

आयकर अपीलिय अधिकरण, इंदौर न्यायपीठ, इंदौर
IN THE INCOME TAX APPELLATE TRIBUNAL,
INDORE BENCH, INDORE

BEFORE SHRI MANISH BORAD, ACCOUNTANT MEMBER
AND
Ms. MADHUMITA ROY, JUDICIAL MEMBER
VIRTUAL HEARING

ITA No.232/Ind/2017
Assessment Year: 2013-14

DCIT(E)
Bhopal : Appellant

V/s
Mayank Welfare Society,
Indore : Respondent
PAN:AANFM0784C

ITA No.776/Ind/2018
Assessment Year: 2015-16

ACIT(E)
Bhopal : Appellant

V/s
Mayank Welfare Society,
Indore : Respondent
PAN: AANFM0784C

Revenue by	Shri Rajeeb Jain CIT-DR
Respondent by	Shri Sumit Nema Sr. Adv. With Shri Manjeet Sachdeva & Shri Gagan Tiwari, ARs

Date of Hearing	22.09.2021
Date of Pronouncement	29.10.2021

ORDER

PER MANISH BORAD, A.M

The above captioned appeals filed at the instance of the Revenue for Assessment Years 2013-14 & 2015-16 are directed against the orders of Ld. Commissioner of Income Tax(Appeals) (in short 'Ld. CIT],-II Indore dated 16.12.2016 & 02.07.2018 which are arising out of the order u/s 143(3) of the Income Tax Act 1961(In short the 'Act') dated 28.03.2016 & 12.03.2018 framed by DCIT(E), Bhopal.

The Revenue has raised following grounds of appeal in ITANo.232/Ind/2017:

1. *Whether on the facts and in the circumstances of the case, the ld. CITCA) was justified in deleting addition of Rs. 14,06,75,754/- made on account of anonymous donations under section 115BBC of the Act without considering the various discrepancies in the list of donors and the receipts as pointed out by the Assessing Officer in the assessment order?*

2. *Whether on the facts and in the circumstances of the case, the Ld. CITCA) was justified in arriving at the conclusion in respect of aforesaid addition of Rs. 14,06,75,754/- that the name and the addresses of the donors were furnished by the assessee when the complete name an postal addresses/PIN Code was not furnished by the assessee before the Assessing Officer an whether the name of cities/districts such as Harda, Indore, Shajapur, Devas, Sonkachchh, Ujjain etc can be accepted as complete address of the donors?*

3. *Whether on the facts and in the circumstances of the case, the Ld. CITCA) was justified in deleting the aforesaid addition of Rs.*

14,06,75,754/- without giving opportunity to the Assessing Officer to examine the issue, especially when the assessee took a plea that it had filed detailed submission/information, which was not examined by the Assessing Officer?

4. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in allowing relief to the assessee regarding the addition of Rs. 60,03,055/- on account of suppression of interest receipts by the assessee, arrived at by the Assessing Officer as difference between interest receipts as per 26AS statement of Rs. 1,34,99,0181- and that offered by the assessee of Rs. 74,95,9631-, considering also the fact that the assessee is following mercantile system of accounting?

5. The revenue reserves the right to add, urge or alter all or any other ground/grounds on or before the date of hearing.

The Revenue has raised following grounds of appeal in ITANo.776/Ind/2018:

1. "Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting addition of Rs. 20,50,90,750/- made on account of anonymous donations under section 115BBC of the Act without considering the various discrepancies like incomplete address- . wrong/Invalid P AN in the list of donors and the receipts as pointed out by the Assessing Officer in the assessment order?

2. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in arriving at the conclusion in respect of aforesaid addition of Rs. 20,50,90,750/- that the names and the addresses of the donors were furnished by the assessee when the complete name and postal addresses PIN Code was not furnished by the assessee before the Assessing Officer and 1900 notices issued by the Assessing officer returned unserved for want of complete address.

3. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in arriving at the conclusion in respect of aforesaid addition of Rs. 20,50,90,750/- that AO has not been able to prove or bring on record any particular or specific evidence that these were benami, ignoring the fact that 2000 summons issued and out of them 1900 were returned unserved by postal authority for want of complete address, recorded that statement of village Sarpanch to prove non-existence of many alleged donors, examined on oath 14 persons and found that all of them denied giving donation to the society?

4. Whether on the facts and in the circumstances of the case, the Ld. CIT(A) was justified in deleting the aforesaid addition of Rs.

20,50,90,750/- without giving opportunity to the Assessing Officer to examine the issue, especial when the assessee took a plea that it had failed detailed submission, which was not examined by the Assessing Officer?

2.As the issues raised in these appeals are common and relate to same assessee, at the request of all the parties both the appeals were heard together and are being disposed of by this common order for sake of convenience and brevity.

3. From perusal of the various grounds of appeal raised by the revenue we find that the common issues relates to addition made by the Ld. Assessing Officer u/s 115BBC(3) of the Act on account of 'Anonymous donation' at Rs. 14,06,75,754/- and Rs.20,50,90,750/- for A.Y. 2013-14 & 2015-16 respectively which has been deleted by Ld. CIT(A) and against the finding of ld. CIT(A) revenue is in appeal before this Tribunal. Revenue has also taken a ground that ld. CIT(A) failed to provide opportunity to the ld. Assessing Officer to examine the issue specially when the assessee took a plea that it had filed detailed submission/information. Second issue only relates to A.Y. 2013-14 regarding the addition of Rs. 60,03,055/- on account of suppression of interest receipts by the assessee which

subsequently was deleted by the Ld. CIT(A).

4. As agreed by both the parties for the purpose of adjudicating the common issue relating to addition for Anonymous donation u/s 115BBC(3) of the Act we will take the basis of the fact for A.Y. 2013-14 and our decision for A.Y. 2013-14 shall apply *mutatis mutandis* on this common issue raised by the Revenue for A.Y. 2015-16.

5. Brief facts as culled out from the records are that the assessee is a society established on 04.12.1996 with a main object for development of downtrodden/poor people of society and establishment of institutions, programmers for improving the literary level of various segments of the society in the field of medicine, social engineering etc. That for achieving the said objects the society has setup primary health centres in rural areas for providing free health care services to people of low income level cum research in rural area also are conducting graduate and post graduate courses in the field of medicine surgery and allied advanced courses. The society is registered u/s 12AA(1)(B)(1) vide order dated 01.12.2008. Approval u/s

80G(5) (vi) was issued to the assessee on 13.05.2009, that approval u/s.10(23c)(vi) was granted by the Honourable Chief Commissioner of Income Tax on 25.06.2009. The department of revenue, National Committee for Promotion of social and Economic Welfare Ministry of Finance vide notification dated 04.10.2011 approved the application u/s 35AC of the Act. Assessee's return for A.Y. 2013-14 was e-filed on 30th September 2013, declaring loss of Rs. 24,81,72,253/-. Case selected for scrutiny under CASS, followed by serving of notices u/s 143(2) & 142(1) of the Act. Ld. Assessing Officer on examining the records observed that the assessee society is running Indore Medical College Indore and a 1200 bed facility hospital near Indore and is also conducting various medical camps. In the audit report, gross revenue is shown at Rs. 42,40,92,826/- and gross expenditure at Rs.39,63,67,098/- and capital expenditure at Rs.21,22,84,057/-. Ld. Assessing Officer also observed that in the balance sheet under the head corpus funds a sum of Rs.14,06,75,754/- was shown to be received as donation during the year towards corpus funds.

6. Ld. Assessing Officer asked the assessee to file the details of this donation of Rs.14,06,75,754/- vide notice dated 09.03.2016. In reply the assessee filed a list of 27746 persons before the Ld. Assessing Officer which included the date of receipt of donation, name, father/husband name, age, gender, address and amount. Ld. Assessing Officer, however, insisted for complete address as in case of various donors only the name of village was mentioned and also issued summons to some donors on text check basis. The assessee filed the confirmation of various donors who accepted to have given donation to the assessee along with their identity proof. This, fact was also brought in notice before Ld. Assessing Officer that the various donors are scattered across many villages who have utilized the free facility of hospital situated around 30 km from Indore and surrounded by various small villages providing free medical facilities and free medicines are provided to the people at large. It was also submitted before Ld. Assessing Officer that most of the alleged donation were given by the family of patients getting medicated free of cost from this hospital and at the

time of getting discharged they on their own will use to donate the amount to the hospital. Ld. Assessing Officer however was not satisfied and he treated the donation of Rs.14,06,75,754/- given towards a corpus funds as Anonymous donation liable to be taxed under the provisions of section 115BBC(3) of the Act.

7. Ld. Assessing Officer also observed that the assessee has disclosed the interest income of Rs.74,95,963/- whereas as per the income tax portal on form 26AS tax has been deducted on the interest income of Rs. 1,34,99,018/- based on this information. Ld. Assessing Officer made addition for suppression income at Rs.60,03,055/-. Accordingly income assessed at Rs. 14,06,75,754/-. It is important to mention here that the Ld. Assessing Officer has not disputed the book results and the loss incurred by the assessee at Rs. 24,81,72,253/- shown in the audited financial statement and has also not disputed that the assessee society is carrying out charitable activity by way of giving medical relief to poor and also imparting education through Index Medical College and the assessee is regularly carrying out

the activities for which it was granted registration u/s 12AA(1)(B)(i) & 10(23C)(vi) of the Act.

8. Aggrieved assessee preferred an appeal before the ld. CIT(A) challenging the issue on addition of anonymous donation suppression interest received and succeeded as Ld. CIT(A) deleted the addition. The revenue is now in appeal before this Tribunal. Ld. DR vehemently argued submitting that the alleged donation are not genuine donation and the members/trustee of the society have diverted their unaccounted income in the society and the alleged details of large number of persons claimed to be villagers is just a colourable device and not true since the results of the enquiries conducted to verify the genuineness of donation were not favourable to the assessee.

9. Ld. CIT-DR also referred to the search and seizure action conducted in the case of assessee on 23.03.2018. Special reference was made to the paper book dated 24.08.2021 in which the application of the assessee society before Settlement Commission for A.Y. 2008-09 to

2018-19 was referred which is still pending.

10. Further Ld. CIT-DR submitted that the ld. Assessing Officer for A.Ys. 2013-14 & 2015-16 are different but the issue of the “Anonymous donation” remains the same and he, therefore placed specific reliance on the following observation of the Ld. Assessing Officer to the assessee society for A.Y. 2015-16:-

4.34. In view of the above statements of claimed donors recorded on oath, it is evident that not a single person has accepted giving donations to the assessee. In fact, they all have categorically denied having given any donation to the assessee or it's Medical College. This in itself shows that the list of donors prepared subsequently; and ' submitted during the assessment proceedings is bogus and not-genuine. As found from enquiries which is also evident from the statements recorded, many names appearing in the list are non-existent. It is further found from the enquiries conducted and, statements recorded during the assessment proceedings that the assessee has merely borrowed some names of the patients, employees, students etc available with it and ' has claimed bogus donations in their names to channelize its unaccounted money -. ' The assessee in response to the specific show cause in this regard has argued that the, statements have been recorded behind the assessee and no cross enquiry was given to the assessee. Such submissions have been duly considered but not found acceptable. The assessee despite repeated requested failed to furnish complete details of identity, intention letters, receipt books etc. for verification before the undersigned. The assessee has failed to produce the donors for examination during the assessment proceedings. O law of the land requires that assessee should be called for before conducting any enquiry and made part of recording any statement. The statements were recorded on oath absolutely in a fair manner and the persons have also acknowledged the same in the statements itself. In fact, one person herself submitted letter in Dak stating that no donation was given by her. They have categorically denied having given any donation to the assessee in response to specific queries regarding the issue of donation to the assessee.

These statements recorded has been duly confronted to the assessee vide letter dated 19.12.2017 and copy of all the statements have been provided to the assessee on the same date through email. Thus, the argument of the assessee that opportunity of cross enquiry was not provided to the assessee is not tenable, In fact the assessee has nothing to say in the matter and hence some weird logic has been taken that the statements have been recorded behind assessee.

4.35 It is further pertinent to mention that several Courts in similar circumstances have held such claimed donations as taxable in the hands of the assessee u/s 115BBC amendments have been made in section 10(23C) and section 13 to provide that any income by way of all anonymous donation which is taxable under section 115 BBC shall be included in the total income of the assessee. Section 115BBC is applicable from assessment year 2007-08 onwards.

11. To appreciate the issue we would like to reproduce section 115BBC as under-

"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 (iii) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iii) or sub-clause (vii) 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-

[(i) the amount of income-tax calculated at the rate of thirty per cent on the aggregated f 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

(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.]

(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 II 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.]"

12. On a plain reading of section 115BBC, the salient features of section noticed are as under (1) Total income of an assessee, being a person in receipt of income on behalf of:-

(i) any university or other educational institution existing solely for educational PUIPO' and not for purposes of profit if the aggregate annual receipts of such university or educational institution do not exceed the amount of annual receipts as may be prescribed; or

(ii) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purpose and not for purposes of profit, if the aggregate annual receipts of such hospital or institution do not exceed the amount of annual receipts as may be prescribed; or

(iii) any other fund or institution established for charitable purposes [which may be approved by the prescribed authority], having regard to the objects of the fund or institution and its importance throughout India or throughout any State or States; or

(iv) any trust (including any other legal obligation) or institution wholly for public religious purposes or wholly for public religious and charitable purposes [which may be approved by the prescribed authority], having regard to the manner in which the affairs of the trust or institution are administered and supervised for ensuring that the income accruing thereto is properly applied for the objects thereof;

(v) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiiab) or sub-clause (iiiad) and which may be approved by the prescribed authority; or

(vi) any hospital or other institution for the reception and treatment of persons suffering from illness or mental defectiveness or for the reception and treatment of persons during convalescence or of persons requiring medical attention or rehabilitation, existing solely for philanthropic purposes and not for purposes of

profit, other than those mentioned in sub-clause (iiiac) or sub-clause (iiiae) and which may be approved by the prescribed authority] (vii) Trust or institutions referred to in section 11.

(2) Includes any income by way of any anonymous donation.

(3) Income tax payable shall be the aggregate of the amount of income tax calculation on the income by way of any anonymous donation @ 30 %.

(4) Amount of income tax with which the assessee would have been chargeable had his total income been reduced by the amount of income charged to tax @ 30%.

(5) Anonymous Donation - for the purpose of anonymous donation, following conditions must be satisfied:--

(i) Anonymous donation means voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub clause (iv) or sub-clause (v) [or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via)] of clause (23C) of section 10 [or by an electoral trust]].

(ii) Where a person receiving such contribution does not maintain record of the identity indicating the name and address of person making such contribution and such other particulars as may be prescribed.

(6) This provision of anonymous donation shall not apply to following :-

(i) any trust or institution created or established wholly for religious purpose;

(ii) any trust or institution created or established wholly for religious purpose and charitable purpose 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.

13. In the light of the above background of discussions of relevant scheme of the Act and provisions of section 115BBC, if we consider the facts of the case under consideration, we notice that the assessee did not maintain records of the identity indicating the names and addresses of the donors. Merely filing list of donors containing names and addl'esses/incomplete addresses does not satisfy the conditions

laid down in section 115BBC(3) of lite Act.Tilt: sub-section (3) of section 115BBC has explained the meaning of anonymous donation clearly that such institution is required to maintain records of identity indicting the names and addresses of the persons making the donations or contributions. On a perusal of records, we do not find that the assessee has maintained such records of identity indicting names and addresses of the donors. After sample examination carried out by the Revenue Authorities, it was found that in some cases the assessee has proved identity indicating the names and addresses of the donors. Therefore, to that extent, it can be said that the there was no anonymous donation. The burden is on the assessee to explain that the assessee has maintained records of identity indicting names and addresses of the persons of such contribution or donation. (Emphasis Supplied)

4.36 The Hon'ble ITAT, Pune Bench has also in its recent judgment in the case of Assistant Commissioner of Income-tax, (Exemption) Circle, Aurangabad v. Gurudatta Shikshan Sanstha reported in [2017] 87 taxmann.com 214 (Pune-Trib.) has categorically held that where assessee-trust though provided names and addresses of donors, but during enquiry most of them denied having given any donation to trust, such donations received by assessee were rightly brought to tax as 'anonymous donations' within meaning of section 115BBC. The relevant excerpt of the judgment is reproduced as under for ready reference:-

1/19. We find the above section is brought into statute with Finance Act 2002 w.ej 01.04.2003 and the same apply to the A. Y 2011-12 under consideration. According to the said provisions, the "Anonymous Donation" is defined in sub-section (3). According to the subsection (1), 30% of the aggregate of the Anonymous Donation received in excess of the higher of the specified amounts, constitutes tax in certain cases. The meaning given to the Anonymous Donations is exhaustive. The maintenance of record regarding the identity of the donors assumes significance in the definition. When the provision specify directing the assessee to maintain the record regarding the identity of such donation, it implies that record of that identity of the donor should stand the test of scrutiny by assessing authorities; Finally writing some names and their addresses, in our opinion, falls short of the legal requirement. Therefore, in our view, the names and addresses taken for verification on test check basis, goes to cast of doubt about the genuineness of the such records, name of donors, donations etc."

(Emphasis Supplied)

4.37 The Hon'ble income Tax Appellate Tribunal, Mumbai Bench in its recent judgment in case of Madhavi Raksha Sankalp Nirmal Niketan v. Deputy Director of Income Tax (Exemption) reported in

[2017] 83 taxmann.com 316 (Mumbai-Trib.) in almost identical facts has also categorically held that where assessee-trust received corpus donation, assessee was to furnish father's name, PAN and addresses of donors for verification by Assessing Officer before exemption under section 11(l)(d) was allowed. The Id. Tribunal has also directed the assessee to produce the donors for verification as selected by the Assessing Officer. In this case of Madhavi Raksha Sankalp Nirmal Niketan, even the intention letters of all the donors were provided, all the donations were received through banking channel not in cash but then also such directions were made by the Id. Tribunal in interest of justice. The relevant portions of the judgment are reproduced as under for ready reference:-

1/3. The brief facts of the case are that the assessee is a trust registered as a charitable organization with DIT (E), Mumbai u/s 12A of 1961 Act vide registration No. TR/25225 and the assessee is also registered with Charity Commissioner, Mumbai vide registration No. E- 10395, Mumbai. The assessee trust has claimed that it is engaged in charitable activities in the field of education and medical relief and is thus entitled for exemption u/s 11 of 1961 Act. During the course of assessment proceedings u/e 143(3) r.to.s. 143(2) of 1961 Act, the A.O. observed that the assessee trust had shown addition to Corpus of Rs.2,42,26,508/- during the year and opening balance of corpus is at Rs. 23,82,41,105/-. The assessee was asked to furnish the following information: -

II (a) Copy of letters from donors showing specific direction that the donations are to towards Corpus showing.

(b) Copies of Receipts issued to donors to Corpus Donations.

(c) PAN & proof of Address of donors.

(d) Specify mode of payment viz Cheque/cash. There've the donations are claimed to have been received in cash, furnish fresh confirmations for these corpus donations. "

The assessee trust in reply submitted that the trust received donations totalling Rs. 2,42,26,508/towards its corpus from about 6500 donors. All these donations were accompanied by letters of directions of the donors that the donations shall form part of corpus fund. The assessee enclosed direction letters from the donors. The assessee also drew the attention of the A.a. to the order u/s 264 dated 22.03.1996 passed by the then Director of Income tax (Exemptions) in assessee's own case for assessment year 1992-93, whereby the Id. DIT (Exemptions) had allowed the petition u/s 264 of the Act which was filed against the assessment order wherein Aa treated donation of Rs. 22,83,688/- as voluntary donations rather than corpus donations as claimed by the assessee trust by virtue of which it was deductible u/s 11(1)(d) of 1961 Act. The relevant para of the order u/e 264 is reproduced below: =

"In order to understand the modalities of the donation in this case, the activity of the trust has to be seen. It is a unique way of creating impersonal wealth. In a village, like minded farmers get together and cultivate land and produce wealth in the service of God and such wealth is utilised for the upliftment of the village as well as for donation to the trust which in turn is again utilised for charitable purpose. A group of people who are devoted to the concept propagated by the trust join together and out of that someone contributes land another contributes seeds another contributes irrigation and another contributes labour and so on and cultivate the land jointly to produce wealth out of which part is utilised for charitable purpose at the village level and part of which is donated to trust by way of corpus donation. Therefore individual shares in the produce is an unidentified even amongst themselves and therefore, the certificate of the representative of that group is sufficient enough and acceptable to treat it as corpus donation. These activities are taken turn by turn from one village to another in subsequent year and this activity goes on. In these circumstances, the claim of the assessee that it is a corpus donation is in order and is acceptable and the AO is directed to treat as corpus donation. TNherenever directions letters were not filed, they are available with the assessee which may be obtained and placed on record. "

The assessee has produced the sample copies of receipts issued to the donors in respect of corpus donations. The assessee also submitted direction letters for the period for verification. The assessee has also submitted PAN which were reflected in the respective direction letters of the donors. It was also submitted that all the donations were received by account payee cheques or demand drafts and nothing was received in cash. The assessee contended that all the corpus donations were supported by confirmatory letters from the donors that they are towards corpus and as such they are exempt U/S 11(1)(d) of 1961 Act.

*The A.D. observed that all donation letters totaling 6584 in number furnished by the assessee trust were in the same format and each letter carried names of 3-4 villagers who were claimed to be the donors. It was observed by the AD that in each case name of village, Taluka, District is given but complete address is not given and claim of the assessee cannot be verified in the absence of address. It was also observed that none of the letters bear PAN of the donors as claimed by the assessee trust. Under 'these circumstances, the AO. rejected these direction letters as an evidence' in support of identity and address of donors as mandated u/e 115BBC of 1961 Act and held that exemption u/s 11(1)(d) of the Act is not admissible to the assessee. The AO held that the receipts which were claimed to be treated as voluntary contribution are liable to be taxed u/s 115 BBC of 1961 Act as anonymous donations. The AO. after going through the object clauses of the assessee trust observed that the assessee trust is not a religious trust. The AO. held that the assessee failed to establish the identity and address of donors and the AO invoked provisions of section 115 BBC of the Act and denied exemption to the assessee u/s 11 of 1961 Act and taxed the same u/e 115BBC of 1961 Act. **II***

Aggrieved by the assessment order dated 22-03-2013 passed by the DDIT (Exemption)-l(l) i.e. the AO, the assessee carried the matter in appeal before the ld. CIT (AJ who rejected the appeal of the assessee on the ground that the third party verification of donors was not possible by the AD. due to incomplete identity and address of the donors which was vague and general. The ld.CIT (A), therefore, held that the corpus donations of Rs. 2,42,26,508/- received by the assessee trust during the year was assessee I s income in the absence of identity and address of the donors being not verifiable as genuineness of the transaction remained unproved, and hence the furnished for verification by the AD. Considering the factual matrix of the case, keeping in oietu the provisions of Section 115BBC of 1961 Act and in the interest of justice and fair play, we are of considered view that this matter needs to be set aside and restored to the file of the A.D for necessary enquiry and verification of the said donations so received by the assessee as to genuineness and also for verifying compliance of the relevant section 115BBC of 1961 Act. The onus as well burden of proof is entirely on the assessee to provide to the AD all relevant details as contemplated under section 115BBC of 1961 Act to the satisfaction of the Ld. AO as to compliance of Section 115BBC of 1961 Act and as to genuineness of the said donation. The assessee is directed to furnish PAN, addresses and all other relevant details of all the said donors before the AD to satisfy mandate of Section 115BBC of 1961 Act. The assessee is directed to produce before the AD donors, 25% in numbers for donation up-to Rs 20,000/- and 10% in number for donations above Rs.20,000/- to satisfy the AD about compliance of mandate of Section 115BBC of the Act and genuineness of the such donations. The selection of donors shall be on random basis at the sole discretion of the AD, which short listed list of donors shall be supplied by the AD to the assessee for necessary compliance as per our above directions. If so required for ensuring compliance of Section 115BBC of 1961 Act and for establishing genuineness of the said donations of Rs. 2,42,26,508/-, the AD can enhance the number of persons to be produced by the assessee before him higher than minimum stipulated by us as above. (Emphasis Supplied)

4.39 It is also pertinent to mention here that from the objects and activities of the assessee it is seen that the assessee is neither a religious trust nor it is a religious and charitable trust as mentioned in section 115BBC (2) of the Act and hence provisions of sub-section (1) of the section 115BBC of the Act are squarely applicable in the case of the assessee as in case of the assessee, anonymous donations as per section 115BBC(3) has been found.

4.40 Without any prejudice to the above, it is also noted that the assessee cannot make any fresh claim which was not in the return of income other than by filing a revised return of income. The Hon'ble Supreme court has been specific on this issue in the

case of Goetze (India) Ltd. vs. CIT on 24.03.2006 reported in, 284 ITR 323 SC [2006].

The assessee has not shown any donation in part B-II of its return or in Schedule VC and it also doesn't claim any exemption of Corpus donation u/s 11(1)(d) of the Act in the return of income. Thus, the claim of exemption u/s 11(1)(d) of the Act is not admissible on this ground also.

4.41 Without any prejudice to above, it is further to mention that the assessee has not satisfied the pre-conditions for claiming exemption u/s 11(1)(d) of the Act for corpus donations. For example, it has been categorically mentioned and also held-by several Courts that the assessee has to furnish the intention letter of donors given at the time of giving donation stating that the donation is made towards corpus. Further it has been held that the Corpus is a permanent fund which has to be kept intact and only income generated out of corpus has to be utilised. It is found that the assessee has not- fulfilled such conditions and as such, the claimed exemption u/s 11(1)(d) of the Act is not allowable otherwise also.

4.42 In view of all the above facts and circumstances of the case, discussion made above in detail, evidences gathered and judicial pronouncements discussed in. preceding paragraphs, it is found that the assessee has failed to maintain the records of identity of claimed donors in case of all donations received during the year amounting to Rs. 21,58,85,000/- (Corpus donation of Rs. 17,23,85,000/- and normal donation of Rs. 4,35,00,0001 -) as prescribed in section 115BBC(3) of the Act. Thus, this amount of Rs. 21,58,85,0001 - is hereby treated as anonymous donation within the meaning of provisions of section 115BBC of the Act. However, the assessee is provided benefit of five percent of total donations amounting to Rs. 1,07,94,250/- as given in section 115BBC(1)(i) of the Act. Accordingly, the balance anonymous donations amounting to Rs. 20,50,90,750/- are charged to tax at the rate of thirty per cent as per provisions of section 115BBC of the Act. I am also satisfied that the assessee has committed default within the meaning of the provisions of section 271(1)(c) of the I.T. Act by furnishing inaccurate particulars of its income and hence penalty proceedings u/s 271(1)(c) of the I.T. Act are initiated separately.

11. Per contra ld. Counsel for the assessee vehemently argued referring to the following written submissions:-

The facts of the case are that the appellant is a society which was established on 04.12.1996 basically for development of downtrodden/poor people of society and establishment of institutions, programmers for improving the literary level of various segments of the society in the field of medicine, social engineering etc and for which the appellant society has setup primary health centers in rural areas for providing free health care services to people of low income level.

That, apart from the above, the society also setup a medical college and hospital cum research Centre in rural area and are conducting graduate and post graduate courses in the field of medicine surgery and allied advanced courses.

That, the society is registered u/s 12AA(1)(B)(1) of the Income Tax Act vide order dated 01.12.2008 and is also approved u/s 80G(5)(vi) vide order which was issued to the assessee on 13.05.2009.

That approval u/s 10(23c)(vi) of the Income Tax Act was granted to the society on 25.06.2009.

That the Department of revenue, National Committee for Promotion of Social and Economic Welfare Ministry of Finance vide notification dated 04.10.2011 approved the application u/s 35AC of the Income Tax Act of the appellant society.

That the return of income tax filed for the assessment year 2013-2014 was filed on 30.09.2013 .

That return filed for the relevant assessment year was selected for scrutiny and the appellant society submitted the details as required from time to time during the assessment proceedings and assessment was completed under section 143(3)/115BBC of the Income Tax Act after making addition of Rs.14,06,75,754/- on account of donation considering the same as benami under section 115BBC and of Rs.60,03,055/- on account of difference in interest income as per 26AS statement. That against the assessment order passed the assessee filed an appeal before the learned Commissioner of Income Tax (Appeal)

That the learned Commissioner of Income Tax (Appeal) partly allowed the appeal of the assessee and deleted addition made under section 115BBC by the Assessing Officer.

That against the appeal order passed by the learned Commissioner of Income Tax (Appeal), the department has filed an appeal before the Honorable Bench, Income Tax Appellate Tribunal, Indore Bench, Indore.

This is departmental appeal before the honorable bench.

That during the course of assessment proceedings the appellant cooperated fully and furnished all the details asked for and the learned Assessing Officer accepted the nature of activities having carried on by the society. That, the said fact is evident from the assessment order itself because no adverse comment regarding the bona fides of the charitable work being carried on has been made.

That, the appellant which had a corpus fund of Rs.82,07,94,149/- received donations at Rs. 140675754/- and therefore learned Assessing Officer directed to furnish the complete list of the donors along with their address and the appellant was directed to produce details. That, the assessee submitted the details on 03.03.2016 and as per the assessment order itself the list comprised of 27746 persons. The said list contained the serial number, date, name, father's name, age of the donor, sex, location and the amount. List of donors is attached at page no. 206 to 382 of the paper book. That, as per the Assessing Officer the complete address were not furnished and also a copy of the receipt for receiving the donation was also not furnished and therefore the learned Assessing Officer, asked the assessee to furnish the aforesaid details on 17.03.2016 otherwise the assessment shall be completed as per provision of section 115BBC. That, the Assessing Officer has observed a few certificates were submitted on which the name of the donor, village and amount were filled up in writing and that otherwise the letter were typewritten. The learned Assessing Officer failed to appreciate that the receipt are either printed or typewritten. That there was no reason to doubt the same.

That the learned Assessing Officer has further stated, that as per section 11(1)(d) corpus fund were as the amount which is donated voluntary however in the opinion of the AO the amounts donated are towards free treatment and hence the amount is treated as Benami donation under section 115BBC.

That, having arrived at this conclusion (without appreciating of the facts) the learned Assessing Officer has gone a couple of steps further, in so far as stating that because some of the certificates bear thumb impression and that the assessee has taken an advantage of the illiterate persons. The AO has then come to the conclusion that all the certificates are false and have been prepared later.

That, on the aforesaid ground the learned Assessing Officer in the assessment order assumed arbitrarily that provisions of section 115BBC were applicable and proceeded to make an addition of donation received amounting to Rs. 140675754/-.

Attention is drawn to section 115BBC of the Income Tax Act and as per the heading itself, it is apparent, that tax is applicable only in certain cases t.e. anonymous donations.

That coming back to the facts of the case as stated above, that assessee received donation from 27746 persons and to obtain certificates from all 27746 persons in only a few days was an impossible task, hence to doubt that the receipts were prepared at one go is an assumption.

That point to be noted is that, the assessee filed the complete list giving the name, date, name of the father/spouse, age, sex, place and the amount, hence the donations received were not from anonymous sources.

That tax can be levied only if the donation are received from anonymous sources.

In the present case a complete list was available in the hard disc of the computer. This point has nowhere been mentioned by the Assessing Officer.

The assessee took time only for taking hard copies numbering more than 27000 persons.

The Learned Commissioner of Income Tax (Appeals) rightly deleted the addition so made by the Assessing Officer.

That, from a perusal of the certificates as enclosed at page no. 382A to 382E of the paper book it shall be seen that these were issued by the Sarpanch of the village, wherein it is stated that because of the hospital in their area lot of problems have been solved and there is an improvement and development in the area and therefore the residents have donated amounts towards the completion of the hospital.

That it is well settled that though the larger cities or towns do have a reasonable good postal service and that the houses etc. are properly numbered along with the colonies etc. the small villages having population from 500 to say 1500 don't have that luxury.

Leave alone the pin code or any other data the majority of small villages don't have post offices either and hence to give a specific number of the house is actually beyond understanding and uncalled for.

That the Assessing Officer failed to appreciate this very important aspect. That, in response to the producing of receipts of the donation the same numbering 200 were filed before the Assessing Officer. Receipts are enclosed at page no. 03 to 205 of the paper book. However, the filing or not filing of the certificates is not as important, because the complete list along with the addresses of the dononers was before the AO.

The learned Assessing Officer observed that the copies of the letters issued by the donors were typed and that the names, the village and the amounts were filled up later, and on this basis come to a conclusion that the donors are the people who have undergone medical treatment and have paid the amounts in lieu of the treatment and medicines and has therefore assumed that the assessee has charged for the facility.

That, not only did the Assessing Officer not accept the explanation of the assessee but also held that the letters were false. That, he further stated, that the age of the donors range from 0 years to 2 years and hence the amounts have been received towards medical charges. That the learned Assessing Officer totally failed to appreciate that no treatment for whatever the cause can be provided in Rs. 1700/- in the present situation.

What the learned Assessing Officer has surmised any treatment and medication along with hospitalization is possible in a meager amount.

That, the learned Assessing Officer failed to appreciate the explanation that the villagers with the guidance of the Sarpanch and after

discussing amongst themselves voluntarily decided to donate almost similar amounts for the facility.

That, it was a blessing in disguise for the people of that area for getting free medical facility who earlier had to travel to Indore earlier and pay exorbitant fees in the city.

That, an important aspect to consider is that the Medical Council of India carries out periodical inspection and renews the permission if only everything is found in order. That, it is beyond understanding, that how could the learned AO come to a conclusion that medical treatment could be so cheap or economical.

That, the AO did not consider a glaring fact, that the hospital being run by the society is a 1200 bed facility which itself requires a huge expenditure. That, the AO's observation that the letters/certificates were typed and the name etc were written by pen later is of no significance. Firstly because the complete list giving names and address had been filed before the AO, and secondly the certificates were furnished on the direction of the AO himself. That, there is no discrepancy when the donors have certified by either signing or by putting their thumb impression.

That, as stated above the cost of treatment is very high vis a vis the amount of donation received and therefore the assumption of donations being benami are ill conceived. That, a very important aspect ignored by the learned AO were the certificates of the Gram Sarpanch stating the reason for making the donation is mentioned.

R. J. Trivedi (HUF) Vs. Commissioner of Income-tax, M.P. 144 ITR 877

“Account Books – Rejection of – Best judgment assessment, whether justified – Assessee carrying on coal mining business and working collieries – Account books rejected by Tribunal for want of quantitative tally, and evidence as to what was paid to subcontractor – Accounts properly maintained in accordance with mineral concessions rules, 1960, and checked by Governmental authorities – annual and monthly returns submitted in accordance with coal mines Regulations, 1957 – Coal produced dispatched by rail which was a check against manipulation of accounts – payment was made to sub-contractor at a certain rate per ton of coal – Finding of Tribunal vitiated by taking into account irrelevant and non-existent facts and by omission to consider relevant facts and circumstances – matter remanded – Income-tax Act, 1961 ss.144, 145(2) – Mineral Concessions Rules, 1960, r.27(i),(j) – Coal mines regulations, 1957, reglns. 4,5.”

That the learned Assessing Officer further erred in stating that because the letters were typed and later the names etc. were mentioned, without understanding that the donation were being received towards construction of new buildings and therefore there were computerized too.

We rely on the following case laws :-

1. Commissioner of Income-tax (Exemption) vs. Bhagwan Shree Laxmi Naraindham Trust (2015) 378 ITR 222(Delhi)

“held, dismissing the appeal, that the question of receipt of anonymous donations could not be addressed within the narrow scope of the specific wording of some of the clause of the trust deed but in the overall context of the actual activities in which the trust was involved in including imparting spiritual education to persons of all castes and religions, organizing samagams, distribution of free medicines and clothes to the needy and destitute, provision of free ambulance service for needy and destitute patients and so on. The activities described by the assessee as having been undertaken by it during the assessment year in question could be included in the broad conspectus of Hindu religious activity when viewed in the context of the objects of the trust and its activities in general. Thus, the Tribunal was justified in coming to the conclusion that the assessee was entitled to the benefit of section 115BBC as far as the anonymous donations received by it were concerned.”

2. Vaishnavi Educational Society Vs. Deputy Commissioner of Income Tax ITAT Hyderabad Tribunal (B) (2015) 167 TTJ 0774(Hyd)

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 AO- Hence, such donations cannot be classified as “anonymous donations” as per the provisions of s.115BBC(3)-Only requirement under s. 115BBC (3) is that the names and addresses of the donors are to be recorded-CIT(A) has wrongly applied the provisions of s.68 in the case of the assessee by stating that the recipient society should also be in a position to identify the donors and establish the capacity to give a donation of the amount mentioned against their names

Conclusion: Assessee having furnished the names and addresses of donors to the Investigation Wing of the Department which were also recorded in the books produced by the assessee before the AO, donations cannot be classified as “anonymous donations” as per the provisions of s. 115BBC.”

Copy of the case law is enclosed at page no. A17 to A27 of the paper book.

3. Income Tax Officer V/s. Gaudiya Granth Anuvud Trust (2014) 23 ITJ 141 (Trib-Agra)

Income-u/s. 2(24) of the Income Tax Act, 1961-Corpus Donation- Whether same is taxable-HELD-Same is not taxable as same is a capital receipt

Considering the above facts and submission your honor will find that the Learned Commissioner of Income Tax (Appeal) rightly deleted addition made under section 115BBC stating as under :-

“In light of this and other decision cited above it is clear that the onus on the appellant was only to submit the names and addresses of the donors and where such name and addresses have been submitted, the same cannot be held to be benami. In this particular case, the appellant had filed the complete list giving the name, date, name of the father/spouse, age sex, place and the amount, hence the donations received cannot be said to be received from anonymous record any particular or specific evidence that these were benami. Thus, I do not find merit in the addition made by the AO on mere assumptions and conjectures. Thus, I hereby delete the addition made u/s. 115BBC by the AO. This ground of appeal is allowed.”

Para no. 3.28 of the CIT(A) Order.

Further your honors attention is invited to the fact that the hospital and the Medical College are located at a distance of approximately 30 kilometres from Indore is rural area.

That the assessee is registered under section 12AA of the Income Tax Act vide dated 01.02.2008 and is also approved u/s 80G(5)(vi) vide order which was issued to the assessee on 13.05.2009.

That approval u/s 10(23c)(vi) of the Income Tax Act was granted to the society on 25.06.2009 from the Chief Commissioner of Income Tax .

Copy of registration under section 12A, 80G and 10(23C)(vi) are enclosed at page no. 931 to 934 of the paper book.

That assessee has been granted approval under section 35AC of the Income Tax Act by the Department of revenue, National Committee for Promotion of Social and Economic Welfare Ministry of Finance vide notification dated 04.10.2011. Copy of approval under section 35AC is enclosed at page no. 584 to 592 of the paper book.

That none of the above registration and / or approval are issued without proper inquiry by the respective department.

That the Assessing Officer did not find anything wrong with the nature of work being done by the society which is evident from the assessment order itself because no adverse comment regarding the bona fides of the charitable work being carried on by the assessee has been made.

We further draw your honours attention to an article by noted author N. Jain published in All India Federation of tax practitioners Journal at page 44 para 2.22 wherein the following is stated :-

“In case of an educational institution exempt i/s 10(22) [now 10(23C)], the Assessing Officer noticed some credits, which he sought to treat as deemed income u/s 68 of the Income-tax Act, 1961 and brought to tax, but denied exemption for such amount. It was argued on behalf of the assessee that the income which is exempt has to be understood in a wide sense. The High Court in Director of Income Tax (Exemption) v. (Del) found that the income cannot be given a restricted meaning

following the decision of the Supreme Court in different context in *P.R. Prabhakar v. CIT* [2006] 284 ITR 548 (SC). It also referred to a decision of the Supreme Court in *Adityapur Industrial Area Development authority v. Union of India* [2006] 5 Scale 321 (SC), where it was held that an exemption granted cannot be taken away, unless it is expressly provided for. In such cases where the Assessing Officer infers income for a charitable institution other than what is admitted in the books, whether by anonymous donations or by way of loan, the source of which cannot be proved, such income will also be exempt subject only to the conditions for application of such income as well, so that there could be no liability on such income.”

The above view has also been taken in the case of *ACIT v Muslim Educational Society* [2010] 1 ITR (Trib.) 527 (Coch.).

Further reliance is placed on the following case laws :-

1. Income Tax Officer (Exemption) vs. Prasanti Educational and Welfare Society (2018) 32 ITJ 494 (Trib.-Indore)

“Anonymous Donation – U/s 115BBC of the Income-tax Act, 1961 – AO was found that some of the donors were not traceable and some of them denied having given such donation and therefore, proportionate corpus donation of Rs. 26.32 lacs has been tread as “anonymous donation” – CIT (A) directed the AO to treat this donation as corpus donation – HELD – AO did not properly interpret the provisions of Section 115BBC – Section 115BBC(2) makes it clear that provisions of anonymous donation are not applicable to corpus donation – AO considered this as anonymous donation and even not allowed 5% of total donation which is otherwise exempt u/s 115BBC(1)(i) – of sampled amount of donation – CIT (A) was fully justified in direction AO to treat this donation as corpus donation.”

2.Vaishnavi Education Society vs. Deputy Commissioner of Income tax ITAT Hyderabad Tribunal (B) (2014) 41 CCH 0283HydTrib

“Non Resident – Anonymous donations to be taxed in certain case – search and seizure was conducted at residence of ‘D’ on 12.2.2009, wherein certain documents belonging to assessee-society were seized- Pursuant to notices issued u/s. 153C, assessee filed its returns of income for A.Ys. 2007-08 and 2008-09 admitting nil income and for A.Y. 2009-10 assessee had admitted loss-Assessment order u/s. 143(3) r.w.s. 153C was passed adding certain amount being anonymous donations u/s. 115BBC-It was submitted that assessee society was formed on 30.01.2006, during A.Y. 2007-08 and thereafter the assessee started construction of a college for which Society was in receipt of unsecured loans, loan on FDR and also corpus donations – it was claimed that society had filed the names and addresses of the donors, the corpus donation shall not be added u/s 115BBC – AO rejected assessee’s claim holding that neither it had commenced its activity of imparting education nor any reason was offered by society regarding alleged donation received from various persons – AO,

accordingly treated entire corpus donation as anonymous donations u/s 115BBC-CIT(A) had affirmed addition made by AO holding that mere submission of names and addresses of alleged donors was not enough to satisfy requirement of Section 115BBC and that principles applied in case of unexplained cash credits shall also apply in case of anonymous donations u/s. 115BBC – Held, names of donors along with their addresses were furnished before Investigation Wing of department and were also recorded in books produced by assessee before AO – Hence such donations cannot be classified as “anonymous donations” as per s. 115BBC(3)-Only requirement u/s. 115BBC(3) was that names and addresses of the donors was to be recorded – CIT(A) has wrongly applied provisions of section 68 in the case of the assessee by stating that the recipient society should also be in a position to identify donors and establish the capacity to give a donation of the amount mentioned against their names – Addition made u/s 115BBC was deleted – Assessee’s appeal allowed.”

3..Commissioner of Income-tax Vs. Dawoodi Bohra Jamat (2014) 364 ITR 31(SC)

“Charitable purpose – Exemption – Exclusion from exemption where trust create for benefit of particular community or caste – General principles – Objects of assessee-trust based on religious tenets – Activities of trust both charitable and religious – benefits not exclusively meant for particular religious community – trust not disqualified to claim exemption – Income-tax Act, 1961.”

4.Income tax Officer vs. Gaudiya Granth Anuvad Trust (2014) 23 ITJ 141 (Trib.-Agra) ITAT, Agra Bench

“Income – U/s 2(24) of the Income-tax Act, 1961 – corpus Donation – Whether same is taxable – HELD – Same is not taxable as same is a capital receipt.”

5.Director of Income-tax (Exemption) vs. Keshav Social and Charitable Foundation (2005) 278 ITR 152 (Delhi High Court)

“Exemption – Charitable purpose – Trust – Donations received in previous year – Assessee only required to show donations were voluntary – More than 75% of income used for charitable purposes in accordance with objects – Assessee duly registered under section 12A – list of bonors submitted – Incomplete details of donors does not mean donations are unaccounted money – Addition of Donations as cash credit and denying benefit not justified – Income-tax Act, 1961, ss. 11, 12A, 68.”

CIT (E) v. Patanjali Yogpeeth (NYAS) (2018) 252 Taxman 317/300 CTR 266 (Delhi)(HC).

Property held for charitable purposes- Propagation of yoga falls under category of ‘Imparting of education’-Corpus donation to be excluded from total income-Higher membership fee is also donation hence cannot be assessed as income [Ss.2(15), 2(24)(ia),4]

Dismissing the appeal of the revenue the Court held that propagation of yoga by way of conducting yoga classes on a regular basis and in a systemized manner falls under category of 'Imparting of education'. Corpus donation was to be excluded from total income. Higher amount from certain subscribers/donors in yoga camps who were provided corresponding benefits as opposed to others, that by itself could not be basis for holding that membership fee was not a donation and had to be treated as income liable to tax. (AY 2009-10)

Voluntary contribution: Voluntary contribution can be of two types:

(a) Voluntary Contribution with specific direction that they shall form part of the corpus of the trust or institution: Such voluntary contributions received by the trust are fully exempt under section 11 and the condition that at least 85 % of the income should be applied during the previous year in which it is earned is not applicable in this case.

The question, whether a particular contribution has been towards corpus or otherwise would depend upon the facts of the case. Where the contribution is made for a specific purpose and not for general purpose, it can be understood that the donation is towards corpus. [CIT v Shri Plot Swetamber Murti Pujak Jain Mandal (1995) 211 ITR 293 (Guj.)]. Where the amount was given with specific direction for construction of Wadi, it shall be treated as having been for corpus. [CIT v Sthanakvasi Vardhman Vanik Jain Sangh (2003) 260 ITR 366 (Guj.)].

Treatment of corpus donations: Corpus donations cannot be treated as income in view of the exception under section 12, so that such corpus donations need not be applied for the objects as required for other donations. It is sufficient, if the income therefrom is applied. It is not unusual for trust to receive such donations for specified purposes not available for application at the discretion of the trustees according to the objects of the trust, so that the main trust need not lose its right to exemption either for non-application or even for the reason that the specific object of such tied-up donation does not fall within the ambit of the objects of the trust. [CIT v. Sthanakvasi Vardhman Vanik Jain Sangh (2003) 260 ITR 366 (Guj.)].

Section 11(4) is merely intended to tax income which is not accounted for in the books: it does not operate to charge a disclosed amount which is admittedly expended, for a purpose either charitable or non-charitable, but is disclosed as business expenditure and consequently added back in computing the business income. [CIT v Birla Education Trust (1985) 153 ITR 579 (Cal)].

Profit and gains from incidental business [Section (4A)]: Where a trust or an institution is also carrying on any business activity, the provisions of Section 11(1), (2), (3) and (3A) regarding exemption etc. shall not apply in respect of income earned from such business activity. However, if such business is incidental to the attainment of the objects of the trust/institution and separate books of account are maintained by such trust/institution in respect of such business, the exemption shall be

available to trust in respect of income earned from such business activity.

Consequent to substitution of sub section (4A), w.e.f. assessment year 1992-93, all that is required for business income of a trust or institution to be exempt is that business should be incidental to attainment of objectives of trust or institution. [Asst. CIT v Thanthi Trust (2001) 274 ITR 785 (SC)]. Thus, a business whose income is utilized by the trust or the institution for the purpose of achieving the objectives of the trust or the institution is surely, a business which is incidental to the attainment of the objectives of the trust.

It is relevant to note that the provisions of section 11(4A) do not override the provisions of section 10 of the Income Tax Act, and as such, profits derived by any trust, institution, association etc. referred to in clauses (21), (23A), (23B), (23BB), (23C), etc. will continue to be exempted from income tax.

Sir, even if it is assumed that the assessee trust had received the amounts towards medical treatment from some of the patients, even then the same would have been exempt income for the reason, that the object of the trust was running a charitable institution and the same was complied with.

The learned Assessing Officer too has not found any thing contrary and accepted the charitable activities by the Trust.

From the above your honors will find that the addition made by the learned Assessing Officer under section 115BBC is not based on the facts of the case and was rightly deleted by the learned Commissioner of Income Tax (Appeals).

12. It is also submitted that the provisions of section 115BBC of the Act are not applicable to the assessee society because case of the assessee does not fall in sub-section (3) of u/s 115BBC of the Act as the assessee has maintained complete record of the identity of the donors including their name gender, age, husband/father name and address of the persons. Reliance was placed on the following decisions:-

S.No.	Particulars	Page Nos.
1.	<i>Shanti Niketan Trust ,M/s P.k Singhal & Co. v Additional Commissioner of Income Tax, Ghaziabad (ITAT-Delhi)</i>	01-08
2.	<i>Income Tax Officer (Exemption) v Prasanti Educational and Welfare Society (ITAT-Indore)</i>	09-18
3.	<i>Director of Income Tax (Exemption) v Keshav Social & Charitable Foundation (2005) 146 Taxman 569 (Delhi)</i>	19-20
4.	<i>Vaishnavi Educational Society v Deputy Commissioner of Income Tax, Central Circle, Tirupati (Hon'ble ITAT-Hyderabad)</i>	21-30
5	<i>Deputy Commissioner of Income Tax(Exemptions) Lucknow v M/s Shri Ramswaroop Charitable Trust (Hon'ble ITAT-Lucknow)</i>	31-57
6	<i>Hans Raj Samarak Society v Assistant Director of Income Tax (Exemptions), Trust Circle-II, Delhi (ITAT-Delhi)</i>	58-62
7	<i>Director of Income Tax v Hans Raj Samarak Society (2013) 35 Taxman 642 (Delhi)</i>	63-64
8	<i>Dhirendra Pal Singh Institute of Higher Education V Joint Commissioner of Income Tax, Range-3 (Hon'ble ITAT-Agra)</i>	65-72
9	<i>Assistant Commissioner of Income Tax, Circle -2, Meerut v. Shree Shiv Vankeshwar Educational & Social Welfare Trust (2019) 106 Taxmann.com 249 (Delhi -Tribunal)</i>	73-77
10	<i>Order dated 13/05/2020 passed in case of Bhariya Kissan Charitable Club Trust, Roorkee v. The Income Tax officer Exemptions (Dehradun) by Hon'ble ITAT Dehradun Bench)</i>	78-86

13. We have heard rival contentions and perused the records placed before us and carefully gone through the submissions made by Ld. Counsel for the assessee and the decisions referred and relied by both sides. Common grievance raised by the Revenue for A.Y. 2013-14 & 2015-16 is that the ld. CIT(A) erred in deleting the addition for 'Anonymous donation' made by the Ld. Assessing Officer u/s 115BBC(3) of the Act.

14. We find that the assessee society was established on

12.04.1996. It was granted registration u/s 12AA(1)(B)(i) of the Act vide order dated 01.12.2008. It was also granted approval u/s 80G(5)(vi) of the Act on 13.09.2009. The assessee society is also running medical college and has been granted approval u/s 10(23C)(vi) of the Act vide order dated 25.06.2009. The assessee society has also been accorded approval u/s 35AC of the Act vide notification dated 04.10.2011 given by the Department of revenue, National committee for Promotion of Social and Economic Welfare Ministry of finance vide notification dated 04.10.2011 and the name of the assessee appears at Colum no. 17 of this notification. Activities of the assessee society includes running of medical college, running a hospital approx. 30 km from Indore in rural area where the villagers and people at large are provided free medical facilities and free medicines. The Activities of the assessee society being carried out for charitable purpose u/s 2(15) and Educational purpose u/s 10(23C)(vi) of the Act have not been disputed by the Ld. Assessing Officer at any stage. The bone of contention only relates to the donation received towards corpus funds at Rs. 14,06,75,754/- received during the A.Y. 2013-14 and similar type of addition made by the ld. Assessing Officer for A.Y. 2015-16 at Rs. 20,50,90,750/-.

Though the assessee provided the complete list of 27746 persons for A.Y. 2013-14 who have given cash donation of Rs. 14,06,75,754/- and list of 38625 contributors to donation of Rs.17,23,85,000/- and list with PAN provided for donation of Rs.4, 35,00,000/- containing details of the name and address of the person, age, gender and father/husband names, the ld. Assessing Officer, however, was not satisfied with these details and questioned, the genuineness of such donation because they did not contained the PAN No. in most of the case or wrong/invalid PAN, incomplete/wrong address and unserved summons.

15. We further find that the Ld. CIT(A) has given almost a common finding for A.Y. 2013-14 & 2015-16 mainly asserting the fact that the names of donors in the alleged list of donations are majorly from surrounding villagers where normally address is name of the person, his/her father/husband name and name of villagers. Many of such villages even do not have post office and the person are mostly those persons who got cured free of cost from the hospital run by the assessee and at their sweet will gave donation of the amount they considered appropriate. Ld. CIT(A) also appreciated the fact that the assessee has filed proof of identity of all those donors which were summoned by the Ld. Assessing Officer and also gave merit to the certificates given by Gram Sarpanch of various villages stating the reason for making

donation. We find it appropriate to reproduce the below finding of
Ld. CIT(A) for A.Ys. 2013-14 & 2015-16:

A.Y. 2013-14

3. This ground is with respect to the addition of Rs.1,40,675,754/under section 115BBC on account of unexplained donation. I have carefully gone through the assessment order and specifically the reasons for making such addition. I have also perused the submissions made by the appellant in this regard.

3.1 M/s Mayank Welfare Society was constituted on 12.04.1996 for the purpose of providing free Medical treatment to the poor residing in villages not accessible to the city of Indore. The registration u/s 12AA(1)(B)(I) was granted by the Hon'ble Commissioner of Income tax, Indore on 01.12.2008. The certificate u/s 80G(5)(vi) was issued by the Hon'ble Commissioner of Income tax vide order dated 13.05.2009 and exemption was allowed u/s 10(23C)(vi) was allowed by the Hon'ble Chief Commissioner of Income tax Indore vide order dated 25.06.2009.

3.2 The appellant has submitted that with a view to provide free medical aid to the poor and down trodden, it had constructed a medical college and a large hospital on Nemawar Road approx 25 kilometres away from Indore. It was also submitted that the said hospital has been constructed in a totally rural area where basic amenities are scarce and is surrounded by hundreds of small villages.

3.3 The appellant had filed the details regarding the activities before the Assessing officer along with the newspaper clippings wherein the efforts of the charitable activities were lauded. It has been claimed by the appellant that the Assessing Officer accepted the nature of work being done by the aforesaid trust which was evident from the assessment order itself regarding the bonafides of the work being carried on had been made anywhere in the body of the order u/s 143(3) / 115BBC.

3.6 During the course of assessment proceeding, the AO directed the appellant to furnish the names and address of the

donors totalling 27746 persons on 09.03.2016.

3.7 The appellant has stated that the list containing the serial number, date, name along with the name of the father or spouse, age, sex, place and amount was duly submitted to the AO and the same was also produced during the appeal proceedings. The appellant claimed that from a perusal of the certificates as enclosed with the assessment order it can be seen that the donors have mentioned the name of the villages. This claim of the appellant has been found to be correct on examination of the assessment order.

3.8 It is well settled that though the larger cities or towns do have a reasonable good postal service and that the houses etc. are properly numbered along with the colonies etc. the small villages having population from 500 to say 1500 don't have that luxury. The appellant has further claimed that leave alone the pin code or any other data the small villages don't have post offices either and hence to give a specific number of the house is actually beyond understanding and uncalled for. This argument and logic of the appellant seems reasonable.

3.9 It has been argued that the learned Assessing Officer failed to appreciate this very important aspect. Further, it has been claimed by the appellant that in response to the AO asking to produce the receipts of the donation, the same numbering 200 were filed before The Assessing Officer.

3.10 The Assessing Officer observed that the copies of the letters issued by the donors were typed and that the names, the village and the amounts were filled up later, and on this basis came to a conclusion that the donors were the people who had undergone medical treatment and had paid the amounts in lieu of the treatment and medicines and had therefore assumed that the assessee had charged for the facility.

3.11 That, not only did the Assessing Officer not accept the explanation of the appellant but also held that the letters were false. The appellant has argued that the Ld. AO totally failed to appreciate that no treatment for whatever disease can be provided in Rs.1700 in the present situation. It was further argued that the learned Assessing Officer has assumed that any treatment and medication along with hospitalization was possible in such a meager amount.

3.12 The appellant has further stated that the learned Assessing Officer failed to appreciate the explanation that the villagers with the guidance of the Sarpanch and after discussing amongst themselves voluntarily decided to donate

almost similar amounts for the facility.

3.13 The appellant considered it as a blessing in disguise for the people of that area who had to travel to Indore earlier and pay exorbitant fees in the city.

3.14 It was submitted by the appellant that an important aspect to consider was that the Medical Council of India carries out periodical inspection and renews the permission if only everything is found in order.

3.15 Further the appellant has argued that another issue that was important is that the learned Assessing Officer had asked for furnishing the receipts only on the date of last hearing. The appellant has claimed that the AR of the appellant carried other information personally on 26th March but the same was not accepted. The 24th and 25th March were holidays on account of Holi and Good Friday respectively. Thus, it has been claimed by the appellant that being left with no choice, a detailed submission was sent by speed post on 26th March, but the same was not considered by the learned Assessing Officer, and the order was passed on 28.03.2016 and was received by the appellant on 31.03.2016.

3.16 The AR of the appellant has further stated that the order u/s 115BBC was passed without proper appreciation of the facts. The Ld. Assessing Officer made the addition for the reason that the letter were typed and later the names etc. were mentioned. The appellant has mentioned that the addition has been made by the AO out understanding that the donations were being received towards construction of new buildings and therefore there were computerized letter for the sake of convenience on which the donations were received.

3.17 Thus the appellant has argued that the point to be noted is that a very short time was provided and therefore it was only feasible to get the certificates on content. It has also been pleaded that there was no discrepancy when the donors had certified by either signing or by putting their thumb impression.

3.18 I have also gone through the logic and arguments put up by the AO for making the addition. The first reason advanced by the AO is that these were not donations but payment made for the free treatment provided to the villagers. Thus, this statement of AO itself is contradictory as there cannot be any payment for free treatment. The AO has further stated that these amounts were not given voluntarily but was given against free treatments. The relevant para is reproduced as

below:-

3.19 It is surprising that neither the AO has taken care to give any para number nor any page number, that too in an order where huge additions have been made by him. The AO is advised to take care that such basic details of page number and para number are given in the order. Further, the arguments, reasons and the basis for making the additions have not been spelled out clearly and in transparent manner.

3.20 Another reason for making the addition is that the letters so produced by the appellant have been termed fake by the AO on the basis of similar handwritings but no conclusive evidence have been brought on record by the AO in this respect. The AO has further stated that the donation should be voluntarily. There cannot be any doubt with respect to this statement. The donation would lose the character of donation if it is not voluntary. But, the AO has failed to give the specific reasons and basis on which he reached to the conclusion that the donations were not voluntary in this case.

3.21 Thus, the appellant has claimed that a very important aspect ignored by the learned AO were the certificates of the Gram Sarpanch stating the reason for making the donation.

3.22 The appellant has relied on the decision of the Hon'ble MP HC 144 ITR 877 in the case of R.J. Trivedi (HUF) vs. Commissioner of Income Tax, wherein it has been held "(i) that the accounts were properly maintained by the assessee and were checked by government authorities and there was no change of manipulation of accounts. Income-tax, wherein it has been held "(i) that the accounts were. properly maintained by the assessee and were checked governmental authorities and there was no chance of manipulation of accounts"

3.23 The appellant has argued that the AO's observation that the letters certificates were typed and the names etc. were written by pen later is of no significance. Firstly, because the complete list giving names and address had been filed before the AO, and secondly the certificates were furnished on the direction of the AO himself. The appellant further stated that the cost of treatment was very high vis a vis the amount of donation received and therefore the assumption of donations being payment of free treatment is ill conceived.

3.24 It was also submitted by the appellant that the Assessing Officer further erred in stating that because the letters were typed and later the names etc. were mentioned, without understanding that the donation were being received towards

construction of new buildings and therefore there were computerized letter for the sake of convenience on which the donations were received.

3.25 The appellant relied on the following case laws :-

1. "Commissioner of Income-tax (Exemption) vs. Bhagwan Shree Laxmi Naraindham Trust (2015) 378 ITR 222(Delhi)

"held, dismissing the appeal, that the question of receipt of anonymous donations could not be addressed within the narrow scope of the specific wording of some of the clause of the trust deed but in the overall context of the actual activities in which the trust was involved in including imparting spiritual education to persons of all castes and religions, organizing samagams, distribution of free medicines and clothes to he needy and destitute, provision of free ambulance service for needy and destitute patients and so on."

2. Vaishnavi Educational Society Vs. Deputy Commissioner of Income Tax ITAT Hyderabad Tribunal (B) (2015) 167 TTJ o 774(Hyd)

"Applicability of section 115BBC - Addition of donations - Treated as anonymous donations when no record maintained - During search and seizure at house or doctor, some documents of assessee society were seized, on notice by Assessing Officer u/ s 153C, Nil returns were filed for assessment years 2007-08 and for A Y 2009-10 returned loss - Assessment u/ s 143(3) r. w. s. 153C was de and amount added being anonymous amount u/s 115BBC for AY 2007-0 and corpus donation received for AY 2008-09 and also added an amount on . re to establish creditworthiness of creditor as unexplained cash credit for A Y 2009-; 0 _ on appeal to CIT (A), held that since Assessee society was not able to establish identity and capacity of donors, addition done by AO was sustained and appeal of assessee was dismissed - Held section 115BBC only mandates names and addresses of donors are to be recorded - CIT (A) wrongly applied section 68 on Assessee society, hence appeal allowed as CIT (A) erred in confirming the addition as anonymous donations u/ s 115BBC - hence ground taken by assessee was allowed for A Y 2007- 08, and for disallowance of expenditure u/ s 40(a)(ia), capital expenditure and addition of suppressed receipts for AY 2008-09 - Assessing Officer has to verify and examine and arrive at the amount, for AY 2009-10 - Assessee proved with enough proof and deleted addition answering in favour of Assessee - Appeals disposed of and statistically allowed by common order. " Copy of order is enclosed.

3. Vaishnavi Education Society vs. Deputy Commissioner of Income tax ITAT Hyderabad Tribunal (B) (2014) 41 CCH 0283HydTrib

"Non Resident - Anonymous donations to be taxed in certain case - search and seizure was conducted at residence of 'D' on 12.2.2009, wherein certain documents belonging to assessee-society were seized-Pursuant to notices issued u/ s. 153C, assessee filed its returns of income for A. Ys. 2007-08 and 2008-09 admitting nil income and for A. Y. 2009-10 assessee had admitted loss-Assessment order u/ s. 143(3) r.w.s. 153C was passed adding certain amount being anonymous donations u/s. 115BBC-It was submitted that assessee society was formed on 30.01.2006, during A. Y. 2007-08 and thereafter the assessee started construction of a college for which Society was in receipt of unsecured loans, loan on FDR and also corpus donations - it was claimed that society had filed the names and addresses of the donors, the corpus donation shall not be added u/ s 115BBC - AO rejected assessee's claim holding that neither it had commenced its activity of imparting education nor any reason was offered by society regarding alleged donation received form various persons - AO, accordingly treated entire corpus donation as anonymous donations u/ s 115BBC-CIT(A) had affirmed addition made by AO holding that mere submission of names and addresses of alleged donors was not enough to satisfy requirement of Section 115BBC and that principles applied in case of unexplained cash credits shall also apply in case of anonymous donations u/ s. 115BBC - Held, names of donors along with their addresses were furnished before Investigation Wing of department and were also recorded in books produced by assessee before AO -Hence such donations cannot be classified as "anonymous donations" as per s. 115BBC(3)-Only requirement u/ s. 115BBC(3) was that names and addresses of the donors was to be recorded - CIT(A) has wrongly applied provisions of section 68 in the case of the assessee by stating that the recipient society should also be in a position to identity donors and establish the capacity to give a donation of the amount mentioned against their names - Addition made u/ s 115BBC was deleted - Assessee's appeal allowed." Copy of order enclosed.

4. Commissioner of Income-tax Vs. Dawoodi Bohra Jamat (2014) 364 ITR 31(SC)

"Charitable purpose - Exemption - Exclusion from exemption where trust create for benefit of particular community or caste - General principles - Objects of assessee trust based on religious tenets - Activities of trust both charitable and religious benefits not exclusively meant for particular religious community - trust not disqualified to claim exemption - Income-tax Act, 1961."

That in respect of mismatch in interest income as per 26AS statement and in the books of accounts, it is submitted that the as per 26AS statement downloaded by the assessee from the income tax department site as on 19.09.2013, the interest income comes to Rs. 7601462/- and accordingly the society claimed tds deducted thereon in the return of income. Copy of 26AS statement downloaded on 19.09.2013 is enclosed with paper book. From perusal of which your honor will find that the society rightly accounted for interest income and tds on the basis of 26AS dated 19.09.2013 available. Further it is submitted that the assessee has made FDR with various bank and the same are auto renewed by the bank and the interest on FDR is accounted for on the basis of the information available in the 26AS statement and the amount of interest of Rs. 7601462/- was rightly accounted by the society."

As decided in the cases of Vaishnavi Educational Society Vs. Deputy Commissioner of Income Tax ITAT Hyderabad Tribunal (B) (2015) 167 TTJ 0774(Hyd) that section 115BBC only mandates the names and addresses of the donors which has been duly met by the appellant.

3.27 Further, as mentioned above it was held in the case of Vaishnavi Education Society vs. Deputy Commissioner of Income tax ITAT Hyderabad Tribunal (B) (2014) 41 CCH 0283 Hyd Trib that names of donors along with their addresses were furnished before

Investigation Wing of department and were also recorded in book produced by assessee before AO -Hence such donations cannot l.l. classified as "anonymous donations" as per section 115BBC(3)- only requirement u/s 115BBC(3) was that names and addresses of the donors was to be recorded. It was held in para 13 of the order as below:

"Hence, we are of the opinion that the only requirement u/ s. 115BBC(3) is that the names and addresses of the donors are to be recorded. The learned 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 identify the donors and establish the capacity to give a donation of the amount mentioned against their names. In this context, reliance is placed on the decision of the Delhi Bench of this Tribunal in the case of Hans raj Samarak Society (133 ITD 530) wherein it has been held as under:

" " 4.4 Sub-section (1) of the aforesaid provision provides that where the income of an institution etc., Referred to in section 11 includes income by way of anonymous donation the income-tax payable by it shall be aggregate of - (i) 30% of the anonymous

donation and(ii) the income-tax payable on the total income as reduced by anonymous donation. Sub section (2) excludes wholly religious institutions from the purview of the aforesaid provision. It further excludes wholly religious and charitable institutions from the purview of the aforesaid provision if the anonymous donation is made with the specific direction that such donation is for purposes other than for any university, educational institution, hospital or medical institution. It is clear that this provision excludes religious institution and institution whose objects are wholly religious and charitable. Sub-section (3) defines the expression "anonymous donation" in an exhaustive manner to be a case where the institution etc., does not maintain record of identity indicating the name and address of the person making the contribution. No further particulars remained-to be maintained have been prescribed under this sub-section. /I .

3.28 In light of this and other decision cited above it is clear that the onus on the appellant was only to submit the names' and addresses of the donors and where such name and addresses have been submitted, the same cannot be held to be benami. In this particular case, the appellant had filed the complete list giving the name, date, name of the father/spouse, age, sex, place and the amount, hence the donations received cannot be said to be received from anonymous fir ' sources. Further, the AO has not been able to prove or bring on sources any particular or specific evidence that these were benami. us, I do not find merit in the addition made by the AO on mere assumptions and conjectures. Thus, I hereby delete the addition made u/s 115BBC by the AO. This ground of appeal is allowed.

Ground No.2

4. This ground of appeal is with regard to addition of Rs.60,03,055 [: on account of difference of interest received between income and expenditure account and 26AS. The appellant's submissions in this regard are reproduced as below

"That in respect of mismatch in interest income as per 26AS statement and in the books

of accounts, it is submitted that the as per 26AS statement downloaded by the assessee from the income tax department site as on 19.09.2013, the interest income comes to Rs.7601462/- and accordingly the society claimed tds deducted thereon in the return of income. Copy of 26AS statement downloaded on 19.09.2013 is enclosed with paper book. From perusal of which your honor will find that the society rightly accounted for interest income and tds on the basis of 26AS dated 19.09.2013 available. Further it is submitted that the assessee has made FDR with various bank and the same are auto renewed by the bank and the interest on FDR is

accounted for on the basis of the information available in the 26AS statement and the amount of interest of Rs. 7601462/ - was rightly accounted by the society."

4.1 Based on the submission of the appellant the AO is directed to reconcile the amount of interest to be taxed and accordingly relief may be allowed to the assessee on the basis of 26AS statement. This ground of appeal is allowed.
CIT A.Y. 2015-16

Ground No.1

3.0 This ground of appeal is with regard to making addition of Rs 21,58,85,000 u/s 115BBC on account of unexplained donation. I have carefully gone through the assessment order and specifically the reasons for making such addition. I have also perused the submissions made by the appellant in this regard.

3.1 Mis Mayank Welfare Society was constituted on 12.04.1996 for the purpose of providing free Medical treatment to the poor residing in villages not accessible to the city of Indore. The registration u/s 12AA(1)(B)(I) was granted by the Hon'ble Commissioner of Income Tax-I, Indore on 1.12.2008. The certificate u/s 80G(5)(vi) was issued by the Hon'ble Commissioner of Income Tax vide order dated 13.05.2009 and exemption was allowed u/s (23C)(vi) was allowed by the Hon'ble Chief Commissioner of Income Tax Indore vide order dated 25.06.2009.

3.2 The appellant has submitted that the department of revenue, National Committee for promotion of Social and Economic Welfare Ministry of Finance vide notification dated 04.10.2011 approved the application u/s 35AC of the Income Tax Act of the appellant society.

3.3 The AO had made the addition of Rs 205090750 on account of donation considering the same as anonymous donations charged to tax under section 115BBC of the Income Tax Act, 1961. During the course of assessment proceedings, the appellant had cooperated fully and had furnished all the details asked for and the AO had accepted the nature of activities having carried on by the society. The appellant has argued that this fact was also clear from the AO order because no adverse comment was mentioned in the assessment order regarding the charitable working activities.

3.4 During the year under consideration, the appellant had received corpus donation of Rs 172385000 during the

relevant assessment year out. The AO had directed the appellant to furnish the complete list of the donors along with their address. In compliance to the said query, the appellant had submitted the details of donations on 29.08.2017 and as per the assessment order itself the list comprised of 38625 donors. The appellant has stated that the list was comprised of 38625 donors including the serial number, date, name, gender, location and the amount. The assessee has also submitted the confirmation letter and few receipts on sample basis. Further, the appellant has argued that this fact was also mentioned in the AO's order.

3.5 The appellant had also sent the said list of the donors through had found the said details incomplete therefore he has issued summons to six donors out of the list provided and the summons were returned unserved.

3.6 The reason given by the appellant for non-mentioning the details is that all these villages were small villages and the complete residential address were not necessarily available. Further, the appellant has submitted that even if the address were found, O summons might not have been accepted by semi illiterate villager because they did not understand the summon proceedings of the department. In their opinion, a summons for a villager would be thought of as if it were a court summons. The appellant has further stated that the AO had failed to appreciate this very important aspect.

It has been also argued that the villagers with the guidance of the Sarpanch and after discussing amongst themselves voluntarily decided to donate almost similar amounts for the facility. The appellant had furnished the confirmation letter of the parties and of Sarpanch during the assessment proceedings.

3.7 It has been stated that the appellant was running a charitable institution and it was required to provide for treatment of a minimum of 1800 to 1900 patients per day as per the guidelines of the Medical Council of India. The appellant's hospital 2.S well as medical college was situated at a distance of more than 25 Km from Indore. The appellant has also submitted that the appellant hospital had not made any charges therefore, the donations had come voluntarily.

3.8 It is well settled that though the larger cities or towns do have a reasonable good postal service and that the house etc are properly numbers along with the colonies etc, the small villages having population from 500 to say 1500

don't have that luxury. The appellant has further pleaded that the appellant had submitted complete list of the donations received giving their name and address. Also in respect of donations received the assessee had submitted PAN along with their names. The PAN given by some of the persons was in fact allotted to one of the family members of the donor and the same was given to confirm the address of the donor

3.9 It has been further stated that the amounts were received by - cheques and hence could not be treated as anonymous and the appellant had submitted the voter ID on sample basis. The appellant has submitted that all such documents proved the identity and genuineness of the donations.

3.10 The appellant has also argued that out of 2000 summons sent, 1850 returned back which might be possible due to the fact that persons belonged to the small villages and when they came to know that the letter was from government department, they could have refused to take the notice. The appellant has argued that 150 summons had been served which further proved that identity and genuineness of the transactions.

3.11 The Hon'ble High Court of Madhya Pradesh in the case of Commissioner of Income Tax vs. Agrawal Warehousing & Leasing Ltd. reported in 70 CCH 0522 MPHC held as under:-

"Precedent-Order of Tribunal-Binding nature-Orders passed by the Tribunal are binding on all Revenue authorities functioning under the jurisdiction of the Tribunal-CIT(A) not only committed judicial impropriety but also erred in law in refusing to follow the order of the Tribunal-Even if he had some reservations about the correctness of the decision of the Tribunal he had to follow the order.

3.12 In support of his contention, the appellant has relied on the latest decision of Hon'ble Bench of ITAT Indore in the case of ITO Exemption vs Prasanti Educational and Welfare Society ITJ 494. The relevant extract of the said order is reproduced hereunder:-

"Anonymous Donation- u/ s 115BBC of the Income Tax Act, 6-AO was found that some of the donors were not traceable and some of them denies having given such donation and therefore, proportionate corpus donation of Rs 26.32 lacs has been treated as "anonymous donation"-CITA directed the AO to treat this donation as corpus donation-Held-AO did not properly interpret the

provisions of section SBBC- section 115BBC[2] makes it clear that provisions of anonymous donations are not applicable to corpus donation-AO considered this as anonymous donation and even not allowed 5% of total donation is otherwise exempt u/ s 115BBC{1}{i} -of sampled amount of donation CII[A] was fully justified in direction AO to treat this donation as corpus donation. "

3.13 The appellant has also relied on the following judicial decisions which are reproduced hereunder:-

"5.Commissioner of Income-tax Vs. Dawoodi Bohra Jamat (2014) 364 ITR 31(SC)

"Charitable purpose - Exemption - Exclusion from exemption where trust create for benefit of particular community or caste - General principles Objects of assessee-trust based on religious tenets - Activities of trust both charitable and religious - benefits not exclusively meant for particular religious community - trust not disqualified to claim exemption - Income-tax Act, 1961."

6.Income tax Officer vs. Gaudiua Granth Anuvud Trust (2014) 23 ITJ 141 (Trib.-Agra) ITAT, Agra Bench

"Income - U/s 2(24) of the Income-tax Act, 1961 - corpus Donation - Whether same is taxable - HELD - Same is not taxable as same is a capital receipt"

7. Director of Income-tax (Exemption) vs. Keshav Social and Charitable Foundation (2005) 278 ITR 152 (Delhi High Court)

"Exemption - Charitable purpose - Trust - Donations received in previous year - Assessee only required to show donations were voluntary - More than 75% of income used for charitable purposes in accordance with objects Assessee duly registered under section 12A - list of honors submitted Incomplete details of donors does not mean donations are unaccounted money - Addition of Donations as cash credit and denying benefit not justified - Income-tax Act, 1961, ss. 11, 12A, 68."

3.14 As decided in the cases of Vaishnavi Educations Society vs Deputy Commissioner of Income Tax ITAT Hyderabad Tribunal {B} {2015} 167 TTJ 0774 {Hyd} that section 115BBC only mandates the names and address of the donors which has been duly met to the appellant.

3.15 Further, as mentioned above it was held in the case of Vaishnavi Educations Society vs Deputy Commissioner of Income Tax ITAT Hyderabad Tribunal {B} {2014} 41 CCH 0283 Hyd Trib that names of donors along with their address were

furnished before Investigation wing of department and were also recorded in book produced by assessee before AO- Hence such donations cannot be classified as "anonymous donations" as per section 115BBC{3} -Only requirement u/ s 115BBC{3} was that names and addresses of the donors was to be recorded .

3.16 The Hon'ble Supreme Court in the case of CIT vs Dawoodi Bohra Jamat {2014} 364 ITR 31 where it was held that Charitable purpose-exemption -exclusion from exemption where trust create for benefit of particular community or caste -general principles-objects of assessee-trust based on religious tenets-activities of trust both charitable and religious -benefits not exclusively meant for particular religious community - trust not disqualified to claim exemption Income tax Act, 1961.

3.17 In the case of Income Tax Officer vs Gaudiya Granth Anuvud Trust {2014} 23 ITJ 141, Hon'ble ITAT Agra had held that Income-u/ s 2{24} of the Income Tax Act, 1961-Corpus donation – whether same is taxable-Held-Same is not taxable as same is a capital In light of this and other decision cited above it is clear that the onus on the appellant was only to submit the names and addresses of the donors and where such name and addresses have been submitted, the same cannot be held to be benami. In this particular case, the appellant had filed the complete list giving the name, date, name of the father/spouse, age sex, place and the amount, hence the donations received cannot be said to be received from anonymous sources. Further, the AO has not been able to prove or bring on record any particular or specific evidence that these were benami. Thus, I do not find merit in the addition made by the AO on mere assumptions and conjectures. It is also a fact that the undersigned had given his decision in favour of the appellant in the same case for A.Y. 2013-14. Thus, in view of the above facts, various case laws so discussed and especially the decision of the Jurisdictional bench of ITAT, Indore in the case of ITO Exemption vs Prasanti Educational and Welfare Society (Supra) which is binding on the undersigned as a matter of judicial proprietary as held by the jurisdictional Hon'ble MP High Court in the case of CIT vs Agrawal Warehousing & Leasing Ltd(Supra), I hereby delete the addition so made by the AO ix) 115BBC . This ground of appeal is allowed.

16. From perusal of the above finding of Ld. CIT(A) as well

as the detailed submissions filed by the assessee along with documentary evidences it remains an undisputed fact that the assessee society is consistently engaged in carrying out charitable activities, imparting education and also running a 1200 bed hospital, situated approximately around 30 km from Indore which is fully operational and thousands of patients are treated free of cost along with free medicines. It is also not disputed that the assessee society holds registration u/s 12AA of the Act, approval u/s 80G(5)(vi) & u/s 10(23C)(vi) of the Act is also approved u/s 35AC of the Act by National Committee for Promotion of Social and Economic Welfare Ministry of Finance and this approval is being renewed consistently. This renewal of approval u/s 35AC of the Act is granted only after necessary verification at the end of the committee working under the Central Government. Assessee has also filed the letters issued by Sarpanch, Gram Panchayat of neighbouring villages appreciating the voluntary charitable and hospitalisation service provided by the assessee society. The ld. Assessing Officer has not disputed any other part of the financial statement and has

accepted the book results except the alleged donation towards corpus funds and the only issue relates to alleged anonymous donation for which the addition has been made by the Ld. Assessing Officer invoking the provisions of section 115BBC(3) of the Act.

17. We will first like to go through the provisions of section 115BBC of the Act which provides for taxing of 'anonymous donation' in certain cases and the same reads as follows:-

[Anonymous donations to be taxed in certain cases.

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 (iiiiae) 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—

[36](#)(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

(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.]

The following clause (ii) shall be substituted for the existing clause (ii) of sub-section (1) of section 115BBC by the Finance (No. 2) Act, 2014, w.e.f. 1-4-2015:

(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.]

18. We find that Ld. Assessing Officer has made the addition by invoking the provisions of sub-section (3) of section 115BBC of the Act as reproduced above, as per which any person as referred to in sub-section (1) of section 115BBC of the Act receives any voluntary contribution referred to in section 2(24)(iia) of the Act and 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, than such voluntary contribution would be liable to tax as 'Anonymous Donation'.

19. As far as the words "*such other particulars as may prescribed*" is concerned as provided u/s 115BC(3) of the Act no such other particulars have been prescribed under

the Act till date. So what remains is that if a person receiving a voluntary contribution maintains the records of the identity of donor indicating name and address of the person making such contribution, then such voluntary contribution cannot be treated as anonymous donation. In the instant case, the assessee has received the alleged donation from around 27746 persons during A.Y. 2013-14 and around 38625 persons during A.Y. 2015-16. Ld. Assessing Officer has alleged that the assessee's case falls in sub-section (3) of section 115BBC of the Act. But for holding so Ld. Assessing Officer should have given a finding that the assessee has not maintained the record of name, address of the person giving such contribution. As far as the records placed before lower authorities and before us shows that the assessee has prepared complete list of the donors giving voluntary contribution for the year under appeal which includes providing the name, gender/father/husband name, address and the amounts received and the same are duly accounted for in books of accounts regularly maintained and audited.

20. Perusals of these details shows that donations have

been received from thousands of persons residing in the villages. It is a well-known fact that if in the address name of village is mentioned it does not tantamount to show that the address is incomplete because in the small villages consisting of few 100 houses, the people are known by name. Normally the small villages they don't have the street no. or house no. Even some small villages do not have post office so there can be no Pin Code No. also. In such circumstances Ld. Assessing Officer ought to have taken positive view in totality of facts that the assessee society is running 1200 bed facility hospital which is providing free of cost treatment to hundreds and thousands of the villagers and also giving them free medicines. There are several small villages in the close vicinity of hospital and there are no other good hospitals or medical facilities providing such type of voluntary charitable services. When a person is given free of cost good treatment and free medicines and there is no obligation on him for making any sort of payments than in such circumstances when such a person gets discharged from the hospital he/she or his/her family members are

happy to give some voluntary contribution at the specific counter provided in the hospital and a receipt for the same is also issued to them. We find that Ld. Assessing Officer has issued summons to many of such donors of people of which some were returned unserved but in many cases the confirmation have been received and the villagers have either signed or have put their thumb impression. Around 200 confirmation were filed by the Assessee before Ld. Assessing Officer. Sub-section (3) of section 115BBC of the Act only requires that the assessee should maintain record of the identity of the donors indicating the name and address of such persons. The assessee's accounts are duly audited and details of name and address of each and every donors has been maintained and are produced before us. Confirmations of many donors have also been placed on record. Looking to the totality of facts, the alleged donation cannot be held to be an 'anonymous donation' as provided under the provisions of Sec. 115BBC(3) of the Act. Our this view is supported by various judicial pronouncements.

21. Hon'ble High Court of Delhi in the case of *CIT(E) vs.*

Bhagwan Shri Laxim Naraindham Trust (2015) 378 ITR 222

(Delhi) “held, dismissing the appeal, that the question of receipt of anonymous donations could not be addressed within the narrow scope of the specific wording of some of the clause of the trust deed but in the overall context of the actual activities in which the trust was involved in including imparting spiritual education to persons of all castes and religions, organizing samagams, distribution of free medicines and clothes to the needy and destitute, provision of free ambulance service for needy and destitute patients and so on. The activities described by the assessee as having been undertaken by it during the assessment year in question could be included in the broad conspectus of Hindu religious activity when viewed in the context of the objects of the trust and its activities in general. Thus, the Tribunal was justified in coming to the conclusion that the assessee was entitled to the benefit of section 115BBC as far as the anonymous donations received by it were concerned.”

22. Coordinate Bench Agra in the case of *ITO vs. Gaudiya Granth Anuvad Trust (2014) 23 ITJ 141 (Trib-Agra)* also held in favour of the assessee on the instant issue observing as follows:

“In light of this and other decision cited above it is clear that the onus on the appellant was only to submit the names and addresses of the donors and where such name and addresses have been submitted, the same cannot be held to be benami. In this particular case, the appellant had filed the complete list giving the name, date, name of the father/spouse, age sex, place and the amount, hence the donations received cannot be said to be received from anonymous record any particular or specific evidence that these were benami. Thus, I do not find merit in the addition made by the AO on mere assumptions and conjectures. Thus, I hereby delete the addition made u/s. 115BBC by the AO. This ground of appeal is allowed.”

23. Our view is further supported by the decision of Coordinate Bench Delhi in the case of *ACIT v. Shri Shiv Vankeshwar Educational & Social Welfare Trust (2019) 106 Taxmann.com 249 (Delhi –Tribunal):*

7. We have carefully considered the rival contention and perused the orders of the lower authorities. Admittedly the assessee has received a donation of INR 16265000/- from 1038 individuals and ld CIT (A) has noted that same is credited to the income and expenditure account of the assessee, However ld AO has noted that same is credited as Corpus Donation. During the course of assessment proceedings the assessee produced multiple details with respect to the various donors which establish the identity of those donors. The learned assessing officer on examination of the various details with respect to these donors and stated that there are several infirmities in the details furnished by the assessee, he made an addition of the about some u/s 68 of the income tax act and also applying the provisions of [section 115BBC](#) of the act. The learned CIT - A has categorically recorded a finding that above donation is normal donation which has been offered by the assessee as income. The claim of the AO is that same is a corpus donation. Corpus donation is never credited to the income and expenditure account of the trust whereas the normal donation is credited to the income and expenditure account as income. If a normal donation is doubted by the AO about its genuineness, and identity of the donors, the addition cannot be made u/s 68 of the income tax act in the case of the trust as it has already been offered as an income. The identical issue arose before the Hon"ble Delhi High Court in the director of income tax exemption vs Keshav social and charitable foundation 278 ITR 152 wherein the Hon"ble High Court held that „11. [Section 68](#) of the Act has no application to the facts of the case because the assessee had in fact disclosed the donations of Rs. 18,24,200 as its

income and it cannot 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 is 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](#) of the Act.' Page | 5 ACIT Vs Shree Shiv Vankeshawar Educational & Social Welfare Trust, ITA No. 4623/Del/2012 (Assessment Year: 2009-10)

8. Therefore on reading of the above decision of the honourable Delhi High Court it is clear that when an income is credited to the income and expenditure account by the assessee trust then provisions of [section 68](#) does not apply. Honourable High Court recognized that the situation may be different in case of corpus donation. As in the present case the amount of donation as held by the learned CIT - A is normal income already offered by the trust, these fact has never been controverted by the learned departmental representative, respectfully following the decision of the Hon"ble Delhi High Court, we uphold the decision of the learned CIT - A that the addition u/s 68 of the above donation cannot be made.

9. The 2nd issue that arises even if the nation is credited to income and expenditure account of the assessee, whether a normal donation or a corpus donation, cannot be termed as anonymous donation u/s 115BBC of the income tax act. In order to tax unaccounted money being contributed to wholly or partly charitable or religious trusts or institutions by way of anonymous donations, [section 115BBC](#) was inserted by the [Finance Act, 2006](#), with effect from April 1, 2007, i.e., with effect from the assessment year 2007-08, to provide that any income by way of anonymous donations received by the following entities shall be included in the total income and taxed at the rate of 30 per cent. :

- (i) any trust or institution referred to in [section 11](#) ;
- (ii) any university or other educational institution referred to in [section 10\(23C\)\(iiiad\)](#) and (vi) ;
- (iii) any hospital or other institution referred to in [section 10\(23C\)\(iii ae\)](#) and (via) ;
- (iv) any fund or institution referred to in [section 10\(23C\)\(iv\)](#) ;
- (v) any trust or institution referred to in [section 10\(23C\)\(v\)](#) ;

10. The anonymous donations will not be covered if donations received by any trust or institution created or established wholly for religious purposes or donations received by any trust or institution created or established for both religious as well as charitable purposes other than any anonymous donation Page | 6 ACIT Vs Shree Shiv Vankeshawar Educational & Social Welfare Trust, ITA No. 4623/Del/2012 (Assessment Year: 2009-10) 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. Sub-section (3) defines "anonymous donation" to mean any voluntary contribution referred to in [section 2\(24\)\(iii\)](#), where a person receiving such contribution does not maintain a record consisting of the identity of the person making such contribution indicating the name and address of the person and such other particulars as may be prescribed. We asked whether the central board of direct tax as prescribed any particulars which is required to be maintained by the assessee trust, the answer was no. We also did not find any such prescription about what kind of particulars the assessee trust is required to maintain. Therefore, it is apparent that at present the simple requirement is maintaining the name and address of the donors. In the present case, the assessee has already given much more detail than the name and address of the donors. Therefore with respect to the donation from 1038 persons the assessee has shown their name and address along with other particulars. It is not the case of the revenue that assessee has not maintained and provided these details to the assessing officer. In view of this we do not find that the donation received by the assessee falls into the definition of anonymous donation. Hence on the applicability of the provisions of [section 115BBC](#) of the income tax act we find that the learned CIT - A has correctly reached the conclusion that the donation received by the assessee is not an anonymous donation as provided under [section 115BBC](#) of the act. Therefore on this count also we uphold the order of the learned CIT - A.

24. Our view is also supported by the decision of Coordinate Bench Lucknow in the case of *DCIT(E) vs. M/s Shri Ramswaroop Charitable Trust*, in *ITANo.557/LKW/2017 dated 08.03.2019*. The relevant finding of the Tribunal is mentioned below:

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 ITA No. 557/Lkw/2017 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 ITA No. 557/Lkw/2017 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, 1963 and 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 ITA No. 557/Lkw/2017 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.O. 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. O. Anonymous Donation has been defined in [Section 2\(24\)\(iii\)](#) 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 adding 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 [Section 68](#), read with [section 11](#), of the (Delhi) High Court of Delhi in [Income-tax Act, 1961-Cash'credits \[In the case of Director of Income case of charitable trust\]](#) - Assessment Tax Vs. Hans Raj Samarak year 2006-07 - Assessing Officer Society. 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 in 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] ITA No. 557/Lkw/2017 2 Vaishnavi Educational Society Charitable Trust - Anonymous Vs. Deputy Commissioner of donations maintenance of record of Income Tax Reported in 114 identity of donors - names of the donors . DTR 224. 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. O. - 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 identify 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 Shri Nikhil Agarwal, appearing for the (Allahabad), High Court of respondent-assessee has relied on DIT Allahabad, in the case of ([Exemption](#)) v. [Keshav Social](#) & . Commissioner of Income Tax, Charitable Foundation [2005] 278 ITR Ghaziabad Vs. Uttaranchal 152/146 Taxman 569 (Delhi) in which Welfare Society. 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 ITA No. 557/Lkw/2017 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) The assessee, a charitable trust, was In the Delhi High Court in the .engaged in the activity of providing case of Director of Income Tax medical advise to the poor and needy in . ([Exemption](#)) Vs. [Keshav Social](#) various parts of the State. During the and Charitable Foundation. 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 ITA No. 557/Lkw/2017 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 ITA No. 557/Lkw/2017 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.

25. As far as, the contention of the Ld. DR is concerned that the assessee society was subject to search on 23.03.2018 and has also filed an application before Settlement Commission and report u/s 245D(2B) of the Act has been called. We find that firstly the issue arising out of the proceedings under the search u/s 132 of the Act will not have any bearing on the instant appeals as both the proceeding are independent of each other and secondly the proceedings before Settlement Commission are still pending and whatever will be the outcome of such proceedings will follow the course of action as provided under the Income Tax Act.

26. We, therefore, respectfully following the various decisions the settled judicial proceedings referred

hereinabove and specially the decision of Coordinate Bench Lucknow in the case of *M/s Shri Ramswaroop Charitable Trust (supra)* which is squarely applicable in favour of the assessee in the instant appeals, are of the considered view that as the assessee had provided complete details of name and address of the donors giving alleged donation and complete detail of all such donation are entered in the regular books of accounts which have been audited, the book results have not been disputed by the Revenue Authorities except for the alleged donation and further where the assessee had provided identity proof of most of persons which were summoned by the Id. Assessing Officer and have also filed the confirmation letters from such donors and the assessee society being undisputedly carrying out the charitable and educational activities, applying the funds received through voluntary contribution for achieving the object of the society and also providing free medical facility from its 1200 bed facility hospital running consistently in the Rural area, near Indore, find no infirmity in the finding of Ld. CIT(A) appreciating the fact of the case, details of name and

address of 27746 donors from A.Y. 2013-14 & 38625 donors for A.Y. 2015-16 alleged to have given donation of Rs.14,06,75,754/- for A.Y. 2013-14 and Rs. 17,23,85,000/- for A.Y. 2015-16 and also rightly holding that the assessee has provided the details of donation of Rs.4,35,00,000/- received from other persons giving their name address and Permanent Account No.. Therefore, the alleged sum undisputed before us by the revenue for A.Y. 2013-14 & 2015-16 cannot be held to be “anonymous donation”. We, accordingly, confirm the finding for Ld. CIT(A) and dismiss this common issue raised by the revenue in ground no.1, 2, 3 for A.Y. 2013-14 and ground No.1,2,3 & 4 for A.Y. 2015-16.

27. So far as the plea raised in the ground no.3 and ground no.4 for the AY 2013-14 & 2015-16, respectively, in respect of not giving opportunity to the Assessing Officer to examine the issue is concerned, we find that before us, the Revenue failed to pinpoint any material which was not considered by the Assessing Officer during the course of the assessment proceedings as the material filed before us was part of the record of the Assessing Officer/ld. CIT(A). Further, it is also settled that the ld. CIT(A) has co-terminus powers of that Assessing Officer.

Therefore, we do not find any merit in the plea raised by the Revenue in these grounds.

28. As far as ground No.4 of the revenue appeal for A.Y. 2013-14 is concerned we find that the ld. Assessing Officer made the addition of Rs. 60,03,055/- based on his observation that as per the form 26AS, tax has been deducted on interest income of Rs. 1,34,99,018/- whereas the assessee has offered the income of Rs. 74,95,963/-. We further find that when the matter travelled before ld. CIT(A), the assessee contended that as per the copy of 26AS statement downloaded on 19.09.2013, the interest income is shown at Rs.76,01,462/- and equal amount has been shown by the assessee in the income and expenditure account as interest income.

29. Under these given circumstances wherein there are different claim by both the sides on the same issue i.e. 26AS form available on the wave site of the Income Tax Department then in such situation Ld. CIT(A) has rightly restored the matter to the Ld. Assessing Officer to carry out necessary reconciliation with the help of the documents to be placed by the assessee society before Ld. AO and the documents relied on by the ld. Assessing Officer to make the impugned addition. Thus, no interference is called for in the finding of Ld. CIT(A) as the

ld. Assessing Officer can decide accordingly on the basis of 26AS statement for A.Y. 2013-14 available on the wavesite of the Income Tax and the explanation/reconciliation given by the assessee with respect to the interest on Bank FDR. Accordingly ground no.4 of the revenue's appeal for A.Y. 2013-14 is allowed for statistical purposes. Ground no.5 is general in nature which needs no adjudication.

30. In the result, Revenue's appeal for the AY 2013-14 vide ITANo.232/Ind/2017 is partly allowed for statistical purposes & Revenue's appeal for the AY 2015-16 vide ITANo.776/Ind/2019 stands dismissed.

The order pronounced as per Rule 34 of ITAT Rules, 1963 on 29.10.2021.

Sd/-

(MADHUMITA ROY)
JUDICIAL MEMBER

Sd/-

(MANISH BORAD)
ACCOUNTANT MEMBER

दिनांक /Dated : 29.10. 2021

Patel/PS

Copy to: The Appellant/Respondent/CIT concerned/CIT(A) concerned/ DR, ITAT, Indore/Guard file.

By Order,
Asstt.Registrar, I.T.A.T., Indore