

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH 'G', NEW DELHI**

Before Sh. N. K. Saini, AM and Ms. Suchitra Kamble, JM

ITA No. 2497/Del/2013 : Asstt. Year : 2007-08

Shree Bankey Bihari Educational Society (Regd.), NH-24, Near Masuri Canal, Dasna Mauri, Ghaziabad-201302	Vs	Addl. CIT, Range-2, Ghaziabad
(APPELLANT)		(RESPONDENT)
PAN No. AADTS4243G		

Assessee by : Sh. Akhilesh Kumar, Adv.

Revenue by : Sh. Kaushlendra Tiwari, Sr. DR

Date of Hearing : 29.05.2018	Date of Pronouncement : 03.08.2018
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ORDER

Per N. K. Saini, AM:

This is an appeal by the assessee against the order dated 31.10.2012 of the Id. CIT(A), Ghaziabad.

2. The Registry has pointed out that there is a delay in filing the appeal. The assessee moved an application dated 25.04.2013 for condonation of delay stating therein as under:

"1. That the appellant filed an appeal in form 35 on dated 22.1.2010 against the order u/s 143(3) of the Income Tax Act, 1961 before the Commissioner of Income Tax (Appeal), Ghaziabad.

2. That the appellant submitted following correspondence address in form 35:

*Shree Bankey Bihari Educational Society
N. H. 24, Near Masuri Canal,
Ghaziabad UP 201302*

3. *That the appeal was heard on dated 29.10.2012 and kept for orders.*

4. *That in the m/o March 2013, the appellant received on dt. 19.3.2013, one notice dt. 13.3.2013 from the AO which indicated that CIT (A), Ghaziabad had passed appeal order on dt. 31.10.2012.*

5. *That the appellant moved an application dt. 25.03.2013 before the CIT (Appeal), Ghaziabad for providing copy of the appeal order, however, the office of the CIT (A) verbally informed that one copy of the appeal order was issued to CA Pramod Goel on dt. 30.11.2012 when he came to office for some other work and advised to contact CA Pramod Goel.*

6. *That the appellant immediately contacted CA Pramod Goel to inquire about the copy of the appeal order who replied that as he is busy in time barring matters till 31.3.2013 and will be able to reply only after 31.3.2013. On 2.4.2013, the appellant again contacted CA Pramod Goel, who stated that on 30.11.2012, when he was in the income tax office for some office work, office of the CIT (A) gave them copy of the appeal order dated 31.10.2012 and as he was very busy during that time, he forgot to send copy of the same to appellant and gave the copy of the appeal order to appellant on dt. 2.4.2013.*

7. *That though the impugned order was passed on dt. 31.10.2012 however the copy of the appeal order was not sent to appellant on the above mentioned address in form 35 after passing the appeal order on 31.10.2012 and the same was handed over to CA Pramod Goel on 30.11.2012 i.e. after one month of passing the order.*

8. *That the appellant, on receipt of copy of order on 2.4.2103, immediately filed the appeal before the Hon'ble Tribunal.*

9. *That the appellant was taking all due care and was always pursuing the legal remedies available and there is no*

intention to commit delay in filing the appeal or delay the due process of law.

10. That the appellant will suffer irreparable loss and injury if the delay is not condoned.

11. Reliance is placed on the order of the Supreme Court in the case of Collector, Land Acquisition, Anantnag Vs Katiji (AIR 1987 SC 1353). The principle laid down by the Supreme Court must be liberally followed. The appellant has not benefitted by filing the appeal late and refusal to condone delay will result in a meritorious matter being thrown out at the very threshold and cause of justice being defeated.”

PRAYER

12. That it is prayed that in view of the above factual and legal submissions, the delay in filing appeal may please be condoned.

Sd/-

(Ganga Saran Sharma)

Chairman

Shree Bankey Bihari Education Society

Appellant

I, Ganga Saran Sharma, Chairman of Shree Bankey Bihari Educational Society, the Appellant do hereby declare that what is stated above is true and correct to the best of my knowledge and belief.

Verified, today the 25th day of April, 2013

Sd/-

(Ganga Saran Sharma)

Chairman

Shree Bankey Bihari Education Society

Appellant

3. In support of the above application, the assessee also furnished an affidavit dated 15.04.2013 of CA Pramod Kumar, Chartered Accountant, its counsel which reads as under:

"I, CA Pramod Kumar s/o Late Sh. J.P. Goel, age 45 years r/o SD-373, Shastri Nagar, Ghaziabad do hereby solemnly affirm and state as under :-

1. That I represented the appellant Shri Bankey Bihari Educational Society before the Commissioner Of Income Tax (Appeal), Ghaziabad in income tax appeal for AY 2007-08.

2. That the appeal was heard on 29th October, 2012 and file was kept for orders.

3. That on 30th November, 2012, I visited the CIT(A), Ghaziabad office for some work and on that day I was served with the copy of the appeal order dt. 31.10.2012 in the income tax appeal of the appellant for AY 2007-08.

4. That as I was very busy during that time, I forgot to convey message of receipt of appeal order to the appellant.

5. That in the last week of March, 2013, the appellant contacted me and enquired about the copy of the appeal order. As I was busy in time barring matters, I asked them to contact me in April 13.

6. That on 2.4.2013, the appellant again contacted me and I gave them the copy of appeal order as served to me by the office of CIT(A), Ghaziabad on 30.11.2012."

*Sd/-
Deponent*

Verification

I, the above named deponent do hereby verify that the contents in para 1 to 6 above are true and correct to the best of my knowledge and belief and nothing material has been concealed from.

Verified at Ghaziabad on this 15th day of April 2013.

*Sd/-
Deponent*

4. During the course of hearing, the Id. Counsel for the assessee submitted that the delay occurred due to the mistake of the Counsel of the assessee who did not handover copy of the order and that the order was not served by the Id. CIT(A) at the address of the assessee rather it was given to the Counsel who inadvertently did not serve the same to the assessee. He requested to condone the delay. The reliance was placed on the following case laws:

➤ *Vijay Vishin Meghani Vs DCIT 398 ITR 250 (Bom.)*

5. In his rival submissions, the Id. Sr. DR opposed the application for condonation of delay and submitted that the order was served upon the Counsel for the assessee within the time but the appeal was not filed in the stipulated time, therefore, the delay may not be condoned. However, he admitted that the impugned order was not served at the address of the assessee but was given to the Counsel for the assessee.

6. After considering the submissions of both the parties and the material on record, it appears that the delay in filing the appeal in this case occurred due to mistake of Counsel for the assessee for which the assessee is not responsible.

7. On a similar issue, the Honøble Bombay High Court in the case of *Vijay Vishin Meghani Vs DCIT 398 ITR 250 (Bom.)* (supra) held as under:

“The assessee filed appeals with a delay of 2984 days before the Appellate Tribunal for the assessment years 1994-95 and 1996-97, against the decision of the Commissioner (Appeals) denying the deduction claimed under section 80-O of the Income-tax Act, 1962. The

assessee submitted an affidavit stating that he followed the advice given by his chartered accountant not to file further appeals before the Tribunal for the assessment years 1994-95 and 1996-97, as the issue involved was identical to the appeal filed before the Tribunal for the assessment year 1993-94, which was then pending before the Tribunal, to avoid multiplicity of litigation and that after the adjudication of appeal for the assessment year 1993-94 by the Tribunal, he could move a rectification application before the Assessing Officer to bring the assessment order in conformity with the decision of the Tribunal. In support of the averments made in the affidavit, the assessee also filed an affidavit by one of the partners of the firm of chartered accountants. The Tribunal dismissed the appeal in limine and observed that a chartered accountant could not have given an absurd advice. The affidavit filed by the firm of chartered accountants was rejected. The affidavit filed by the assessee was also rejected on the ground that it gained strength only from the affidavit filed by the firm of chartered accountants. It held that the assessee had failed to show the reasons for the entire period of delay, i.e., no reason was given for the delay that occurred between periods and therefore, the delay in filing the two appeals could not be condoned.”

It has further been held as under:

“That none should be deprived of an adjudication on the merits unless the court or the Tribunal or appellate authority found that the litigant had deliberately and intentionally delayed filing of the appeal, that he was careless, negligent and his conduct lacked bona fides. Those were the relevant factors. The Tribunal's orders did not meet the requirement set out in law. It had misdirected itself and had taken into account factors, tests and considerations which had no nexus to the issues at hand. The Tribunal, therefore, had erred in law and on the facts in refusing to condone the delay. The explanation placed on affidavit was not contested nor could it have been concluded that the assessee was at fault, that he had

intentionally and deliberately delayed the matter and had no bona fide or reasonable explanation for the delay in filing the proceedings. The position was otherwise.”

8. In the present case also, the delay occurred due to wrong advice of the Id. Counsel for the assessee and there was no malafide intention of the assessee in filing the appeal belated. In our opinion, the explanation given by the assessee is plausible, therefore, the delay is condoned and the appeal is admitted.

9. Following grounds have been raised in this appeal:

“1. That the CIT(A) has erred on facts and in law in confirming the addition of Rs.15,00,000/- made by the AO by treating the donation of Rs.15,00,000/- from m/s Nav Jyoti Vikas Sansthan as unexplained cash credit u/s 115BBC/68 of the I. Tax Act, 1961.

2. That the CIT(A) has erred on facts and in law in not allowing benefit of application of provisions of section 11 & 12 of the I. Tax Act, 1961 as the sum of Rs.15,00,000/- was fully applied for charitable purpose pursued by the appellant.

3. That the CIT(A) has erred in not passing a speaking order and not giving reasons for rejecting various contentions raised by the appellant before him.

4. That the CIT(A) has erred in not following various judgments relied upon by the appellant.

Appellant craves leave to add, amend or delete any of the grounds of appeal.”

10. From the above grounds, it is gathered that the only grievance of the assessee relates to the confirmation of addition of Rs.15,00,000/- made by the AO by treating the same as unexplained cash credit.

11. Facts of the case in brief are that the assessee society is engaged in running of a Dental Collage and Research Centre set up at Dasna Masuri, Ghaziabad. It was granted registration u/s 12AA of the Income Tax Act, 1961 (hereinafter referred to as the Act) on 14.06.2002 and thereafter approval u/s 80G of the Act was granted vide order dated 23.05.2007. The assessee filed the return of income on 17.07.2007 declaring Nil income which was processed u/s 143(1) of the Act. Later on, the case was selected for scrutiny. During the course of assessment proceedings, the AO noticed that the assessee had shown in the details of corpus funds an amount of Rs.71,10,000/- out of which major amount was received from M/s VIC Enterprises Pvt. Ltd., Punjabi Bhawan, 10 Rouse Avenue, New Delhi, amounting to Rs.50,00,000/- and from M/s Navjyoti Vikas Sansthan, 66, New Mohanpuri Colony, Meerut amounting to Rs.15,00,000/-. The balance donation had been received from the different persons, below Rs.20,000/- from each donor. The assessee although furnished the confirmation letters from the donors, however, the AO sought information u/s 133(6) of the Act vide letter dated 05.01.2009. The donor M/s VIC Enterprises Pvt. Ltd. had given its confirmation vide letter dated 22.01.2009 along with the copies of its profit and loss account, balance sheet, copy of bank account & audit report etc. However, no confirmation was received from M/s Navjyoti Vikas Sansthan. Subsequently, a computerized confirmation was received. Thereafter, the AO traced bank account through the cheque drawn by the society, issued by M/s Nav Jyoti Vikas Sansthan and called the information u/s 133(6) of the Act from Nainital Bank, Ghaziabad. On perusal of the bank account, the AO noticed that before issuance of cheque, funds were credited by transfer entry by M/s Navjyoti Vikas Sansthan vide cheques issued by Mahamedha Co-operative Bank. The AO also called information from Mahamedha Co-operative Bank with the name and complete address of the banks from where those cheques

were cleared/deposited in the bank account of Navjyoti Vikas Sansthan. The AO noticed that the maximum cheques were received from M/s Varun Trade Centre and M/s Sharma Associates which were operated by Sh. Vineet Kumar. The AO also noticed that the cash was directly deposited in the account of M/s Varun Trade Centre and M/s Sharma Associates and the same were subsequently transferred to M/s Navjyoti Vikas Sansthan and other concerns. The AO pointed out that when inquiry was made on the given addresses of those accounts holders, it was found that the addresses given in the account opening form were bogus and no person was residing on the given address. The AO after gathering those facts, summoned the Secretary of the assessee Society and one of the joint holder of bank account of Sh. Devendra Singh and recorded their statements on oath. In their statements, they stated that all these transactions were not in their knowledge, it was also stated that Sh. Sandeep Garg, Income Tax Practitioner and Sh. Vinod Dixit had promised to pay 10% commission of entire transaction for providing entry through this bank account and therefore, Secretary of the Society Sh. Madan Giri and Sh. Devendra Singh Chauhan had given them blank signed cheques for the above purpose. Both the persons had given affidavit to this effect. The AO pointed out that the accountholders of the society stated that the society, M/s Navjyoti Vikas Sansthan had no income and no donation had been given to any society because there was no source of income of the society as the society was not doing any activity. The AO also summoned Sh. Vinod Dixit and Sh. Sandeep Garg and confronted them with the aforesaid statements and affidavits. Both of them had given a letter that the Secretary of Society approached them for taking their advices on giving entries to the parties in cheque in lieu of cash. Ultimately, both of them advised not to participate in any transaction because those activities were against law. They denied all the allegations made against them in the affidavits. The AO asked the assessee to show-cause as under:

"1. As per balance sheet a donation of Rs.15,00,000/- have been shown as received from Navjyoti Vikas Sansthan, 66, New Mohanpuri Colony, Meerut, through cheque. The necessary statement of the secretary of M/s Navjyoti Vikas Sansthan has already been taken on 2.9.2009 by the undersigned. The Secretary Sh. Madan Giri, S/o Late Sh. Nanak Giri, has denied to give any donation to your society. Please show cause as to why the amount of Rs.15,00,000/- may not be added in your total income being anonymous donation as per provisions of Section 115BBC of the IT Act, 1961.

2. You are further required to show cause as to why the difference of cost of construction declared by you and the cost of construction estimated by the Valuation Officer amounting to Rs.8,62,646/- may not be added in your total income as unexplained investment in construction of college building.

3. Please produce all books of accounts, bills & vouchers, bank pass book for the A.Y. 2007-08."

12. Since, there was no compliance to the aforesaid notice, the AO again issued a show-cause notice dated 27.11.2009 as under:

"In this connection, Notices u/s 143(2) & 142(1) were issued and served. On the dates so fixed your authorised representative Shri Pramod Goel, FCA, attended the proceedings from time to time and furnished necessary details as called for which have been examined.

2. During the course of assessment proceedings it was noticed that donation of Rs. 15,00,000/- has been shown as received from Nav Jyoti Vikas Sansthan, 66, New Mohanpuri Colony, Meerut, through cheque. The necessary statement of the secretary of M/s Nav Jyoti Vikas Sansthan has already been taken on 2.9.2009 by the undersigned. The Secretary Shri Madan Giri S/o Late Shri Nanak Giri, has denied to give any donation to your society. In this regard the bank account of M/s Nav Jyoti Vikas Sansthan, was also obtained and on inquiry it was found that the cheque had been received on transfer from other bank account. The credence of M/s Nav Jyoti Vikas Sansthan was inquired into and it was found " that the society was not registered u/s 12A of IT Act. It is further found that the exemption was also denied by the Ld. CIT, Ghaziabad, to the society.

The inquiry revealed that account holder of M/s Nav Jyoti Vikas Sansthan is Shri Madan Giri and Shri Deven Chauhan whose statement have been recorded and placed on record. On further inquiry, from the bank it was found that the transfer entry credited, was received from M/s Varun Trade Centre. It was further found that the case was directly being deposited in the account of M/s Varun Trade Centre and subsequently transferred to M/s Nav Jyoti Vikas Sansthan.

3. Considering these facts/issues, when the statements of Shri Madan Giri & Shri Deven Chauhan were recorded, both persons have stated that their bank account have been mis-utilized. Their society does not have any source of income to give such heavy donation and these were only book/bank entries in greed of getting commission of 10% in lieu of such entries. As the source is not explained by Shri Madan Giri, the secretary of M/s Nav Jyoti Vikas Sansthan, and the so called society is also not filing its return of income regularly, the statement of account holder of society stating that these are mere book entry in lieu of commission, the ultimate the source of deposit in the book of M/s Nav Jyoti Vikas Sansthan is cash deposits and the confirmation submitted by you from the above sodety has also been denied by the secretary of the society.

4. In view of above, you are required to explain as to why the above so called donation of Rs. 15,00,000/- may not be treated as non genuine and bogus. In view of all above facts and circumstantial evidences an opportunity is being given to cross examine the secretary of the society Shri Madan Giri and to obtain/inspect all the affidavits given by the above persons/copies of statements/documents and copies of bank account relied upon by the Department on or before 8.12.2009.

5. The difference of cost of construction declared by you and the cost of construction estimated by the Valuation Officer amounting to Rs.8,62,646/- may not be added in your total income as unexplained investment in construction of college building.

6. Please note that this is time barring case, in case of non compliance assessment proceeding will be finalized on the facts and circumstances of the case without providing you further opportunity

and adding in your total income, the bogus donation of Rs. 15,00,000/- and difference in the investment in construction of building as shown by you and valued by DVO amounting to Rs. 8,62,646/-.”

13. In response, the assessee submitted as under:

“That at the outset we wish to submit that the donation of Rs.15,00,000/- received from M/s Nav Jyoti Vikas Sansthan is genuine and was received from them. The assessee maintained complete record of the identity indicating the name & address of the donors making such contributions during the year under consideration and such details and other relevant documents of all the donations received during the year were produced before your goodself, Sh. Madan Giri, secretary of M/s Nav Jyoti Vikas Sansthan was cross examined and his statement was recorded on 16.12.2009. Sh. Madan Giri confirmed in his statement that his signatures are genuine and he has not received any cash against the donation given, Sh. Madan Giri is a highly educated and professionally qualified person and has very long experience as lawyer for more than 30 years. He has now concocted a story that he was influenced by others and they misused the account of the society. The allegations made by him are totally false and we deny the same. Independent enquiries from Mr. Vinod Dixit and Mr. Sandeep Garg were also made by your goodself in this regard. In reply, Mr. Vinod Dixit and Mr. Sandeep Garg in their representation filed on 30,11.2009 before you has categorically denied allegations made by Mr. Madan Giri and Mr. Devendra singh, in their statements and affidavits filed before you. Thus, the allegations/denials made by Mr. Madan Giri and Mr. Devendra Singh are totally false and have been made with a prejudice mind. In these circumstances and in view of the documents filed before your goodself, records containing details of donation maintained by the assessee and filed before you, we submit that the donations received is genuine and was utilized for the charitable purposes. Thus in view of these facts and submissions made earlier, it is prayed that the donation of Rs. 15,00,000/- should not be treated as anonymous and may be accepted as genuine.”

14. The AO, however, did not find force in the submissions of the assessee by observing as under:

“a) Shri Madan Giri, Secretary of the society M/s Nav Jyoti Vikas Sansthan, has clearly stated in his statement on oath given by him on 2.9.2009 that I have totally ignorant from the society M/s Bankey Bihari Educational Society to which the donation of Rs. 15,00,000/- was shown as given.

b) Shri Devendra Singh Chauhan who is also the joint account holder of the bank account of the above society, has also denied in his statement on oath taken on 2.9.2009.

c) Both of them have stated that the letter pad of our society was misused by Shri Vinod Dixit & Shri Sandeep Garg, who are Income Tax Advocates, for giving the entry of donation to desired societies through our bank account and in lieu of this act, they have promised to give 10% commission on this type of entries.

d) Shri Madan Giri was residing at Meerut and the account of the society was opened at Ghaziabad whereas the head office of the society was also at Meerut.

e) No return of income was filed by the society because as per statement of the secretary no activities were done by the society.

f) As per bank account of the society M/s Nav Jyoti Vikas Sansthan, having Account No. 1002078 at Nainital Bank Ltd., 35, Additional Sihani Gate, Ghaziabad, which was opened on 21.2.2006 with the cash deposit of Rs. 5,000/- and upto 16.9.2006, the total transaction of Rs.1,81,05,000/- was made and finally the balance amount of Rs.3,593/- was withdrawn and no further transaction was made in this account till date.

g) When the inquiry of clearing cheque was made, it has been found that most of the cheques are coming from the account of Shri Vinod Kumar Gupta Prop. M/s Varun Trade Centre and M/s Sharma Associates who has his bank account at Mahamedha Urban Cooperative Bank Ltd., Ghaziabad.

h) The cash was deposited in the above account and transferred to the account of Nav Jyoti Vikas Sanshan which has further issued cheques to various persons including M/s Bankey Bihari Educational Society.

i) The capacity and creditworthiness of M/s Nav Jyoti Vikas Sansthan has not been established.

j) As far as cross examination is concerned, it is to point out that leading questions were asked by the counsel which were incomplete in itself such questions are that:

- i. Have you signed the cheque?*
- ii. Have you signed the confirmation?*
- iii. Is it your signature on confirmation?*

On the above issues, the Secretary of the society stated all these question in affirmative because he had done so. The counsel of the assessee completely ignored the fact that the secretary of the society Sh. Madan Giri and joint account holder of the society Sh. Devendra Singh Chauhan, had already brought this fact on record that they had given blank sighed cheque book and they were acting on the advice of Sh. Vinod Dixit and Sh. Sandeep Garg. Therefore, acceptance of signing of cheque and confirmation should be looked into in complete back ground of the statement. As far as denial for allegations of Sh. Vinod Dixit and Sh. Sandeep Garg is concerned that should also be looked into in broad prospective of their letters, First of all they have not denied the acquaintance of Sh. Madan Giri and Sh. Devendra Singh Chauhan with them. They have accepted that they are well known to each other. Secondly they have stated that Sh. Madan Giri and Sh. Devendra Singh Chauhan (the associates of the society) had approached them for giving entries in lieu of receipt of cash commission. The above issue further strengthened the facts that entry has been taken by the society in lieu of cash.

It is further necessary to point out that apart from above narrated facts it would not be out of place to mention that the accounts from where M/s Nav Jyoti Vikas Sansthan has received maximum amounts, namely M/s Varun Trade Centre and M/s Sharma Associates are one of the accounts from where amounts were received by M/s D.N. Kansal Securities Pvt. Ltd. and others to the tune of more than 45 crores and the total of these two accounts transactions comes to Rs. 45 crores and more. There are other entries taken from M/s Varun Trade Centre and M/s Sharma Associates which are directly or indirectly related with Mr. Mahender Gupta. The search action took

place at the premises of M/s D.N. Kansal Securities Pvt. Ltd., whose director is Sh. Manoj Kumar Gupta S/o Sh. Prahlad Saran Gupta by Investigation Wing, Ghaziabad. Sh. Manoj Kumar Gupta, has accepted in his statement for providing bogus entries and he offered his commission income in lieu of entry charges. This fact also proves that all the above banking channels were used as tool for introducing black money by way of donation.”

15. The AO held that there was neither genuine donation nor it was voluntary and made the addition of Rs.15,00,000/-, considering the same as unexplained cash credit u/s 115BBC/68 of the Act. The reliance was placed on the following case laws:

- *CIT Vs P. Mohan Kala, 271 ITR & 278 of 2007 (SC)*
- *CIT, West Bengal-II Vs Durga Prasad More, 82 ITR 540 (SC)*

16. Being aggrieved the assessee carried the matter to the Id. CIT(A) and submitted as under:

II. Addition of Rs. 15,00,000 on account of donation from Nav Jyoti Vikas Sansthan:

"27. That during the year under consideration, the appellant received a total amount of Rs. 71,00,000/- towards donation for corpus fund. Out of this, two major amounts were received from M/s VIC Enterprises Pvt. Ltd. Rs. 50,00,000/- and from M/s Nav Jyoti Vikas Sansthan, 66, New Mohanpuri Colony, Meerut (PA No. AAAAN4050A) Rs. 15,00,000/-. The balance donations were received from various persons for less than Rs. 20000/- each. The confirmations from all the parties were filed before the AO After independent inquiries, the AO accepted all the donations except Rs. 15,00,000/- from Nav Jyoti Vikas Sansthan.

28. That it was alleged that Sh. Madan Giri, secretary of the Nav Jyoti Vikas Sansthan, doner society had denied to having given any donation to the appellant. It was also alleged that the society has no source of income to give such heavy donation and these were only book/bank entries in greed of getting commission of 10% in lieu of such entries. The AO also referred to and relied upon the bank statement, statements and affidavits etc., copies of these documents/statements/affidavits etc. are enclosed.

In response to show cause notice issued by the AO, the appellant submitted its reply vide letter dt. 21.12. 2009 which is reproduced below for your ready reference:

"With reference to above, we wish to make following additional submissions as regard donation received from Nav Jyoti Vikas Sansthan:

That at the outset we wish to submit that the donation of Rs. 15,00,000/- received from M/s Nav Jyoti Vikas Sansthan is genuine and was received from them. The assessee maintained complete record of the identity indicating the name and address of the donors making such contributions during the year under consideration and such details and other relevant documents of all the donations received during the year were produced before your goodself. Sh. Madan Giri, secretary of M/s Nav Jyoti Vikas Sansthan was cross examined and his statement was recorded on dt. 16.12.2009. Sh. Madan Giri confirmed in his statement that his signatures are genuine and he has not received any cash against the donation given.

Mr. Madan Giri is a highly educated and professionally qualified person and has very long experience as lawyer for more than 30 years. He has now concocted a story that he was influenced by others and they misused the account of the society. The allegation made by him are totally false and we deny the same. Independent enquiries from Mr. Vinod Dixit and Mr. Sandip Garg were also made by your goodself in this regard. In reply, Mr. Vinod Dixit and Mr. Sandip Garg in their representation filed on 30.11.2009 before you has categorically denied allegations made by Mr. Madan Giri and Mr. Devendra Singh in their statements and affidavits filed before you, Thus, the allegations/denials made by Mr. Madan Giri and Mr. Devendra Singh are totally false and have been made with a prejudice mind. In these circumstances and in view of the documents filed before your goodself, records containing details of donation maintained by the assessee and filed before you., we submit that the donation received is genuine and was utilized for the charitable purposes. Thus, in view of these facts and submissions made earlier, it is prayed that the donation of Rs. 15,00,000/- should not be treated as anonymous and may be accepted as genuine."

29. That though it has been alleged by the AO that secretary of Nav Jyoti Vikas Sansthan denied having made any donation and also denied the signature on donation letter but in response to question put up to him during cross examination on 16.12.2009 he accepted that the signature

on donation letter are his original signature. Fife also accepted that signature on cheque are also genuine. He also accepted that he has not received any cash in lieu of the cheque.

30. That the AC has considered various irrelevant information which are unrelated to the transaction of donation received by the appellant. Most of the deposits and withdrawals as referred to by the AO relate to transactions taking place in the FY 2006-07 whereas the transaction of the appellant relate to FY 2007-08. The AO has not brought any material on record to show that the source of deposits was cash for making donation as alleged by him in the assessment order.

31. That the appellant has proved the identity of the doner, genuineness of the transaction, source etc. by submitting necessary documents. The donation was duly confirmed by the doner. The doner further confirmed his signature on cheque, donation confirmation in front of the AO on 16.12.2009 and also confirmed that he has not received any cash in lieu of the donation paid. Thus, the appellant discharged its burden fully on 16.12.2009. After 16.12.2009, the AO has not brought any material on' record to disprove the claim of the appellant and has failed to discharge his burden.

32. Reliance is place on the appeal order passed by the Ld. Commissioner of Income Tax (Appeal) Ghaziabad in appeal no. 161/2007-08 dt. 21.10.2010 in the appeal of Sai Chhaya Educational Welfare Society vs. Addl. Commissioner of Income Tax, Range 2, Ghaziabad. It was held that even if some discrepancies were noted by the AO; these were relevant to be examined in the hands of the doners only; such discrepancies were not fit enough to warrant additions in the hands of the appellant (para 7.4).

33. Without prejudice, it is submitted that even if the donation is treated as unexplained/bogus, the benefit of application of provisions of section 11 and 12 of the Income Tax Act cannot be denied. As the amount donation of Rs. 15,00,000/- was fully utilized for the charitable purpose during the year under consideration, the taxable income and tax payable would be "Nil". The AO has not cited any of the provisions of the income Tax Act, 1961 to deny the benefit of application of section 11 and 12 of the IT Act, therefore, the taxable income should be held "Nil".

17. The Id. CIT(A) after considering the submissions of the assessee confirmed the addition made by the AO by observing in para 5.3 of the impugned order as under:

The issue of unexplained, cash credit of Rs. 15,00,000/- in form of donation has been discussed in detail and lucidly by the AO on page 3 and pages 6 to 8 of the assessment order. For the sake of brevity, the entire reasoning is not being repeated here. Sufficient it is to conclude that donor has been examined by the AO wherein donor has not only refused to have given any genuine donation, but has also exposed the modus operandi followed by the assessee to misutilise the bank account and blank signed cheques, for the purpose of laundering as unaccounted money. The details of bank statement of donor (M/s Nav Jyoti Vikas Sansthan), if perused carefully, corroborate the view that donor's name and account has been misused for money laundering. The cash has been deposited in the account of Sh. Vinod Kumar Gupta and then transferred to the account of the donor which has issued cheques to the various persons including the appellant.

The objections raised by the appellant's counsel during the appeal are without much substance. The counsel is harping only on one answer where Sh. Madan Giri has said that he did not receive any cash/service charge/kickback in lieu of such hawala entries. The counsel has not cared to read the other answers of Sh. Madan Giri, wherein he has clarified that the kick back as promised by him was not fulfilled by the assessee and that is why he has said that he did not receive any such compensation/kickback. So this does not imply that Sh. Madan Giri is retracting, or changing, his earlier statement that the account and cheques of M/s Nav Jyoti Vikas Sansthan have been misused to "create" the impugned donation of Rs. 15,00,000/- Donor's statement remains conclusively against the appellant, and the appellant has failed to give any satisfactory explanation so as to rebutt the charge of routing his own black money to the books in form of donation.

Agreeing with the entire inquiry work out and reasoning of the AO; I have no hesitation in holding that donation of Rs. 15,00,000/- received from M/s Nav Jyoti Vikas Sansthan is an unexplained cash credit, required to be added u/s 68 of the Act.

This ground of appeal is rejected."

18. Now the assessee is in appeal. The ld. Counsel for the assessee reiterated the submissions made before the authorities below and further submitted that the donation of Rs.15,00,000/- received from M/s Nav Jyoti Vikas Sansthan, 66, New Mohanpuri Colony, Meerut through cheque was utilized by the assessee for charitable purpose. It was further submitted that the copy of donation letter dated 25.07.2006 on letter head of M/s Nav Jyoti Vikas Sansthan issued for making donation to the assessee alongwith cheque No. 084387of Rs.15,00,000/- drawn on the Nainital Bank Ltd., Ghaziabad was furnished to the AO. It was also stated that the donation letters as well as cheque and confirmation letters were signed by Sh. Madan Giri under the seal of Secretary of the Sansthan. The said donation was made towards corpus fund of the assessee for charitable activities being carried out by the assessee. Therefore, the addition made by the AO and sustained by the ld. CIT(A) was not justified. The reliance was placed on the following case laws:

- *CIT, Gzb Vs Uttranchal Welfare Society (2014) 364 ITR 398 (All.)*
- *DIT Vs Keshav Social & Charitable Foundation 278 ITR 152 (Del.)*
- *Sunder Deep Ed. Society in ITA No. 2428/Del/2011 order dated 6.12.2013*
- *DIT Vs Sri Belimatha Mahasamsthana Socio Cultural and Educational Trust 20 Taxmann.com 694 (Kar.)*
- *DIT Vs Hansraj Smarak Society in ITA No. 534/2012 order dated 18.09.2012 (Del.)*
- *ACIT Vs Shree Ganpati Ed. Society in ITA No. 2655/Del/2011 order dated 28.09.2012*
- *Charanjiv Charitable Trust Vs DIT in ITA No. 3295/Del/2011 order dated 14.08.2015*

19. In his rival submissions, the ld. Sr. DR strongly supported the orders of the authorities below and reiterated the observation made by the AO at page no. 3 of the assessment order dated 21.12.2009. The reliance was placed on the following case laws:

- *Navodaya Castle Pvt. Ltd. Vs CIT (2015-TIOL-314-SC-IT)*
- *CIT Vs Navodaya Castle Pvt. Ltd. (2014) 367 ITR 306 (Del.)*

- *CIT Vs MAF Academy (P.) Ltd. 361 ITR 258 (Del)*
- *CIT Vs Nipun Builders & Developers (P.) Ltd. 350 ITR 407 (Del.)*
- *CIT Vs Nova Promoters & Finlease (P) Ltd. 342 ITR 169 (Del.)*
- *CIT Vs Ultra Modern Exports (P.) Ltd. 40 Taxmann.com 458 (Del.)*
- *CIT Vs N.R. Portfolio Pvt. Ltd. (2013) 29 Taxmann.com 291 (Del.)*
- *CIT Vs Empire Builtech (P.) Ltd. 366 ITR 110 (Del.)*
- *CIT Vs Focus Exports (P.) Ltd. 51 Taxmann.com 46 (Del.)*

20. We have considered the submissions of both the parties and perused the material available on the record. In the present case, it is noticed that the assessee received a donation of Rs.15,00,000/- from M/s Nav Jyoti Vikas Sansthan, Meerut vide cheque no. 084387 drawn on the Nainital Bank Ltd., Ghaziabad. The said cheque was signed by the Secretary of the Sansthan who also gave a confirmation letter. The said fact is evident from page no. 45 of the assessee's paper book which is the copy of the cross examination on oath of Sh. Madan Giri who confirmed vide giving answer to question no. 3 that the donation was given to the assessee. It is also noticed that the assessee had shown the donation in its books of account. The said donation was utilized for construction of the building to be used for running of dental college setup in Village Dasna, Masuri to impart dental education.

21. On a similar issue, the Hon^{ble} Jurisdictional High Court in the case of CIT Vs Uttranchal Welfare Society (2014) 364 ITR 398 (supra) held as under:

“If there is full disclosure of the donation whatever purpose and that the registration u/s 12A is continuing the valid exemptions cannot be denied.”

22. Similarly, the Hon^{ble} Delhi High Court in the case of DIT(E) Vs Keshav Social & Charitable Foundation (2005) 278 ITR 152 (supra) held as under:

“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.”

The SLP filed by the department against the aforesaid order of the Honøble Delhi High Court was dismissed by the Honøble Supreme Court in Civil Appeal No. 3358/2006 vide order dated 22.02.2017.

23. In the present case also, the assessee not only disclosed its donation but also produced confirmation from the Secretary of the trust who has given the donation through cheque. The said donation was utilized for charitable activities. Therefore, the addition made by the AO and sustained by the Id. CIT(A) was no justified and accordingly the same is deleted.

24. In the result, the appeal of the assessee is allowed.

(Order Pronounced in the Court on 03/08/2018)

Sd/-
(Suchitra Kamble)
JUDICIAL MEMBER

Sd/-
(N. K. Saini)
ACCOUNTANT MEMBER

Dated: 03/08/2018

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR