

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCHES : "A" NEW DELHI**

**BEFORE SHRI H.S.SIDHU, J.M. AND
SHRI J.SUDHAKAR REDDY, AM**

**ITA No: 3722/Del/2012
AY : 2005-06**

ADIT (E)
Inv. Circle 1
Delhi

vs. All India Kataria Education Society
845, Ward no.6, Mehrauli
New Delhi

PAN: AAATK 0840 N

(Appellant)

(Respondent)

Appellant by : Sh. KK Jaiswal, D.R.

Respondent by : Sh.Tarun Rohatgi, C.A.

ORDER

PER J.SUDHAKAR REDDY, ACCOUNTANT MEMBER

This is an appeal filed by the Revenue directed against the order of Ld.CIT(A)-XII, New Delhi pertaining to the Assessment Year (A.Y.) 2005-06 dated 11.4.2012.

2. Facts in brief:- The assessee is registered under the Societies Registration Act vide Registration No. S-18172 of 1987. The assessee Society is also registered u/s 12A(a) of the Income Tax Act, 1961 (the Act) vide Registration No. DLI(c) 481/92 dated 28.10.1992. The assessee is engaged in running of a school in the name of K R Mangalam World School in Vikas Puri, New Delhi. The assessee society filed return of income declaring 'nil' income on

31.10.2005 along with audit report for the period ending 31.3.2005, Balance Sheet and details of Income and Expenditure.

2.1. The A.O. completed the assessment u/s 143(3) of the Act determining the taxable income at Rs.47,90,074/- inter alia making addition of Rs.46,30,000/- on the ground that the assessee has taken forced donations. Further an addition of Rs.24,88,000/- was made on the ground that loans and advances were extended by the assessee Society to persons covered u/s 13(3) of the Act.

3. Aggrieved, the assessee carried the matter in appeal. The First Appellate Authority allowed the appeal.

4. Aggrieved the Revenue is in appeal before us on the following grounds.

“1. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.46,30,000/- made by the A.O. on account of donations which were not voluntary but were linked to the admissions in schools of wards of donors simply because the AO had not allowed the cross examination of the donors who had stated that the donation had nexus with the admissions of their children by the assessee.

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in deleting the addition of Rs.24,88,000/- made by the A.O. on account of loan and advances to education society registered u/s 12A of the Act because the same could not be said to be utilization and application of funds for charitable purpose by the assessee.

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

5. We have heard Shri K.K.Jaiswal, Ld.D.R. on behalf of the Revenue and Shri Tarun Rohatgi, the Ld.Counsel for the assessee.

6. On a careful consideration of the facts and circumstances of the case, perusal of material on record, orders of lower authorities, case laws cited, we hold as follows.

7. The amount of Rs.46,30,000/- was added by the A.O. on the ground that the assessee has taken donations by force. The Ld.CIT(A) reversed this finding of the A.O. On the ground that statements were recorded from the donors behind the back of the assessee and that neither the donors nor their statements were confronted to the assessee Society. He held that no

opportunity was given to the assessee for cross examining them and thus statements recorded cannot be considered as evidence. The Ld.CIT(A) deleted the addition.

7.1. The Ld.D.R. relies heavily on the order of the A.O.

7.2. Before us Ld.Counsel for the assessee relies on the order of the Ld.CIT(A) and also relies on the following decisions.

(i) Dy.CIT vs. Vellore Institute of Technology (2011) 12 Taxmann.com 272 (Chennai) Madras 'D' Bench of ITAT

(ii) ACIT vs. Balaji Educational & Charitable Public Trust (2011), 15 taxmann.com 53 (Mad.)

(iii) CIT-IV, N.Del vs. Dharam Pal Prem Chand Ltd., 295 ITR 105 (Del)

(iv) ITO vs. Pawan Kumar Gupta (2011), 43 SOT 32 in ITA 4690/Del/2009 Delhi 'F' Bench of ITAT

(v) M/s Andaman Timber vs. Commissioner of Central Excise, Kolkata in Civil Appeal no.4228/2006 (S.C.)

8. On considering these decisions we find that the issues are covered in favour of the assessee and against the Revenue by the decision of the Madras Bench of the ITAT in the case of Dy.CIT vs. Vellore Institute of Technology (supra). The donations in question were already shown as income. Hence the question of addition of the same for a second time does not arise.

8.1. The Ld.D.R. could not controvert the recording of facts made by the Ld.CIT(A) at the last two paras of page 20 of his order. Hence we uphold the finding of the Ld.CIT(A). Thus ground no.1 of the Revenue is dismissed.

9. On ground no.2 we find that the assessee has advanced an amount of Rs.15 lakhs to M/s GEE DEE Education Society and Rs.9,88,000/- to K.R. Mangalam World School, G.K.II. The School K.R. Mangalam School, G.K.II is a school run by the GEE DEE Education Society. Thus the total amount in question has been advanced to M/s GEE DEE Education Society which is also a Charitable Society registered u/s 12A of the Act. The assessee has not claimed the loans so given, as utilizations of funds. There are certain common Members as Trustees of both the Societies. A perusal of S.13(3)

demonstrates that an advance given by the assessee to another educational society cannot be said to be to persons covered under this section. The assessee submits that the advances have since been refunded. Under these circumstances the addition made on the ground that there is violation of S.13(3) is factually incorrect and has been rightly deleted by the First Appellate Authority.

10. Ground no.3 is general in nature and dismissed.

11. In the result Revenue's appeal is dismissed.

Order pronounced in the Open Court on 26th April, 2016.

Sd/-
(H.S. SIDHU)
JUDICIAL MEMBER

Sd/-
(J.SUDHAKAR REDDY)
ACCOUNTANT MEMBER

Dated: the 26th April, 2016

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Copy of the Order forwarded to:

1. Appellant;
2. Respondent;
3. CIT;
4. CIT(A);
5. DR;
6. Guard File

By Order

Asst. Registrar