

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

**BEFORE SHRI N.K. BILLAIYA, ACCOUNTANT MEMBER
&
SHRI K.NARASIMHA CHARY, JUDICIAL MEMBER**

ITA No.2817/Del/2013
Assessment Year: 2009-10

ACIT, Circle -2,
College,
Ghaziabad.

vs Ram Chameli Chadha Vishwas Girls
C-22, Meerut Road, Industrial Area,
Ghaziabad.
PAN: AAATR8501R

Appellant

Respondent

Assessee by: Shri Tarun Rohatgi, CA

Revenue by: Smt. Ashima Neb, Sr. DR

Date of Hearing 09.04.2019

Date of Pronouncement 11.04.2019

ORDER

PER K. NARASIMHA CHARY, JM

This is an appeal filed by the revenue against the order dated 12.2.2013 in Appeal No. 1180/11-12 passed by the Learned Commissioner of Income-tax (Appeals), Ghaziabad {"CIT(A)"} for Assessment Year 2009-10.

2. Brief facts of the case are that the assessee is a purely charitable founded by the renowned philanthropist Late Shri K.L. Chadha Vishwas who was its Honorary Secretary. Only object of the society is to encourage education amongst girls. Late Shri K.L. Chadha was a

follower of Swami Vishwas Ji Maharaj, a renowned saint of modern times. Its constitution and regulations were duly approved by various concerned government authorities. His Holiness Swami Vishwas Ji Maharaj is its Chairman. The Society has been granted exemption u/s 12A of the Income-tax Act, 1961 ("the Act") by the Commissioner of Income-tax, Meerut vide Certificate No.40(36)/Registration/Ghaziabad/1996-97/14619 dated 21.7.1997. For the Asstt. year 2009-10, they have not filed their return of income and, therefore, the learned AO issued notice u/s 142(1) on 12.3.2010. in view of the non-response of the assessee, penalty had to be imposed but ultimately, the assessee filed the return of income on 31.3.2011 declaring nil income.

3. Learned AO recorded that in spite of issuing several notices and levy of penalty subsequent to the filing of the return, there was no response from the assessee nor did the assessee produce any details or documents required by him and, therefore, vide order dated 30.12.2011 passed u/s 144 of the Act, Id. AO made an addition of Rs.17,78,510/- u/s 68 on account of the unexplained creditors, Rs.32,07,860/- u/s 40A(3) and 69C for cash payments exceeding Rs.20,000/-, Rs. 1,49,23,731/- by way of disallowance of 50% of expenses in respect of which AO says that no evidence was produced and lastly Rs.50 lacs stating that receipts relating to this amount were not eligible for deduction u/s 11 & 12 of the Act.

4. Aggrieved by the said additions, assessee preferred appeal before the Id. CIT(A) and during the course of appeal, assessee produced, by way of additional evidence, all the documents in their custody. Ld. CIT(A) obtained remand report. On perusing the remand report in the

light of the documents produced by the assessee, Id. CIT(A) deleted all the additions made by the AO and allowed the appeal of the assessee.

5. Hence, the Revenue is in this appeal before us stating that the Id. CIT(A) have failed to appreciate the facts in their proper perspective and the Id. CIT(A) should not have admitted the additional evidence. The unexplained sundry creditors to the tune of Rs. 17,78,510/- were not properly verifiable at the end of the AO. So also, in respect of the other additions also, revenue challenged the findings of the Id. CIT(A).

6. First, coming to the first addition of Rs. 17,78,510/- made by the learned AO u/s 68 of the Act in respect of the creditors covered by grounds No 3 and 4, Id. CIT(A) observed that the sundry creditors balances were creditors in the course of educational activities of the society and since they are not the loan creditors, this aspect has to be dealt in a different perspective and there is no justification to fasten the undue onus on the assessee on this aspect. Learned CIT(A) further observed that the insistence of the Id. AO on the assessee to obtain confirmation from these creditors who are not under the control of the assessee and more particularly when the nature of activity of the assessee was running a charitable society is an incorrect approach. Ld. CIT(A) felt that the Id. AO should have pursued the verification to its logical end and merely because the assessee was not able to produce the confirmations from the creditors, ignoring the other material on record, no addition could be made.

7. From the remand report dated 18.12.2013, it could be seen that though the Id. AO stated that confirmation from the sundry creditors were not received by him, such a fact does not appear to have been

informed to the assessee by the Id. AO. Moreover, we find strength in the observation of the Id. CIT(A) that the sundry creditors in the course of the activity of the assessee cannot be equated to the unsecured loan creditors. Fact remained undisputed is that on verification of the record, Id. CIT(A) reached a conclusion that the payments of such balances were made in the subsequent years as was evidenced by the books of account of the assessee. There is no denial of this fact with any cogent reason. The very fact that the balances of these sundry creditors were cleared of in the subsequent years and necessary entries were made in the books of accounts, clearly establish that any addition on this count cannot be sustained. We are in agreement with the findings of the Id. CIT(A) and do not find any justification to sustain the addition. Hence, ground nos. 3 & 4 are dismissed.

8. Ground Nos. 5 & 6 relate to the addition of Rs.32,07,860/- on account of the cash payments exceeding Rs.20,000/-. During the assessment proceedings Id. AO found that much of the amount was spent on the assets like building construction, computer, electrical fittings, lab equipment, books, photocopy machines, internet tower, furniture and fixtures and safety system, Genset, inverter etc. As rightly held by the Id. CIT(A), Section 40A(3) has no application for the cash purchases of the capital assets. Further in respect of Rs.29,89,246/- which constitutes part of this expense, on verification of record, Id. CIT(A) found that this amount was spent mostly payment for wages and all individual payments being less than Rs.20,000/-. In this set of circumstances, finding of the learned CIT(A) deleting this amount cannot be found fault with. Hence, there is no strength in Ground Nos. 5 & 6 and are dismissed.

9. Now coming to Ground No.7 in respect of deleting the disallowance of Rs. 1,49,23,731/- made on account of disallowance of 50% of expenses on verification of the books. During the remand proceedings, Id. AO found that this expense constitutes the salary to staff, canteen expenses, bus fare, examination fee etc. and all these payments were made by way of cheque or through banking channels. Further, the expenses were not doubted. Ld. AO found that no identity proof was obtained by the assessee but for this no other objection was obtained by the AO during the remand proceedings. Since the payments were made through banking channels, the objection taken by the AO does not appear to be sound and the Id. CIT(A) rightly granted relief to the assessee with which we are not inclined to interfere with. Ld. CIT(A) is perfect in his approach that so far as the expenses were not doubted and the payments were made through cheque and banking channels, merely because ID proof of the staff was not obtained, the same cannot be disallowed. Hence, we dismiss this ground.

10. Ground Nos. 8 & 9 relates to the ad hoc addition of Rs.50 lacs on the ground that the details of students getting free/concessional education were not produced. However, during remand proceedings, such details were produced and verified by the Id. AO without any comment and since the AO is satisfied with the explanation offered in respect of these receipts which were duly accounts in the books of accounts, revenue cannot have any grievance on this aspect. Now the law is fairly settled that running of hostel or the transport facility by an educational institution cannot be taken to be a commercial activity. We, therefore, do not find anything material in the grievance of the revenue on this aspect. Hence, Ground Nos. 8 & 9 are also dismissed.

11. Grounds No. 1, 2 & 10 are general in nature and do not require any specific adjudication and hence dismissed as such.

12. In the result, appeal of the revenue is dismissed.

Order pronounced in the Open Court on 11th April, 2019.

**Sd/-
(N.K. BILLAIYA)
ACCOUNTANT MEMBER**

**sd/-
(K. NARASIMHA CHARY)
JUDICIAL MEMBER**

Dated: 11th April, 2019
VJ

Copy forwarded to:

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

ASSISTANT REGISTRAR
ITAT NEW DELHI

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