raised by the Revenue are general in nature without pointing out the violations of Section 11(5) of the Act, whereas the Ld. CIT(A) called for Remand Report from the Assessing Officer and based on the reply filed by the assessee and after verification of factual findings of the transaction, granted relief to the assessee namely 10 lakhs advance given to Kapila Infratech Pvt. Ltd. After verification of the correspondence by the assessee Trust with Kapila Infratech Pvt. Ltd which is available at page no. 37 and Kapila Infratech Pvt. Ltd vide its reply letter dated 15.01.2011 that they

were facing problem in construction without supportive construction supervisor, disputes with management for construction work and non-availability of labour force which is available at page no. 38 of the Paper Book. This is not disputed by the Ld. D.R., therefore the finding recorded by the Ld. CIT(A) does not require interference.

6.1. Regarding purchase of gold, the assessee filed list of thirty name of the students with each engineering division and with their percentage of mark who were been awarded with gold medals which is available at page no. 41 of the Paper Book. Therefore the factual finding recorded by the Ld. CIT(A) is not being contravened by the ld. D.R. with appropriate records. Therefore the findings of the Ld. CIT(A) on this ground does not require any interference.

6.2. Regarding the payment made to Chandansingh, the Ld. CIT(A) has observed that the payment is made for construction work on which TDS has been deducted and a fresh confirmation with signature of the contractor and his PAN No. etc. have been submitted and the amount is incurred for the furtherance of the projects of the trust only. Similarly the donation made to various NGO's trust institutions for which the assessee has proved the genuineness of the payment namely Rs. 1 lakh paid to the Sabarkantha Relief Committee vide Receipt No. 183 dated 09.07.2013, This donation was given at the request of the District Collector for an Govt. Organization, which is as per Clause No. 3 of the Objects of the Trust. Similarly Rs. 25,000/- donation paid to

SahyogKushtha Yagna Trust vide Receipt No. 80922 dated 13.08.2013, this donation is given for the purpose for leprosy patients which is as per Clause No. 2 of the Trust Deed. Similarly other donations for education purpose and for providing food to the needy students which are donations, as per Clause No. 1 of the Trust Deed. Therefore it cannot be said the same amount was not applied for the objects of the trust and the same cannot be incurred in violation of Section 11 of the Act. Therefore the grounds raised by the Revenue are devoid of merits and the same are hereby dismissed.

7. In the result, appeal filed by the Revenue is hereby dismissed.

Order pronounced in the open court on 16-09-2022

Sd/-
(ANNAPURNA GUPTA)
ACCOUNTANT MEMBER True Copy
Ahmedabad : Dated 16/09/2022

Sd/-
(T.R. SENTHIL KUMAR)
JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद