

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES, "B" JAIPUR

श्री विजय पाल राव, न्यायिक सदस्य एवं श्री विक्रम सिंह यादव, लेखा सदस्य के समक्ष
BEFORE: SHRI VIJAY PAL RAO, JM & SHRI VIKRAM SINGH YADAV, AM

आयकर अपील सं./ITA. No. 1023/JP/2016
निर्धारण वर्ष / Assessment Years : 2012-13

M/s Ramadevi Memorial Charitable Trust, Road No. 2, Man Nagar, Jhunjhunu	बनाम Vs.	The ACIT(E), Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAATR7440 M		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by : Shri Roonipal (JCIT)

सुनवाई की तारीख / Date of Hearing : 06/02/2020
उदघोषणा की तारीख / Date of Pronouncement : 07/02/2020

आदेश / ORDER

PER: VIKRAM SINGH YADAV, A.M.

This is an appeal filed by the assessee against the order of Id. CIT(A)-III, Jaipur dated 30.09.2016 for the assessment years 2012-13 wherein the assessee has taken the following grounds of appeal:-

"1. On the facts and in the circumstances of the case and in law the learned CIT (A)-III, Jaipur has erred in confirming the order passed by Ld. AO u/s 143(3) without considering the submission

made by assessee and thereby withdrawing exemption u/s 11 of the Income Tax Act, 1961 arbitrarily.

2. On the facts and in the circumstances of the case, Ld. CIT(A) erred in confirming the action of Ld. AO in treating the donation of Rs.89,25,000/- as "Anonymous donation, on mere conjectures & surmises & by grossly ignoring the fact that assessee had produced all receipts in respect of donations received by it containing complete names & addresses of the donors, thus Appellant prays donations should not be treated as "Anonymous" and claim of assessee be allowed.

3. On the facts and in the circumstances of the case the learned CIT(A) erred in upholding the action of Ld. AO ignoring the fact that neither identity nor creditworthiness of donors was doubted rather disallowance was made merely for the non production of complete address of donors which in fact was already filed, thus appellant prays claim of assessee may please be accepted."

2. At the outset, it is noted that the matter was originally listed for hearing on 17.01.2017, thereafter the matter has been listed for hearing on number of occasions and has been adjourned from time to time at the request of the assessee/AR. The matter was last listed for hearing on 06.01.2020 wherein Shri Manish Agarwal (CA) appeared and submitted a letter dated 06.01.2010 stating that they are unable to represent the assessee before the Tribunal and withdrawing their power of attorney and the matter may be decided by issue of notice directly to the assessee. Thereafter, the matter was adjourned and scheduled for

hearing for today i.e. 06.02.2020 and notice which was issued to the assessee-trust duly dispatch by the Registry on 08.01.2020 through RPAD. None appeared on behalf of the assessee nor any written representation was filed by the assessee trusts. Therefore, it was decided to hear the matter *ex-parte qua* the assessee after hearing the Id. DR and based on material available on record.

3. During the course of hearing, the Id. DR took us through the findings of the Assessing Officer while passing the assessment order U/s 143(3) of the Act dated 29.03.2015. It was submitted that during the course of assessment proceedings, the Assessing Officer observed that in the corpus account, the assessee has shown donation of Rs. 1,22,66,069/- and to verify the same, a show cause was issued to the assessee dated 19.03.2015. In response, the assessee filed its submissions vide letter dated 23.03.2015. Basis the submissions filed by the assessee, donation of Rs. 25,00,000/- received from Smt. Nidhi Punia and donation of Rs. 8,41,069/- received in kind was accepted as declared. However, in respect of the remaining donation amounting to Rs. 89,25,000/-, the explanation submitted by the assessee was not accepted by the Assessing Officer and relevant findings of the Assessing Officer at page 4 reads as under:-

"In view of the above discussion made in preceding paras, the assessee could furnish justification and evidences in support of the donation received of Rs. 33,41,069/- and for remaining donations the assessee has furnished a list of innumerable number of people from whom the donation of Rs. 5,000/- each

has been stated to have been received in cash on various dates. The assessee could not furnish complete postal address or identity of the persons from whom the donations have been received. Furthermore the receipt books produced are also appears to be fabricated and issued in one or two sitting without any address of the persons from whom donations stated to have been received. Despite providing a number of opportunities the assessee has not furnished postal address and identification of the person concerned as well as purpose of the donations and whereabouts of the donors. Prima facie the list furnished appears to have been prepared on the basis of voter list or any other records of the census department. The list itself give an impression that complete name of the person is not mentioned and no details about their father or mother and furthermore the address are also mentioned of nearby village of the assessee's place. In view of the aforementioned discussion the donation of Rs. 89,25,000/- is treated as anonymous donations for which the assessee has not been able to justify its identity and genuineness. In view of these discussion provisions of section 13(7) which deals the issue are reproduced herein below:-

⁷*[Section 11 not to apply in certain cases.*

13. (1) Nothing contained in section 11⁹[or section 12] shall operate so as to exclude from the total income of the previous year of the person in receipt thereof—

(a)–

[(7) Nothing contained in section 11 or section 12 shall operate so as to exclude from the total income of the previous year of the person in receipt thereof, any anonymous donation referred to in section 115BBC on which tax is payable in accordance with the provisions of that section.]

In view of the discussion made in the preceding paras provisions of section 13(7) are invoked and the anonymous donations of Rs. 89,25,000/- is brought to tax as per provisions of section 115BBC of the Act at the Maximum Marginal Rate (MMR) as per provisions of Sec. 115BBC of the Act.”

4. The Id. DR further submitted that even during the appellate proceeding before the Id. CIT(A), the assessee has not filed any evidence to controvert the finding of the AO. He has not even filed a list of donors with full address and all these facts show that the donations received were anonymous donation and therefore, the action of the AO in treating the same as anonymous by applying Section 115BBC of the Act. It was accordingly submitted that there is no infirmity in the order of the lower authorities and therefore, the same should be confirmed.

5. We have heard the Id. DR and perused the material available on record. Firstly, it is noticed that due show cause was issued by the Assessing Officer to the assessee-trust to furnish necessary details and documentation in support of the various donation received by the assessee-trust. In its submissions, the assessee-trust has stated that all the donors are the villagers who have donated for the cause of

development of education amongst villagers and spread of spirit of woman education and such donations are paid by the villagers of the nearby area amounting to Rs. 5,000/-and below amount and are voluntarily received by the assessee-trust. It was further submitted that all the receipts carry name and address of the donors and such donors can be physically found, if required to be verified. On perusal of the same, the Assessing Officer has recorded a finding that the assessee could not furnished complete address or identify the persons from whom the donations have been received, the receipt books appears to be fabricated without any address of the persons from whom the donations have been received and number of opportunities have been provided to the assessee-trust to furnish postal address and identification of the persons as well as the purpose of the donation and prima facie the list appears to have been prepared on the basis of voter list or any other records of the census department. Even the complete name of the Donors is not mentioned nor the details about their father and the address where they were residing were furnished. It was further observed by the AO that all these donations have been received of same amount i.e. Rs. 5,000/- from innumerable people which we find practically improbable that each of the donors have donated equivalent amount not a rupee more nor a rupee less. We therefore find that the assessee trust has failed to substantiate the donation so received through any credible and verifiable evidence in terms of complete name and address of the donors and purpose of the donation and therefore, the provisions of Section 13(7) r/w 115BBC have been rightly invoked by the Assessing officer and confirmed by the Id. CIT(A). In the result,

we do not find any merit and justification in the grounds of appeal so taken by the assessee-trust.

In the result, the appeal of the assessee-trust is dismissed.

Order pronounced in the open Court on 07/02/2020.

Sd/-

(विजय पाल राव)
(Vijay Pal Rao)

न्यायिक सदस्य / Judicial Member

Sd/-

(विक्रम सिंह यादव)
(Vikram Singh Yadav)

लेखा सदस्य / Accountant Member

जयपुर / Jaipur

दिनांक / Dated:- 07/02/2020.

*Santosh

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

1. अपीलार्थी / The Appellant- M/s Ramadevi Memorial Charitable Trust, Jhunkjnu.
2. प्रत्यर्थी / The Respondent- ACIT(Exemption) Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 1023/JP/2016 }

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar.