

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़  
IN THE INCOME TAX APPELLATE TRIBUNAL,  
CHANDIGARH BENCHES 'B', CHANDIGARH

श्रीमती दिवा सिंह, न्यायिक सदस्य एवं डा. बी.आर.आर. कुमार, लेखा सदस्य  
BEFORE: SMT. DIVA SINGH, JM & Dr. B.R.R.KUMAR, AM

ITA 684/CHD/2015  
Assessment Year: 2009-10

M/s Om Educational &  
Social Welfare Trust,  
# 76, Bye Pass Road,  
Kamani Chowk, Yamuna Nagar.

Vs

The DCIT,  
Yamuna Nagar.

PAN : AAATO2033K

Appellant

Respondent

निर्धारिती की ओर से/Assessee by : Shri Tej Mohan Singh

राजस्व की ओर से/ Revenue by : Shri Manjit Singh, Sr.DR

सुनवाई की तारीख/Date of Hearing : 15.10.2018

उद्घोषणा की तारीख/Date of Pronouncement : 28.11.2018

**आदेश/ORDER**

**PER DIVA SINGH**

The present appeal has been filed by the assessee assailing the correctness of the order dated 14/05/2015 of CIT(A) Panchkula pertaining to 2009-10 assessment year on the following grounds :

1. That the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in upholding the addition of Rs.22,50,000/- treating the same as deemed income under section 69C of the Act which is arbitrary & unjustified.
2. That the Ld. Commissioner of Income Tax (Appeals) has further erred in treating the donations received to be anonymous donations covered by the provisions as enunciated in Section 158BBC of the Act which is arbitrary and unjustified.
3. That decisions as relied upon by the Ld Commissioner of Income Tax (Appeals) are not applicable in the facts of the instant case and as such the addition made of Rs.22,50,000/- is arbitrary and unjustified.

2. The ld. AR referring to record submitted that the explanation offered has not been considered by the CIT(A) though it has been reproduced.

3. The Ld. Sr.DR though placed reliance upon the impugned order however, had no objection if the issue is remanded back for granting the assessee opportunity of being heard as admittedly on the face of the record it appeared that assessee had not been confronted with view being taken by the CIT(A) in as much as relying upon section 115 BBC.

4. The relevant facts of the case are that the assessee trust M/s Om Educational & Social Welfare Trust Yamuna Nagar Trust created on 01.11.2007 was subjected to a survey operation under section 133A of the Income Tax Act, 1961 on 27/03/2009. The stated aims of the assessee trust were to establish/maintain/develop and run educational institutions to provide education in different fields of learning. The assessee Trust as per record, has started Management Institute under the name and style of M/s Om Institute of Management at village Landhora Tehsil Jagadhri, District Yamuna Nagar management and the Trust got approval from All India Council for Technical Education, Kurukshetra, Department of Technical Education, Haryana for start of the college from 2008-09. During the course of survey, several loose documents regarding payment made to a building contractor on account of construction of building were found which were not found recorded in its regular books of accounts. Accordingly, the assessee as per record had surrendered an amount of Rs.22,50,000/- as additional income on account of undisclosed investment made in the construction of building. The assessing officer was of the view that since the construction expenses pertained to the pre-operative period, they obviously could not have been met from the regular receipts/income of the Trust and thus, required the assessee to explain why it should not be added as undisclosed income. Attention of the assessee was invited to the decision of the Gujarat High Court in the case of M/s Fakir Mohammad Haji Hassan Vs CIT (247 ITR 290). Not accepting the explanation, the said amount was added to the income of the assessee.

5. The assessee carried the issue in appeal before the CIT(Appeals) Attention was invited to the statements recorded in the course of the search. For ready reference the relevant extract from the impugned order is reproduced hereunder :

*“5. I have gone through the facts of the case and the written submission filed by the appellant. It is noted that a survey u/s 133 A of the Act was carried out at the appellant's premises on*

27.03.2009. Certain discrepancies were found by the survey team. During the survey, a statement of Sh. Pankaj Goyal S/o sh. Raj Kumar Goyal was recorded on oath. Sh. Pankaj Goyal was working as treasurer in Om Educational & Social Welfare Trust. Regarding the query on construction of building he replied that building was got constructed through contractor M/s A.R. Empires Pvt. Ltd., Parwanoo. Regarding the payments made to the contractor and the cost of building he replied that total payment to the contractor for construction of building has been made at Rs.69,00,000 - approximately and the total cost of building as per books is Rs.69,29,634/-. Thereafter, in reply to another query, he stated as under :-

"Q. As per loose papers found in the premises total payment made to M/s A.R. Empire Pvt. Ltd. is shown as Rs.91,82,177/- as against bill amount of Rs.98,50,110/-. Please explain the difference in payment to the contractor as per books and the loose paper.

Ans. The difference of Rs. 22,52,543/- being the difference in payment to the contractor and amount of building is due to the reason that the trust received certain donation which may not have been recorded in the books of accounts and were utilized for construction of building. However, to avoid any litigation and for peace of mind I declared an investment of Rs. 22.52 lacs in the account of building over and above the cost of construction whatever has been shown in the books of account subject to no penal action."

Subsequently, the appellant issued a letter dated 28.03.2009 addressed to the Joint Commissioner, Yamuna Nagar stating therein as under :-

"During the course of survey, some discrepancies were noticed in value of building as per books of account and loose papers. In order to cover up these discrepancies and to buy peace of mind I declared a sum of Rs.22.5 lacs as investment in construction of building over and above the cost of building as per books of account subject to no penal action. I am also handing over the post dated cheque for Rs. 7.65 lacs towards advance tax liability. This declaration is irrevocable. "

However, in the return of income the appellant credited the additional surrendered income in the income & expenditure account as miscellaneous income. The surrendered amount was included in the total receipts of Rs.45,95,266/- and after claim of various expenses, the excess of expenditure of Rs.2,83,234/- over the income was shown. This shows that the entire additional income surrendered during the course of survey was set off against expenses. The AO considered the additional income of Rs.22,50,000/- invested in construction of building as deemed income and brought to tax u/s 69C of the Act after relying on the decision of Faqir Mohd. Hazi Hassan (supra). The AO also distinguished on facts the decisions relied upon by the appellant in its assessment order which were again relied upon during the appellate proceedings. After considering the various submissions of the appellant, the AO concluded that additional income of Rs,22,50,000/- surrendered during the course of survey is

*assessable separately as per provisions of section 69C of the Act.”*

6. A perusal of the impugned order shows that the CIT(A) though in the subsequent paras took note of the fact that the assessee as per the statements recorded submitted that the difference was explainable from donations not recorded in the books, the CIT(A) relying upon section 115 BBC concluded the issue holding that these were anonymous donations. The Ld. AR inviting attention to the same has submitted that at no stage in the course of the assessment proceedings the assessing officer required the assessee to address whether the names of the donors were available with the assessee nor has the CIT(A) while applying the provisions of section 115 BBC has not care to give the assessee any notice to address the same and has straightaway held these to be anonymous whereas on facts it was his submission that the assessee has full details of the people who made the donations and thus these are not anonymous donations. It was his limited prayer that the fact that the amount has been applied to the construction is a matter of fact which has not been disputed by the tax authorities and the fact that the sources are explained as donations which has been the stand taken by the assessee in the course of the survey itself and repeated at the stage of assessment as well as the appellate stage also, accordingly, it was his submission that in case the issue has to be still addressed on facts as to whether the list of people who have donated, is available with the assessee, then the assessee who has the list may be provided an opportunity to place it on record.

7. We have heard the rival submissions and perused the material available on record. Admittedly, consistently during the course of the survey itself the assessee has stated that the discrepancies in the construction bills were explainable from the donations received by the assessee. Admittedly, in the course of the assessment proceedings assessee was not required to address whether the assessee was in a position to address who had made the donations. Even on a perusal of the impugned order, it is evident that conclusions have been drawn without providing the assessee an opportunity of being heard. Accordingly, addressing the limited prayer of the assessee qua the issues at hand, we deem it appropriate to set aside the impugned order back to the file of the CIT(A) with a direction to pass a speaking order in accordance with law

after providing a reasonable opportunity of being heard to the assessee. Said order was pronounced at the time of hearing itself in the presence of the parties.

8. In the result, the appeal of the assessee is allowed for statistical sense

Order pronounced in the Open Court on 28.11. 2018.

**Sd/-**

( डा. बी.आर.आर. कुमार )  
(Dr. B.R.R. KUMAR)

**लेखा सदस्य/ Accountant Member**

“पूनम”

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to :

1. अपीलार्थी/ The Appellant -
2. प्रत्यर्थी/ The Respondent -
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील)/ The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

**Sd/-**

(दिवा सिंह )  
(DIVA SINGH)

**न्यायिक सदस्य/Judicial Member**

आदेशानुसार/ By order,

सहायक पंजीकार/ Assistant Registrar