

**IN THE INCOME TAX APPELLATE TRIBUNAL
“B” BENCH, AHMEDABAD**

**BEFORE SMT. ANNAPURNA GUPTA, ACCOUNTANT MEMBER &
SHRI SIDDHARTHA NAUTIYAL, JUDICIAL MEMBER**

I.T.A. No.1147/Ahd/2018
(Assessment Year: 2014-15)

Dudhsagar Research & Development Association, C/o. Dudhsagar Dairy, Highway, Mehsana-384002	Vs.	ACIT(Exemption) Circle-1, Ahmedabad
[PAN No.AAATD1312J]		
(Appellant)	..	(Respondent)

Appellantby :	Shri Bandish Soparkar, A.R. & Shri Parin Shah, A.R.
Respondentby:	ShriJames Kurian, CITDR

Date of Hearing	29.09.2022
Date of Pronouncement	11.10.2022

ORDER

PER SIDDHARTHA NAUTIYAL - JUDICIAL MEMBER:

This appeal has been filed by the Assessee against the order passed by the Ld. CIT(Appeals)-7, Ahmedabad in Appeal No. CIT(A)-7/138/16-17 vide order dated 28.02.2018 passed for Assessment Year 2014-15.

2. The assessee has taken the following grounds of appeals:-

“1. The learned CIT (Appeals) erred in confirming the addition of Rs. 7,44,14,182/- being specific donation received by the appellant trust as corpus donation as income of the assessee. It is submitted that voluntary contributions received by the assessee trust from all the donors with a specific direction that the same

- 2 -

shall form part of corpus of the trust can never be considered as income of the appellant. It is submitted that the addition so incorrectly and illegally made be deleted.

2. *The learned CIT (Appeal) has erred in disregarding the evidences and materials filed clearly showing that the amount of Rs. 7,44,14,182/- were received by the appellant trust as donation to the corpus, were directly credited to the trust fund and was never in the nature of income as per past consistent practice followed and accepted by the income tax dept. It is submitted that the same be so held now and the addition of Rs.7,44,14,182/- made as income of the appellant trust be deleted.*

3. *The order passed by the learned Commissioner of Income-tax (Appeals) is bad in law and contrary to the provisions of law and facts. It is submitted that the same be held so now.*

4. *Your appellant craves leave to add, alter and/or to amend all or any of the grounds before the final hearing of appeal.”*

3. The brief facts of the case are that during the course of assessment proceedings it was observed that the Assessee had received corpus donationon which exemption was claimed under Section 11(1)(d) of the Act. The Assessee was required to explain the nature of the corpus donations and to explain the source of such donation. In response, the Assessee explained as under:

- 3 -

“WRITE UP ON DONATIONS (FORMING PART OF THE CORPUS OF THE TRUST) RECEIVED FROM MILK SUPPLYING SOCIETIES:

Contributions are received from the milk supplying societies as decided in their Annual General Meeting of Dudhsagar Research And Development Association. At present, the milk supplying societies are giving Rs.2/- per Kg Fat supplied by them in every 10 days milk cycle. The same is collected from their milk bill by Mehsana District Cooperative Milk Producers Union Ltd. as per Authorisation given by the concerned milk supplying societies and turn, the amount is paid by Mehsana District Cooperative Milk Producers Union Ltd. to Dudhsagar Research And Development Association by issuing a cheque. Dudhsagar Research And Development Association credits the same to the corpus as per direction given by the donor society.”

4. The AO observed that the contribution was received from milk supplying societies (Donor MSS). The Donor MSS sell their milk to the Mehsana District Co-operative Milk Producers Union Ltd.(MDCMPUL), a parent body which is being processed and further sold as packaged milk and other milk products. The contribution made by Donor MSS, was in fact linked to the amount of Milk fat supplied by these Donor MSS to the MDCMPUL and the amount of contribution was calculated as per a given formula - Rs. 2/- per KG Fat supplied in every 10 days milk cycle. It was, therefore, apparent that the contribution was not

- 4 -

voluntary contribution but was compulsorily collected from Donor MSS and therefore, could not be treated as corpus donation. Accordingly, Ld. Assessing Officer held that Corpus donations are exempt under Section 11(1)(d) of the Act subject to the condition that the donation is made voluntarily and with a specific direction by the donor that such donation shall form part of corpus. The discretion as to whether the donor wants to donate or not, has to lie with the donor and it needs to be exercised voluntarily. In this instant case a MSS which has to sell milk to MDCMPUL needs to pay a certain amount which is more in the nature of a cess, at a rate fixed, from time to time. The amount of cess is determined by the Governing Council of DURDA- Assessee. The amount of Cess is determined from the quantity of milkfat supplied by the Donor MSS to the MDCMPUL. It is part of the Rules and Regulations of DURDA that it would be collecting Cess from the members. This Cess is to be treated as Corpus Donation. Since the Cess is linked to the Quantity of Milk fat supplied, the payer has no choice or option to alter the amount of Cess it is required to pay. The fact that this Cess is treated as Corpus Donation is not known to the payer except when a letter to this effect is obtained by DURDA from the un-suspecting Donor MSS as a matter of routine. MDCMPUL keeps a pre-printed format wherein only the name of the payer Mandli, its code Number, Taluka and Amount is left blank to be filled at the time of receiving the Cess amount. The Corpus as understood, is the capital of an Assessee, a capital of a society, a capital of a trust, a capital of an institution. A donation would qualify as corpus donation if the following three conditions are satisfied cumulatively:

- 5 -

- a. The receipt is in the nature of donation
- b. The donation is made voluntarily
- c. The donor gives a specific direction that the donation is for the corpus.

5. The Ld. Assessing Officer observed that in the instant facts Assessee has received cess from the members, against the sales made by Donor MSS to MDCMPUL, and therefore, such fees / cess paid against sale of Milk does not qualify as donation. Also, such cess is not voluntary for the reason that firstly, the Donor is paying fees in lieu of the sales it makes to MDCMPUL and if the donor wishes to be avail services of the Association or its associates he has to pay the cess. Secondly the Donor MSS also does not have any discretion regarding the quantum of fees which fixed by the Governing Council of the DURDA. Thus, the Ld. Assessing Officer concluded that the Cess receipts of DURDA cannot be termed as voluntary donation. The AO also observed that for any donation to be treated as corpus donation, it is necessary that a written direction from the donor is obtained in which donor has to clearly express his intention that the donation is made for the corpus of the organization. **Expression of a particular intention can arise only when the concerned person has discretion to choose between options.** Further the origin of such discretion comes from the knowledge that he is having different options. In the instant facts, there is nothing at all to show that the donors had any knowledge in respect of corpus donation and that a part of the sale consideration of milk fat supplied by it was to be treated as corpus donation. Therefore, the question of having discretion and

exercising his choice and expressing intent does not arise. Therefore, there has been no specific direction from the applicants to treat these fees as corpus donation. To avail exemption under Section 11(1)(d) of the Act, all the three conditions are to be satisfied cumulatively. On the basis of the all of the above, the Ld. Assessing Officer concluded as below:

a. Perusal of the Rules and regulations of DURDA point to an inescapable inference that the claim of exemption under Section 11(1)(d) in respect of the CESS received from the Donor MSS was in paper, in zest and not in right earnest.

b. The receipts are Cess received from Donor MSS in lieu of the sale of Milk. Such receipts are not donation receipts.

c. The quantum and nomenclature of the Cess have been decided by the Assessee.

d. The Donor MSS have no discretion and they did not make any donation. The rate was fixed by the Assessee against a promise and not voluntary.

e. There was no voluntary and conscious expression on intention by the Donor MSS that such payments be treated as corpus donation. There was no specific direction from the Donor MSS.

6. In view of above the Ld. Assessing Officer disallowed Assessee's claim that Rs. 7,44,14,182/-be treated as corpus donation under Section 11(1)(d) of the Act.

7. In appeal, Ld. CIT(A) dismissed the assessee's appeal on this issue, with the following observations:

*“18. After going through the assessment order where this issue has been discussed in detail, the submission of the appellant as well as the objects of the appellant trust, I find that **the appellant itself has stated that the corpus income that is being received by it is in the nature of “fees” collected from milk societies. The appellant takes the contribution from milk suppliers @ Rs.2/- per kilo fat for the milk supplied to it by each society.** On the basis of such receipts, the appellant provides services to these societies in the form of maintenance of good quality of milk animals and other medical benefits, Therefore, it is very clear that the said ‘donation’ is made by the milk societies in lieu of certain services that the appellant gives them in exchange for this fees. Therefore, the contribution cannot be said to be voluntary. A voluntary contribution is one that is without any expectation and in donations that are made by contributors/donors there is no quid pro quo involved. **Here in this case, not only is the money received by the appellant not voluntary, but it is seen that it is received at a fixed rate and therefore by no stretch of imagination can the receipts he said to be a voluntary donation from the milk suppliers. There is a prescribed set formula behind the amounts being received by the appellant and thus these contributions cannot be: called donations but are very clearly fees that the milk societies are paying in exchange for certain services.***

- 8 -

The object of the appellant trust is to carry out research, development, running veterenary hospitals, laboratories, establish life stock farms to improve their breeds, etc and the receipts that are received from the milk suppliers are thus very clearly revenue receipts that are generated out of the objects of the trust. These receipts are generated on recurring basis and are operational receipts. A perusal of a sample receipt of the milk supplier also shows that it merely states that the amount has been paid towards the corpus fund of the appellant. The recurring and operational receipts can never be considered as corpus receipts only on the ground for the reason that the receipt given states so. The corpus donation has to be, for a specific purpose/direction and without any quid pro quo. These receipts do not state the specific purpose that they are being given for. In view of the detailed discussion above, it is held that the amount of Rs.7,44,14,182/- is income of the trust and cannot be treated as corpus donation under Section 12(1) r.w.s. 11(1)(d) of the Act. The addition of Rs.7,44,14,182/- made by the AO is accordingly confirmed. Ground of appeal No.1 is dismissed.”

8. Before us, Ld. Counsel for the assessee reiterated the submissions made earlier before Revenue Authorities and submitted that all conditions for donations qualifying for exemption for Corpus donation are satisfied in the instant facts: (a) There is a specific direction that the donation be treated as Corpus donation (he drew our attention to page 33 of Paper-Book in support of his contention) (ii) The amount so donated

qualifies as “Contribution” and the Members so contributing are not getting anything back in return in lieu of such donation and (iii) the contribution is ”Voluntary” and the mere fact that it is linked to production of milk cannot lead to the conclusion that it is not voluntary. He submitted that the members themselves have “voluntarily” decided to give contribution to the assessee. The methodology of linking corpus donation to the production of milk has been adopted and agreed to by the “Members” as and the assessee has not adopted the methodology. Accordingly, the donation qualifies as “Corpus donation” eligible for exemption was claimed under Section 11(1)(d) of the Act.

9. In response, Ld. Departmental Representative invited our attention to page 12/42 of Paper-Book to submit that clearly the donation is not “Voluntary” and therefore donation does not qualify as “Corpus donation” eligible for exemption was claimed under Section 11(1)(d) of the Act. The Ld. Departmental Representative submitted that the resolution to collect additional donation has been has been decided by the assessee itself with no discretion of the Donors. Accordingly, donation does qualify as “Corpus donation” eligible for exemption was claimed under Section 11(1)(d) of the Act.

10. We have heard the rival contentions and perused the material on record. It would be useful to reproduce the Copy of Resolution passed by the assessee titled “*to discuss regarding donation received on per kg fat*”:

Dt: 15/10/2012

No.DURD:559

Dudhsagar Research and Development Association, Mehsana Seal

Copy of resolution passed at 45th Annual Ordinary General Meeting held on 24.06.2012:-

Resolution No. 4: *To discuss regarding donation received on per kg fat (in milk content).*

*The resolution to collect donation of 0.50 paise more per kg fat from current financial year at Rs. 2/- in place of Rs. 1.5 made by Milk Producers Co operative Societies to Dudhsagar Research and Development Association (DURDA) **to meet the cost of Dairy Science and Food Technology College** as well new programmes was placed before general body to seek their approval. Accordingly, from the current year **it is hereby resolved to collect fund from the Milk Producer Societies per kg fat** (content of milk collection)*

True copy

-sd-

Secretary

Dudhsagar Research and Development Association Mehsana

11. The contents of the above resolution clearly show that the contributions are not “Voluntary” in nature. The assessee has *suo moto* passed a resolution to “collect” donation form the made by Milk Producers, which goes contrary to the assertion made by the assessee that

contributions are “Voluntary” in its character. Apparently, the Milk producers do not any choice or say in the matter whatsoever. Merely producing a receipt which states that the amount has been paid towards the corpus fund of the appellant cannot lead us to accept that the contribution qualifies as a “Corpus donation” when notably these receipts do not even state the specific purpose that they are being given for. Moreover, as noted above, the donations are clearly not “voluntary”. The quantum of the cess, as well as the mode of computation thereof, has been decided by the Assessee and the Donor have no discretion or say in the matter. In **Russel v. Vestry of St. Giles 3E & B 416**, Lord Campbell observed 'voluntary contributions' here do not mean annual subscriptions paid for value received or expected to be received by the party paying, **but means a gift made from disinterested motives for benefit of others.** In **Society of Writers v. I.R. 2 TC 257**, the Court held that the entrance fees and subscriptions paid by entrants to a society or institution as a condition precedent to their membership and as the price of admission to the privileges and benefits of the society or institution are given under a contract and are not voluntary. The Delhi High Court in the case of **DivineLightMission[2005] 146 Taxman 653 (Delhi)** held that membership fee and subscription amounts received by trust/society from its members cannot be characterized as voluntary contribution within meaning of expression ‘fund’ in Section 12. While holding so, High Court made the following observations:

“Voluntary contribution is an act not coupled with compulsion.
One may contribute or one may not contribute. Therefore, it is

*rightly said that it is in the nature of a gift. **But so far as subscription is concerned, it is with some compulsion.** If one wants to become a member of a trust and if he is required to pay subscription, as in the instant case, then it amounts to compulsion.”*

12. Again, the Bombay High Court in the case of **CIT v Gem & Jewellery Export Promotion Council[1983] 13 Taxman 13 (Bombay)/[1983] 143 ITR 579 (Bombay)**, on the nature of voluntary contributions:

*It was well known that the grants-in-aid were made by the Government to provide certain institutions with sufficient funds to carry on their charitable activities. On reading the conditions on which those grants-in-aid were given, it was obvious that **the institutions or associations to which the grant was made had no right to ask for the grant and it was solely within the discretion of the Government to make grants to institutions of a charitable nature.** Again, the Government **did not expect any return for the grants given by it to such institutions and there was nothing which was required to be done by these institutions for the Government, which could be considered as consideration for the grant.***

Therefore, none of the conditions attached to the grant affected the voluntary nature of the contribution. Hence, the impugned grant was exempt under section 12.

13. The concept of voluntary contribution has been explained by N.D. Ojha C.J. speaking for the Division Bench (as his Lordship then was), in the case of **CIT v. Madhya Pradesh Anaj Tilhan Vyapari Mahasangh [1988] 171 ITR 677 (MP)** as (page 680) :

"The contributions, in order to be voluntary, had to be made willingly and without compulsion and the money was to be gifted or given gratuitously without consideration."

14. In the case of **Director of Income-tax (Exemption) v Jaipur Golden Charitable Clinical Laboratory Trust[2009] 311 ITR 365 (Delhi)**, on the voluntary nature of donations, made the following donations:

*"From the perusal of the above clause, it is clear that it was optional for the consulting doctors to contribute donations **which are also apparent from the fact that only 61 doctors opted for such arrangement out of 141 doctors working for the assessee. The above mentioned clause neither binds nor forces the doctors. It only gives the option to give or arrange donations in case he wants less deduction from the professional fee payable to him. Considering this condition it can be said that the donations by the***

- 14 -

doctors have been given of its own volition and without any force.....”

15. In view of the above discussion, we find no infirmity in the order of Ld. Assessing Officer and Ld. CIT(A) and we are of the view that the assessee is not eligible for claim of deduction under Section 11(1)(d) of the Act. In the result, the appeal of the assessee is dismissed.

16. In the result, the appeal of the assessee is dismissed.

This Order pronounced in Open Court on 11/10/2022

Sd/-
ANNAPURNA GUPTA
(ACCOUNTANT MEMBER)

Sd/-
SIDDHARTHA NAUTIYAL
(JUDICIAL MEMBER)

Ahmedabad; Dated 11/10/2022

TANMAY, Sr. PS

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 प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Ahmedabad
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt. Registrar)
आयकर अपीलीय अधिकरण, अहमदाबाद / ITAT, Ahmedabad