

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

Before Sh. Amit Shukla, Judicial Member

Dr. B. R. R. Kumar, Accountant Member

ITA No. 5773/Del/2015 : Asstt. Year : 2010-11

1. Mayur Educational & Welfare Society, Mayur Public School, Sector-16A, Vasundhara, Ghaziabad (U.P.) 2. 61, Chitra Vihar, Delhi-110092	Vs	Addl. Commissioner of Income Tax, Ghaziabad (U.P.)
(APPELLANT)		(RESPONDENT)
PAN No. AAAAM5982C		

Assessee by : Dr. Rakesh Gupta, Adv.

Revenue by : Sh. N. K. Bansal, Sr. DR

Date of Hearing: 28.08.2019

Date of Pronouncement: 05.09.2019

ORDER

Per Dr. B. R. R. Kumar, Accountant Member:

The present appeal has been filed by the assessee against the order of the Id. CIT(A), Meerut dated 17.08.2015.

2. Following grounds have been raised in this appeal:

"That on the facts and circumstances of the case, the Ld. CIT(Appeals) is not justified and has erred in law in upholding the addition of Rs.45,50,386 made by the A.O. on account of donations and allowing part relief of Rs.8,49,614/- only as against the total addition of Rs.54,00,000/-(as per corrigendum Rs.45,50,386/-).

2. That on the facts and circumstances of the case, the Ld. CIT(Appeals) is not justified and has erred in

law in upholding the disallowance of claim of depreciation of Rs.9,18,645/-."

3. The question is to be decided is that on the facts of the case whether the Id. CIT (A) is right in holding that the anonymous donations are subjected to tax as per the provisions of Section 115BBC of the Act? And on the facts of the case whether the donation received by the assessee can be treated as anonymous donation.

4. Section 115BBC of the Income Tax Act reads as under:

"Section 115BBC. (1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iii ae) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of—

7[(i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—

(A) five per cent of the total donations received by the assessee; or

(B) one lakh rupees, and

8[(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub-clause (A) or sub-clause (B) of clause (i), as the case may be.]

(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by—

(a) any trust or institution created or established wholly for religious purposes;

(b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

(3) For the purposes of this section, "anonymous donation" means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2 , 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.]"

5. As per the provisions of Section 115BBC of the Act a receipt/donation is considered anonymous when the person receiving the contribution does not maintain a record of a) identity b) address. The tax rate is 30% and the amount to be taxed would be 5% of the total donations or Rs.1,00,000/- and on the amount as reduced by the aggregate anonymous donations. Coming to the application of these provisions to the instant case before us to establish whether the amounts received by the assessee are really anonymous or not, we find that the AO has held them as anonymous based on the following reasons:

- *"All the confirmation are received in stereo typed letter which had the same pattern of headers/ letter pads and typing pattern in term of page margin, word font and even having same content pattern also whereas the donors addresses are different. None of the so called confirmation letters are bearing any telephone numbers.*
- *It was found that the copies of ITR were pertaining to other than relevant previous year. They were either*

pertaining to A. Y. 2008-09 were as relevant period is A.Y. 2010-11.

- Bank accounts furnished were incomplete and only one page print out with few entries were attached.*
- In few cases signatures, appeared in the ITRs of other years as submitted by assessee are not the same as they are in the confirmation letters. Even the signatures over the ITR are different from the people who have signed on confirmation.*
- In most of the cases, the return income as per ITRs was below lakhs or at nil.*
- The bank account shows transfer entry and cash deposits from one account to other account which further shows that all the so called donors accounts are operated by one persons or group of same persons.*
- The details submitted by the assessee regarding the three balance sheets which does not through any light over the donation and their capacity. The same are obtained from the web site of ministry of corporatizes affairs or from registrar office. Income expenditure has not been given in the balance sheet. The details of return have not been given.*
- Assessee could neither produce the donors nor telephone numbers nor were even current addresses were provided. The other details as submitted by assessee had not come from the donors but were retrieved from internet accessing the website of ministry of corporate affairs.*
- The plea of assessee, having transaction made through bank account, does not hold much weight because it merely shows entry from the bank but does not throw any light on the nature of transactions and the question remained unanswered whether the company/concern/person will own up that account or not.*
- Vide order sheet entry dated 07-02-2013, the assessee was specifically required to furnish the copy*

of bank accounts, P&L A/c, balance sheet, statement of affairs, copy of acknowledgement of Income tax returns along with confirmations of donors. Even after a lapse of one month time complete details in respect of donors as desired by the undersigned were not furnished by the assessee. The discrete inquiry made by this office could not serve any purpose as the above name company is not found at given address. In compliance to these letters very few donors have confirmed their donations and the same are placed on record. Considering this fact, the assessee was asked to produce the donors but could not produce the donors and utterly failed in discharging the onus."

6. The Id. CIT (A) based on the reasons mentioned at page nos. 9 to 11 of the order held that though the ingredients of Section 68 of the Act are present, the addition cannot be made u/s 68 of the Act as assessee has utilized the amount for charitable purposes. However, he held that such donations be taxed under provisions of Section 115BBC of the Act.

7. Heard the arguments of both the parties and perused the material available on record.

8. From the provisions of the Act, we find that the conditions and prerequisite for addition u/s 68 and 115BBC of the Act are different. For the purpose of addition u/s 68 of the Act, the assessee has to prove the identity, genuineness and creditworthiness of the person from whom the monies had been received whereas for the purpose of Section 115BBC of the Act, the Act clearly defines that a donation can be treated as anonymous where a person receiving such contribution does not maintain the record of the identity indicating name and address. In the instant case, there is no dispute about the name and address of the parties who have given the donation. The ITRs and the letters from the donors stating that the donation has been given for the trust for conference, and towards the corpus fund. Hence, they cannot be treated as anonymous donations

within the provisions of the Act liable to be taxed u/s 115BBC(1) of the Act.

9. The second ground taken up by the assessee pertaining to disallowance of the claim of depreciation. The Revenue has disallowed the claim on the grounds that the amount utilized for acquiring the assets have already been claimed and allowed u/s 11(1) of the Act. The Hon'ble Supreme Court in the case of Rajasthan and Gujarat Charitable Foundation Pune in 402 ITR 441 held as under:

"3. As stated above, the first question which requires consideration by this Court is: whether depreciation was allowable on the assets, the cost of which has been fully allowed as application of income under section 11 in the past years? In the case of CIT v. Munisuvrat Jain 1994 Tax Law Reporter, 1084 the facts were as follows. The assessee was a Charitable Trust. It was registered as a Public Charitable Trust. It was also registered with the Commissioner of Income Tax, Pune. The assessee derived income from the temple property which was a Trust property. During the course of assessment proceedings for assessment years 1977-78, 1978-79 and 1979-80, the assessee claimed depreciation on the value of the building @ 2½% and they also claimed depreciation on furniture @ 5%. The question which arose before the Court for determination was : whether depreciation could be denied to the assessee, as expenditure on acquisition of the assets had been treated as application of income in the year of acquisition? It was held by the Bombay High Court that section 11 of the Income-tax Act makes provision in respect of computation of income of the Trust from the property held for charitable or religious purposes and it also provides for application and accumulation of income. On the other hand, section 28 of the Income-tax Act deals with chargeability of income from profits and gains of business and section 29 provides that income from profits and gains of business shall be computed in accordance with section 30 to section 43C. That, section 32(1) of the Act provides for depreciation in respect of building, plant and machinery owned by the assessee and used for business purposes. It further provides for deduction subject to section 34. In that matter also, a similar argument, as in the present case, was advanced on behalf of the revenue, namely, that depreciation can be allowed

as deduction only under section 32 of the Income-tax Act and not under general principles. The Court rejected this argument. It was held that 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. The Court rejected the argument on behalf of the revenue that section 32 of the Income-tax Act was the only section granting benefit of deduction on account of depreciation. It was held that income of a Charitable Trust derived from building, plant and machinery and furniture was liable to be computed in 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 Income-tax 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 gross income of the Trust. In view of the aforesatated judgment of the Bombay High Court, we answer question No. 1 in the affirmative i.e., in favour of the assessee and against the Department."

10. Hence, respectfully following the order of the Apex Court, we hereby allow the depreciation claimed by the assessee.

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

(Order Pronounced in the Open Court on 05/09/2019).

Sd/-

(Amit Shukla)
Judicial Member

Sd/-

(Dr. B. R. R. Kumar)
Accountant Member

Dated: 05/09/2019

Subodh

Copy forwarded to:

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

ASSISTANT REGISTRAR