

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

BEFORE SHRI R. K. PANDA, ACCOUNTANT MEMBER

**ITA No.4702/DEL/2019
[Assessment Year: 2011-12]**

Society for Welfare Awareness Research Guidance, RZ-2705/30, Sheel Bhawan, Main Jagdamba Road, Tughalakabad Extension, Delhi-110019	Vs	Income Tax Officer(Exemption), Ward-2(2), W-151, Greater Kailash-II, New Delhi-110048
PAN-AADAS6285R		
Assessee		Revenue

Assessee by	Sh. Mayank Patawari, CA
Revenue by	Sh. Om Prakash Sr. DR

Date of Hearing	28.03.2022
Date of Pronouncement	27.04.2022

ORDER

PER R.K. PANDA, AM,

This appeal filed by the assessee is directed against the order dated 14.03.2019 of the learned CIT(A)-40, New Delhi, relating to Assessment Year 2011-12.

2. The addition of Rs.23,00,000/- made by the AO being corpus donation received from M/s Herbicare Bio-Herbal Research Foundation and upheld by the Ld. CIT(A) is

the only issue pressed by the assessee in the grounds of appeal.

2.1. Facts of the case, in brief, are that information was received from the office of the Commissioner of Income Tax (Exemptions), Kolkata that the assessee was a beneficiary of accommodation entry in the garb of corpus donation of Rs. 23,00,000/- from Herbicare Bio- Herbal Research Foundation. Therefore, assessment proceedings were reopened under section 147 by issuing notice under section 148 dated 17/12/2015 after recording reasons. In response to notice under section 148 return of income was filed on 05/02/2016. A request was made by the assessee to provide reasons for reopening the assessment proceedings which were communicated to the assessee vide letter dated 30/05/2016. Objections raised by the assessee vide letter dated 31/05/2016 were rejected vide office letter dated 13/06/2016. Notices under section 143(2) dated 11/02/2016 and 142(1) dated 04/05/2016 were issued.

2.2. The assessee society is registered under the Societies Registration Act, 1860 and is also registered under section 12A

vide order dated 23/10/2001. The main objects of the assessee society are as under:

- i. To run educational/professional institutions from Nursery onwards for the promotion of science, technology, literature, management, economics, art and culture etc. for value-based education.
- ii. To provide vocational/professional education in various disciplines.
- iii. To provide consultancy and research support to industry, business service organisations, academics and other organisations.
- iv. To identify and develop various educational aids required at different levels of education for the benefit of RS and other educational institutions.

2.3. During the course of assessment proceedings, the AO noted that information was received from the office of the Commissioner of income tax (exemptions), Kolkata regarding list of bogus donations paid and received in lieu of cash by various trusts/societies outside Kolkata which was gathered

during the survey operations on various societies/trusts. Name of the assessee society figured in the list. During the survey operations under section 133A in the case of Herbicare Bio-Herbal Research Foundation on 27/01/2015 at Kolkata, Shri Swapan Ranjan Das Gupta, the director of the organization deposed in his statement on oath that they had adopted the prevalent practice of scientific and research organisations of giving accommodation entries on commission basis to different beneficiaries in the garb of donation receipts to be finally given back to them in the form of cash or cheque. Corpus donation of Rs. 23,00,000/- had been received by the assessee during the previous year relevant to the assessment year under consideration. The AO accordingly issued a show-cause notice dated 14/12/2016 asking the assessee to explain as to why the aforesaid corpus donation of Rs. 23,00,000/- reflected by the assessee in its balance sheet should not be treated as cash credit within the meaning of section 68.

2.4. In response to the same, the assessee inter-alia, submitted as under:

- i. *Donation of Rs. 23,00,000/- was received vide RTGS of Rs. 18,00,000/- and Rs.50,0000/- on 07/03/2011 from*

Herbicare Healthcare Bio-Herbal Research Foundation for which a proper receipt of donation was issued.

ii. The amount received was duly declared in the audited balance sheet of the trust and was reflected in the return of income filed for the year under consideration.

iii. The assessee has applied the fund so received in compliance with the instructions of the donor.

iv. Amount received has already been shown as income by way of corpus and since the same has been utilised for allowable purposes as per the applicable provisions there is no occasion of any tax evasion loss to revenue. Even if the amount so received was to be accounted for as donation in receipt and payment/income and expenditure account, the same would have been exempt being utilised for allowable purpose.

2.5. However, the AO was not satisfied with the arguments advanced by the assessee. He noted that the donor, Herbicare Healthcare Bio-Herbal Research Foundation, was found to be an accommodation entry provider during the survey proceedings under section 133A conducted at its premises. It was admitted by the director of the said foundation that accommodation entries had been provided in the garb of donations to various trust/societies including the donation to the assessee society amounting to Rs. 23,00,000/-. The assessee failed to discharge the onus cast on it as per the provisions of section 68 of the I.T. Act, 1961. Further, the director of the donor society had stated on oath that accommodation entry had been given to the assessee. He therefore, held

that the corpus donation of Rs. 23,00,000/- reflected by the assessee in its balance sheet was unexplained cash credit within the meaning of the provisions of section 68 to be taxed under section 115BBE of the Act. He accordingly determined the total income of the assessee at Rs.23,00,000/-

3. Before the ld. CIT(A), the assessee made elaborate arguments challenging the order of the AO in making addition of Rs.23 Lakhs u/s 68 of the Act. However, the ld. CIT(A) was not satisfied with the arguments advanced by the assessee and upheld the action of the AO by observing as under:-

“4.3.2 I have considered the assessment order and the submissions of the appellant. In the case under consideration, notice under section 148 was issued on receipt of information from office of Commissioner of Income Tax (Exemptions), Kolkata. No return of income had been filed by the assessee for the year under consideration and was filed for the first time in response to notice under section 148. Objections were raised by the appellant which were duly disposed off by the Assessing Officer vide letter dated 13/06/2016. It is settled law that information received from other offices can constitute material for reopening a case. In the case of ITR Vs. Purushottam Das Bangur and Anr. [224 ITR 362 (SC)] it was held that communication received by the Assessing Officer in discharge of official duties is information of notice under section 148. Notice under section 148 on the basis of letter issued from Investigation Wing has been held to be valid in the case of AGR Investigation Ltd. Vs. Additional CIT & Anr: [333 ITR 146 (Del)]. In the case under consideration this is more so since no return of income had been filed by the

assessee under section 139 despite there being a clear mandate for institutions claim'ng exemption under section 11 to file return of income.

