

IN THE INCOME TAX APPELLATE TRIBUNAL  
DELHI BENCHES "E" : DELHI

BEFORE SHRI ANIL CHATURVEDI, ACCOUNTANT MEMBER  
AND  
SHRI ANUBHAV SHARMA, JUDICIAL MEMBER

ITA.No.4775/Del./2015  
Assessment Year 2008-2009

The DCIT, Central Circle-29, Room No.318, 3 <sup>rd</sup> Floor, ARA Centre, Jhandewalan Extn., New Delhi.	vs.	M/s. Gian Sagar Educational & Charitable Trust (Regd.), SCO, 109-110, Sector- 43B, Chandigarh. PAN AAATG5827B
(Appellant)		(Respondent)

ITA.No.4692/Del./2015  
Assessment Year 2008-2009

M/s. Gian Sagar Educational & Charitable Trust (Regd.), SCO, 109-110, Sector-43B, Chandigarh. PAN AAATG5827B	vs.	The DCIT, Central Circle-4, New Delhi.
(Appellant)		(Respondent)

For Revenue :	Ms. Sarita Kumari, CIT-DR
For Assessee :	Shri Shailesh Gupta, C.A. And Shri Ravi Pratap Mall, Advocate

Date of Hearing :	11.10.2022
Date of Pronouncement :	21.10.2022

**ORDER**

**PER ANIL CHATURVEDI, A.M. :**

The above cross-appeals are preferred by the Revenue and Assessee-Trust against the Order of the Ld. CIT(A)-30, New Delhi, dated 24.03.2015 in Appeal No.400/13-14/1551, relating to the A.Y. 2008-2009.

2. Briefly stated facts of the case are that the Assessee is a Trust duly registered under section 12AA of the I.T. Act, 1961 with the O/o. Commissioner of Income Tax-II, Chandigarh. It filed its return of income for the A.Y. 2008-09 declaring total income at Rs.NIL. Initially the assessment was framed by the A.O. [Addl. Commissioner of Income Tax, Range-6, Mohali] under section 143(3) of the I.T. Act, 1961 vide order dated 30.12.2010 and the total income of the assessee-trust was determined at Rs.16,30,38,330/- after set off of losses of Rs.6,23,15,329/- Thereafter, an application was made by the assessee-trust under section 154 of the I.T. Act, 1961 on 03.01.2011 seeking allowance of deduction on account of further

application of income to the extent of Rs.68,54,03,834/- made by the assessee-trust in acquiring fixed assets. The said claim was accepted vide order passed under section 154 of the I.T. Act, 1961 dated 27.05.2011 wherein the income of the assessee-trust was recomputed at Rs.NIL as the application of income made by the assessee-trust during the relevant period was in excess of the income received. Thereafter, the Ld. Commissioner of Income Tax (Central)-III, New Delhi, after examining the assessment records concluded that the order passed by the A.O. under section 154 of the I.T. Act, 1961 was prejudicial to the interests of Revenue and thereby, proceedings under section 263 of the I.T. Act, 1961 were initiated by issuing notice. The Ld. CIT, thereafter, in exercise of his revisional powers under section 263 of the I.T. Act, 1961, cancelled the assessment and directed the A.O. for conducting assessment afresh, *inter alia*, directing that no relief to be allowed in respect of set off of losses to the extent of Rs.6,23,15,329/- as the same was statutorily barred in view of provisions of Section 13(7) of the I.T. Act, 1961. Pursuant to the directions of the Ld. CIT

passed under section 263 of the I.T. Act, 1961, the A.O. passed the assessment order under section 263 read with section 143(3) of the I.T. Act, 1961 vide order dated 02.12.2013 and the total taxable income of the assessee-trust was determined at Rs.22,53,53,785/- under section 115BBC of the I.T. Act, 1961.

2.1. Aggrieved by the order of the A.O, the Assessee-Trust carried the matter in appeal before the Ld. CIT(A), who vide order dated 24.03.2015 in Appeal No.400/13-14/1551 granted substantial relief to the Assessee-Trust.

3. Aggrieved by the order of the Ld. CIT(A), the Revenue as well as Assessee-Trust are now in appeal before the Tribunal. The Grounds raised by the Revenue in it's appeal [ITA.No.4775/Del./2015 – A.Y. 2008-2009] are as under :

1. *“On the facts and in the circumstances of the case, the CIT (A) has erred in law on facts in deleting the additions of Rs.1,91,00,000/- on account of unverifiable donation and Rs.10,59,83,785/- on account of unverifiable/ bogus*

*contribution to corpus fund made by AO by invoking the provisions of section 68 and section 115 BBC of the Act.*

2. *On the facts and in the circumstances of the case, the CIT (A) has erred in law on facts in deleting the addition of Rs.10,02,70,000/- made by AO by invoking the provisions of section 68 and section 115 BBC of the Act on account of donations for which creditworthiness/genuineness was not proved.*
3. *The order of the CIT (A) is erroneous and is not tenable on facts and in law.*
4. *The appellant craves leave to add, alter or amend any/ all of the grounds of appeal before or during the course of the hearing of the appeal”.*

4. The Grounds raised by the Assessee-Trust in it's appeal [ITA.No.4692/Del./2015 – A.Y. 2008-2009] are as under :

1. *“That the orders passed by the learned Commissioner of Income-tax (Appeals)-30, New Delhi are illegal and against the facts of the case.*

2. *That the learned Commissioner of Income-tax (Appeals)-30, New Delhi has grossly erred in not directing the learned Assessing officer to make the assessment De-Novo as directed to assessing officer by Ld. Commissioner of Income-tax (Central)-III, New Delhi in his order u/s 263 of the Income-tax Act, 1961.*
3. *That the learned Commissioner of Income-tax (Appeals)-30, New Delhi has grossly erred in confirming an addition of Rs.1.46 Crores u/s 115 BBC of the Income-tax Act, 1961 even though the name, address & PAN of the donor was duly furnished and there is no anonymous donation and as such section 115 BBC of the Income-tax Act, 1961 is not applicable to the donation received by the trust.*
4. *That your appellant leaves to add, alter, amend or forgo any of the grounds at the time of hearing of the appeal”.*

5. First we proceed to decide the Revenue’s appeal as under.

5.1. The brief facts emanating to the grounds raised by the Revenue in it’s appeal are that in the original assessment order dated 30.12.2010 passed under section 143(3) of the I.T. Act, 1961, the A.O. made an addition

under section 115BBC read with Section 68 of the I.T. Act, 1961 at Rs.12,50,83,785/- and Rs.10,02,70,000/- [totalling to Rs.22,53,53,785/-] on account of non-genuineness and creditworthiness of the of the donors. The reason for such disallowance and its break-up are as under :

	Amount in (Rs.)
1.Total amount of donation in respect of which notices u/s 133(6) have not been served or no reply received [Ref: Para 6.2 of the order (total 11 cases)]	Rs. 1,91,00,000/-
2.Total amount of Corpus donation where notices u/s 133(6) not served or no reply received [Ref: para 6.2 of the order (total 73 cases)]*	Rs. 10,59,83,755/-
3.Total amount of Corpus donation where Creditworthiness of the donors were not proved On the basis of balance sheet Financial result	Rs. 10,02,70,000/-
	<b><u>Rs. 22,53,53,785/-</u></b>

5.1.1. The A.O. did not allow any deduction on account of application of income as per the provisions of Section 11 of the I.T. Act, 1961 while computing the taxable income, but, however, allowed set-off of losses as per Income and Expenditure A/c. Thereafter, in the rectification order dated 27.05.2011 passed under section 154 of the I.T. Act, 1961, the A.O. allowed the application of income to the extent of

Rs.22,53,53,785/- under sections 11 and 12 of the I.T. Act, 1961 and, therefore, the total taxable income was computed at Rs.NIL as the application of income exceeded the income even after the addition of unexplained donation. The Ld. CIT(A) decided the issue by observing as under :

### **5.3 Decision:-**

I have considered the impugned assessment order, written submission alongwith paper books and oral arguments of Ld. AR. The Ld. AR has enclosed original assessment order framed u/s 143(3), rectification order passed u/s 154 and revision order passed by CIT(Central)-III, New Delhi.

Facts in brief is that in original assessment order the assessing officer has made addition u/s 115 BBC read with section 68 for Rs. 12,50,83,785/- and Rs. 10,02,70,000/- u/s 68 of I.T. Act totaling to Rs. 22,53,53,785/- on account of non genuineness and creditworthiness of donors and did not allow any deduction on account of application of Income as per the provision of Section 11 while computing taxable income, however allowed set off of loss as per I&E A/c. Order u/s 154 was passed on 27.05.2011 allowing application of income to the extent of Rs. 61,91,04,926/- u/s 11 & 12 therefore, taxable income was computed at NIL as application of Income far exceeded the income even after addition of unexplained donation.

Ld. CIT (Central)-III, New Delhi passed order u/s 263 holding that order u/s 154 and original assessment passed u/s 143(3) are erroneous & prejudicial to the interest of revenue & therefore, these orders were cancelled and the assessing officer was directed to make de-novo assessment after considering the facts & circumstances of the case and after considering the statutory provisions of subsection (7) of section 13 & provision of section 115 BBC. In the present impugned assessment order, no deduction was allowed u/s 11 on application of income and entire addition was taxed u/s 115 BBC of I.T. Act, 1961.

In view of the above facts the basic issue which has to be adjudicated whether application of income is to be allowed on such addition made on account of such alleged donation which remained unverified or creditworthiness of donors were doubtful.

In the impugned assessment order, the bifurcation of total addition is not mentioned, only the reference of original assessment is made. I have perused the original assessment made u/s 143(3). The broad bifurcation of addition on the basis of finding and enquiry made during the assessment proceedings & survey proceedings are as under:-

	Amount in (Rs.)
1.Total amount of donation in respect of which notices u/s 133(6) have not been served or no reply received [Ref: Para 6.2 of the order (total 11 cases)]	Rs. 1,91,00,000/- ✓
2.Total amount of Corpus donation where notices u/s 133(6) not served or no reply received [Ref: para 6.2 of the order (total 73 cases)]	Rs. 10,59,83,755/-
3.Total amount of Corpus donation where Creditworthiness of the donors were not proved On the basis of balance sheet Financial result	<u>Rs. 10,02,70,000/-</u> <u>Rs. 22,53,53,785/-</u>

In the present impugned assessment proceedings, Ld. assessing officer has not done any further enquiry or investigation in respect of these donors on the pretext that the assessing officer has no power of reviewing an order passed previously & his power are only restricted to the extent of rectifying mistakes which is apparent on the face of record. I do not agree with this finding of the assessing officer. Ld. CIT(Central) III, New Delhi has passed order u/s 263 directing the assessing officer to make de-novo assessment after considering the facts & circumstances of the case & considering the legal provision specially section 13(7) read with section 115 BBC of the Act, 1961.

I have considered the provisions of section 115 BBC read with subsection (7) of section 13 of I.T. Act. As per the provision of section 115 BBC, any anonymous donation is taxable at the flat rate of 30% of such donation. Therefore, section 115 BBC is a charging section itself. The provisions of subsection (1) of section 115 BBC is reproduced as under:-

(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 (iiiie) 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 nay 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 aggregate of anonymous donations received in excess of the higher of the following, namely:-

(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.

Anonymous donation has been defined in subsection (3) of I.T. Act, 1961 reproduced as under:-

*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.*

A perusal of the above definition reveals that if the person receiving such donation maintains the record of identity and address of donors then such donation cannot be called anonymous have been notified as per the requirement of this section.

In view of the above facts, I agree with the arguments of Ld. AR that the requirement of section 115 BBC is not at par with onus on the assessee casted u/s 68 of I.T. Act, i.e. to prove creditworthiness of the donors. Emphasis in section 115 BBC is to maintain & declare correct identity of the donors. The Ld. AR argued that the appellant have maintained & disclosed such name & address of donors during the assessment proceeding as accepted by the assessing officer in the original assessment order, therefore section 115 BBC is not applicable to the facts of the case.

I have examined these arguments on the facts of the case & perused original assessment order. As per para (5) of the original assessment order, the appellant has maintained the name & address of all the donors, which has been reproduced in the assessment order. Unless these details are proved to be wrong that these persons have not donated to the appellant, in my view the donation received cannot be said as anonymous donation by virtue of sub section (3) of section 115 BBC.

I have perused the status of enquiry contained in para 6.1 & 6.2 of the original assessment order. In one donor namely M/s. Adivasi Mahila Vikas Samiti, it has been categorically stated that it has not made any donation to the appellant. The relevant portion of finding is contained in para 6.1 of the original assessment order & reproduced as under:-

6.1 Here, it is pertinent to stress upon the reply received in this office in the case of Adivasi Mahila Vikas Samiti, Fuldungri, P.O. Ghatsila, Distt. Singhbhum, Jharkhand – 832303 from whom, donation @ Rs. 1.46 Cr is stated to have been received. The counsel of Adivasi Mahila Samiti has in response to letter u/s 133(6) stated that during the relevant period Adivasi Mahila Vikas Samiti did not make any transaction with the said M/s Gian Sagar Educational and Charitable Trust and made no payment to them on any account.

As the alleged donor M/s Adivasi Mahila Vikas Samiti, has not confirmed the donation to the appellant, to this extent the name or address of the donor is incorrectly maintained by the appellant & therefore, onus on the appellant to the extent of this donation to maintain identity of donor is not fulfilled. As the meaning of maintaining identity of donors means name & address should be correct. If the name of the person with address maintained by assessee denies to have paid donation, it means such details are not correctly maintained & therefore, not maintained. Neither during the present impugned assessment proceeding nor during the present appellate proceedings, the appellant has produced or contradicted this findings. Considering these above Rs. 1.46 Crores allegedly received from M/s. Adivasi Mahila Vikas Samiti is treated as anonymous donation and is taxable u/s 115 BBC of I.T. Act & no deduction is allowable on account of application of income under subsection (7) of section 13 of I.T. Act, 1961.

As far as the balance donations are concerned, the enquiry conducted during the original assessment proceedings revealed that the enquiry letters were either not replied or not served. This does not prove that the appellant has not maintained the requisite details to establish the identity of donors specially under the circumstances where all the alleged donation are through banking channels and letters of donors were produced during the assessment proceedings. The appellant has filed complete details of donation during the present impugned assessment proceedings, containing name, address & PAN.

Therefore, these are the cases at the most of not discharging onus u/s 68 of I.T. Act. In any case all the donation except corpus donation is credited as income of the assessee. In my view these donation cannot be called anonymous donation therefore section 115 BBC read with section 13(7) are not applicable.

In view of the above facts I agree with the arguments of Ld. AR that even in case of unexplained cash credit u/s 68 the income have to be computed in accordance with the provision of section 11 to 13 of I.T. Act.

I have perused the judicial pronouncements relied by the Ld. AR on this issue. Since, registration u/s 12AA is continuing in the case of the applicants, therefore, the appellant's income has to be computed in accordance with the provision of section 11 & deduction on account of application has to be allowed. I rely on the following judicial pronouncements on this issues cited by Ld. AR.

- i) Commissioner of Income Tax vs. Uttaranchal Welfare Society (2013) 86 CCH 333 All HC, (2014) 364 ITR 398 (All)

- ii) Director of Income Tax (Exemptions) & Anr. vs. Sri Belimatha Mahasamsthana Socio Cultural & Educational Trust 336 ITR 694 High Court of Karnataka
- iii) Director of Income Tax (Exemption) vs. Bharat Kalyan Pratishtan (2002) 257 ITR 609 (Del) High Court of Delhi
- iv) Assistant Commissioner of Income Tax vs. Geetanjali Education Society\* (2008) 114 TTJ (Jd) 697 ITAT, Jodhpur
- v) Director of Income Tax vs. Raunaq Education Foundation 294 ITR 76 (Del) High Court of Delhi
- vi) Director of Income Tax (Exemption) vs. Keshav Social & Charitable Foundation (2005) 278 ITR 152 (Del) High Court of Delhi

In view of the above judicial pronouncements, application of income is to be allowed as the registration u/s 12AA is continuing & therefore, the activities of the trust are in accordance with its Memorandum of Association.

Considering the entire facts & circumstances of the case, I hereby confirm anonymous donation to the extent of Rs. 1.46 Crores u/s 115 BBC and balance donation is not treated as anonymous donation within the provision of section 115 BBC and application of income of income is allowed for balance addition. Accordingly, these grounds of appeal are partly allowed.

6. As a result, the appeal is partly allowed.

6. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before the Tribunal.

7. Before us, the Ld. D.R. supported the order of A.O.

8. The Learned Counsel for the Assessee, on the other hand, reiterated the submissions made before the lower authorities and supported the order of the Ld. CIT(A).

9. We have heard the Learned Representatives of both the parties and perused the material on record. We find that the Ld. CIT(A) while deleting the addition noted that despite the direction of Ld. CIT in the order passed under section 263 of the I.T. Act, 1961 wherein the A.O. was directed to make *de-novo* assessment after considering the facts and circumstances of the case, the A.O. did not make any further enquiry or investigation in respect of the donations on the pretext that A.O. had no power of reviewing the order passed previously and his power was only restricted to the extent of rectifying the mistakes which are apparent on the face of the record. This finding of the A.O. did not find favour with the Ld. CIT(A). The Ld. CIT(A) while deleting the addition has noted that if a person receives donation and maintains the record of identity and address of the donors and then such donation cannot be considered to be anonymous donation as defined in sub-section (3) of Section 115BBC of the I.T. Act, 1961. He further held that requirement of Section 115BBC is not at par with onus on the assessee-trust casted under section 68

of the I.T. Act, 1961 i.e., to prove creditworthiness of the donors. He has given a finding that since the assessee-trust has maintained and disclosed name and address of the donors during the assessment proceedings and which were accepted by the A.O. in the original assessment order, therefore, the provisions of Section 115BBC would not be applicable to the facts of the case. He has further noted that details of the names and addresses of the donors has not been proved to be wrong or those persons have not donated to the assessee-trust. He, therefore, held that for these reasons also the donation received by the assessee-trust cannot be considered to be anonymous donation by virtue of sub-section (3) of Section 115BBC of the I.T. Act, 1961. Before us, no fallacy in the findings of the Ld. CIT(A) has been pointed out by the Revenue. In such a situation, we find no reason to interfere with the order of the Ld. CIT(A) and thus, **the grounds raised by the Revenue are dismissed.**

**10. In the result, appeal of the Revenue is dismissed.**

11. Now, we proceed with Assessee's Appeal vide ITA.No.4692/Del./2016 for the A.Y. 2008-2009.

12. Before us, the Learned Counsel for the Assessee at the very outset submitted that only grounds of appeal number.3 of the assessee's appeal needs adjudication and the other grounds of appeal 1, 2 and 4 are not pressed and, therefore, ground nos.1, 2 and 4 of assessee are dismissed being not pressed.

13. The brief facts relating to grounds of appeal number.3 are that during the year under consideration assessee-trust is stated to have received donation of Rs.1.46 crores from M/s. Adivasi Mahila Vikas Samiti, Fuldungri, P.O. Ghatsila, District Singhbhum, State of Jharkhand. It was noted by the A.O. that the Counsel of M/s. Adivasi Mahila Vikas Samiti in response to letter issued under section 133(6) of the I.T. Act, 1961 appeared before him and stated that during the relevant period it did not make any transaction with the assessee-trust and no payment was made to the assessee-trust on any account. The Ld. CIT(A) noted that since the name and address of the donor was

incorrectly maintained by the assessee-trust, the onus of maintaining the identity of the donor was not fulfilled by the assessee-trust. He was of the view that when the donor has denied to have made donations means that the details about the receipt of donation was not correctly maintained by the assessee-trust and thus, the anonymous donation of Rs.1.46 crores allegedly received from M/s. Adivasi Mahila Vikas Samiti was treated as anonymous donation and taxable under section 115BBC of the I.T. Act, 1961 and no deduction of the same was held to be allowable on account of application of income under section 13(7) of the I.T. Act, 1961 to the assessee-trust.

14. Aggrieved by the order of the Ld. CIT(A), the Assessee-Trust is now in appeal before us.

15. Before us, the Learned Counsel for the Assessee reiterated the submissions made before the A.O. and the Ld. CIT(A) and pointed to the copy of the letter received from M/s. Adivasi Mahila Vikas Samiti which is placed at page number 24M of the paper book wherein it has been confirmed by the donor that Rs.51 lakhs was given to the

assessee-trust vide pay order. He also pointed to the other donations made by the donor during the year which has been confirmed by the donor and the copy of those pay orders are also placed in the paper book at page-24 of the paper book. He, thereafter, submitted that since the assessee-trust has furnished the copy of the pay orders and the letters received from the M/s. Adivasi Mahila Vikas Samiti, the finding of lower authorities about the donor having denied the giving of donation to assessee-trust is factually incorrect. He submitted that in view of the evidences placed by the assessee in the paper book in the form of confirmations and copy of pay orders received from the donors, the matter may be remitted back to the file of A.O. for necessary verification and he may be directed to make necessary enquiries and thereafter, decide the issue.

16. The Ld. D.R. did not seriously object to the request made by Learned Counsel for the Assessee.

17. We have heard the Learned Representatives of both the parties and perused the material on record. We find that in the instant case the assessee-trust had placed

the requisite documents i.e., letters issued by M/s. Adivasi Mahila Vikas Samiti confirming the payment of donors by pay orders and the copy of the pay orders issued in support of its claim of receipt of donations from M/s. Adivasi Mahila Vikas Samiti. Since the A.O. had not made any enquiries on the documentary evidences furnished by the assessee-trust to ascertain the genuineness of the donations so received by the assessee- trust by issuing summons under section 131 of the I.T. Act, 1961 to the alleged donars or to the Bank in view of pay orders furnished by the assessee-trust and in absence of any strong objection from the side of the Ld. D.R. for restoring the issue back to the file of A.O, we are of the view that the issue needs to be re-examined. We, accordingly, restore the issue back to the file of A.O. for fresh adjudication. Needless to say that the A.O. shall provide reasonable and adequate opportunity of being heard to the assessee-trust. The assessee-trust is also directed to cooperate with the A.O. by furnishing all the requisite documentary evidences/information as called for by him to decide the issue. **Accordingly, grounds of appeal**

**number.3 of the assessee-trust is allowed for statistical purposes.**

**18. In the result, ITA.No.4692/Del./2015 of the assessee is partly allowed for statistical purposes.**

**To sum-up, appeal of Revenue is dismissed and appeal of Assessee is partly allowed for statistical purposes.**

Order pronounced in the open Court on 21.10.2022.

Sd/-  
(ANUBHAV SHARMA)  
JUDICIAL MEMBER

Sd/-  
(ANIL CHATURVEDI)  
ACCOUNTANT MEMBER

Delhi, Dated 21<sup>st</sup> October, 2022

VBP/-

Copy to

1.	The appellant
2.	The respondent
3.	CIT(A) concerned
4.	CIT concerned
5.	D.R. ITAT 'E' Bench, Delhi
6.	Guard File.

// By Order //

Assistant Registrar : ITAT Delhi Benches :  
Delhi.