

**आयकर अपीलीय अधिकरण, "पटना" न्यायपीठ पटना**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"PATNA" BENCH, PATNA**

*(Heard from Kolkata Benches through web-based video conferencing platform)*

**BEFORE DR. MANISH BORAD, HON'BLE ACCOUNTANT MEMBER**

**&**

**SHRI SONJOY SARMA, HON'BLE JUDICIAL MEMBER**

**I.T.A. No. 103/Pat/2020**

**Assessment Year: 2014-15**

<b>Income Tax Officer, Ward-1, Exemption</b>	Vs	<b>Aishwarya Foundation, Patna 46, Patliputra Colony Near Sahyog Hospital Patliputra Colony Patna - 800013 [PAN: AACTA0834A]</b>
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<b>अपीलार्थी/ (Appellant)</b>	<b>प्रत्यर्थी/ (Respondent)</b>
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Assessee by :	Shri Soumitra Choudhury, Advocate
Revenue by :	Shri Rupesh Agrawal, Sr. D/R

सुनवाई की तारीख/Date of Hearing : 13/04/2023

घोषणा की तारीख /Date of Pronouncement: 03/05/2023

**आदेश/ORDER**

**PER SONJOY SARMA, JUDICIAL MEMBER:**

The present appeal is directed at the instance of the revenue against the order of the Learned Commissioner of Income Tax (Appeals) - 1, Patna, (hereinafter the "Id. CIT(A)") dt. 10/09/2020, passed u/s 250 of the Income Tax Act, 1961 ("the Act") for the Assessment Year 2014-15.

2. The sole issue raised by the department before us in the instant *lis* relates to the deletion of addition of Rs.2,61,72,000/- by the Id. CIT(A) made by the Assessing Officer in the assessment framed u/s 143(3) of the Act on 30/12/2016 on account of alleged anonymous donations made u/s 115BBC of the Act.

3. Brief facts of the case are that the assessee trust is a charitable organization registered u/s 12AA of Act. It filed its return of income for the year under consideration on 24/06/2015 declaring total income at 'Nil'. Case of assessee was selected for scrutiny through CASS followed by issuance of notice u/s 143(2) & 142(1) of the Act. During the course of assessment proceedings, the Assessing Officer noted from the income & expenditure account that the assessee had shown income at Rs.2,61,72,000/- which was received as donation and incurred expenses to the tune of Rs.2,22,47,910/- which resulted in income over expenditure at

Rs.39,25,443/-. The Assessing Officer asked the assessee to submit relevant details in respect of the genuineness of the donations, to which compliance was made by the assessee and a list containing names of 1371 persons was furnished who had made the donations. The Assessing Officer noticed that none of the donations exceeded Rs.20,000/-. For further verification, out of the 1371 persons whose names were provided by the assessee, the Assessing Officer issued letters/summons to 109 persons seeking confirmation of donation to the assessee, however, the same remained unserved or persons denied to have known or given donation to the assessee. Resultantly, the Assessing Officer held the claim of the assessee of having received the amount of Rs.2,61,72,000/- as donation, as baseless and bogus and treated the same as anonymous donation under section 115BBC of the Act and assessed the income of the assessee at Rs.2,87,88,843/- as per the following computation:-

SI No.	Particulars	Amount
1.	Income over expenditure as per return	Rs.39,25,443/-
2.	Add: Anonymous donation under section 115BBC of the Income Tax	Rs.2,61,72,000/-
3.	Less: Rebate allowed under section 115BBC out of anonymous donation viz. 5 per cent of the donation or Rs.1.00 lakh which is higher	Rs.13,08,600/-
Total		Rs.2,87,88,843/-

4. Aggrieved the assessee carried the matter in appeal before the Id. First Appellate Authority, who granted relief by deleting the addition made by the Assessing Officer u/s 115BC of the Act.

5. Aggrieved, the revenue is in appeal before this Tribunal.

6. The Id. D/R filed written submissions and vehemently argued supporting the order of the Id. Assessing Officer and contended that the donations so received by the assessee to the tune of Rs.2,61,72,000/-, were from anonymous donors as the identity of the donors was not proved before the Assessing Officer in response to the summons issued to 110 persons out of the list of 1371 donors provided by the assessee and hence the same was rightly added by the Assessing Officer u/s 115BBC of the Act.

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7. On the other hand, the Id. Counsel for the assessee submitted that the assessee is a trust registered u/s 12AA of the Act engaged in charitable activities. During the course of assessment proceedings on 09/12/2016 the assessee was asked to furnish names of persons from whom donation has been received. In compliance, the assessee had furnished names and complete address of 1371 persons from whom donation totaling to Rs. 2,61,72,000/- has been received during the year under consideration. However, the Id. Assessing officer sent letters only to 109 persons seeking confirmation of donation to the assessee and most of them have confirmed the same either personally or by registered post. A list of details of donor along with their confirmation and postal receipts were also placed before the Id. CIT(A). The Id. Counsel for the assessee further submitted that as per Section 115BC of the Act, the receiver of donation has to maintain identity of the donors to the extent of name and address only and that no addition can be made for anonymous donation on the ground that confirmations from donors had not been filed. He prayed that the order of the Id. CIT(A) be upheld.

8. We have heard rival contentions and perused the material available on record. The assessee trust is registered u/s 12AA of the Act engaged in charitable activities. It received donations amounting to Rs. 2,61,72,000/- during the year under consideration from 1371 parties. The Id. Assessing Officer on account of suspicion and for the purpose of conducting further verification in respect of the genuineness of the donations, issued summons to 109 parties seeking confirmation of the donations. The Assessing Officer not being satisfied with the replies received and in certain cases as the notices remained unserved, drew adverse inference and proceeded to treat the total donations of Rs.2,61,72,000/- received from 1371 parties as bogus.

9. The fact that the assessee is a charitable trust and its only source of income is from charitable activities and it is wholly and exclusively engaged in carrying out charitable activities, has not been disputed by the Assessing Officer. The accounts of the assessee have been duly audited and an audit report in Form 10B was duly filed showing the receipt of the donations and their application for charitable purposes. We find that the Assessing Officer has specifically termed the

donations to be “anonymous” which, as per leading Law and English dictionaries would mean *Nameless; not identified by name* whereas in the present case, the assessee has duly submitted the names and addresses of all the donor parties which are placed on record.

10. Here it would be relevant to take note of Section 115BBC of the Act, which reads as under:-

**“115BBC.** (1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiia) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiia) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (23C) of [section 10](#) or any trust or institution referred to in [section 11](#), includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of—

<sup>49</sup>(i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—

- (A) five per cent of the total donations received by the assessee; or
- (B) one lakh rupees, and

<sup>50</sup>(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub-clause (A) or sub-clause (B) of clause (i), as the case may be.]

(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by—

- (a) any trust or institution created or established wholly for religious purposes;
- (b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

(3) For the purposes of this section, “anonymous donation” means any voluntary contribution referred to in sub-clause (ia) 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.]

[emphasis supplied]

10.1. In light of the above, we find that sub-Section (3) to Section 115BBC of the Act specifically defines an “anonymous donation” as any voluntary contribution referred to in sub-clause (ia) 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*. Further it is pertinent to mention that no other particulars have been prescribed under this proviso. The assessee in the present case has duly complied with the requisites by maintaining the records of the donors in the form of their names and addresses thereby not making them anonymous donations and resultantly not attracting the rigours of the Section 115BBC of the Act. The Id.

Assessing Officer had conducted due verifications and enquiry at his end but has failed to point out anything constructive leading to the conclusion that the donations in question were anonymous.

11. The Id. CIT(A), while granting relief to the assessee has held as follows:-

*"I have gone through assessment order and submission made by the AR of the appellant. I have also carefully considered the various circulars and judgments of different Tribunals and High Courts on the issue.*

*Having carefully examined the assessment order I find that undisputedly during the relevant previous year, the appellant received donations amounting to Rs.2,61,72,000/-. These receipts were taken to the income of the appellant and applied for charitable purposes. The appellant was asked to furnish details of these donations, that is, the names and addresses of the donors and the mode of receipt of donations. It is noted in the assessment order dated 30.12.2016 that the appellant was unable to satisfactorily explain the donations and the donors were perhaps fictitious persons. The assessing officer was of the opinion that the appellant had tried to introduce unaccounted money into its books by way of donations and, therefore, the amount of Rs.2,61,72,000/- was treated as anonymous donation under section 115BBC of the Income Tax Act, 1961.*

*During the course of these proceedings, the appellant contended that he had furnished details including names and complete addresses of all the 1371 persons from whom donation totalling Rs.2,61,72,000/- had been received. The appellant further contended that the A.Q. sent letters/ notices u/s 133(6) of the Act to only 109 persons seeking confirmation of donations and that most of them have either personally or by registered post confirmed the same.*

*When the appellant was confronted with the observations made by the A.O. that letters sent to 109 persons were either not complied with till the completion of assessment proceedings or the person denied having given the donation, the appellant submitted that as the matter was getting barred by limitation the A.O. did not wait for the replies and in most of the notices compliance was made subsequent to the completion of assessment proceedings and the same are on assessment record. The appellant also provided a copy of a few of these confirmations along with his submission made during these proceedings.*

*Case record were called for and were submitted by the A.O. vide letter No.ITO/W-1(E)/Pat/2020-21/51 dated 21/08/2020 to verify this contention and the same was found correct. Page No. 329 to 444 forming part of the assessment folder comprised of such verification / compliances to notice u/s 133(6) received and placed on assessment record subsequent to the completion of the assessment proceedings which are concluded at page 328.*

*Having examined the contention of the appellant from records and findings it correct the addition u/s 115BBC of the Act was carefully considered. The appellant submitted that the provisions of the section were not violated as donations cannot be categorized as anonymous donation.*

*Section 115BBC reads as under:*

*"Anonymous donations to be taxed in certain case 115BBC. (1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub- clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub- clause (iiiie) or subclause (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 (23 C) of section 10 or any trust or institution referred to in section 11, includes any income by way of any anonymous donation, the income-tax payable shall be the aggregate of-*

*(i) the amount of income-tax calculated at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely: -*

*(A) five per cent of the total donations received by the assessee; or*

*(B) one lakh rupees, and*

*(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received.*

*(2) The provisions of sub-section (1) shall not apply to any anonymous donation received by-*

*(a) any trust or institution created or established wholly for religious purposes;*

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(b) any trust or institution created or established wholly for religious and charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university or other educational institution or any hospital or other medical institution run by such trust or institution.

(3) For the purposes of this section, "anonymous donation" means any voluntary contribution referred to in sub-clause (iia) of clause (24) of section 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as may be prescribed."

Sub-section 1 provides that where the total income of an assessee being a person in receipt of income on behalf of any trust or institution referred to in section 11 includes income by way of anonymous donation, the income tax is payable by it on this amount as prescribed in the section. Sub-section 3 defines the expression anonymous donation in an exhaustive manner to be a case where the person receiving the donation does not maintain records of identity indicating the name and address of the contributor and such other particulars as may be prescribed. No other particular has been prescribed under this provision.

The Board Circular No. 14 reported in 288 ITR (St.) 9 has explained these provisions which were introduced by the Finance Act, 2006 w.e.f. assessment year 2007-08, which is as under:

Income of wholly charitable or religious trusts or institutions as well as partly charitable or religious trusts or institutions is exempt from income-tax under sections 11 and 12, subject to the fulfilment, inter alia, of certain conditions of application of income and investment in specified modes.

Anonymous donation has been defined in the new section to mean any voluntary contribution referred to in section 2(24) (iia) of the Act, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the person making such contribution and such other particulars as maybe prescribed."

To be excluded from the definition of expression "anonymous donation" the person receiving the voluntary contributions referred to in section 2(24) (iia) is required to maintain a record of identity indicating the name and address of the contributor and such other particulars as may be prescribed. Since no other particulars have been prescribed under the provisions the person receiving the donation is under obligation to maintain the identity of donors indicating the name and address only.

In the instant case, the appellant had provided the required details as called for by the A.O., to prove the identity of the donors and thereafter the A.O. has also conducted independent enquiry to verify these details. It is on record that most of the replies in affirmative were received although subsequent to the completion of assessment proceedings. Had the same been available to the A.O. then probably the inference drawn by him would have taken into consideration these confirmations. In any case, since no other particulars have been prescribed under the provisions of the Act, the appellant is under obligation to maintain records of only the identity of donors indicating the name and address and the same was provided to the AO.

In view of the above facts, I am inclined to agree to the contention of the appellant that the A.O. has drawn an erroneous conclusion by holding that the donations from 1371 persons are in the nature of anonymous donation and liable to be added u/s 115BBC of the Act. So far as applicability of provisions of section 68 of the Act is concerned, it has been held by various Tribunals and High Courts that once donation received was taken as income of the appellant which was applied for charitable purposes, provisions of section 68 of the Act cannot be invoked.

This inference is further reinforced by the following judicial pronouncements :

1. Income Tax Officer-II(3) Lucknow Vs. M/s Saraswati Educational CharitableTrust, ITAT, Lucknow 'A' Bench in ITA No.776/LKW/2014.

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2. DIT(Exemptions) Vs. Keshav Social & Charitable Trust (Delhi) 278 ITR 152
3. Shri. Vivekanand Education & Welfare Society ITAT(Delhi) ITA No. 2592/Del/2012
4. Sunder Deep Educational Society Vs. ACIT ITAT (Delhi) ITA No. 2428/Del/2011
5. Income Tax ... vs M/S Tathagat Shiksha Samiti

*In view of the discussion above and respectfully following the judgments of Hon'ble ITAT and High Courts, the addition made by the A.O. amounting to Rs.2,61,72,000/- u/s 115BBC of the Act is hereby deleted. Further, the A.O. is directed to compute the income of the appellant as per provisions of under section 11 of the Act.*

*In the result, the appeal is allowed."*

12. We find that the Id. CIT(A) has passed a reasoned order after considering all the elements and ingredients involved in the present case and hence we do not find any reason to interfere with the observation and findings of the Id. CIT(A) and uphold the same. Accordingly, the sole ground of appeal raised by the revenue is dismissed.

13. In the result, appeal of the revenue is dismissed.

**Order pronounced in the Court on 3<sup>rd</sup> May, 2023 at Kolkata.**

*Sd/-*

**(MANISH BORAD)  
ACCOUNTANT MEMBER**

*Sd/-*

**(SONJOY SARMA)  
JUDICIAL MEMBER**

Kolkata, Dated 03/05/2023

*SC Sp/2*

आदेश की प्रतिलिपि अग्रेषित / Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent
3. संबंधित आयकर आयुक्त / Concerned Pr. CIT
4. आयकर आयुक्त (अपील) / The CIT(A)-
5. विभागीय प्रतिनिधि, अधिकरण अपीलिय आयकर , पटना /DR,ITAT, Patna,
6. गार्ड फाईल /Guard file.

आदेशानुसार/ BY ORDER,  
TRUE COPY

Assistant Registrar  
आयकर अपीलिय अधिकरण  
ITAT, Patna