4.3.3 In the case under consideration, the statement recorded during the survey operation under section 133A was used as information for reopening the case under section 148 in the case of the assessee. As noted above earlier, no return of income had been filed by the assessee and the same was filed for the first time only in response to notice under section 148. Objections raised to the notice under section 148 were also disposed off vide speaking order dated 13/06/2016. It has been contended by the appellant that cross examination of the Director of Herbicure Bio-Herbal Research Foundation was not given to the appellant before making the addition, it is seen from the assessment record that the such a request was made only toward the fag end of the assessment proceedings in response to showcause notice"-dated' 14/12/ 2016~when the matter was getting barred by limitation and the same could not have been provided by the Assessing Officer. In the case of Pebble Investment and Finance Ltd Vs ITO [(2017) 156 DTR 0247 (Bom)], which has been upheld by the Hon'ble Supreme Court (2017-TIOL-238-SC-IT), the Hon'ble Bombay High Court have held that statement made under section 133A was not bereft of any evidentiary value. It was also held that the same may not be conclusive but in absence of any contrary evidence' or explanation as to why statement made under section 133A of the Act was not credible, it could be acted upon. The Hon'ble Court also distinguished the decision of the Hon'ble Supreme Court in the case of CIT vs. S. Khader Khan (300 ITR 157). It was also held that in absence of assessee offering any explanation as to why statement could not be relied upon, no fault could be found on reliance upon statement of Director. As regards the request tor cross examination was concerned, it was held that the assessee, during first round, of proceedings before Assessing Officer did not raise any such issue. The relevant extracts of the order are reproduced below:

9. We note that a statement made under Section 133A of the Act is not bereft of any evidentiary value. The same may not be conclusive but in the absence of any contrary evidence or explanation as to why the statement made under Section 133A of the Act is not credible, it can be acted upon. The decision of Madras High Court in CIT v/s. S. Khader Khan Son reported in 300 ITR 157 as upheld by the Apex Court, is not of any assistance to the Appellant. In the facts before the Court in S. Khader Khan

(supra), the person who made the statement under Section 133A of the Act had retracted it before the Assessment Order was passed. Moreover, in the absence of the the Appellant-Assessee offering any explanation as to why the statement cannot be relied upon, no fault can be found on the reliance upon the statement of the Director of M/s. Omega. Further, so far as request for cross examination is concerned, we find that Appellant-Assessee, during the first round of proceedings before the Assessing Officer did not raise any such issue. At that point of time, the person who make the statement, could have been produced by the Assessing Officer. It was only in the second round of proceedings when the Appellant-Assessee was not able to contact the Director of M/s. Omega, that they came up with a request for his cross examination. Therefore, the submission on part of the Appellant that the delay has led to it being unable to produce evidence is of no avail as the delay was in seeking cross examination by it...

4.3.4. It is the contention of the appellant that the onus to prove genuineness of the transaction and creditworthiness of the party has been discharged with the submission of substantial documents. Reliance has also been placed on the decision of the Hon'ble ITAT Kolkata in the case of *Sanskriti Sagar vs. CIT (Exemption)*, Kolkata in ITA No. 96/Kol/2017 wherein it was held that there was no reference of donation received/given prior to 31/03/2011 in the nature of bogus donations. It is to be noted that the facts of the case are different. In the case under consideration *Herbicare Healthcare BioHerbal Research Foundation* have given donation to the appellant. It is the contention of the appellant that it has proved creditworthiness of the donor. In the case relied upon by the appellant, question No. 22 of the statement of *Shri Swapan Ranjan Das Gupta* has been referred to which is reproduced below:

"Q.22. Let me remind you that as one of the Directors of *Herbicare Healthcare BioHerbal Research Foundation* you are duty bound' to keep complete information regarding transactions being made by the said entity and the genuineness of persons / entities with whom the said transactions are being made. Your attention is further been drawn to the computer extracts taken out of the tally which was found in your e-mail. These pages are related to the bank book of *Herbicare Healthcare BioHerbal Research Foundation* wherein it is clearly reflected that the amount of Rs.25 lakh (in two trenches) received from *OCL India Ltd* on 15.07.2011, Rs.251akh received from *OCL India Ltd* on 11.08.2011 & 17.08-2011

are immediately being transferred to A.S. Enterprises which is a paper company on the same dates. Similar trend is visible in the case of Donations received from other parties where just immediately after the receipt of donation amount the same is being transferred to the account of any paper company. In view of the same you are once again being given an opportunity to speak the truth and explain the transactions reflected from your bank book as above.

4.3.5 From the above it is apparent that the financial condition of Herbicure Healthcare BioHerbal Research Foundation was not very good till 2010-11 and it was poor to such an extent that the institution could not procure any genuine donations and could not carry out any work as a result of which it started to give bogus donation and accommodation entries. In such a situation when an institution cannot carry out its own work, then how can it be in a position to give corpus donations to others. It is clear that the donor did not have creditworthiness to give the said donation, in the case of Director of Income-tax (Exemption) v. Keshav Social & Charitable Foundation [(2005) 146 TAXMAN 569 (DELHI)], the Hon'ble Delhi High Court have held that section 68 had no application to donations other than corpus donations since donations would be income in the hands of the assessee which would have been applied for charitable purposes. In the case of the appellant, corpus donation has been taxed under section 68. In view of the facts and circumstances of the case, the addition is, therefore, upheld. Grounds of appeal Nos. 3 and 4 are dismissed.

4.4 Ground of appeal No. 6 states that the appellant craves leave for addition, alteration or deletion of the grounds of appeal. Since no such option has been exercised during the appellate proceedings, this ground is academic in nature and considered to be a dismissed ground for statistical purposes.

5. In the end result, the appeal is DISMISSED.”

4. Aggrieved with such order of the Ld. CIT(A), the assessee is in appeal before the Tribunal.

5. The ld. counsel for the assessee strongly challenged the order of the ld. CIT(A) in confirming the addition of Rs.23 lakhs made by the AO. He submitted that the assessee has

received corpus donation of Rs.23 lakhs from M/s Herbicare Bio- Herbal Research Foundation through banking channel. Referring to page-27 and 28 of the paper book , the ld. counsel for the assessee drew the attention of the Bench to the letter dated 07.03.2011 issued by the donor giving Rs.18 lakhs and Rs.5 lakhs respectively totalling Rs.23 lakhs through RTGS. Referring to page-29 and 30 of the paper book, the ld. counsel for the assessee drew the attention of the Bench to the receipt issued by the assessee trust to the donor acknowledging the receipt of Rs.23 lakhs. He submitted that the assessee has substantiated with evidence to the satisfaction of the AO regarding the identity, creditworthiness of the donor and genuineness of the transaction. Referring to the following decisions, he submitted that under identical circumstances, the Co-ordinate Benches of the Tribunal have accepted the donation from M/s Herbicare Health Care Bio Herbal Research Foundation as genuine and the addition made by the AO and the Ld. CIT(A) have been deleted.

- i. Fateh Chand Charitable Trust vs Commissioner of Income Tax (Exemption), reported in 83 taxmann.com 33 (Lucknow-Trib.)
- ii. Sanskriti Sagar vs CIT ITAT Kolkata ITA No.96/Kol/2017

iii. Bioved Research Society vs CIT(Exemption), reported in 91 taxmann.com 268 (Allahabad Tribunal)

6. The Ld. DR on the other hand, heavily relied on the order of the AO and the ld. CIT(A).

7. I have considered the rival arguments made by both the sides, perused the orders of the Assessing Officer and the Ld. CIT(A) and the paper book filed on behalf of the assessee. I have also considered the various decisions cited before me. I find the AO in the instant case made addition of Rs.23 lakhs by invoking the provisions of section 68/115BBE of the Act on the ground that the assessee has failed to substantiate with evidence to his satisfaction regarding the corpus donation of Rs.23 Lakhs received from M/s Herbicare Health Care Bio Herbal Research Foundation. It is his allegation that the said donor is found to be an accommodation entry provider which was established during the course of survey u/s 133A of the Act. I find the ld. CIT(A) upheld the action of the AO, the reasons of which have already been reproduced in the preceding paragraph. It is the submission of the ld. counsel for the assessee that the assessee has duly discharged the onus cast upon it by proving the three ingredients of section 68 of

the Act and therefore the addition made by the AO and sustained by the Ld. CIT(A) is not justified.

7.1. I find merit in the above argument of the ld. counsel for the assessee. I find identical issue had come up before the Lucknow, Allahabad and Kolkata Benches of the Tribunal, copies of which have filed in the paper book. I find the Lucknow Bench of the Tribunal in the case of Fateh Chand Charitable Trust vs Commissioner of Income Tax (Exemption), reported in 83 taxmann.com 33 (Lucknow-Trib.) while considering the donation of Rs.1 Crore from M/s Herbicare Health Care Bio Herbal Research Foundation for AY 2011-12 has observed as under:-

“13. Having carefully examined the order of the ld. Commissioner of Income Tax (Exemptions) in the light of the rival submissions, we find that on receipt of certain information from the ld. Commissioner of Income Tax (Exemptions), Kolkata; ld. Commissioner of Income Tax (Exemptions) has issued notice under section 12AA(3) of the Act to the assessee on 13.11.2015 for compliance on 24.11.2015. On 24.11.2015 the assessee sought adjournment and hearing was adjourned to 27.11.2015. On 27.11.2015 the assessee has filed a detailed reply to the charges leveled against it in show cause notice. The assessee emphatically denied the allegations leveled against the assessee that it has received a donation of Rs.1 crore through cheque after making payment of the same in cash to M/s Herbicare Health Care Bio Herbal Research Foundation. The reply filed by the assessee is available at pages 19 to 25 of the compilation of the assessee running into 7 pages and in para 8 of it, the assessee has specifically asked the ld.

Commissioner of Income Tax that in case there is any authentic material available with him which could throw some light on this issue, the same may be given to the assessee so that specific reply on the same could be submitted on it, besides denying the allegations leveled against him. For the sake of reference, we extract para 8 as under:

"8. That your goodself has, in your notice dated 13/11/2015, alleged that the assessee has received a donation of Rs1,00,00,000/- from M/s Herbicare Health Care Bio Herbal Research Foundation in the A/Y 2011-12 by paying an amount of Rs.1,00,00,000/- in cash to M/s Herbicare Health Care Bio Herbal Research Foundation itself. This allegation is totally untrue as nothing of this sort has been written or mentioned in the confirmation, given by M/s Herbicare Health Care Bio Herbal Research Foundation.

Till date no evidence to the contrary has been made available to the assessee which could substantiate your honour's allegation that the amount of Rs.1,00,00,000/- was paid by the assessee in cash to the donor in exchange of donation received by cheque. However, in case, there is any authentic material available with your honour which could throw some light on this issue, the same may be given to the assessee so that a specific reply on the same could be submitted on it."

14. It is also evident from record that the report received from the ld. Commissioner of Income Tax (Exemptions), Kolkata and the statement of Shri. Swapan Ranjan Das Gupta, Director of M/s Herbicare Health Care Bio Herbal Research Foundation was simply shown to the assessee on 27.11.2015, but no opportunity was afforded to the assessee either to cross-examine the said witness or to make any further comments in this regard and the ld. Commissioner of Income Tax (Exemptions) has passed an order on the very same day cancelling the registration earlier granted to the assessee. No doubt, the ld. Commissioner of Income Tax (Exemptions) is empowered to cancel the registration as per provisions of section 12AA(3), where the Principle CIT is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be. But in

the instant case ld. Commissioner of Income Tax (Exemptions) has simply received information from the ld. Commissioner of Income Tax (Exemptions), Kolkata that M/s Herbicare Health Care Bio Herbal Research Foundation was engaged in giving donations on receipt of cash through brokers, but nowhere it has been stated that M/s Herbicare Health Care Bio Herbal Research Foundation has paid donation to the assessee on receipt of cash of the equal amount through brokers. Similar statement of Shri. Swapan Ranjan Das Gupta was also made, but in that statement also there was no reference of the assessee. The ld. Commissioner of Income Tax (Exemptions) has simply shown this information to the assessee on 27.11.2015, but did not offer any further opportunity to make his comments in this regard. The assessee has emphatically denied the charges leveled against it in its reply filed on 27.11.2015 that if the ld. Commissioner of Income Tax (Exemptions) has received any authentic material in this regard, the same may be provided to the assessee so that the assessee can make a proper reply. But without affording any further opportunity to the assessee, the ld. Commissioner of Income Tax has passed an order of cancellation on the very same day.

15. It is settled position of law that any evidence collected at the back of the assessee cannot be used adversely unless and until it is confronted to the assessee and the assessee is allowed to cross-examine the witness, if any.

16. Our attention was also invited to various judicial pronouncements in this regard and in the case of Andaman Timber Industries, their Lordships of the Hon'ble Apex Court has categorically held that not allowing the assessee to cross-examine the witness by the adjudicating authority, though the statement of those witnesses were made basis of the impugned order, is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely effected. Their Lordships have, however, held that it is to be borne in mind that the order of the ld. Commissioner of Income Tax was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statement and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee. The Hon'ble Apex Court accordingly held that in the testimony of these two witnesses

is discredited, there was no material with the Department on the basis of which it could justify its action.

17. We have also examined the arguments of the assessee that even if receipt of donation is to be treated as unexplained receipt under section 68 of the Act, the addition of the same cannot be made because the assessee itself has applied the entire receipts for the objects of the assessee-trust. In support of this proposition, our attention was invited to the judgment of the Hon'ble jurisdictional High Court in the case of CIT v. Uttaranchal Welfare Society [2014] 42 taxmann.com 361/364 ITR 398/222 Taxman 34 (All.) (Mag.) in which their Lordships have held that section 68 of the Act has no application where assessee had disclosed donations as its income. While relying on this proposition of law, their Lordships have followed the view taken by Hon'ble Delhi High Court in the case of DIT (Exemptions) v. Keshav Social & Charitable Foundation [2005] 278 ITR 152/146 Taxman 569 and the judgment of the Hon'ble Apex court in the case of S.R.M.C.T.M. Tiruppani Trust v. CIT [1998] 230 ITR 636/96 Taxman 635, in which it was held that section 68 of the Act has no application in such cases where the assessee has disclosed donations as its income.

18. Similarly in the case of DIT v. Hans Raj Samarak Society [2013] 35 taxmann.com 642/217 Taxman 114 (Mag.) , their Lordships of the Hon'ble Delhi High Court has held that provisions of section 68 of the Act could not be applied as donation had already been shown by the assessee as income.

19. Similar views were also expressed by the Chennai Bench of the Tribunal in the case of Padanilam Welfare Trust (supra) in which it was held that merely because capitation fee was collected by the assessee-trust from students, the same would not constitute the violation of the provisions of granting registration under section 12AA of the Act where there was no valid allegation against the assessee that the income of the trust has not been applied for educational activities.

20. Similar view was also expressed by the Hyderabad Bench of the Tribunal in the case of V. B. Srinivas Rao (supra).

21. A reference was also made to the order of the Lucknow Bench of the Tribunal in the case of Sarswati Educational Charitable Trust (*supra*) which it was held that if the 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. The relevant observations of the Tribunal are extracted hereunder for the sake of reference:—

"8. 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 ld. CIT(A), we confirm the same as he has adjudicated the issue in the light of various judicial pronouncements. Accordingly we confirm his order."

22. Undisputedly, the assessee has taken receipt of donation as part of its income and the same was applied for charitable purposes and these facts are borne out from the consolidated balance sheet of the assessee available at page 8 of the compilation of the assessee. The Revenue has not made out a case that the donation received by the assessee was not taken as part of income and was applied for non-charitable purposes. The allegation of the Revenue is only that the donation was received by the assessee on making payment in cash to M/s Herbicare Health Care Bio Herbal Research Foundation, but to substantiate this claim, no evidence was brought on record by the Revenue. It was simply an oral assertion and moreover the assessee was not afforded any opportunity to cross-examine the witness, whose statement was relied on by the ld. Commissioner of Income Tax (Exemptions) for cancellation of registration under section 12AA of the Act earlier granted to the assessee. Even assuming, for the sake of argument, that if the assessee has received donation on making payment in cash and it may be his own money which was introduced in the trust through circuitous means, but it was applied for charitable purposes,

therefore, it cannot be added under section 68 of the Act. Thus, even on merit, we do not find any force in the allegations raised by the Revenue. The ld. Commissioner of Income Tax (Exemptions) has cancelled the registration under section 12AA of the Act on the basis of conjunctures and surmises, as he has observed in his order that the assessee might have been charging capitation fee from the parents of the students, but in this regard no evidence was brought on record. It is also obvious from the record that the ld. Commissioner of Income Tax (Exemptions) has passed an order on the same day when the assessee has furnished detailed explanation in writing and even without verifying the same. Therefore, we find no merit in the order of the ld. Commissioner of Income Tax (Exemptions). Accordingly, we set aside the order of ld. Commissioner of Income Tax (Exemptions).

23. In the result, appeal of the assessee stands allowed.”

8. I find the Kolkata Bench of the Tribunal in the case of Sanskriti Sagar vs CIT in ITA No.96/Kol/2017, order dated 15.09.2017 while accepting the donation of Rs.85,000/- from M/s Herbicare Health Care Bio Herbal Research Foundation for AY 2011-12 has observed as under:-

“12. We have heard the submissions of the Ld. Counsel for the assessee and the Ld. DR. The Ld. Counsel for the assessee firstly drew our attention to the answer given by founder and director of HHBHRF to question No. 22 recorded at the time of survey carried out in the business premises of HHBHRF. He drew our attention to the fact that in the said statement the founder director had specifically referred to a period from which bogus donations were received by HHBHRF viz., after A.Y. 2010-11. He drew our attention to the fact donation was given to the assessee by HHBHRF through cheque dated 03.03.2011 which was admittedly prior to the period in which bogus donations were received by HHBHRF. According to him the statement recorded at the time of survey based on which

the impugned order was passed was not incriminating, so far the assessee is concerned. According to him therefore the very basis on which the impugned order has been passed by the Ld. CIT(Ex), Kolkata is unsustainable. His next submission was that there was no other incriminating material on the basis of which it can be concluded that the assessee gave cash and in return got donation of Rs. 85,000/- and it was the assessee who arranged through the brokers for getting bogus donations. It was also his submission that there is no evidence of the assessee having indulged in money launderings. The assessee brought to our notice that assessee has been carrying out charitable activities and the activities carried out by it during the FY 2010-11 are placed on page 90 of the paper book.

13. *According to the Ld. AR, the Ld. CIT(Ex), Kolkata has no direct evidence against the assessee warranting cancellation of registration u/s. 12AA (3) of the Act. It was submitted by him that registration granted to the assessee can be cancelled u/s. 12AA(3) only on conditions being satisfied (a) that the activities of the trust or institution are not genuine (b) that the activities of the trust or institution are not being carried out in accordance with the objects of the trust or institution. There is no evidence brought on record whatsoever to show either of the aforesaid conditions have been satisfied to warrant cancellation of registration u/s. 12AA(3) of the Act. The Ld. Counsel for the assessee placed strong reliance on the decision of ITAT, Kolkata Bench rendered in the case of Sri Mayapur Dham Pilgrim and Visitors Trust Nadia vs. C.I.T. (Exemptions), Kolkata in ITA No. 1165/Kol/2016 order dated 03.05.2017.*

14. *The Ld. DR placed reliance on the order of Ld. CIT(Exemptions), Kolkata. According to him the answer given at the time of survey in reply to question No. 22 is sufficient to come to a conclusion that the assessee has indulged in money laundering. Alternatively it was his submission that the assessee should be afforded an opportunity of cross examination of Shri Swapan Ranjan Dasgupta, the founder director of HHBHRF.*

15. *We have given a very careful consideration to the rival submissions. From the answer to question No. 22 given by Shri Swapan Ranjan Dasgupta, founder director of HHBHRF at the time of survey in the business premises of*

HHBHRF, it is possible to entertain a doubt with regard to genuineness of the donations given by HHBHRF. It can be a money launderings indulged by a third party, who gave donations to the assessee by using the middlemen connected with HHBHRF. So far as the assessee is concerned it received donation from HHBHRF a sum of Rs. 85,000/- duly accounted the same in profit and loss account as corpus donation. There is no evidence whatsoever brought on record to show that the cash was paid by the assessee which in turn reached the hands of HHBHRF which was returned in the form of donation to the assessee after retaining the commission. As we have already observed that the answer to question No. 22 given by Shri Swapan Ranjan Dasgupta referred to donations given in the financial year 2011-12 as bogus donations. With regard to the donations received/given prior to 31.03.2011 there is no reference to such donations given or received by HHBHRF being in the nature of bogus donations. The assessee had received the donation from HHBHRF on 03.03.2011. It is therefore not possible to place reliance on the statement recorded at the time of survey and come to a conclusion that the assessee has been indulging in money laundering.

15.1 In answer to question No. 23 Shri Swapan Ranjan Dasgupta founder director of HHBHRF has made reference to certain middle men who are engaged in money laundering using HHBHRF as a medium for money laundering. There is no evidence brought on record to show any connection between those brokers and the assessee. In the absence of such corroborative evidence, it is not possible to come to any conclusion that the assessee indulged in money laundering and that the donation received by the assessee from HHBHRF was a bogus donation. In fact on identical facts this Tribunal in the case of Sri Mayapur Dham Pilgrim and Visitors Trust (supra) came to the conclusion that cancellation of registration u/s. 12AA cannot be sustained. In fact in the case of Sri Mayapur Dham Pilgrim and Visitors Trust (supra) the factual position was that the donor had made a reference to the name of that assessee in a list of bogus donations given by it in an application filed before the Settlement Commission of Income Tax. Still the Tribunal came to the conclusion that there was absence of material to show that the concerned trust had indulged in money laundering. We

are of the view that in the case of the assessee in this appeal stands on a much better footing than in the case of the assessee of Sri Mayapur Dham Pilgrim and Visitors Trust (supra).

16. Apart from the above, the grounds for cancellation for registration u/s. 12AA(3) of the Act is that the activities of the trust should not be genuine or the activities of the trust are not being carried out in accordance with the objects of the trust. There is neither an allegation in the impugned order nor finding that any of the aforesaid conditions exist in the case of the assessee. We therefore are of the view that the cancellation of registration granted to the assessee u/s. 12A of the Act cannot be sustained and the impugned order is hereby quashed. The appeal of the assessee is accordingly allowed.

17. In the result, assessee's appeal stands allowed."

9. I find the Allahabad Bench of the Tribunal in the case of Bioved Research Society vs CIT(Exemption), reported in 170 ITD 160 (Allahabad Tribunal) while accepting the donation of Rs.1 Crore from M/s Herbicure Health Care Bio Herbal Research Foundation for AY 2017-18, has observed as under:-

"5. We have considered the rival submissions. In exercising the powers under section 12AA(3) for cancellation of registration under section 12A/12AA by Pr.CIT/CIT, following conditions have to be satisfied.

(1) That the Trust or Society has already been granted registration under section 12AA(l)(b) of the I.T. Act.

(2) W.E.F. 01.06.2001 registration has been granted at any time under section 12A as stood before Amendment by Finance Act, 2 of 1996.

(3) The Commissioner subsequently found and satisfied that-

- (a) *Activities of such Trust or Institution are not genuine or*
- (b) *Are not being carried out in accordance with the objects of the Trust or Institution.*

5.1 *In the present case, assessee has already been granted registration under section 12A vide order dated 30th August, 2007, w.e.f. 01.04.2003 and approval under section 80G(5) vide order dated 10th February, 2010. The assessee has also been granted approval under section 35(i)(ii) of the I.T. Act by the Government of India vide Notification dated 01.02.2008 w.e.f. 01.04.2007 for carrying out scientific research. It is not in dispute that notification dated 01.02.2008 of the Government of India have not been withdrawn or have not been reported to have been withdrawn. Learned Counsel for the Assessee placed on record detailed material to show that assessee has been carrying out scientific research activities till date. Learned Counsel for the Assessee submitted that assessee has not received any donation from any of the party as mentioned in the report of the Investigation and has also not re-donated any amount subject to commission. The copies of the balance sheet from A.Ys. 2013- 2014 to 2017-2018 have been filed on record. In A.Y. 2013-2014 A.O. made additions on account of anonymous donations under section 115BBC of the I.T. Act in the order under section 143(3) which have been set aside and deleted by the ld. CIT(A), Allahabad, vide order dated 16th May, 2017 and benefit under section 11 have been allowed to the assessee. In subsequent year also assessee has received donations which have been applied towards implementation of research and development work. The ld. CIT(E) has issued show cause notice for cancellation of registration on 13.02.2017 for compliance on 28.02.2017 and according to ld. CIT(E), it is delivered to the assessee on 18.02.2017. However, according to Learned Counsel for the Assessee due to shortage of the time, adjournment was moved but there is no reference of the same in the impugned order. Any how, even if, it may be taken as correct that show cause notice is delivered upon the assessee on 18.02.2017, there was hardly any sufficient time to make compliance before ld. CIT(E) on 28.02.2017. It is also not clear from the order of the ld. CIT(E) whether any correspondence or information received from Investigation Wing, Varanasi or Lucknow and ld.*

CIT(E), Kolkata have been confronted to the assessee before taking action in the matter. Nothing is brought to our notice, if any information or material received from ld. CIT(E), Kolkata or any Investigation Wing was ever supplied to the assessee for comments of the assessee. The impugned order is silent regarding this fact. Therefore, it is clear that whatever information was received by the ld. CIT(E) from ld. CIT(E), Kolkata or Investigation Wing, was not supplied to the assessee. Therefore, any material collected at the back of the assessee cannot be read in evidence against the assessee. We rely upon the decision of the Hon'ble Supreme Court in the case of Kishin Chand Chellaram v. CIT [1980] 4 Taxman 29/125 ITR 713. It, therefore, stands clear that except the report received from Investigation Wing, Kolkata, ld. CIT(E), Kolkata or Investigation Wing of Varanasi or Lucknow, there were no other material with the ld. CIT(E) to assume that assessee was indulged in receiving unaccounted money in the garb of fund or re-donating the funds subject to commission. The ld. D.R. has not produced any material on record to justify the findings of the ld. CIT(E) against the assessee for cancelling the registration. May be the assessee did not appear before ld. CIT(E) as argued by ld. D.R. and he has submitted that the matter may be remanded to ld. CIT(E) for re-consideration but the facts noted above clearly prove that ld. CIT(E) merely on assumption and presumption and without confronting any material to the assessee, has passed the impugned order in haste within the period of 10 days from the alleged delivery of the notice upon the assessee. Identical matter has been considered by the ITAT, Lucknow Bench in the case of Fateh Chand Charitable Trust (supra), in which the issue was, cancellation of registration under section 12AA(iii) of the I.T. Act. The Tribunal set aside the impugned order of the ld. CIT(E) and restore the registration under section 12AA of the I.T. Act and decided the appeal in favour of the assessee. The findings of the Tribunal in paras 13 to 23 are reproduced as under :

13. *"Having carefully examined the order of the Id. Commissioner of Income Tax (Exemptions) in the light of the rival submissions, we find that on receipt of certain information from the Id. Commissioner of Income Tax (Exemptions), Kolkata; Id. Commissioner of Income Tax (Exemptions) has issued notice under*

section 12AA(3) of the Act to the assessee on 13.11.2015 for compliance on 24.11.2015. On 24.11.2015 the assessee sought adjournment and hearing was adjourned to 27.11.2015. On 27.11.2015 the assessee has filed a detailed reply to the charges leveled against it in show cause notice. The assessee emphatically denied the allegations leveled against the assessee that it has received a donation of Rs.1 crore through cheque after making payment of the same in cash to M/s Herbicare Health Care Bio Herbal Research Foundation. The reply filed by the assessee is available at pages 19 to 25 of the compilation of the assessee running into 7 pages and in para 8 of it, the assessee has specifically asked the Id. Commissioner of Income Tax that in case there is any authentic material available with him which could throw some light on this issue, the same may be given to the assessee so that specific reply on the same could be submitted on it, besides denying the allegations leveled against him. For the sake of reference, we extract para 8 as under:-

8. That your goodself has, in your notice dated 13/11/2015, alleged that the assessee has received a donation of Rs1,00,00,000/- from M/s Herbicare Health Care Bio Herbal Research Foundation in the A/Y 2011-12 by paying an amount of Rs.1,00,00,000/- in cash to M/s Herbicare Health Care Bio Herbal Research Foundation itself. This allegation is totally untrue as nothing of this sort has been written or mentioned in the confirmation, given by M/s Herbicare Health Care Bio Herbal Research Foundation.

Till date no evidence to the contrary has been made available to the assessee which could substantiate your honour's allegation that the amount of Rs.1,00,00,000/- was paid by the assessee in cash to the donor in exchange of donation received by cheque. However, in case, there is any authentic material available with your honour which could throw some light on this issue, the same may be given to the assessee so that a specific reply on the same could be submitted on it"

14. It is also evident from record that the report received from the Id. Commissioner of Income Tax (Exemptions), Kolkata and the statement of Shri Swapan Ranjan Das Gupta, Director of M/s Herbicare Health Care Bio Herbal Research Foundation was simply shown to the assessee on 27.11.2015, but no opportunity was afforded to the assessee either to cross-examine the said witness or to make any further comments in this regard and the Id. Commissioner of Income Tax (Exemptions) has passed an order on the very same day cancelling the registration earlier granted to the assessee. No doubt, the Id. Commissioner of Income Tax (Exemptions) is empowered to cancel the registration as per provisions of section 12AA(3), where the Principle CIT is satisfied that the activities of such trust or institution are not genuine or are not being carried out in accordance with the objects of the trust or institution, as the case may be. But in the instant case Id. Commissioner of Income Tax (Exemptions) has simply received information from the Id. Commissioner of Income Tax (Exemptions), Kolkata that M/s Herbicare Health Care Bio Herbal Research Foundation was engaged in giving donations on receipt of cash through brokers, but nowhere it has been stated that M/s Herbicare Health Care Bio Herbal Research Foundation has paid donation to the assessee on receipt of cash of the equal amount through brokers. Similar statement of Shri Swapan Ranjan Das Gupta was also made, but in that statement also there was no reference of the assessee. The Id. Commissioner of Income Tax (Exemptions) has simply shown this information to the assessee on 27.11.2015, but did not offer any further opportunity to make his comments in this regard. The assessee has emphatically denied the charges leveled against it in its reply filed on 27.11.2015 that if the Id. Commissioner of Income Tax (Exemptions) has received any authentic material in this regard, the same may be provided to the assessee so that the assessee can make a proper reply. But without affording any further opportunity to the assessee, the Id. Commissioner of Income Tax has passed an order of cancellation on the very same day.

15. *It is settled position of law that any evidence collected at the back of the assessee cannot be used adversely unless and until it is confronted to the assessee and the assessee is allowed to cross-examine the witness, if any.*

16. *Our attention was also invited to various judicial pronouncements in this regard and in the case of Andaman Timber Industries v. Commissioner of Central Excise, 62 taxmann.com 3, their Lordships of the Hon'ble Apex Court has categorically held that not allowing the assessee to cross-examine the witness by the adjudicating authority, though the statement of those witnesses were made basis of the impugned order, is a serious flaw which makes the order nullity inasmuch as it amounted to violation of principles of natural justice because of which the assessee was adversely effected. Their Lordships have, however, held that it is to be borne in mind that the order of the Id. Commissioner of Income Tax was based upon the statements given by the aforesaid two witnesses. Even when the assessee disputed the correctness of the statement and wanted to cross-examine, the adjudicating authority did not grant this opportunity to the assessee. The Hon'ble Apex Court accordingly held that in the testimony of these two witnesses is discredited, there was no material with the Department on the basis of which it could justify its action.*

17. *We have also examined the arguments of the assessee that even if receipt of donation is to be treated as unexplained receipt under section 68 of the Act, the addition of the same cannot be made because the assessee itself has applied the entire receipts for the objects of the assessee-trust. In support of this proposition, our attention was invited to the judgment of the Honble jurisdictional High Court in the case of CIT v. Uttaranchal Welfare Society, 42 taxmann.com 361, in which their Lordships have held that section 68 of the Act has no application where assessee had disclosed donations as its income. While relying on this proposition of law, their Lordships have followed the view taken by Hon'ble Delhi High Court in the case of DIT (Exemptions) v. Keshav Social & Charitable Foundation, 278 ITR 152 and the*

judgment of the Hon'ble Apex court in the case of S.R.M.M.C.T.M. Tiruppani Trust v. CIT, 230 ITR 636, in which it was held that section 68 of the Act has no application in such cases where the assessee has disclosed donations as its income.

18. *Similarly in the case of Director of Income Tax v. Hans Raj Samarak Society, 35 taxmann.com 642, their Lordships of the Hon'ble Delhi High Court has held that provisions of section 68 of the Act could not be applied as donation had already been shown by the assessee as income.*

19. *Similar views were also expressed by the Chennai Bench of the Tribunal in the case of Padanilam Welfare Trust v. DCIT (supra) in which it was held that merely because capitation fee was collected by the assessee-trust from students, the same would not constitute the violation of the provisions of granting registration under section 12AA of the Act where there was no valid allegation against the assessee that the income of the trust has not been applied for educational activities.*

20. *Similar view was also expressed by the Hyderabad Bench of the Tribunal in the case of V. B. Srinivas Rao (supra).*

21. *A reference was also made to the order of the Lucknow Bench of the Tribunal in the case of Income Tax Officer v. Sarswati Educational Charitable Trust in I.T.A. No. 776/LKW/2014 in which it was held that if the 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. The relevant observations of the Tribunal are extracted hereunder for the sake of reference:-*

"8. 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 he assessee has filed various documents to prove the identity of the donors, these donations cannot be called to be anonymous. So for 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 he issue in the light of various judicial pronouncements. Accordingly we conform his order."

22. *Undisputedly, the assessee has taken receipt of donation as part of its income and the same was applied for charitable purposes and these facts are borne out from the consolidated balance sheet of the assessee available at page 8 of the compilation of the assessee. The Revenue has not made out a case that the donation received by the assessee was not taken as part of income and was applied for non-charitable purposes. The allegation of the Revenue is only that the donation was received by the assessee on making payment in cash to M/s Herbicare Health Care Bio Herbal Research Foundation, but to substantiate this claim, no evidence was brought on record by the Revenue. It was simply an oral assertion and moreover the assessee was not afforded any opportunity to cross-examine the witness, whose statement was relied on by the Id. Commissioner of Income Tax (Exemptions) for cancellation of registration under section 12AA of the Act earlier granted to the assessee. Even assuming, for the sake of argument, that if the assessee has received donation on making payment in cash and it may be his own money which was introduced in the trust through circuitous means, but it was applied for charitable purposes, therefore, it cannot be added under section 68 of the Act. Thus, even on merit, we do not find any force in the allegations raised by the Revenue. The Id. Commissioner of Income Tax (Exemptions) has cancelled the registration under section 12AA of the Act on the basis of conjunctures and surmises, as he has observed in his order that the assessee might have been charging capitation fee from the parents of the students, but in this regard no evidence was brought on record. It is also obvious from the record that the Id. Commissioner of Income Tax (Exemptions)*

has passed an order on the same day when the assessee has furnished detailed explanation in writing and even without verifying the same. Therefore, we find no merit in the order of the Id. Commissioner of Income Tax (Exemptions). Accordingly, we set aside the order of Id. Commissioner of Income Tax (Exemptions).

23. In the result, appeal of the assessee stands allowed."

6. In this case, similar issue of the material not confronted to the assessee was considered and decided in favour of the assessee. It was also decided in this case when donation have been shown as income and applied the receipts for objects of the Assessee-Trust, no addition could be made against the assessee. The facts in the present case are similar to the case of Fateh Chand Charitable Trust (supra). Considering the above discussion in the light of material on record, it is clear that assessee has been carrying out scientific research activities as per its objects. The donation received by the assessee have been used for the scientific research purpose only. There is no legal admissible evidence on record against the assessee that assessee received any donation from any company as alleged in the report of the Investigation Wing. No evidence of any unaccounted cash transactions conducted by the assessee were found. There is no evidence on record to show that assessee received or paid any commission for indulging in any unaccounted money. Therefore, cancellation of registration in the matter is merely on presumption only.

7. In the case of Sharda Educational Trust v. CIT [2014] 43 taxmann.com 95/147 ITD 271 (Agra - Trib.), it was held that in the absence of any examination of any student and their parents about payment of any money/capitation fees to the assessee trust and there being no corroborative evidence to prove receipt of any such amount, registration of assessee trust, could not be cancelled on the basis of paper seized during search. The Tribunal set aside the cancellation of registration and restored the registration. The order of the Tribunal have been confirmed by the Hon'ble Allahabad High Court by dismissing the departmental appeals in Income Tax Appeal No. 303 of 2013 in the case of CIT v. Sharda Educational Trust vide

Judgment dated 07.11.2013. In view of the above discussion, we are of the view that the impugned order of ld. CIT(E) cannot survive in Law. Therefore, there is no need to remand the matter to ld. CIT(E) for fresh consideration. We, accordingly, set aside the impugned order dated 28.02.2017 and restore the registration under section 12AA of the I.T. Act in favour of the assessee. Appeal of assessee allowed.

8. *In the result, appeal of the assessee is allowed.”*

10. Since the facts of the instant case are identical to the facts of the case decided by the Co-ordinate Benches of the Tribunal cited (supra), therefore, respectfully following the decisions, cited above, I set-aside the order of the ld. CIT(A) and direct the AO to delete the addition of Rs.23 Lakhs made by her. The grounds raised by the assessee are accordingly allowed.

11. In the result, the appeal filed by the assessee is partly allowed.

Order pronounced in the Open Court on 27.04.2022.

Sd/-

[R.K.PANDA]
ACCOUNTANT MEMBER

Delhi; Dated: 27.04.2022.

Shekhar, Sr. P.S

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT

4. CIT(A)
5. DR

Asst. Registrar,
ITAT, New Delhi