IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). 3358/2006

DIRECTOR OF INCOME TAX (EXEMPTION) **APPELLANT(S)**

VERSUS

KESHAV SOCIAL & CHARITABLE FOUNDATION **RESPONDENT(S)**

O R D E R

After going through the matter, we find that concurrent findings of fact are arrived at by the Commissioner of Income Tax (Appeals) as well as the Income Tax Appellate Tribunal, which have been upheld by the High Court vide impugned judgment.

We do not find any question of law that arises for consideration. The appeal is, accordingly, dismissed.

.....J.
[A.K. SIKRI]

.....J.
[ASHOK BHUSHAN]

NEW DELHI;
FEBRUARY 22, 2017.

ITEM NO.108 COURT NO.8 SECTION IIIA

S U P R E M E C O U R T O F I N D I A
RECORD OF PROCEEDINGS

Civil Appeal No(s). 3358/2006

DIRECTOR OF INCOME TAX Appellant(s)

VERSUS

KESHAV SOCIAL & CHARITABLE FOUNDATION Respondent(s)

Date : 22/02/2017 This appeal was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE A.K. SIKRI
HON'BLE MR. JUSTICE ASHOK BHUSHAN

For Appellant(s) Mrs. Anil Katiyar,Adv.

For Respondent(s) Mr. Bhargava V. Desai,Adv.

UPON hearing the counsel the Court made the following
O R D E R

The appeal is dismissed in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

(Ashwani Thakur) (Mala Kumari Sharma)
COURT MASTER COURT MASTER
(Signed order is placed on the file)

TAXMANN®

[2005] 146 Taxman 569 (Delhi)/[2005] 278 ITR 152 (Delhi)

SECTION 11/INCOME-TAX ACT

[2005] 146 TAXMAN 569 (DELHI)

HIGH COURT OF DELHI

Director of Income-tax (Exemption)*

v.

Keshav Social & Charitable Foundation

SWATANTER KUMAR AND MADAN B. LOKUR, JJ.

IT APPEAL NO. 220 OF 2002

FEBRUARY 3, 2005

† **Section 11, read with section 68, of the Income-tax Act, 1961 - Charitable or religious trust - Exemption of income from property held under - Assessment year 1991-92 - Assessee, a charitable trust, had disclosed donations received by it as its income and had spent 75 per cent of amount for charitable purposes - On failure of assessee to furnish details of donations, Assessing Officer treated that amount as cash credit under section 68 and benefit under section 11 was denied - Whether fact that complete list of donors was not filed or that donors were not produced, did not necessarily lead to inference that assessee was trying to introduce unaccounted money by way of donation receipts - Held, yes - Whether section 68 had no application to facts of case because assessee had in fact disclosed donations as its income - Held, yes**

FACTS

The assessee, a charitable trust, was engaged in the activity of providing medical advise to the poor and needy in various parts of the State. During the relevant previous year, the assessee was asked to furnish the details of donations received by it. However, the Assessing Officer, on finding that the assessee was unable to satisfactorily explain the donations and the donors were fictitious persons, held that the assessee had tried to introduce unaccounted money in its books by way of donations and, therefore, the amount was to be treated as cash credit under section 68. On that basis, the benefit under section 11 was denied to the assessee.

On appeal, the Commissioner (Appeals) held that treating donation as income under section 68 was not correct the assessee had disclosed the donations as its income and had spent 75 per cent of the amount for charitable purposes. On the revenue's appeal, the order of Commissioner (Appeals) was upheld by the Tribunal.

On appeal :

HELD

To obtain the benefit of the exemption under section 11, an assessee is required to show that the donations were voluntary. In the instant case, the assessee had not only disclosed its donations, but had also submitted a list of donors. The fact that the complete list of donors was not filed or that the donors were not produced, did not necessarily lead to the inference that the assessee was trying to introduce unaccounted money by way of donation receipts. That was more particularly so in the facts of the case where admittedly, more than 75 per cent of the donations were applied for charitable purposes. [Para 10]

Further section 68 had no application to the facts of the instant case because the assessee had in fact disclosed the donations as its income and it could not be disputed that all receipts, other than corpus donations, would be income in the hands of the assessee. There was, therefore, full disclosure of income by the assessee and also application of the donations for charitable purposes. It was not in dispute that the objects and activities of the assessee were charitable in nature, since it was duly registered under the provisions of section 12A. [Para 11]

For the aforesaid reasons, there was no merit in the appeal and no substantial question of law arose from order of the Tribunal. Therefore, the appeal was to be dismissed. [Para 12]

CASE REFERRED TO

S. Rm. M. Ct. M. Tiruppani Trust v. *CIT* [1998] 230 ITR 636/ 96 Taxman 635 (SC) [Para 9].

R.D. Jolly *for the Applicant.* **C.S. Aggarwal** and **Prakash Kumar** *for the Respondent.*

JUDGMENT

Madan B. Lokur, J. - The Appellant is aggrieved by an order dated 10th January, 2002 passed by the Income-tax Appellate Tribunal, Delhi Bench-A, New Delhi (for short 'the ITAT') in ITA No. 2827/Delhi/96 for the assessment year 1991-92.

2. The assessee is a charitable trust and its main activity is to provide medical advise to the poor and needy in various parts of Uttar Pradesh. It has mobile vans and its doctors visit remote villages in these mobile vans.

3. During the relevant previous year, the assessee received donations amounting to Rs. 18,24,200. The assessee was asked to furnish details of these donations, that is, the names and addresses of the donors and the mode of receipt of donations. It is noted in the assessment order dated 29th March, 1994 that the assessee was unable to satisfactorily explain the donations and the donors were perhaps fictitious persons. The Assessing Officer was of the opinion that the assessee had tried to introduce unaccounted money into its books by way of donations and, therefore, the amount of Rs. 18,24,200 was treated as cash credit under section 68 of the Income-tax Act, 1961 (for short 'the Act'). On this basis, the benefit of section 11 of the Act was denied to the assessee.

4. The assessee filed an appeal which was allowed by the Commissioner of Income-tax (Appeals) [for short 'CIT(A)'] by an order dated 23rd February, 1996. The CIT(A) was of the view that the Assessing Officer was not justified in treating the donations received as income under section 68 of the Act. The assessee had disclosed the donations as its income and had spent 75 per cent of the amount for charitable purposes. It was, therefore, held that the assessee had not committed any default. The CIT(A), consequently, directed the Assessing Officer to allow exemption to the assessee under section 11 of the Act and it was held that treating the donations of Rs. 18,24,200 as the income under section 68 of the Act was not correct.

5. The Revenue filed an appeal which came to be disposed of by the order under challenge.

6. The ITAT was of the view that since more than 75 per cent of the donations received by the assessee were spent in charitable purposes, the addition of Rs. 18,24,200 was not correct. The ITAT appears to have accepted the submission of learned counsel for the assessee that once a donation is received, it will be deemed to be received for a charitable purpose unless the donation was received towards the corpus of the trust.

7. Learned counsel for the Revenue submitted before us that essentially what the assessee was trying to do was to launder its black money or unaccounted income by converting it into donations and it should not be permitted to do so. On this basis, it was contended that a substantial question of law has arisen whether the order of the ITAT was correct in law.

8. We are afraid that it is not possible for us to agree with the submission of learned counsel for the Revenue and we are of the view that no substantial question of law arises for our consideration.

9. In *S. Rm. M. Ct. M. Tiruppani Trust* v. *CIT* [1998] 230 ITR 636[1] (SC), it has been held that under section 11(1) of the Act, every charitable or religious trust is entitled to deduction of certain income from its total income of the previous year. The income so exempt is the income which is applied by the charitable or religious trust to its charitable or religious purposes in India. This is, of course, subject to accumulation up to a specified maximum which, in the present case, was 25 per cent. In the appeal that we are concerned with, it has been found as a matter of fact that the assessee had applied more than 75 per cent of the donations for charitable purposes as per its objects.

10. To obtain the benefit of the exemption under section 11 of the Act, the assessee is required to show that the donations were voluntary. In the present case, the assessee had not only disclosed its donations, but had also submitted a list of donors. The fact that the complete list of donors was not filed or that the donors were not produced, does not necessarily lead to the inference that the assessee was trying to introduce unaccounted money by way of donation receipts. This is more particularly so in the facts of the case where admittedly more than 75 per cent of the donations were applied for charitable purposes.

11. Section 68 of the Act has no application to the facts of the case because the assessee had in fact disclosed the donations of Rs. 18,24,200 as its income and it cannot be disputed that all receipts, other than corpus donations, would be income in the hands of the assessee. There was, therefore, full disclosure of income by the assessee and also application of the donations for charitable purposes. It is not in dispute that the objects and activities of the assessee were charitable in nature, since it was duly registered under the provisions of section 12A of the Act.

12. For these reasons, we do not find any merit in the appeal. No substantial question of law arises. Dismissed.