

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'A' NEW DELHI**

**BEFORE SHRI G.D.AGRAWAL, HON'BLE VICE PRESIDENT
&
SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER**

**ITA No.-4109/Del/2015
(Assessment Year: 2010-11)**

Shanti Niketan Trust M/s. P.K. Singhal & Co., CAs, E-24A, IInd Floor, Jawahar Park, Laxmi Nagar, Delhi PAN : AAHTS6683C	Vs.	Addl. CIT Range-1 Ghaziabad
Appellant		Respondent

**Assessee by: Sh. K.P.Garg, CA
Revenue by: Shri G Johnson, Sr.DR**

Date of Hearing	09.10.2018
Date of Pronouncement	07.01.2019

ORDER

PER SUDHANSHU SRIVASTAVA, J.M.:

This appeal is filed by the assessee against order dated 03.03.2015 passed by the Ld. CIT (Appeals), Muzaffarnagar for assessment year 2010-11.

2. The brief facts of the case are that the assessee is a society which was granted registration u/s. 12AA of the Income Tax Act, 1961 (hereinafter called the Act) vide order dated 17.04.2009 with effect from 01.05.2008. The assessee society also enjoys

recognition u/s 80G of the Act. As per the Memorandum, the assessee society has been established to run colleges with an object to enhance the standard of education. The return of income for the year under consideration was filed declaring nil income. Subsequently, the case was selected for compulsory scrutiny. During the course of assessment proceedings, the assessee was required to furnish information regarding donations received along with names, addresses, bank accounts and copy of confirmations from the donors. The assessee submitted details of the donors/donations. However, as some details as desired by the Assessing Officer (AO) were not filed, the AO proceeded to issue notices u/s 133(6) of the Act to the various donors to confirm the donations. However, most of the notices were returned un-served. Thereafter, the assessee was asked to produce the donors but the assessee did not produce the donors. Accordingly, the AO concluded that the donations were neither genuine nor voluntary. The AO proceeded to hold the donations as being fictitious and unexplained cash credits and proceeded to add an amount of Rs. 99,50,000/- to the income of the assessee u/s 68 of the Act in view the deeming provisions of Section 115 BBC of the Act. In addition, the AO also made in addition of Rs. 45,44,814/- being depreciation said to be claimed by the assessee. The assessee's appeal before the Ld. CIT

(Appeals) was also dismissed. Now, the assessee is before the ITAT and has challenged the action of the lower authorities in treating the impugned donations as anonymous donation u/s 115BBC of the Act. The assessee is also challenging the action of the lower authorities in adding back the depreciation of Rs. 45,44,814/- to the income of the assessee.

3. The Ld. Authorised Representative, appearing on behalf of the assessee, drew our attention to the provisions of Section 115BBC of the Income Tax Act and submitted that as per sub section (3), donation can be called anonymous only when the person receiving the 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. It was further submitted that the assessee has duly maintained particulars of the names and addresses of the donors and the same has not been disputed by the Assessing Officer. It was also submitted that no other particulars have so far been prescribed by the Act. It was also submitted that apart from this no other onus was to be discharged by the assessee in this regard. He also drew our attention to the income and expenditure account of the society and pointed out that the assessee has duly shown the donations as income and the expenditure as application of income. It was also

emphasized that the donations were not from bogus entities as all the donor companies were registered companies which were on the Roll of the Registrar of the Companies.

3.1 With respect to the depreciation, which has been added back by the lower authorities, it was submitted that this action was incorrect as the assessee had not claimed the depreciation amount as application of income and, therefore, the amount of depreciation could not have been added back.

4. In response, the Ld. Sr. Departmental Representative, while placing reliance on the concurrent findings of the lower authorities, submitted that the fact remained that the donors were not produced before the Assessing Officer and, therefore, the AO was correct in adding back the amount to the income of the assessee.

5. We have heard the rival submissions and have also perused the material available on record. It is seen that the AO has invoked section 68 of the Act read with section 115BBC to hold that the donations were anonymous. In our considered view, Section 68 of the Act has no application to the facts of the assessee because the assessee has duly disclosed the donations as its income. There was, thus, a full disclosure of income by the assessee and also the application of the donations for charitable purposes. It is not in dispute that the objects and activities of the assessee are charitable

in nature since it is duly registered under the provisions of section 12A. Further, the AO has invoked provisions of section 115BBC to hold that the impugned donations were anonymous. However, the Hon'ble Delhi High Court in the case of DIT (Exemptions) vs. Keshav Social & Charitable Trust (278 ITR 152) observed that the fact that 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 un-accounted money by way of donation receipts. The Hon'ble Court further observed that as the assessee had disclosed the donation as income, the provisions of section 68 cannot be applied.

5.1 The Hyderabad Bench of the ITAT in the case of M/s. Vaishnavi Educational Society Versus The Deputy CIT Central Circle, Tirupati reported in 2014 (11) TMI 350 - ITAT HYDERABAD held that where the names of the donors along with their addresses were furnished before the Investigation Wing of the department and were also recorded in the books produced by the assessee before the AO, such donations cannot be classified as anonymous donations as per the provisions of section 115BBC(3) of the Act. It was further held that the only requirement u/s. 115BBC (3) is that the names and addresses of the donor should be maintained.

5.2 In the present appeal, the assessee had not only disclosed its donations, but had also submitted a list of donors. The AO proceeded to treat the same as anonymous donations only for the reason that the notices u/s 133(6) of the Act were returned unserved and the assessee did not produce the donors when it was called upon to do so. However, since the donations were duly treated as income by the assessee, section 68 could not have been invoked in view of the judgment of the Hon'ble Delhi High Court in the case of DIT (Exemptions) vs. Keshav Social & Charitable Trust (supra). Further, the assessee's case also does not fall in the mischief of section 115BBC because as per sub section (3), anonymous donations are those donations for which no details of the donors are maintained by the assessee. Thus, it follows that if the details are maintained, the donations cannot be called anonymous donation and provisions of section 115BBC cannot be invoked. In the instant appeal, undisputedly, the details were maintained by the assessee but the addition was made on account of non-furnishing of confirmation letters/non-production of the donors before the AO. We are of the considered view that since the assessee has maintained the details of donors, the donations cannot be called anonymous and provisions of section 115 BBC cannot be invoked in the given facts and circumstances of the case.

If provision of section 115BBC cannot be invoked, the impugned addition cannot be sustained. Accordingly, we set aside the order of the Ld. CIT (A) on the issue and direct the AO to delete the addition.

5.3 As far as the second issue regarding adding back of depreciation is concerned, we note that the averment of the Ld. AR is correct that depreciation has not been claimed as an application of income by the assessee and, therefore, there is no question of adding back the same to the income of the assessee. The assessee succeeds on this ground also and while setting aside the order of the Ld. CIT (A) on this issue, we direct the AO to delete this addition also.

6. In the final result, the appeal of the assessee stands allowed.
Order pronounced in the open court on 07.01.2019.

Sd/-
(G.D.AGRAWAL)
VICE PRESIDENT

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Dated: 07.01.2019
BR

Copy forwarded to:

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

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ASSISTANT REGISTRAR
ITAT NEW DELHI