

**IN THE INCOME TAX APPELLATE TRIBUNAL
AGRA (SMC) BENCH: AGRA**

BEFORE SHRI A. D. JAIN, JUDICIAL MEMBER

**I.T.A No. 187/Agra/2016
(ASSESSMENT YEAR-2009-10)**

Dhirendra Pal Singh Institute of Higher Education Agra Road, Near Bye Pass Road, Mainpuri (U.P.) PAN No.AAZFS2787H (Assessee)	Vs.	JCIT-Range-3, Etah. (Revenue)
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Assessee by	Shri R. C. Tomar, AR.
Revenue by	Shri Waseem Arshad, Sr.DR.

Date of Hearing	31.05.2018
Date of Pronouncement	13.07.2018

ORDER

This is assessee's appeal for A.Y. 2009-10, taking the following grounds:

- “1. That assessment order u/s 143(3) passed on 05.12.2011 before the date of final hearing fixed for 09.12.2011 is illegal, against the principle of natural justice and such an order being ab-intio void be directed to be quashed.*

- 2. That the A.O. has failed to appreciate that the appellant society - receiver of the voluntary contribution has maintained a complete record in the form of donation register indicating the complete name and address of donor as per law and nothing more is required as per*

provision of sec. 115BBC as held by Hon'ble I.T.A.T. in the case of Hansraj Smarak Society vs. ADIT (Exmp.) 2012, 69 DTK 123 (Tribunal).

3. *That authorities below have erred in law in treating the donations of Rs. 9,53,600/- as anonymous by applying the provision of sec. 115BBC received by assessee's society enjoying registration u/s 12A. When donation register containing complete record identifying name and address of donor and donors available on the given address.*
4. *That A.O.'s action in treating the donation of Rs. 9,53,600/- as sustained by CIT(A) u/s 115BBC without bringing any adverse material on record by making a general remark that donation are not genuine or identifiable is arbitrary and illegal.*
5. *That the CIT (A) has erred on facts and in law sustaining the addition of Rs. 9,53,600/- as anonymous donation.”*

2. Apropos Ground Nos. 2 to 5, the facts of the case are that the assessee society/institution enjoys benefit of registration u/s 12AA of the IT Act since 2008.

The assessee institution received the following donations during the year:

“That Rs.4,04,597/-, donations received from the 25 persons, general donations to meet establishment and administrative exp. of Rs. 15,00,400/-. Donations for

specific purpose, i.e., for construction of college building.”

3. The AO, observing that these donations were anonymous donations, which were non-genuine, made addition u/s 68, treating the donations as unexplained cash credit and held that benefit of sections 11 & 12 could not be given, because the donations with specific purpose were not genuine and identifiable.

4. The Id. Counsel for the assessee has contended that (i) The assessee has invested Rs. 26,12,919/- on construction of college building and expenditure of Rs.3,58,973/- as per income and expenditure account for establishment and administrative expenses as per B/S & P&L A/c. (ii) Application of funds is more than the prescribed limit. The CIT (A) deleted the addition made by the AO u/s 68. However, he invoked the provisions of section 115BBC on the ground that for want of proper confirmations, the donations of Rs. 9,53,600/- out of total donations received for specific purpose at Rs. 19,05,000/- were treated as anonymous donations and he imposed tax @ 30% on such donations at Rs. 2,57,505/-.

5. The Id. Counsel for the assessee has contended that the finding of the CIT(A) is unsustainable. The receiver of the donations has maintained the register of donors indicating the names and addresses of the donors and their identity as well in the form of Voter Card, Bank account, etc. The CIT (A) has found and opined in his order that these donations have been spent on construction of college

building by observing that an amount of Rs. 26,12,919/- has been spent on construction and application of funds is more than the prescribed limit. Since the assessee has maintained complete record of donations received for specific purpose and the amount has been spent for the specific purpose for which it was received and the donations are further supported by the identity, complete name and addresses of the donors, the addition made by the CIT (A) after invoking the provisions of section 115BBC (2) is illegal. It has been held by the ITAT in the case of 'Hansraj Smarak Society Vs. Asstt. Director of Income tax (Exemptions)', 69 DTR (Del) Trib. 123, copy placed on record, that as per section 115BBC (3), the receiver of donation has to maintain identity including the name and address only. No addition can be made for anonymous donation on the ground that confirmations from the donors had not been filed. In view of donors' details containing complete name and address along with identity (placed as per paper Book Page No. 20 to 93), which were produced both before the AO and the CIT(A), the addition maintained by the CIT (A) on the ground that proper confirmations have not been filed, is illegal and it may be directed to be deleted.

6. The ld. DR has placed strong reliance on the impugned order.

7. Heard. The assessee is an education institution. Voluntary contributions received by such an institution can be brought to tax under the provisions of section 115BBC of the IT Act. Section 115BBC (1) pertains to tax payable on

income by way of anonymous donation. Section 115BBC(3) defines ‘anonymous donation’ to mean any voluntary contribution where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person who has made such contribution and such other particulars as may be prescribed.

8. The Id. CIT(A) has held as follows:

“The only issue which needs consideration is the issue of applicability of provisions as contained in section 115BBC. As per that section if income of an assessee being a person in receipt of income on behalf of any trust or institution included any income by way of anonymous donations the income tax payable shall be aggregate of;

(i) Amount of income tax calculated @ 30% on the total anonymous donations received in excess of 5% of the total donations received by the assessee.

(ii) The amount of income tax which the assessee would have been chargeable had total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in (i) above.

Further, clause 3 of section 115BBC clarifies that anonymous donation means any voluntary contribution where a person receiving such contribution does not maintain record of the identity indicating the name and address of the person making

such contribution and such other particulars as may be prescribed. Considering that the appellant has not able to file proper confirmations, it can be assumed that these donations are anonymous, but, at the same time it has to be noted that the appellant has maintained the details like name and address and documents regarding the identity of the donors. Accordingly, the appellant was directed to prepare a list of such donors of whom documents regarding identity i.e., voter Id. PAN card etc. are available. It is seen that in respect of donations of Rs.9,51,400/-, there are documents to establish the identity of the donors. Therefore, in view of the provisions of section 115BBC such donations cannot be subjected to tax u/s 115BBC. Therefore only donations of Rs.9,53,600/- (Rs.19,05,000/- - Rs.9,51,400/-) can be treated as anonymous donations for the purpose of section 115BBC. The additional income tax chargeable u/s 115BBC would be computed as under:-

5% of the donations of Rs.19,05,000/- = 95,250/-

Anonymous donations in excess of Rs.95,250/- = 9,53,600/- (-)

95,250/- = 8,58,350/-

30% of donation of Rs.8,58,350/- = Rs.2,57,505/-

Accordingly, the AO is directed to charge tax of Rs. 2,57,505/- along with the applicable interest.”

9. Section 115BBC is unambiguous. It mandates that a voluntary contribution is an anonymous donation, if the recipient thereof does not maintain:

- i. record of the identity indicating the name and address of the person making such contribution, and
- ii. such other particulars as may be prescribed.

10. Indisputably, no particulars, other than the name and address of the contributor, have been prescribed. Before the Id. CIT(A), the assessee filed written submissions. These have been reproduced in para 4 of the impugned order. In point (1) (impugned order, page 7), the assessee stated to have maintained a complete list of the names and addresses of its contributors. The Id. CIT(A) does not dispute this. The Id. CIT(A), as available from the above-extracted relevant portion of his order, has treated contributions amounting to Rs.9,53,600/- as anonymous donations, as voter IDs and PANs, etc., concerning the contributors of this amount were not available and the assessee had also not filed proper confirmations. The Id. CIT(A) has, while doing so, applied the provisions of section 115BBC of the Act.

11. I am not in agreement with the CIT(A)'s treatment of the amount of Rs.9,53,600/- as anonymous donations. The assessee had, undisputedly, furnished the list (APB20-21) of the names and addresses of all the contributors, duly complying with the requirements of section 115BBC(3). There is no further requirement in the section. No other particulars have been shown to have been further prescribed.

12. In 'Sri Girraj Education and Welfare Society vs. ITO', 151TTJ 260, it has been held that section 115BBC(1) will not apply, if complete names and address of the donors are given. This decision was also relied on by the assessee before the Id. CIT(A). It stands noted at page 7 of the impugned order. It has not been dealt with by the Id. CIT(A). Before this Bench, no decision contrary to this decision has been cited.

13. Therefore, the grievance of the assessee is accepted as justified. The order under appeal is reversed and the addition of Rs.9,53,600/-, as sustained by the Id. CIT(A), is cancelled.

14. In the result, the appeal is allowed.

Order pronounced in the open court on 13/07/2018.

**Sd/-
(A.D. JAIN)
JUDICIAL MEMBER**

AKV

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR