

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH 'A', KOLKATA  
[BEFORE SHRI P.M. JAGTAP, HON'BLE VICE-PRESIDENT (KZ) &  
SHRI A.T. VARKEY, HON'BLE JUDICIAL MEMBER]

[THROUGH VIRTUAL COURT]

ITA No. 1242/Kol/2019  
Assessment Year: 2013-14

*A.C.I.T, CIRCLE - 2, Durgapur.....Appellant*  
*Aayakar Bhawan Annexe, City Centre,*  
*Durgapur - 713 216.*

*Vs*

*M/s. Kalyan Educational Society.....Respondent*  
*Budbud Bye Pass (North), Budbud,*  
*Burdwan - 713 403.*  
*[PAN : AABTK 2860 K]*

C.O. No. 19/Kol/2020  
(Arising out of ITA No. 1242/Kol/2019)  
Assessment Year: 2013-14

*M/s. Kalyan Educational Society.....Cross-Objector*  
*Budbud Bye Pass (North), Budbud,*  
*Burdwan - 713 403.*  
*[PAN : AABTK 2860 K]*

*Vs*

*A.C.I.T, CIRCLE - 2, Durgapur.....Respondent*  
*Aayakar Bhawan Annexe, City Centre,*  
*Durgapur - 713 216.*

**Appearances by:**

*Smt. Ram Bilash Meena, CIT, DR appearing on behalf of the Revenue*  
*Shri S.K. Tulsiyan, Advt. & Smt. Puja Somani, CA appearing on behalf of the Assessee*

Date of concluding the hearing : October 19, 20220

Date of pronouncing the order : December 16, 2020

**ORDER**

**PER P.M. JAGTAP, VICE-PRESIDENT (KZ)**

This appeal is preferred by the Revenue against the order of Ld.  
CIT (A), Durgapur dated 22.03.2019 and the same is being disposed of

along with the cross-objection filed by the assessee being C.O. No. 19/Kol/2020.

2. The common issue relating to the addition of Rs. 14,76,47,829/- made by the AO on account of unsecured loan which is sustained by the Ld. CIT(A) to the extent of Rs. 1,45,01,400/- is raised in ground no. 1 to 3 of the revenue's appeal and ground no. 1 of the assessee's cross-objection which read as under:

**Grounds of Revenue's appeal:**

*"1. The Ld. CIT(A) erred in restricting the addition of unsecured loan to Rs. 1,45,01,400/- only without appreciating the fact that the assessee could not establish genuineness of entire loan amount of Rs. 14,76,47,829/- by filing supporting documents.*

*2. The Ld. CIT(A) erred in holding that the A.O. had conducted enquiry in certain number of loan creditors only without appreciating the fact that enquiry was made by the A.O. in respect of entire unsecured loan amount of Rs. 14,76,47,829/- and that onus for providing the genuineness of entire unsecured loan lied solely with the assessee to which the assessee miserably failed.*

*3. Whether on the facts and in the circumstances of the case and in law, the Ld. CIT(A), Durgapur was justified in not appreciating a well settled position of law that the onus of proving sources of the sum of money found to have been received by the assessee is on the assessee and he was to discharge the primary onus of proving the identity and genuineness of the transactions as held by the Hon'ble Court in the cases of Kale Khan Md. Hanif (1963) 50 ITR 1 (SC), Roshan Di Hatu (1977) 107 ITR (SC), Biju Patanaik 160 ITR 674 (SC) and Sumati Dayal 214 ITR 801 (SC)."*

**Grounds of Assessee's cross-objections:**

*1. That the Ld. CIT(A) has erred in law and facts of the case in upholding the disallowance of Rs. 1,45,01,400/- on account of unsecured loans.*

*2. That the Ld. CIT(A) has erred in law and facts of the case in upholding the disallowance of Rs. 4,39,84,532/- on account of finance cost incurred*

*by the society on the alleged notion that the said amount relates to Capital Work in Progress and cannot be allowed as revenue expenditure.*

*3. That the Ld. CIT(A) has erred in law and facts of the case in upholding the disallowance of Rs. 3,53,989/- u/s 40A(3) of the Act.*

*4. The Cross-objector craves leave to amend, alter, modify, substitute, add to, abridge and/or rescind any or all of the above grounds.”*

3. The assessee in the present case is a society registered under the West Bengal Registration Act, 1961 on 02.02.2005 and is running educational institution in Burdwan, West Bengal. The return of income for the year under consideration was filed by it on 31.03.2015 declaring a loss of Rs. 3,57,26,308/-. In the balance sheet filed along with the said return, unsecured loan to the tune of Rs. 14,76,47,829/- were shown by the assessee on the Liabilities Act. The said loans were appearing in the name of twenty one parties and in spite of sufficient opportunity afforded by the AO, the assessee could not furnish the complete postal address of many of the said parties. Notices u/s 133(6) were issued by the AO to some of the said parties / creditors at the address furnished by the assessee. The said notices however returned back unserved by the postal authority with the remark “not known”. Keeping in view this position, a notice was finally issued by the AO requiring the assessee to show cause as to why the unsecured loans of Rs. 14,76,47,829/- should not be treated as unexplained and added to its total income. Since there was no response on the part of the assessee to the said notice, the AO proceeded to add the entire amount of Rs. 14,76,47,829/- on account of unsecured loan to the total income of the assessee by treating the same as unexplained in

the assessment completed u/s 144 of the Act vide an order dated 29.03.2016.

4. The addition made by the AO on account of unexplained loan was challenged by the assessee in the appeal filed before the Ld. CIT(A) and keeping in view that the AO verified the unsecured loan only to the extent of Rs. 1,45,01,400/- by making enquiries, the Ld. CIT(A) held that unsecured loan only to that extent could be treated as unsubstantiated / bogus and not the entire amount of Rs. 14,76,47,829/- as done by the AO. He accordingly restricted the additions of Rs. 14,76,47,829/- made by the AO on this issue to Rs. 1,45,01,400/-. Aggrieved by the same, the revenue has preferred this appeal before the Tribunal while the assessee has also filed its cross-objection.

5. We have heard the arguments of the sides on this issue and also perused the relevant material available on record. As rightly submitted by the ld. DR, the primary onus to prove the unsecured loans of Rs. 14,76,47,829/- representing cash credits by establishing the identity and capacity of the concerned loan creditors as well as the genuineness of the loan transactions was on the assessee and there was a failure on the part of the assessee to discharge the same during the course of assessment proceedings as pointed out by the AO in the assessment order. As further submitted by the ld. DR, Ld. CIT(A) appears to have ignored this vital aspect and allowed substantial relief to the assessee on this issue on the ground that enquiry / verification was not made by the AO in case of many loan creditors. The learned counsel for the assessee, on the other hand, has

submitted that no proper and sufficient opportunity was afforded by the AO to the assessee to explain the relevant loan amounts in as much as the final show cause notice stated to be issued by the AO on 22.03.2016 was never received by the assessee. Keeping in view these submissions made by the Id. Departmental representative of both these sides and having regard to all the facts of the case, we consider it just and proper to send back this issue to the file of the AO for giving one more opportunity to the assessee to prove the genuineness of the relevant loans. As rightly submitted by the learned counsel for the assessee in this regard, the total loan amount of Rs. 14,76,47,829/- represented opening balance to the extent of Rs. 10,66,42,149/- and the same, therefore, cannot be added to the total income of the assessee in the year under consideration as unexplained cash credit u/s 68. As regards the balance loan amount of Rs. 4,10,05,680/-, the AO is directed to give one more opportunity to the assessee to explain the same by establishing the identity and capacity of the concerned loan creditors as well as the genuineness of the relevant loan transactions by adducing the necessary supporting evidence. The AO is directed to decide this issue afresh to the extent of loan amount of Rs. 4,10,05,680/- after necessary verification. Ground No. 1 to 3 of the revenue's appeal are thus treated as partly allowed while ground no. 1 of the assessee's cross-objection is treated as allowed for statistical purpose.

7. As regards the issue raised in ground no. 2 of the assessee's cross-objection relating to the disallowance of Rs. 4,39,84,532/- made by the AO and confirmed by the Ld. CIT(A) on account of finance cost incurred by the assessee society, it is observed that the finance cost of

Rs. 4,39,84,532/- claimed by the assessee under “Capital-Work-in-Progress” was disallowed by the authorities below on the ground that the assessee society was not registered u/s 12AA of the Act. As claimed by the assessee society by way of raising additional ground in its cross-objection which is admitted by us, it has been granted registration u/s 12AA of the Act w.e.f. A.Y. 2012-13 by CIT(Exemptions), Kolkata vide his order dated 17.08.2020 passed in consequence of the Tribunal’s order dated 31.07.2020 in ITA No. 778 & 779/Kol/2013 and, therefore, the finance cost in question paid on the loans utilised by assessee society for the charitable purpose cannot be disallowed being application of income. The AO is accordingly directed to verify this claim of the assessee and allow appropriate relief to the assessee on this issue. Ground No. 2 of the assessee’s cross-objection as well as the additional grounds raised therein are accordingly treated as allowed for statistical purpose.

8. As regards ground no. 3 of the assessee’s cross-objection, it is observed that the issue involved therein relating to the disallowance of Rs. 3,53,989/- made by the AO u/s 14A(3) of the Act and confirmed by the Ld. CIT(A) is squarely covered in favour of the assessee by the various decisions of the Tribunal including the decision of Hyderabad Bench of this Tribunal in the case of Sree Education Society vs. Asstt. CIT (2017) 88 taxmann.com 363 (Hyd. – Trib) wherein it was held that no disallowance u/s 40A(3) can be made while determining the income u/s 11 of the Act of the assessee which is registered u/s 12AA of the Act. Respectfully following the said decision of this Tribunal, we delete the disallowance made by the AO u/s 40A(3) of the Act and confirmed by the Ld. CIT(A) in the case of the present assessee society

which is now duly registered u/s 12AA of the Act. Ground no. 3 of the assessee's cross-objection is accordingly allowed.

**9. In the result, the appeal of the revenue is treated as partly allowed for statistical purpose while the cross-objection of the assessee is treated as allowed as indicated above.**

Order Pronounced in the Open Court on 16<sup>th</sup> December, 2020.

Sd/-  
(A.T. VARKEY)  
JUDICIAL MEMBER

Sd/-  
(P.M. JAGTAP)  
VICE-PRESIDENT

**Dated: 16/12/2020**

Biswajit, Sr. PS

Copy of order forwarded to:

1. M/s. Kalyan Educational Society, Budbud Bye Pass (North), Budbud, Burdwan – 713 403.
2. ACIT, Circle – 2, Durgapur.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar  
ITAT, Kolkata