IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "B", LUCKNOW

BEFORE SHRI A.D JAIN, VICE PRESIDENT AND
SHRI T.S. KAPOOR, ACCOUNTANT MEMBER

ITA No.557/LKW/2017
A.Y. 2013-14

DCIT (Exemptions), Lucknow	Vs.	M/s Shri Ramswaroop Charitable Trust, B-987, Sect-A, Mahanagar, Lucknow-226006 PAN AAJTS5262R
(Appellant)		(Respondent)

Appellant by	Shri Adhir Kumar Bar, CIT DR
Respondent by	Shri K.R. Rastogi, FCA
Date of hearing	01/03/2019
Date of pronouncement	08/03/2019

O R D E R

PER: T.S. KAPOOR, A.M.:

This is an appeal filed by the Revenue against the order of ld. CIT(A)-4, Lucknow dated 04.07.2017. The grounds of appeal taken by the Revenue are reproduced as below:

> *"1. Ld. Commissioner of Income Tax (A) has erred in law and facts by allowing the benefit of section 11 thereby deleting the addition of surplus of Rs.8,66,26,577/- ignoring the fact that the assessee charged extra fees from the students in excess of the stipulated fees approved by the Statutory Body, resulting in capitation fees which is against the provisions of Section 11 & 12 of the I.T. Act;*
>
> *2. Ld. Commissioner of Income Tax (A) has erred in law and on facts by deleting the addition made on account of disallowance of depreciation of Rs. 6,07,22,423/-*

ignoring the fact that the appellant had already claimed deduction of full value of fixed assets in earlier years resulting in WDV being zero on which depreciations cannot be claimed, allowing depreciation u/s 32 of the Act would amount to double deduction which is not permissible;

3. *Ld. Commissioner of Income Tax (A] has erred in law and facts by deleting the addition of Rs. 8,57,31,152/- ignoring the fact that the assessee could produce ledger accounts and vouchers for Rs. 7,69,08,761/- only during the assessment proceedings, hence this amount was added to the total income of the assessee, as unexplained credits u/s 68 of the I.T. Act;*

4. *Ld. Commissioner of Income Tax (A) has erred in law and facts by deleting the addition of Rs.1,65,66,693/- made by the AO on account of personal expenses ignoring the fact that the assessee could not produce proper vouchers during the assessment proceedings;*

5. *Ld. Commissioner of Income Tax (A) has erred in law and facts by deleting the addition of Rs.2,03,53,745/- made by the AO on account of administrative expenses ignoring the fact that the assessee could not substantiate the increase in expenditure and did not furnish any justification and explanation in this regard during the assessment proceedings;*

6. *Ld. Commissioner of Income Tax (A) has erred in law and facts by deleting the addition of Rs.4,78,01,284/- made on account of disallowances of interest paid term loan ignoring the fact that the interest on term loan is capital expenditure, which cannot be claimed in Income & Expenditure account;*

7. *The order of Ld. CIT(A) be cancelled and the order of the A.O. restored."*

2. At the outset, the ld. DR submitted that the Assessing Officer had made various additions, which the ld. CIT(A) has wrongly deleted.

3. Arguing Ground No.1, the ld. DR submitted that the assessee had charged extra fees from the students in excess of the stipulated fees approved by the statutory body which was nothing but the capitation fees and therefore, the ld. CIT(A) should not have deleted the addition.

4. Arguing Ground No.2, the ld. DR submitted that the Assessing Officer had made disallowance of depreciation as the assessee had claimed deduction of full value of fixed assets in earlier years and therefore, the WDV had become zero and therefore, the depreciation could not have been claimed assets.

5. Arguing Ground No.3, the ld. DR stated that the addition was made u/s 68 of the Act as the assessee was not able to explain the unexplained credit. It was further argued that against the addition of Rs.8,57,31,152/- the assessee could produce ledger account and vouchers for Rs.7,69,08,761/- only.

6. As regards Ground No.4, the ld. DR stated that the Assessing Officer had made the disallowance on account of personal expenses as the assessee was not able to produce proper vouchers during the assessment proceeding.

7. Arguing Ground No.5, the ld. DR submitted that this addition was made on account of increase in administrative expenses as the

assessee was not able to substantiate the increase in expenditure and did not furnish any justification and explanation.

8. Arguing Ground No.6, ld. DR submitted that the assessee had claimed interest on term loan which was obtained for the purpose of construction of building and therefore, the expenditure was a capital in nature, therefore, the Assessing Officer had rightly made the addition.

9. The ld. AR, on the other hand, relying Ground No.1 submitted that the assessee was a deemed university and therefore, the directions regarding fee from the student in excess of stipulated fees approved by the statutory body did not apply to the assessee and our attention was invited to paper book where the written submission filed before us were placed. Our specific attention was invited to Clause 29 of Extra Ordinarily Gazette of U.P. State Government, where the Act had given power to Executive Council to make ordinances. Our specific attention was invited in Para (e) Clause 29 where the Executive Council was authorized to pass ordinance to charge fee for various courses being studied in the university. It was submitted that the ld. CIT(A) has appreciated the facts of the case and has rightly allowed the relief.

10. Arguing Ground No.2 regarding claim of depreciation, the ld. AR submitted that it is correct that the assessee had claimed full value of

purchase of fixed assets in earlier years and in fact the assessee had not claimed any depreciation on these assets and in this respect our attention was invited to computation of income placed at P.B. Page 43. Our attention was invited to the fact that assessee itself had reduced the amount of depreciation from the total expenditure debited in the profit and loss account and had claimed only those expenses without depreciation. Without prejudice it was submitted that depreciation was allowable up to A.Y. 2014-15 as the amendment was made only through Finance Act No.2 of 2014 w.e.f. 01.04.2015. It was further argued that in view of a number of judgments, the assessee was entitled to claim of depreciation even if the claim earlier was made for full value of fixed assets.

11. Arguing Ground No.3, the ld. AR submitted that the assessee had received total donation of Rs.16,18,36,650/- and during the assessment proceeding all the details showing name and address being identity of the donor was explained. However, the Assessing Officer allowed the donation to the extent of Rs.7,69,08,761/-. It was submitted that the assessee had discharged its onus regarding identity of the donor and genuineness of the transaction and therefore, the ld. CIT(A) after considering the facts and considering the definition of expression

'anonymous donation' in sub Section 3 had rightly held that the addition was not sustainable.

12. As regards the addition on account of personal expenses taken by the Department vide Ground No.4, the ld. AR submitted that the expenses incurred under personal expenses related to salary, medical expenses, staff welfare and payment to labour department and these expenses were directly linked with fee income and intake of students. He submitted that the percentage of personal expenses as compare to gross receipt was lower and therefore there was no justification of adhoc disallowances. It was further submitted that Assessing Officer had made adhoc disallowances without appreciating the fact that TDS was duly deducted on the expenditure wherever it was applicable. The ld. AR in this respect invited our attention to Paper Book, Pages 135 to 147 where the details of salary and payment made to labour department, medical expenses and staff welfare expenses was placed.

13. Arguing next ground of appeal, the ld. AR submitted that the Assessing Officer had made adhoc disallowance of Rs.2,03,53,745/- out of various expenses debited in the profit and loss account. It was further submitted that AO has arbitrarily disallowed 25% of the expenses without appreciating that during the year volume of educational work had increased and nowhere the books of account were rejected and further

TDS was deducted on the expenditure wherever it was applicable. Our attention was invited to Paper Book, Pages 148-197 where the copies of the ledger account of such expenditure was placed.

14. Arguing next ground of appeal, the ld. AR submitted that assessee had obtained a term loan for construction of building on which assessee had paid interest and such interest was disallowed by Assessing Officer holding same to the capital expenditure. It was submitted that the building stood completed during the year and assessee had claimed depreciation on such building also and our attention was invited to paper book Pages 46 where the copy of schedule of fixed assets was placed. Without prejudice, it was argued that even if it was to be considered as capital expenditure then also the same was allowable as for the purpose of computation of exemption u/s 11 entire revenue as well as capital expenditure is considered as application of funds.

15. We have heard the rival parties and have gone through the material placed on record. We find that in Ground No.1, the Revenue is aggrieved with the action of ld. CIT(A) by which he has allowed relief to the assessee u/s 11 of the Act which the Assessing Officer had denied by holding that the assessee had charged excess fees then approved by the statutory body. In this respect, we find that the ld. CIT(A) held that assessee is a deemed university to which special ordinance of U.P.

Government 04.07.2012 was applicable and after becoming deemed university the provision of fee fixation committee of State Government is not applicable. Clause 29 of Extra Ordinarily Gazette of U.P. State Government clearly defines that ordinance shall be made by the Executive Council for the purpose of fee to be charged for courses being studied in the university and for admission to the examination degrees, diploma and certificate of the university. The ld. CIT(A) has appreciated the entire facts and has given a categorical finding that the assessee was a deemed university established by Special Ordinance of U.P. Government dated 04.07.2012. The finding of the ld. CIT(A) as contained from Para 7.2 are quite exhaustive which are as under:

> *"7.2 I have examined the facts and circumstances of the case. I have considered the observation of the Assessing Officer and the arguments assailed by the appellant. I find that the appellant is a deemed university established by Special Ordinance of U. P. Government dated 04.07.2012 as per the clause-(29) of the Extra Ordinarily Gazette the appellant through its Executive Council is empowered to fix fee for admission to University as stated in clause-(e) of the Power to make ordinance. The appellant furnished the minutes of the Fee Fixation Committee through which the appellant has fixed the fee structure for session 2012-13 for courses run by the University. The contention of the appellant is that the appellant is charging fee as per the said order and it is not governed by the Admission and Fee Regulation Committee, Department of Technical Education, Government of Uttar Pradesh as it is a deemed university and has its own norms for fixation of Fee as set out in the Ordinance. The fees have been charged from the students on the basis of Fee fixed by the Fee Fixation Committee and no excess fee has been charged beyond the fee specified in the said order.*

Further Hon'ble Madras High Court in case of CJ.T. Vs. Balaji Educational and Charitable Public Trust repeated in 374 ITR 274 at page 290 held as under:-

"4.9 The finding of the Tribunal is that the department has not established a case that the assessee had in this case not utilized the donations or income for charitable purpose. The clear finding of the Tribunal is that if the assessee had not utilized the amount for charitable purpose, it would automatically become taxable and the assessee would not be entitled to exemption. But, on the contrary, without there being a finding of violation of Section 13 of the Act, an inference is drawn on an alleged receipt of donation and consequently, the allegation is made that there is a violation of Section 13(1)(d) of the Act. A hypothetical finding is given that because capitation fee is charged, it is not an income in terms of Section 11 of the Act and, therefore, there is a violation of Section 13(l)(d) of the Act. The Tribunal held that such a reasoning cannot be accepted because if the donations are offered for income and if the department wants to disprove the nature of income on the basis of material, as has been pointed out by the Commissioner of Income Tax (Appeals), it should be borne out by records based on investigation, which the Assessing Officer failed to do, except falling back on a statement which is not supported by materials.

4.10 On the activities of the trust, the Tribunal has given a finding that the activities of the assessee trust are genuine educational activities entitled to be treated as charitable activities and there is no evidence on record to show that the assessee has accepted capitation fee for allotment of seats. The Tribunal relied on the decisions of various courts to show that the activities of the trust alone are relevant for the purpose of allowing the benefit of exemption under Sections 11 and 12 of the Act in fine the Tribunal held as follows:

"44. The above judicial pronouncement makes it clear that the litmus test of charitable institution is the test of application of the funds and not the colour of donations received by the institution.

45. In the facts and circumstances we find that these appeals filed by the, Revenue are liable to be dismissed. The cross-objections filed trust become infructuous and, therefore, to be dismissed.

The A O has presumed tint the appellant is covered by the Admission and Fee Regulation Committee, Department of Technical Education, Government of Uttar Pradesh. The A.0. in generality has stated that the fee structure of the colleges is within the range of Rs.61500/- to Rs. 65000/- per student. The

A.0. has not appreciated the fee structure given by the appellant, which is approved by the Fee Fixation Committee of the Universe as stated above.

The A. O. has not established profit motive out of fee collected by the appellant trust. He has not examined whether the activities of the appellant trust was solely to generate profit or whether the activities undertaken was for the benefit of the students. Merely relying on the fee structure of the Stat Government for Educational Institute and drawing a comparison with the fee structure of a deemed university does not constitute that the Appellant is working on commercial line and for profit motive and even when the registration u/s 12A has been restored by the Hon'ble I.T.A.T.

There is no change in the activities of the current year as compared to earlier years where in the A. O. has granted benefit of Section 11 of the I.T. Act on similar activities. More so registration u/s 12AA of I. T. Act has been restored by the Hon'ble I.T.A.T. There is no new fact or situation that was brought on record to deny the benefit of Section 11 of I.T. Act to the appellant in the current year nor has the A.O. establish the fact of profiteering directly or indirectly by appellant.

In view of the above and respectfully following the decision of Hon'ble I.T.A.T. A-Bench, Lucknow in I.T.A. No. 44 &45/LKW/2016 (where registration u/s 12A has been restored) the appellant is eligible for exemption u/s 11 of the I.T. Act. The A.O. is directed to allow the exemption u/s 11 of the I.T. Act claimed by the appellant.

The ground of appeal No.1 is therefore allowed."

16. The above finding do not require any interference as we do not find any infirmity in the same, therefore, the Ground No.1 of appeal of the Revenue is dismissed.

17. Now coming to Ground No.2, regarding disallowance of depreciation, we find that the assessee itself had not claimed depreciation as application of funds as is apparent from the copy of computation of income placed at Paper Book, Page 43. For the sake of

completeness Paper Book, Page 43 showing computation of income has been made part of this order is reproduced as under:

SHRI RAMSWAROOP MEMORIAL CHARITABLE TRUST
ASSESSEMENT YEAR 2013 - 2014 (PREVIOUS YEAR ENDED 31.3.2013)

STATEMENT OF INCOME:		Amount Rs.
THROUGH INCOME AND EXPENDITURE ACCOUNT:		
Fees received	87,056,495	
Other Income	10,018,506	97,075,001
THROUGH BALANCE SHEET:		161,836,650
TOTAL:		258,911,651

Summary

Voluentary Countribution	161,836,650
Fee Income	87,056,495
Others Income	10,018,506
	258,911,651

For SRMCT

SHRI RAMSWAROOP MEMORIAL CHARITABLE TRUST
ASSESSEMENT YEAR 2013 - 2014 (PREVIOUS YEAR ENDED 31.3.2013)

STATEMENT OF APPLICATION INCOME FOR CHARITABLE PURPOSES IN INDIA			Amount Rs.
THROUGH INCOME AND EXPENDITURE ACCOUNT:			
Total expenditure as per Income & Expenditure Account		183,701,577	
Less:			
Depreciation	60,722,424	60,722,424	122,979,153
THROUGH BALANCE SHEET:			
Additions to Fixed Assets (as per Schedule)		339,281,890	
			339,281,890
Total Application			462,261,043

For SRMCT

18. In this computation of income, we find the assessee had not claimed any depreciation and has itself added back the depreciation amount. We further find that depreciation was allowable expenditure even if cost of acquisition was claimed as application of funds before the A.Y. 2014-15 as the necessary amendment was made only through Finance Act, 2014. The ld. CIT(A) has considered this aspect and has passed a detailed order from Para 5.4.3. For the sake of convenience, the same is reproduced as below:

> *"5.4.3 The undersigned has gone through the assessment order and written submissions of Ld. AR. This issue has been decided by Hon'ble jurisdictional ITAT in case of Sahara Arts and Management Academy for A.Y. 2005-06 in ITA No. 277/Luc/10 vide order dated 12.07.2010 in favour of appellant. The relevant portion of the said order is as under:-*
>
> *"7. We have considered the rival submissions and carefully gone through the material available on the record. In the present case, it is noticed that the assessee claimed a depreciation amounting to Rs. 32,11,889/- in its Income & Expenditure account. However, the Assessing Officer did not allow the depreciation by stating that the assessee utilized the surplus to acquire the fixed assets, therefore, it was a double deduction since the benefit of addition to the fixed assets was being allowed to the assessee in the last many years. On a similar issue the Hon'ble Bombay High Court in the case of CIT vs. Institute of Banking [2003] 264 ITR 110 has held as under:-*
>
> *"Normal depreciation can be considered as a legitimate deduction in computing the real income of the assessee on general principles or under section 11(1)(a) of the Income Tax Act, 1961. Income of a charitable trust derived from building, plant and machinery and furniture is liable to be computed in a normal commercial manner although the trust may not be carrying on any business and the assets in respect whereof depreciation is claimed may not be business assets. In all such cases, section 32 of the Act providing for depreciation, for computation, of income derived from business or profession is not applicable. However, the income of the trust is*

required to be computed under section 11 on commercial principles after providing for allowance for normal depreciation and deduction thereof from the gross income of the trust."

8. In our opinion, the ration laid down-by the Hon'ble Bombay High Court in the aforesaid referred to case is squarely applicable to the facts of the present case, therefore, we are of the view that the assessee was entitled to depreciation and deduction thereof from the gross income even when the income of the assessee was required to be computed u/s 11 of the Act. In the aforesaid referred to case also the assessee was a trust, registered under the Bombay Public Trust Act and section 12A of the I.T. Act, the income of the assessee was exempt u/s 11 of the Act. The assessee claimed depreciation which was rejected by the Assessing Officer on the ground that the capital expenditure incurred during the accounting year was allowed as deduction form the income of the assessee, the deduction of depreciation was not allowed on the ground that full deduction had been allowed in respect of capital cost of the asset and if the depreciation was allowed, as claimed by the assessee, it would result in double deduction. On a reference, the Hon'ble Bombay High Court confirmed the view taken by the Tribunal by holding that the Tribunal was right in law in directing the Assessing Officer to allow depreciation on the assets, the cost of which had been fully allowed as application of income under section 11 in the past year. We, therefore, keeping in view the ratio laid down in the aforesaid referred to case of\IT vs. Institute of Banking (supra), set aside the order passed by the learned CIT(A) and direct the Assessing Officer to allow the depreciation on the written Dawn Value of the assets."

19. In view of above facts and circumstances of the case, we do not find any infirmity in the order of the ld. CIT(A), Ground No.2 is dismissed.

20. Now in Ground No.3, we find that assessee in total had accepted donation of Rs.16,18,36,650/-. During the assessment proceeding, the details including names and addresses of donation were filed before the Assessing Officer. A copy of which is placed at Paper Book Pages 45 to 134. The AO had not doubted the identity of the donor and genuineness of the transaction. As per sub Section (3) of 115BBC, 'anonymous donation' mean voluntary

contribution where a person receiving such contribution does not maintain a record of identity indicating the name and address of the person making such contribution. In view of these facts, we find that only requirement u/s 115BBC of the Act is the name and address of the donor has to be maintained which the assessee had maintained. We further find that the assessee had declared entire receipt of donations in the total income as is apparent for computation placed at page 43 which had already been made part of this order and had utilized the entire amount for charitable purposes as the total application of funds is more than fee receipt and voluntarily contribution. The ld. CIT(A) has rightly allowed relief to the assessee by holding as under:

> *6.1.2 After examining the assessment order and written submission of the appellant, the following facts emerge.*
>
> - *During the year under consideration the appellant trust received donations of Rs.16,18,36,650/-.*
> - *The AO allowed donations to the extent of Rs. 7,69,08,761/- and made addition of the balance donations of Rs. 8,49,27,592/- u/s 68 of the Act.*
> - *Donations were received through three modes namely Cheque/RTGS/Cash Books of accounts with supporting records were produced before the AO.*
> - *The AO has not doubted the identity of donor, the genuineness of transaction or the capacity of donor. However, an addition of Rs.8,49,27,592/- was made U/s 68 of the Act.*
> - *These donations had already been shown as income of the appellant.*
> - *The appellant produced books of accounts like ledger accounts, bank statements etc to explain the details of donors. Anonymous donations are covered u/s 115BBC of the Act discussed in following paragraphs of this order. The AO has made addition u/s 68 of the Act.*
>
> *6.1.3 In order to prevent channelization of unaccounted money to these institutions by way of anonymous donations, a new section 115BBC has been inserted to provide that any income of a wholly*

charitable trust or institution by way of any anonymous donation shall be included in its total income and taxed at the rate of 30%. Anonymous donation to wholly religious trusts or institutions will not be taxed.

6.1.4 Anonymous donation has been defined in the new section to mean any voluntary contribution referred to in section 2(24) (iia) of the Act, 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. To be excluded from the definition of anonymous donations the person receiving the donation is required to maintain the record of identity indicating the name and address of contributor and such other particulars as may be prescribed. Since no other particulars have been prescribed under the provisions the person receiving the donation is under obligation to maintain the identity of donors indicating the name and address. On perusal of the details filed by appellant it is seen that the appellant has furnished the names and addresses of donors. In view of above it is held that appellant has established the identity of donors as provided u/s 115BBC of I.T. Act, 1963and the donations received by the appellant cannot be categorised as anonymous donations and cannot be subjected to tax as per provisions of sec 115BBC of IT. Act, 1961. The AO had not doubted the identity of the donor or genuineness of the transaction in the assessment order. However, an addition u/s 68 of the Act was made.

6.1.5 Reliance is also placed on decision of Hon'ble ITAT Bench A in ITO-2(3), Lucknow Vs. M/s Saraswati Educational Charitable Trust in ITA no 776/LKW/2014 Dated 17.06.2015 were in the facts on the issue of anonymous donations are similar to the appellant's case. Reliance was placed on decision of Hon'ble Delhi bench of ITAT in case of Hans Raj Samarak Society Vs. ADIT 16 Taxman 103. As per the decision the receiver has the obligation to maintain the identity indicating the name and address only and nothing more. No other particular has been prescribed under the provision. No other word can be read in Sec-115BBC(3) other than words finding place therein.

Reliance is also placed on decision of Hon'ble Delhi High Court which confirmed the decision of Hon'ble ITAT in case of DIT(E) Delhi Vs. Hans Raj Samarak Society{2013) 35 Taxman642(Delhi).

6.1.6 The registration u/s 12A of the Act of the Trust has been restored by the Hon'ble ITAT Lucknow Bench in I.T.A. No. 44 &45/LKW/2016 vide order dated 07.04.2017. There is no dispute that the appellant has shown entire donation of Rs.84927592/- as

income for educational purpose in the computation chart. The Income so disclosed has been applied for charitable purpose as per provisions of Section 11 of the Act. The appellant in the course of assessment proceeding has submitted the complete details of donors giving their name and address. The appellant trust has duly discharged its onus as cast upon it by furnishing the name and address of the donors. The A.0. has not doubted the identity of the donor and genuineness of the transaction.

The Provisions of Section 115BBC with regard to anonymous donation are also not violated by the appellant trust as details of donors with their name and address were duly furnished before the Ld. A. 0. Anonymous Donation has been defined in Section 2(24)(iia) of the Act 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 making such contribution and such other particulars as may be prescribed. The assessee has submitted the complete particulars of the Donor giving their name and address and it can be held that the appellant has established the identity of the donors as required u/s 115 BBC of the Act and donation cannot be categorized as anonymous donation.

Further, Section 68 has no application to the facts of the instant case because the assessee has disclosed the donation as its income and applied the same for charitable purpose. In my considered opinion addrng part of the donation as Cash Credit u/s 68 of I. T, Act to the total income of the appellant amounted to double addition which is not permissible.

Reliance is placed on the following judgements :-

1	[2013] 33 Taxmann.com 642 (Delhi) High Court of Delhi in the case of Director of Income Tax Vs. Hans Raj Samarak Society.	Section 68, read with section 11, of the Income-tax Act, 1961-Cash'credits [In case of charitable trust] - Assessment year 2006-07 - Assessing Officer disallowed deduction under section 11 on finding unaccounted money by way of anonymous donation on purchase of capital assets - Tribunal observed that donation received by assessee was not anonymous donation because receipts were issued by assessee which were i^^ custody of Department - Whether Tribunal was justified in holding that section 68 could not be applied, as "donations had already been shown by assessee as income - Held, yes [Para 4] [In favour of assessee]

2.	Vaishnavi Educational Society Vs. Deputy Commissioner of Income Tax Reported in 114 DTR 224.	Charitable Trust - Anonymous donations maintenance of record of identity of donors - 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 A. 0. - Hence, such donations cannot be classified as 'anonymous donations' as per the provisions of section 115BBC (3) only requirement under s. 115 BBC(3) is that the names and addresses of the donors are to be recorded (CIT(A) has wrongly applied the provisions of section 68 in the case of the Assessee by stating that the recipient society should also be in a position to identity the donors and establish the capacity to give a donation of the amount mentioned against their names - Hans Raj Samarak Society Vs. Assistant Director of Income Tax (2012) 69 DTR (Del) 123 ©2011)133 ITD 530(Del) relied on,
3.	[2014] 42 Taxmann.com 361 (Allahabad), High Court of Allahabad, in the case of Commissioner of Income Tax, Ghaziabad Vs. Uttaranchal Welfare Society.	Shri Nikhil Agarwal, appearing for the respondent-assessee has relied on DIT (Exemption) v. Keshav Social & Charitable Foundation [2005] 278 ITR 152/146 Taxman 569 (Delhi) in which following S. RM. M. CT. M.Tiruppani Trust v. CIT [1998] 230 ITR 636/96 Taxman 635 (SC) it was held that under Section 11 (1) every charitable or religious trust is entitled to deduction of certain income from its total income of the previous year. The income so exempt is the income which is applied by the charitable or religious trust to its charitable or religious purposes in India. This is, of course, subject to accumulation up to a specified maximum which was 25 per cent. In that case it was found, as in the present case that the assessee had applied more than 75% of the donations for charitable purposes as per its objects. The Delhi High Court further held that Section 68 of the Act has no application in such case where the assessee had disclosed donations as its income. It was also not disputed that all receipts, other than corpus donations, would be income in the hands of the assessee. If

		there is Full disclosure of the donation for whatever purpose and that the registration under Section 12-A is continuing and valid, exemptions cannot be denied.
4 .	[2005] 278 ITR 152 (Delhi) In the Delhi High Court in the case of Director of Income Tax (Exemption) Vs. Keshav Social and Charitable Foundation.	The assessee, a charitable trust, was .engaged in the activity of providing medical advise to the poor and needy in various parts of the State. During the relevant previous year, the assessee was asked to furnish the details of donations received by it. However, the Assessing Officer, on finding that the assessee was unable to satisfactorily explain the donations and the donors were fictitious persons, held that the assessee had tried to introduce unaccounted money in its books by way of donations and, therefore, the amount was to be treated as cash credit under section 68. On that basis, the benefit under section 11 was denied to the assessee. On appeal, the Commissioner (Appeals) held that treating donation as income under section 68 was not correct the assessee had disclosed the donations as its income and had spent 75 per cent of the amount for charitable purposes. On the revenue's appeal, the order of Commissioner (Appeals) was upheld by the Tribunal. On appeal : HELD To obtain the benefit of the exemption under section 11, an assessee is required to show that the donations were voluntary. In the instant case, 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; did not necessarily lead to the inference that the assessee was trying to introduce unaccounted money by way of donation receipts. That was more particularly so in the facts of the case where admittedly, more than 75 per cent of the donations were applied for charitable

		purposes. [Para 10] Further section 68 had no application to the facts of the instant case because the assessee had in fact disclosed the donations as its income and it could not be disputed that all receipts, other than corpus donations, would be income in the hands of the assessee. There was, therefore, full disclosure of income by the assessee and also application of the donations for charitable purposes. It was not in dispute that the objects and activities of the assessee were charitable in nature, since it was duly registered under the provisions of section 12A. [Para 11] For the aforesaid reasons, there was no merit in the appeal and no substantial question of law arose from order of the /Tribunal. Therefore, the appeal was to be dismissed. [Para 12] Further Hon'ble I.T.A.T. Lucknow Bench in the appeal of Saraswati Educational Charitable Trust in I.T.A. No. 776/LKW/2014 has considered a similar issue and has held as under :- "6. Though the Revenue has taken a plea that for anonymous donation, provisions of section 115BBC of the Act can be invoked but in the instant case where the assessee has filed various documents to prove the identity of the donors, these donations cannot be called to be anonymous. So far as applicability of provisions of section 68 of the Act is concerned, it has been held by various High Courts including the jurisdictional High Court that once donation received was taken as income of the assessee which was applied for charitable purposes, provisions of section 68 of the Act cannot be invoked. Since we do not find any infirmity in the order of the Id. CIT(A), we confirm the same as he has adjudicated the issue In the light of various judicial pronouncements. Accordingly we confirm his order. In the result, appeal of the Revenue stands dismissed. " In view of the above, and respectfully following the decision of Hon'ble Jurisdictional High Court in the case of

		Uttaranchal Welfare Society (supra) and the. Order of Hon'ble Lucknow Bench in the appeal of Saraswati Educational Charitable Trust, the addition of Rs.8,57,31,152/- is hereby deleted. As a result the ground of appeal no. 3 and 4 are allowed.

21. In view of above facts, we do not find any infirmity in the order of the ld. CIT(A), Ground No.3 is dismissed.

22. Now coming to Ground No.4, regarding disallowance of adhoc expenditure, we find that the percentage of expenditure during the year under consideration in respect to fee income was 31.73% as against 40.20% in the earlier year which was lower than the earlier year. The Assessing Officer had made the disallowance only on adhoc basis without rejection of books of account and without pointing out any deficiency in the vouchers**.** We further find that the assessee had placed on record complete list of personal expenses and copy of which is also placed at P.B. Pages 135 to 147 and therefore, there was no justification of the Assessing Officer to make the addition and therefore, the ld. CIT(A) has rightly deleted the same by holding as under:

> *"8.2 AO noted that personal expenses increased to Rs. 2,76,24,713/- as compared to Rs. 1,00,52,500/- in the earlier year. AO held that appellant failed to produce proper vouchers, therefore, increase of 10% in expenditure as compared to earlier year was allowed and balance was disallowed. This disallowance worked out to Rs.1,65,66,963/-.*
>
> *8.3 I have examined the facts and circumstances of the case. I have considered the observations of the A. 0. in the assessment order and the submissions of the Appellant.*

The appellant has furnished the details of personal expenses and also submitted a comparative with respect to Receipts and Expenses in immediately preceding year. As per the said detail, the personal expenses in F. Y. 2011-12 were 40.20% of the Fee received as against 31.73% of the Fee received in F. Y. 2012-13. Further, Assessee has submitted that the number of students have increased in F.Y. 2012-13 which is visible in terms of increase in the Fee and accordingly, the staff cost and salary expenses are bound to increase. Further the Assessee has furnished before the A. 0. and also before me the copy of Ledger Account of all the expenses. The A.O. has not brought on record any specific instances of expenses not supported by vouchers and accordingly the adhoc disallowance @ 10% made by the A. 0. cannot be upheld.

The AO has not specified as to which expenses could not be verified on account of non verification of vouchers. Just because there is increase in expenses as compared to earlier year the AO has made adhoc disallowances of expenses. In the present case proper books of accounts and bills/vouchers are maintained and produced before the AO. The auditor has not pointed out any adverse inference in respect of non-maintenance of bills/vouchers in the Audit report. Nor has the AO identified the specific bill or vouchers which could not be verified. The issue of adhoc disallowance of expenditure has been decided upon by Hon'ble jurisdictional ITAT in the below mentioned judgements.

The Hon'ble ITAT, Lucknow in M/s Vijay Infra Ltd. Vs. ACIT in appeal No. 254 of 2015 dated 30.10.2015 has held that general observation of AO that vouchers are self-made cannot be made issue for an addition. At best it can be starting point of enquiry.

The Hon'ble ITAT Agra Bench in M/s Atul Construction Co. vs. ITO in ITA Appeal No. 361 of 2013 dated 31.01.2014 held that mere fact that some of the vouchers were self made cannot be a reason enough to disallow the expenses on adhoc basis.

The Hon'ble ITAT, Lucknow Bench in U.P. Corporative Federation Vs. Deptt. of Income Tax in ITA No. 33/lkw/2011 dated 22.03.2011 held that there was no justification is suspecting the genuineness of entire claim and resorting to estimated disallowance. The AO has not given any reason for estimating the disallowance at 5% of the claim. The AO has not doubted the correctness of books of accounts regularly maintained by the assessee. None of the auditors have given any adverse comment in the report. The disallowance was made for sake of disallowance without giving any

cogent reasons. The adhoc addition made by AO has been rightly deleted by Ld. CIT(A).

The Hon'ble ITAT, Lucknow Bench in judgement dated 13.07.2011 in case of Rajmata Devi, Basti Held that AO has not pointed out single instance of expenditure which is not supported by voucher. It seems that AO has made the disallowance without bringing any supporting evidence to justify his action. Considering the entire facts and circumstances of the present case, we delete the disallowance.

The Hon'ble ITAT, Lucknow Bench in M/s Kanha Vanaspati Ltd. Vs. JCIT, SR-II, Lucknow 2006(7) MTC 339 held adhoc disallowance out of expenses. No specific disallowable item pointed out-Vague observation that some expenses were not verifiable Disallowance not justified

The Hon'ble ITAT, Allahabad Bench in Dr. Mahendra Kr. Aggarwal Vs. ITO 2007(a) MTC 97 (Trib. Allahabad) held as under Adhoc 10% disallowance of expenses-No specific instances of unverifiable expenditure pointed out-Disallowance not justified.

In the present case also the AO has disallowed expenses on adhoc basis without pinpointing any specific defect in bills/ vouchers produced. Due to the reasons outlined above and the Judgement of Hon'ble Apex Court in the case of J.J. Enterprises vs. CIT 254 ITR 216(SC) and the judgments of Hon'ble Jurisdictional ITAT as outlined above, the disallowance made by the AO cannot be sustained.

Even otherwise if an addition has been made in the case of charitable trust the same would be treated as application for charitable purpose. Since the registration u/s 12A of the Act of the appellant trust is restored by Hon'ble I.T.A.T. and as already discussed above that the appellant is eligible for exemption u/s 11 of I.T. Act. Accordingly, since the income of the appellant is exempt, the addition made on account of disallowance from expenses will also amount to application of Income and will have no sanctity. Reliance is placed on the decision of Hon'ble I.T.A.T. Bench-A, Lucknow in the appeal of I.T.O. Vs. Virendra Singh Memorial Shiksha Samiti reported in 18 DTK 502.

The ground of appeal No. 10 is allowed."

23. In view of above facts, we do not find any infirmity in the order of the ld. CIT(A), Ground No.4 is dismissed.

24. Next Ground No.5 is regarding disallowance of expenditure out of administrative expenses on adhoc basis. In this respect, also we find that the assessee had filed complete details of vouchers and books of accounts, which was not rejected by the Assessing Officer and he arbitrarily disallowed 25% of the expenditure without observing that TDS was duly deducted on some of the expenses wherever it was applicable. The details of said expenses are placed at Pages 148 to 197 of the paper book. The ld. CIT(A) has allowed this ground of appeal by holding as under:

> *"9.2 AO noted that administrative expenses increased from 79,53,597/- to Rs. 3,77,55,127/- which includes advertisement expenses of Rs. 1,65,11,445/-. The AO held that in respect of expenses to tune of Rs. 1,53,69,201/- there is no justification or explanation available and these are on higher side as compared to earlier year. Thus, 25% of these expenses working out to Rs. 38,42,000/- were disallowed. The AO disallowed the entire advertisement expenses of Rs.1,65,11,445 as such expenses were not claimed in the earlier year. Total disallowance was worked out at Rs. 2,03,53,745/- and added to total income of appellant.*
>
> *9.3 I have considered the facts of the case. The mere reason for disallowing of 25% of the expenditures was that there was increase in these expenses as compared to earlier year. The A.0. has failed to establish with corroborative evidences as how the expenses are not utilized for purpose of education. Without bringing any material on record with regard to non-genuineness of the expenses, the same cannot be disallowed on adhoc basis, even when the assesse has filed complete details of expenses along with bills and vouchers.*
>
> *As regard the addition of Rs.1,65,11,445/- under the head 'Advertisement Expenses' the finding of the A.O. is not acceptable that merely because the expenses were not claimed in previous year therefore, the same are not genuine. The*

appellant has submitted the copy of ledger account in the course of appellate proceeding and the expenses majorly pertains to advertisement made in newspapers etc. It is also stated that T,D.S. has been deducted on these expenses. The A. O. has not substantiated as how the expenses are not related to education 'and in absence of such finding the addition of Rs. 16511445/- and Rs. 3842300/- cannot be upheld. The AO has not specified as to which expenses could not be verified on account of non verification of vouchers. Just because there is increase in expenses as compared to earlier year the AO has made adhoc disallowances of expenses.

In the present case proper books of accounts and bills/vouchers are maintained and produced before the AO. The auditor has not pointed out any adverse inference in respect of non-maintenance of bills/vouchers in the Audit report. Nor has the AO identified the specific bill or vouchers which could not be verified. The issue of adhoc disallowance of expenditure has been decided upon by Hon'ble jurisdictional ITAT in the below mentioned judgements.

The Hon'ble ITAT, Lucknow in M/s Vijay Infra Ltd. Vs. ACIT in appeal No. 254 of 2015 dated 30.10.2015 has held that general observation of AO that vouchers are self-made cannot be made issue for an addition. At best it can be starting point of enquiry.

The Hon'ble ITAT Agra Bench in M/s Atul Construction Co. vs. ITO in ITA Appeal No. 361 of 2013 dated 31.01.2014 held that mere fact that some of the vouchers were self-made cannot be a reason enough to disallow the expenses on adhoc basis.

The Hon'ble ITAT, Lucknow Bench in U.P. Corporative Federation Vs. Deptt. Of Income Tax in ITA No. 33/lkw/2011 dated 22.03.2011 held that there was no justification is suspecting the genuineness of entire claim and resorting to estimated disallowance. The AO has not given any reason for estimating the disallowance at 5% of the claim. The AO has not doubted the correctness of books of accounts regularly maintained by the assessee. None of the auditors have given any adverse comment in the report. The disallowance was made for sake of disallowance without giving any cogent reasons. The adhoc addition made by AO has been rightly deleted by Ld. CIT(A).

The Hon'ble ITAT, Lucknow Bench in judgement dated 13.07.2011 in case of Rajmata Devi, Basti Held that AO has not pointed out single instance of expenditure which is not supported by voucher. It seems that AO has made the disallowance without

bringing any supporting evidence to justify his action. Considering the entire facts and circumstances of the present case, we delete the disallowance.

The Hon'ble ITAT, Lucknow Bench in M/s Kanha Vanaspati Ltd. Vs. JCIT, SR-II, Lucknow 2006(7) MTC 339 held adhoc disallowance out of expenses-No specific disallowable item pointed out-Vague observation that some expenses were not verifiable-Disallowance not justified.

The Hon'ble ITAT, Allahabad Bench in Dr. Mahendra Kr. Aggarwal Vs. ITO 2007(a) MTC 97 (Trib. Allahabad) held as under Adhoc 10% disallowance of expenses-No specific instances of unbelievable expenditure pointed out-Disallowance not justified.

In the present case also the AO has disallowed expenses on adhoc basis without pinpointing any specific defect in bills/ vouchers produced. Due to the reasons outlined above and the Judgement of Hon'ble Apex Court relied upon by the appellant in the case of J.J. Enterprises vs. CIT 254 ITR 216(SC) and the judgments of Hon'ble Jurisdictional ITAT as outlined above, the disallowance made by the AO cannot be sustained.

Even otherwise if an addition has been made in the case of charitable trust the same would be treated as application for charitable purpose. Since the registration u/s 12A of the Act of the appellant trust is restored by Hon'ble I.T.A.T. and as already discussed above that the appellant is eligible for exemption u/s 11 of I.T. Act. Accordingly, since the income of the appellant is exempt, the addition made on account of disallowance from expenses will also amount to application of Income and will have no sanctity. Reliance is placed on the decision of Hon'ble I.T.A.T. Bench-A, Lucknow in the appeal of I.T.O. Vs. Virendra Singh Memorial Shiksha Samiti reported in IS DTR 502.

The ground of appeal no. 11 is allowed."

25. In view of above facts and circumstances of the case, we do not find any infirmity in the order of the ld. CIT(A), therefore, Ground No.5 is dismissed.

26. Now coming to last ground of appeal regarding disallowance of interest paid on term loan, we find that the Assessing Officer had disallowed the same holding the same to be as capital expenses where the fact remain that the expenditure was incurred for the building which was also put to use and assessee had claimed depreciation on the building also. We further find if expenditure was not allowable as revenue expenditure even then the same was allowable as utilization as capital expenditure is also allowed for the purpose of calculating exemption u/s 11 of the Act. The entire capital as well as revenue expenditure has to be taken into account as utilization of funds. The ld. CIT(A) has rightly deleted the addition by holding as under:

> *"10.2 I have considered the facts of the case and arguments of the appellant that mere reason for disallowance of Interest expenses as per the AO's finding that the interest is the capital expenditure. The A. 0. has not given any finding as how the interest expenditure constitutes Capital Expenditure. On the other hand appellant submitted the copy of ledger account of the Building, and explained that the Term Loan for which interest has been paid were utilized for construction of Academic and Administrative Block and the same has been put to use during the year and accordingly capitalized in the books of accounts and accordingly the interest with respect to Term Loan is charge in Income and Expenditure Account. The depreciation on the said blocks amounting to Rs.48700923/- has also been claimed in the Income and Expenditure Account. All these details have also been furnished before A. O.*
>
> *Thus, the interest expenditure disallowed by the A.0. by treating it as capital expenditure is hereby deleted.*
>
> *Even otherwise since the registration u/s 12A of the appellant trust has been restored by the Hon'ble I.T.A.T.*

A-Bench, Lucknow in I.T.A. No. 44 & 45/LKW/2016 and the appellant trust is eligible for exemption u/s 11 of I.T. Act which has also been allowed by me in Ground No. 1. Therefore, even if the finding of the A. O. is considered, interest on Term Loan which is treated as Capital Expenditure is eligible for application of income by virtue of provision of Sec. 11 of the Act. Hence the said addition shall have no sanctity. Reliance is placed on the decision of Hon'ble I.T.A.T. Bench-A, Lucknow in the appeal of I.T.O. Vs. Virendra Singh Memorial Shiksha Samiti reported in 18 DTK 502.

The ground of appeal No.12 is allowed."

27. In view of above facts and circumstances of the case, we do not find any infirmity in the order of the ld. CIT(A), the last Ground No.6 is also dismissed.

28. In the result, appeal of the Revenue is dismissed.

(Order pronounced in the open court on 08/03/2019)

Sd/-	**Sd/-**
(A.D. Jain)	**(T.S. Kapoor)**
Vice President	**Accountant Member**

Aks –
Dtd. 08/03/2019

Copy of order forwarded to:

(1)	*The appellant*	*(2)*	*The respondent*
(3)	*Commissioner*	*(4)*	*CIT(A)*
(5)	*Departmental Representative*	*(6)*	*Guard File*

By order

Assistant Registrar