

**INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "E": NEW DELHI**

**BEFORE SHRI AMIT SHUKLA, JUDICIAL MEMBER
AND
SHRI L.P. SAHU, ACCOUNTANT MEMBER**

ITA No.:- 5245/Del/2015
Assessment Year: 2011-12

DCIT(E) Circle-1(1) New Delhi.	Vs.	Maharaja Agrasen Technical Education Society, 10/4, East Punjabi Bagh, New Delhi-110 026 PAN AABTD1286A
(Appellant)		(Respondent)

C.O. No. 375/Del/2015
Assessment Year 2011-12

Maharaja Agrasen Technical Education Society, 10/4, East Punjabi Bagh, New Delhi – 110 026 PAN AABTD1286A	Vs.	DCIT(Exemption) Circle 1(1) New Delhi.
(Appellant)		(Respondent)

Department by:	Shri Sujit Kumar, Sr.DR
Assessee by :	Shri R.S. Singhvi, CA
Date of Hearing	05/07/2018
Date of pronouncement	17/07/2018

ORDER

PER AMIT SHUKLA, J.M.

The aforesaid appeal has been filed by the revenue and cross objection by the assessee against impugned order dated 9.6.2015,

passed by Ld. CIT (Appeals) 40 (Exemption) New Delhi for the quantum of assessment passed u/s 143(3) for the assessment year 2011-12. In the grounds of appeal revenue has raised following grounds:-

1 "On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that the so called donations does not fall in the category of anonymous donation in terms of provisions of section 115BBC(1) and will not be liable to tax u/s 115BBC of the Act, 1961..

2. On the facts and in the circumstances of the case and in law, the Ld.CIT(A) has erred in holding that the assessee has discharged its onus by filling relevant details and document ignoring that a facade of paper identity is created with a false motive.

3. On the facts and in the circumstances of the case and in law, the Ld. CIT(A) has erred in holding that just filing of ITR details including P&L a/c and balance sheet is sufficient to prove the identity and genuineness of the donor in terms of provisions of section 115BBC of the Act."

2. Facts in brief are that the assessee trust has been running management and engineering colleges and since it was carrying educational activities which was covered within the definition of 'charitable purposes' as defined u/s 2(15), it was granted registration u/s 12AA vide order dated 26.4.2007. Resultantly, assessee's income was to be computed u/s 11 & 12 and benefit of exemption and the consequential benefits were allowable to the assessee. The AO noted that during the year under consideration the assessee has received donations for sums aggregating to Rs.2,05,00,000/-, the details of which are as under :-

(i)	Krac Securities (P) Ltd.	Rs. 12,00,0000/-
(ii)	Mayfair Infosolutions(P) Ltd.	Rs. 11,00,000/-
(iii)	Shri Bhawani India (P) Ltd.	Rs. 20,00,000/- & Rs. 21,00,000/-
(iv)	Acuman Compusoft (P) Ltd.	Rs. 7,00,000/-
(v)	Radha Madhav Agrotech (P) Ltd.	Rs. 25,00,000/- & Rs. 21,00,000/-
(vi)	S.K.M India (P) Ltd.	Rs. 15,00,000/-
(vii)	Anupam Buildmart (P) Ltd.	Rs. 11,00,000/-
(viii)	Sapphire Commercials (P) Ltd.	Rs. 31,00,000/-
(ix)	Zoom Building Material (P) Ltd.	Rs. 25,00,000/- & Rs. 6,00,000/-
	<hr/> Total amount of above donations	Rs. 2,05,00,000/-

3. Ld. AO carried out inquires to find out whether the donations were anonymous or not in terms of section 115BBC. In response to the show cause notice the assessee has filed confirmation from all the above companies' alongwith the other requisite details like balance sheet, profit and loss account and copy of income tax returns etc. However the AO required the assessee to produce the Directors of all the companies which assessee could not produce. Thereafter summons u/s 131 were issued to the Directors and Inspector of Income Tax was also deputed to serve the summons. However, as noted by the AO, the ITI could not serve the summons on any of these companies as they were not found to be functioning at the given addresses. When confronted with this fact, the assessee provided new addresses of some of the companies and again summon were issued by the AO but the said summons could not be served as they were not found on the addresses so provided. All the details of enquiry conducted have been noted by the AO in para 3.1 of the order.

Thereafter, the Ld. AO observed that these 9 companies were nothing but front companies of accommodation entry operators and also discussed how the accommodation entry operators operate through such companies. He further noted that the AOs of these companies were requested to send copies of ITRs and the documents, however it was reported to him that none of these companies were subjected to scrutiny and only the copies of their returns were filed online. As required by the AO, the assessee filed copies of balance sheet profit and loss account and other documents. The AO from such documents noted that the donors have directly reduced donations from the capital or reserves instead of from their profit and loss account. He had also examined independent bank statements and the various entries of debit and credit and thereafter after detailed discussion he held that all the donations are anonymous donations fall within the ambit of section 115BBC. Accordingly, he made the addition after observing and holding as under:-

“3.9. I am therefore, constrained to hold that assessee has not maintained necessary records indicating the identity of the donors in respect of donations of Rs. 2,05,00,000/- in terms of section 115BBC of the Income Tax Act, 1961. During the year the assessee has received total donations of Rs. 11,91,69,600/-. Five percent of total donations come to Rs. 59,58,480/- and anonymous donations of Rs. 2,05,00,000/- are in excess of this amount by Rs. 1,45,41,520/-. Therefore, anonymous donations of Rs. 1,45,41,520/- are chargeable to tax u/s 115BBC r/w section 13(7) of the Income Tax Act, 1961.”

4. Ld. CIT (A) has deleted the addition after observing and holding as under:-

“4.4 I have considered the order of the AO and the submissions of the assessee. It is apparent that the assessee has claimed the receipt to the extent of Rs. 11,91,69,600/- from 120 parties out of which the AO has treated the donation from 9 parties as anonymous donations to the extent of Rs. 2,05,00,000/- merely on the ground that the AO could not get the confirmation from the above 9 parties and has made the addition u/s 115BBC(1). There is merit in the submissions of the assessee that the AO is not justified to invoke the provision of section 115BBC(1) as all the relevant details and documents of the donors were submitted before the AO and as such the same cannot be treated as anonymous donation and as such the AO is not justified to make the addition u/s 115BBC(1)

4.5 However, since the AO had made the necessary enquiries and the whereabouts of the donors could not be confirmed by the AO during the course of assessment proceedings and as such the AO will be justified to make the addition u/s 68 as the explanation of the assessee is not satisfactory but at the same time the assessee will be eligible for exemption u/s 11(1) as the income has been applied for charitable purposes and this view is supported by the cases relied on by the assessee.

4.6 After considering all the facts and circumstances of the case, I am of the view that the addition made by the AO is justified and is confirmed u/s 68 only but at the same time the assessee will be eligible for exemption u/s 11(1) as the same has been applied for charitable purposes and as such the appeal of the assessee is allowed partly.”

5. Before us, Ld. Sr. DR submitted that AO has very exhaustively discussed that, not only these companies were found to be

untraceable on the given addresses but also the entire transaction bear the true characteristics of accommodation entry given by such companies operated by accommodation entry operators. AO has also examined pattern of amount and the manner in which the amounts have been routed in the bank statement of these companies and the amount which was given as donation in favour of the assessee. Though the amounts have been received from various bank accounts into the account of these companies from where cheques have been issued in favour of the assessee. However, the entries show that they are typically managed by entry operators. Thus, AO has rightly taxed the donation u/s 115BBC.

6. Before us Ld. Counsel for the assessee submitted that, to fall within the mischief of section 115BBC for taxing the anonymous donation is that, the person receiving the voluntary contribution does not maintain a record of identify indicating the name and address of person making such contribution and such other particulars as may be prescribed. Here in this case the assessee has provided all the details of the concerned parties, name, identity, PAN nos., copy of audited balance sheet, income tax returns and copy of resolution of the Board of Directors. Thus, it cannot be said that the donation has given from anonymous donors. Ld. CIT (A) in the impugned order has noted that at the most this addition could have been made u/s 68 but as long as assessee is eligible for exemption u/s 11(1) if the amount has been applied for charitable purpose, then the same could not have been added.

7. We have heard the rival submissions and also perused the relevant material placed on record. The provision of section 115 BBC under which the aforesaid donations received from nine corporate entities which have been added, reads as under:-

“115BBC. (1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiiae) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of—

- (i) the amount of income-tax calculated on the income by way of any anonymous donation, at the rate of thirty per cent; and
- (ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

[The following clauses (i) and (ii) shall be substituted for the existing clauses (i) and (ii) of sub-section (1) of section 115BBC by the Finance (No. 2) Act, 2009, w.e.f. 1-4-2010:]

(i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—

(A) five per cent of the total donations received by the assessee; or

(B) one lakh rupees; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received.

(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by—

(a) any trust or institution created or established wholly for religious purposes;

(b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

(3) For the purposes of this section, “anonymous donation” means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating

the name and address of the person making such contribution and such other particulars as may be prescribed.”

8. The aforesaid section provides that any income by way of anonymous donation shall be taxed in the manner provided in clause (i) and (ii) of sub section (1). Sub section (3) mainly provides the meaning of ‘anonymous donation’ which has been defined as voluntary contribution, where the person receiving such contribution does not maintain any record of the identity indicating the name and address of the person making such contribution and such other particulars as maybe prescribed. Ostensibly in the present case the assessee has given the identity by giving the name and address of the corporate of the companies who have given the donations and not only that, their copy of the audited balance sheets, profit and loss account, income tax return, bank statement, etc., has been provided of all the 9 corporate entities and their return before the Registrar of the Companies. Hence the conditions which have been laid down in sub section 3 and onus which is cast upon the person receiving the donation has been fully discharged. The entire case of the AO is that the donation received by the assessee trust by these companies were in fact were operated by accommodation entry providers and they do not have much income and the bank statement revealed that the amounts even come in their bank account from various bank accounts which has been inferred by the AO that assessee must have routed its unaccounted money through various donors in order to get donation. Such observation perhaps would have been relevant if the same would have been scrutinised u/s 68. Here the provision clearly states only the anonymous donation should be taxed and if the donations have been come from known sources, then it cannot be treated as anonymous donations, therefore, the Ld. CIT(A) has rightly held that

the donation received by the assessee cannot be taxed u/s 115BBC(I) . The other observation of the Ld. CIT (A) was that AO is justified for making such addition u/s 68, however still the assessee will get exemption u/s 11, because the same have been applied for charitable purpose. This finding has become purely academic which does not require any adjudication.

9. In the result appeal of the revenue is dismissed on the reasons given above.

Cross Objection No. 375/Del/15

In view of the finding given above, the Cross Objection of the assessee is treated as infructuous. The same is dismissed.

Order pronounced in the Open Court on 17th July 2018.

sd/-

**(L.P. SAHU)
ACCOUNTANT MEMBER**

Dated: 17/07/2018

Veena

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

sd/-

**(AMIT SHUKLA)
JUDICIAL MEMBER**

ASSISTANT REGISTRAR
ITAT, New Delhi