

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

**BEFORE SHRI KUL BHARAT, JUDICIAL MEMBER**

**ITA No.8173/Del/2019  
[Assessment Year : 2011-12]**

Mother Gian Educational Society, F-I/U, Vishakha Enclave, New Delhi-110034. <b>PAN-AABTM0218K</b>	vs	ITO(E), Ward-1(4), New Delhi.
<b>APPELLANT</b>		<b>RESPONDENT</b>
<b>Appellant by</b>	Shri Tarun Rohtagi, CA	
<b>Respondent by</b>	Shri Om Parkash, Sr.DR	
<b>Date of Hearing</b>	20.02.2023	
<b>Date of Pronouncement</b>	09.03.2023	

ORDER

**PER KUL BHARAT, JM :**

The present appeal filed by the assessee for the assessment year 2011-12 is directed against the order of Ld. CIT(A)-40, Delhi dated 09.08.2019.

2. The assessee has raised following grounds of appeal:-

1. *That on the facts and in the circumstances of the case the Learned CIT (A) has erred in law in upholding the action of the learned Assessing Officer in re-opening of assessment under section 147 of the Act.*
2. *That The learned CIT(A) failed to appreciate that the reassessment notice is bad in law as the reasons to believe u/s 147 being based on the basis of borrowed satisfaction.*
3. *That The notice under section 148 dated 28.03.2018 is bad in law as the same has not been digitally signed.*
4. *That the assessment u/s 147 is without jurisdiction in so much so the sanction u/s 151 is mechanical and without application of mind.*
5. *That on the facts and in the circumstances of the case the learned CIT (A) was not justified in confirming the addition of Rs 4,50,000 as unexplained cash credit u/68 towards the Income of the appellant society.*

6. *That the addition of Rs 4,50,000 amounts to double addition as the same forms part of voluntary donation already offered and taxed as Income.*
7. *That the Learned CIT (A) has grossly erred in concluding that the AR of the Appellant had agreed to offer the transactions of Rs.450000 and Rs.11,250 as Income in Assessment Proceedings.*
8. *That the learned CIT (A) has erred in holding the finding of Rs 11,250 being unexplained expenditure under section 69C of the Act.*
9. *That the addition has been made and sustained in violation of principles of natural justice -without giving an opportunity to cross examine the "alleged entry operators".*
10. *That without prejudice to the above grounds the appellant society being registered under section 12A of the Act ought to be allowed application of 15% on the addition made of Rs 4,61,250 in terms of section 11 of the Act."*

3. Facts giving rise to the present appeal are that the Assessing Officer ("AO") was having information regarding the assessee trust beneficiary of the accommodation entries received from SAM/bogus companies through Shri Pradeep Kumar Jindal group, was as accommodation entry provider and he had also during the search operation, stated that he provided accommodation entries to the parties. He had also admitted to have received commission in cash @ 2 % to 2.5 %. The AO therefore, after recording the reasons, re-opened the assessment u/s 147 of the Income Tax Act, 1961 ("the Act") and issued requisite notice u/s 148 of the Act after obtaining necessary approval from Ld.CIT(Exemption). In response to the notice u/s 148 of the Act, the assessee trust filed a letter dated 17.04.2018 and stated that return of income already filed on 23.09.2011 may be considered as the return of income filed u/s 148 of the Act. Thereafter, a notice u/s 143(2) of the Act was issued to the assessee. In response thereto, Shri. N.K.Mahajan, Chartered Accountant/Authorized Representative ("AR") of the

assessee attended the assessment proceedings. The AO after considering the submissions of the assessee, treated a sum of Rs.4,50,000/- being the amount received as an accommodation entry and also payment of commission on this, amounting to Rs.11,250/- treated it as unexplained expenditure. Thus, the AO treated a sum of Rs.4,61,250/- as unexplained expenditure and assessed income of the assessee at Rs.4,61,250/-.

4. Aggrieved against the order of AO, the assessee preferred appeal before Ld.CIT(A), who after considering the submissions, sustained the addition and dismissed the appeal of the assessee.

5. Aggrieved against the order of Ld.CIT(A), the assessee preferred appeal before the Tribunal.

6. **Ground Nos. 1 to 3** raised by the assessee are against the legality of re-opening of the assessment.

7. Ld. Counsel for the assessee vehemently argued that the reasons for re-opening the assessment is based upon borrowed satisfaction. He contended that there is no mention by the assessee as to why the donation received by the assessee is accommodation entries and the assessee beneficiary of same. Further, it was contended that the sanction of Ld. Commissioner was based upon incorrect facts. He therefore, submitted that the authorities below were not justified in re-opening the assessment.

8. On the other hand, Ld. Sr. DR reiterated the submissions as made in the written submissions and supported the orders of the authorities below.

9. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. There is no dispute with regard to the fact that the AO was provided with certain information by the Investigation Wing which was related to availing of accommodation entries from the entity related to Shri Pradeep Kumar Jindal. Therefore, in my considered view, the case laws relied upon by the Ld. Counsel for the assessee would not help hence, re-opening of the assessment is in accordance with law. Thus, Ground Nos. 1 to 3 raised by the assessee are dismissed.

10. **Ground Nos. 5 to 8** raised by the assessee in this appeal are on merit of additions.

11. Ld. Counsel for the assessee reiterated the submissions as made in the written submissions. He submitted that the authorities below were not justified in deleting the addition. He submitted that the entire amount of Rs.4,50,000/- has been offered to tax and has been included in voluntary donation of Rs.7,00,000/-. He therefore, submitted that the authorities below were not justified in making the addition in a different head u/s 68 of the Act. For the sake of clarity, the submissions of the assessee in the written submissions are reproduced as under:-

### **3. On Merits - Ground No.6,7 & 8**

3.1 *The learned Assessing officer has alleged that the appellant society has channelized it's undisclosed income by availing accommodation entries of Rs.4,50,000 through entry operator Sh. Pradeep Kumar Jindal and also paid commission of Rs.11,250.*

*The basis of this allegation it seems is the investigation done by Investigation wing and the post search statements made by sh. Pradeep Jindal.*

3.2 It is submitted:

1. That the entire amount of Rs.450,000 has already been offered for tax since the amount has been included in voluntary donations of Rs.7,00,000 ( refer page 10-14). The copies of the receipts are placed at page no ..... of the paper book. Once it is demonstrated that Rs.4,50,000 have already been offered for tax these can not be added again u/s 68 or any other Section .

Reliance is placed on :

**a) (2005] 146 TAXMAN 569 (DELHI)**

**HIGH COURT OF DELHI**

**Director of Income-tax (Exemption)\* v. Keshav Social & Charitable Foundation**

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]

**b) ITA No. 4623/Del/2012(Assessment Year: 2009-10)**

**Shree Shiv Vankeshawar Educational & Social Welfare Trust,**

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.

2. The amount of donation has been received by account payee cheques. Complete details of donees together with their address is on record. None of them were called by the learned Assessing officer during assessment. The entire assessment is based upon the report prepared by the Investigation wing and the Learned Assessing officer has not been brought any material or evidence on record to justify his allegations. No positive evidence has been placed on record by the learned Assessing officer.
3. The appellant vide his letter dated 07.12.2018 (15-16) had requested to allow for cross examination of the so called entry operators however the Learned Assessing officer has not given this opportunity. The entire case against the appellant is based upon the statements of the alleged entry operators this denial of opportunity of cross examination renders the Assessment null and void.

The constitution bench in **C.B. Gautam V Union of India -199 ITR 530- SC** has held:

" The observance of the principles of natural justice is the pragmatic requirement of fair play in action. "

Reliance is also placed on the observations of the Hon'ble Supreme Court in the case of *Kishinchand Chellaram V. Commissioner Of Income-tax, Bombay City-ii. 1980-(125)-ITR -0713 -SC* wherein the court was dealing with the effect of not confronting the evidence & lack of cross examination.

In a recent supreme court decision in the case of *Andaman Timber Industries vs CCE Kolkatta Civil Appeal 4228 / 2006*, the Hon'ble court has held:

***"Failure to give the assessee the right to cross-examine witnesses whose statements are relied up results in breach of principles of natural justice. It is a serious flaw which renders the order a nullity"***

### **3.3 No Basis of addition Rs.11250 u/s 69C**

*The learned Assessing officer has made this addition on the basis that the entry operator has charged commission of 2% therefore on Rs.450,000 the amount works out to Rs.11,250.*

*This addition is based on presumption and conjectures and without any basis. The learned Assessing officer has brought no evidence on record to justify that the appellant has incurred this expenditure in terms of section 69C.*

*The statement of the entry operator cannot be evidence unless the appellant had a chance to cross examine. In absence of any positive evidence and the failure to give the opportunity to cross examine the addition cannot be sustained.*

*In view of the above submissions appeal may please be allowed."*

12. Ld. Sr. DR opposed these submissions and supported the orders of the authorities below. He also reiterated the submissions as made in the written submissions. For the sake of clarity, the relevant contents of the same are reproduced as under:-

*On Merits:*

*"Even on merits appellant, in spite of the fact that sufficient opportunities to substantiate the genuineness of transactions of Rs.4,50,000/- along with commission of Rs.11250/- claimed as donation. As such the appeal, devoid of any legal ground and merits, deserve to be dismissed by this Hon'ble Bench.*

*It is further requested that the arguments and case laws as discussed by the AO in the assessment order and his factual report .dated 13.9.2022 and that of Ld. CIT[A] may a kindly be treated as my argument during the present proceedings before your honour.*

*Last but not least it worthwhile to note that as per Note sheet Page 4 of the Assessment Folder, copy attached, there was an offer from the AR of the assessee Shri N K Mahajan CA to tax the alleged amount of Rs.4,50,000/- and commission of Rs.11250/- on 10.12.2018.”*

He pointed out that the assessee through its Ld.AR offered this amount for taxation. Now, the assessee cannot be allowed to take a different stand.

13. I have heard Ld. Authorized Representatives of the parties and perused the material available on record. In my considered view, the case laws relied upon by the Ld. Counsel for the assessee would not help as he could not controvert the fact that during the course of assessment proceedings, Ld.AR of the assessee had offered the amount for taxation. Therefore, looking to the facts of the present case, the assessee could not rebut the findings of AO. Coupled with the fact that during the course of assessment proceedings, Ld.AR of the assessee had offered the impugned amount for taxation thus, grounds are devoid of merit. Ground Nos. 5 to 8 raised by the assessee in this appeal are hence, dismissed.

14. In the result, the appeal of the assessee is dismissed.

Order pronounced in the open Court on 09<sup>th</sup> March, 2023.

**Sd/-**

**(KUL BHARAT)  
JUDICIAL MEMBER**

*\* Amit Kumar \**

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR  
ITAT, NEW DELHI