

IN THE INCOME TAX APPELLATE TRIBUNAL
PUNE BENCH "SMC", PUNE

BEFORE SHRI R.S. SYAL, VICE PRESIDENT

ITA No. 793/PUN/2022

निर्धारण वर्ष / Assessment Year : 2017-18

Agrawal Sabha Aurangabad, 17-18, Agrasen Bhavan, Town Centre, CIDCO, Aurangabad 431 001 PAN : AAATA7750K	Vs.	ITO, Exemption Ward, Aurangabad
Appellant		Respondent

Assessee by Shri Prasad S. Bhandari
Revenue by Shri Suhas Kulkarni

Date of hearing 15-12-2022
Date of pronouncement 16-12-2022

आदेश / ORDER

PER R.S. SYAL, VP :

This appeal by the assessee arises out of the order dated 25-08-2022 passed by the National Faceless Appeal Centre (NFAC), Delhi u/s.250 of the Income-tax Act, 1961 (hereinafter also called 'the Act.') in relation to the assessment year 2017-18.

2. The appeal is time barred by 10 days. The assessee has filed an affidavit in this regard. The ld. DR did not raise any serious objection to the delay. Therefore, such delay is condoned and the appeal is admitted for disposal on merits.

3. All the grounds raised by the assessee are against the confirmation of addition of Rs.29,32,750/- made towards anonymous donations and taxing the same u/s.115BBC of the Act.

4. Briefly stated, the facts of the case are that the assessee trust filed its return declaring total income at Nil. During the course of assessment proceedings, the Assessing Officer (AO) observed that the Audit report indicated corpus donation of Rs.32,26,560/- received under the head "Building Fund". The assessee was called upon to furnish necessary details of the corpus donations. The AO recorded that the assessee did not furnish any details, which led to the making of addition of Rs.32,26,560/-. The assessee contended before the Id. CIT(A) that all the necessary details, as called for by the AO, were duly furnished. The Id. CIT(A) required the AO to examine the assessee's contention and furnish a remand report. In the remand report dated 29-06-2022, the AO observed that out of total donations of Rs.32.26 lakh, donations amounting to Rs.20.30 lakh were received through cheques and the remaining amount of Rs.11.96 lakh in cash. The AO carried out verification in respect of 16 donors - consisting of 10 donors from whom donations were received by cheques by means of notices u/s.133(6); and 6 donors

from whom the donations were received in cash by means of summons u/s.131. Written replies were furnished by 9 persons out of total 10 persons to whom notices were issued u/s.133(6); and 4 persons attended out of 5 persons who were summoned u/s.131. All such persons admitted to have given corpus donations. The AO accepted the genuineness of the corpus donations to the extent of Rs.1,80,000/- out of cheque payments; and Rs.1,13,810/- out of cash payments on the basis of replies/attendance. Remaining amount of Rs.29.32 lakh was added. The Id. CIT(A) echoed the assessment order. Aggrieved thereby, the assessee has come up in appeal before the Tribunal.

5. I have heard the rival submissions and perused the relevant material on record. Section 2(24)(iia) provides that '*income*' includes *voluntary contributions* received by a trust created wholly or partly for charitable or religious purposes etc. Thus '*income*' primarily includes voluntary contributions both towards corpus and non-corpus donations. Section 11 deals with income from property held for charitable or religious purposes. Clause (d) sub-section (1) of section 11 provides that *income in the form of voluntary contributions made with a specific direction, that they shall form*

part of the corpus of the trust or institution, shall not be included in the total income of the previous year of the person in receipt of such amount. On an analysis of section 11(1)(d) in conjunction with section 2(24)(iia), it becomes overt that corpus donations are also otherwise part of `income`, but qualify for exemption u/s.11 at the threshold by virtue of the operation of clause (d) of section 11(1) of the Act. Section 115BBC has the caption: `Anonymous donations to be taxed in certain cases`. Sub-section (1) of this provision provides that where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution etc., includes any income by way of anonymous donation, the income-tax shall be calculated at the rates prescribed under this provision. The term `anonymous donation` has been defined in sub-section (3) of section 115BBC to mean “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”. No `such other particulars`, as referred to in the provision, have been prescribed so

far. Thus, the person receiving any contribution needs to maintain a record only of the identity indicating name and address of the person making such contribution, so as to thwart the application of sub-section (3) and the consequential sub-section (1) of section 115BBC. When we read section 115BBC in juxtaposition to section 2(24)(iia), it becomes ostensible that the writ of 'anonymous donation' extends to all types of voluntary contributions - whether corpus or non-corpus; and corpus donations are not immune from the rigor of section 115BBC just because of the role of section 11(1)(d) of the Act. The requisite conditions of maintaining record of the identity indicating the name and address of a person making contribution, as prescribed u/s 115BBC, also need to be satisfied anent to corpus donation in the same manner as the non-corpus. Failure to comply with such conditions exposes even the corpus donation to the mischief of section 115BBC of the Act.

6. Adverting to the facts of the extant case, it is seen that the assessee maintained a separate register for corpus donations and also furnished a list of corpus donations to the AO, as has been given at page 350 onwards of the paper book. Such list has

columns, such as, Sl. No.; Name of the donor; Receipt No.; Amount; and address. It can be seen from this list that the assessee furnished address of some of the donors but failed to furnish address of the others. The AO issued notices/summons to 10/5 donors and 9/4 responded by admitting the making of corpus donations. He, however, made addition even *qua* those donors who he had not issued any notice even though the assessee had given their address. This approach is not proper. If the AO chose to issue notice u/s.133(6) and summons u/s.131 in respect of a few of them, he cannot draw an adverse inference in respect of others who he did not issue any notice. Genuineness of such other donors having made corpus donations has to be accepted. Going with the prescription of section 115BBC r.w.s.11(1)(d), only such corpus donations fall for consideration u/s 115BBC for which the assessee did not maintain and furnish address of the donors to the AO through the list. I, therefore, set-aside the impugned order and remit the matter to the file of the AO for examining the list of corpus donors as given at page 350 onwards of the paper book and make addition only in respect of such donors whose addresses are

not given. In carrying out this exercise, the AO will give adequate opportunity of hearing to the assessee.

7. To sum up, only the donations as per page 350 onwards of the paper books, where address of the donors were not given, fall within the domain of section 115BBC and the rest are eligible for exemption u/s.11(1)(d) of the Act.

8. In the result, the appeal is allowed for statistical purposes.

Order pronounced in the Open Court on 16th December, 2022.

Sd/-
(R.S.SYAL)
उपाध्यक्ष/ VICE PRESIDENT

पुणे Pune; दिनांक Dated : 16th December, 2022

Satish

आदेश की प्रतिलिपि □ ग्रेषित/Copy of the Order is forwarded to:

1. अपीलार्थी / The Appellant;
2. प्रत्यर्थी / The Respondent
3. The CIT(A) concerned
4. The Pr.CIT concerned
5. DR, ITAT, 'SMC' Bench, Pune
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

// True Copy //

Senior Private Secretary
आयकर अपीलीय अधिकरण ,पुणे / ITAT, Pune

		Date	
1.	Draft dictated on	15-12-2022	Sr.PS
2.	Draft placed before author	16-12-2022	Sr.PS
3.	Draft proposed & placed before the second member	-	JM
4.	Draft discussed/approved by Second Member.	-	JM
5.	Approved Draft comes to the Sr.PS/PS		Sr.PS
6.	Kept for pronouncement on		Sr.PS
7.	Date of uploading order		Sr.PS
8.	File sent to the Bench Clerk		Sr.PS
9.	Date on which file goes to the Head Clerk		
10.	Date on which file goes to the A.R.		
11.	Date of dispatch of Order.		

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