

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES,"SMC" JAIPUR

डा० एस. सीतालक्ष्मी, न्यायिक सदस्य एवं श्री राठौड़ कमलेश जयन्तभाई, लेखा सदस्य के समक्ष
BEFORE: DR. S. SEETHALAKSHMI, JM & SHRI RATHOD KAMLESH JAYANTBHAI, AM

आयकर अपील सं./ITA. No. 632/JPR/2023
निर्धारण वर्ष/Assessment Years : 2016-17

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| Shri Merh Kshtriya Sabha Patti Katla, Ajmer. | बनाम Vs. | CIT(Appeals) Delhi. |
| स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAFTS 9079 J | | |
| अपीलार्थी / Appellant | | प्रत्यर्थी / Respondent |

निर्धारिती की ओर से / Assessee by : None
राजस्व की ओर से / Revenue by : Shri Anup Singh (Addl.CIT)

सुनवाई की तारीख / Date of Hearing : 28/02/2024
उद्घोषणा की तारीख / Date of Pronouncement : 27/05/2024

आदेश / ORDER

PER: DR. S. SEETHALAKSHMI, J.M.

This appeal is filed by the assessee aggrieved from the order of the CIT(A), National Faceless Appeal Centre, Delhi dated 25.08.2023 [Here in after referred as "CIT(A)/NFAC"] for the assessment year 2016-17, which in turn arise from the order dated 08.12.2018 passed under section 143(3) of the Income Tax Act, [Here in after referred as "Act"] by the AO.

2. The assessee has marched this appeal on the following grounds:-

“1. Considering the amount of donation of Rs. 31,69,001/- received as anonymous donation u/sec. 115BBC, without considering the facts & legal aspects.

2. Even after inclusion such donation amount of Rs. 31,69,001/- as “INCOME” in return of income, addition made.

3. Not granting the benefit of section 11(1) for Rs. 31,57,085/- as capital application.

4. any other matter with prior permission of the chair.”

3. Nobody appeared on behalf of the assessee in spite of giving the opportunity, therefore, the Bench decided to dispose off the appeal after considering the contention of the Ld. Departmental Representative and the material placed on record.

4. The fact as culled out from the records is that the return of income declaring NIL income for the assessment year 2016-17 was filed electronically by the assessee trust on 01.12.2016 in the status of Trust/AOP. The return of income was revised on 02.03.2017 vide acknowledgement No.641130111020317. The case of the assessee AOP/Trust was selected for scrutiny under CASS. Accordingly, Notice u/s 143(2) dated 27.06.2017 was issued and served upon the assessee. Consequent to change of incumbent, Notice u/s 142(1) was issued on 25.01.2018 and served upon the assessee calling for its financial statements. In response, the required detail/information were submitted

by the assessee which have been examined. The Trust is registered under section 12A(a) of I.T. Act w.e.f. 16.02.1999 by CIT, Ajmer vide letter No. CIT/Hqrs/Judl./Sec 12 (a)/T-17/2 dated 19.12.2001. The Trust has also been granted certificate u/s 80G of income-tax Act vide order No. CIT/Ajmer/ Judl/2014-15/1480 dated 11.11.2014 by the Commissioner of Income-tax, Ajmer. Thereafter, Notice u/s 142 (1) and letters were issued to the assessee Trust calling for certain detail/ information in respect of its activities, income earned and expenses incurred during the year under assessment along with supporting evidences. The required information and detail has been furnished which has been examined and placed on record. In vide letter dated 23.08.2018, the assessee Trust was intimated that as per CBDT's Instruction No. 01/2018, all scrutiny assessments are to be conducted/completed electronically and requested to re-submit the same through e-portal. The detail has been furnished from time to time and printouts thereof are placed on record.

4.1 On examination of the details/information, total receipts of the assessee's Trust has been shown in financial statements as well as in Computation of income at Rs. 13,77,349/- out of which only 9,91,781/- have been applied for charitable activities. Apart from this, an amount of Rs. 31,69,001/- has been introduced directly in the Balance Sheet under the head 'Sahayog Rashi and the same has not been routed through

Income & Expenditure Account. However, Rs. 41,27,119/- have been claimed as Capital expenditure against this amount. In response to the above letter, the assessee trust has not filed any submissions, thereafter a show cause notice was issued on 09.11.2018. In response to the above show cause letter, the assessee trust has not filed any submissions, to give an another opportunity, final show cause notice was given to the assessee trust on 03.12.2018. In response to the show cause letter, the assessee trust has not filed any submissions, this clearly indicates that the trust has nothing to state against the proposed completion of assessment proceedings. In view of above, income of the assessee amount of Rs. 31,69,001/- received by the Trust is treated as 'Anonymous donation' and the provisions of section 115BBC are being applied. Further, the amount of Rs. 1,78,966/- which has not been applied by the assessee trust to charitable activities is also being taxed at MMR. Thus income of the assessee is worked out at Rs. 33,47,970/- as under_

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| 1. Anonymous Donation as discussed above | Rs. 31,69,000/- |
| 2. Amount not applied to charitable activities | Rs. 1,78,966/- |
| 3. Total | Rs. 33,47,966/- |
| 4. Rounded off | Rs. 33,47,970/- |

5. Aggrieved from the above order of the Assessing Officer, an appeal before the Id. CIT(A) was preferred by the assessee. Apropos to the grounds so raised the relevant finding of the Id. CIT(A) is reiterated here in below:-

“5.1 The appellant had claimed that complete details related to the Donor, Address and ID's were filed in person to the AO. You have also filed copy of the AO's letter containing details claimed to be filed by you before the AO during the assessment proceedings, as claimed before Hon'ble ITAT. On perusal of these details, it was seen that no ID details are available from persons from whom these donations have been claimed to be received, though claimed in the said Affidavit before the Hon'ble Tribunal. The appellant had submitted certain Aadhar details and copy of certain receipts issued, ledger accounts which were also discussed during this VC. The Ld. Counsel of the appellant clarified that the identity details of individual donors are not possible to be collected and maintained as the said individual quantum of donations are small. The Appellant issues Receipts books in the name of certain volunteers/collecting persons who meet individual donors situated in different places/towns/cities etc. and collect donations, some of which are very small. Hence the name of the volunteer /collecting agent is being mentioned in the individual ledgers and Receipts are also issued in their name i.e. name of the volunteers /collection persons. The Aadhar details and identity details are also of the said volunteers /collection persons only. In view of these facts, it was pointed out that the appellant has not maintained identity details including addresses of the individual donors and the appellant's A/R reiterated that the same was not possible due to small donations of individual donors and hence receipts recorded with identity details of the volunteers, who are undertaking the collection exercise. Based on the above discussion, it is very clear that the identity details of the individual donors making voluntary donations with the quantum of such donations has not been maintained by the appellant for stated reasons.

5.2 The appellant in its submissions had claimed that the provisions of section 115BC under which the addition was made by the AO was not applicable in its case as it was a charitable trust. The A/R of the appellant, during the VC hearing, reiterated the claims made in the submissions, which have been quoted above. As pointed out vide NFAC letter dated 02.01.2023, which has been quoted above, it was pointed out to the appellant that it is a wholly

charitable institution as submitted before Hon'ble ITAT in para 3 of the order of Hon'ble ITAT as well as before Hon'ble ITAT in the affidavit dated 25/1/2019. Hence prima facie the provisions of section 115BBC were squarely applicable to appellant's case. It was pointed out to the appellant that the exception in section 115BBC was for a wholly religious trust, or a wholly religious and charitable trust i.e mixed purpose trust. It was pointed out to the A/R that the appellant was not eligible as a wholly religious and charitable trust. On perusal of the objects of the trust, it is noted that the trust is created for the caste Swankar for their bodily, educational, mental and social progress of the said caste (jati). Hence, it is very clear that the appellant is neither a wholly religious trust, or a wholly religious and charitable trust i.e mixed purpose trust and nothing in this regard could be proved by the appellant. Hence, it is held that the case of the appellant is not covered by exceptions to Section 115BBC of the Act.

5.3 In its submissions filed by the appellant, reliance has been placed on the decision of Hon'ble ITAT in the case of M/s Saraswati Educational Charitable Trust in ITA 776/Lkw/2014 for AY 2010-11.

5.3.1 Vide hearing notice dated 02.01.2023, it was pointed out to the appellant that the facts of its case were different since it was seen that in that case, the assessee had maintained various details of Donors viz. PAN, confirmations, ITR etc. whereas in appellants case, even the address and name details are not maintained/complete. Further donations had been also taken as part of Income in the said case, whereas in appellant's case, the receipts were directly taken to the balance sheet. Hence, in appellant's case the facts are different and it was pointed out to the appellant that this decision was not prima facie applicable in its case. In the course of VC hearing, the Ld. A/R of the appellant pointed out that the appellant had included the amount of voluntary contribution as part of its income in the computation of total income as filed along with its ITR and also applied the same for charitable purposes during the relevant financial year, as disclosed in the computation of income as well as Form 10B, which is audit report submitted along with the ITR. In support of its claim, the appellant also submitted the copy of the said income tax computation, audit report before NFAC in support of its claims. The A/R also referred to its written submissions dated 5/1/2023 quoted above, where the said quantum and related calculation was explained. The claim of the appellant that while the amount of donation has been directly credited to the balance sheet but shown as income in the computation of income and then applied for the charitable purpose as per Audit Report was found correct based on details filed and explained during the VC hearing. However, it was pointed out to the appellant that in this decision, the facts were different. In this case of decision of Hon'ble ITAT in the case of M/s Saraswati Educational Charitable Trust in ITA 776/Lkw/2014

for AY 2010-11 being relied upon by the appellant in which the other relied upon decisions have also been discussed, it is noted that the addition was made u/s 68 in the said case whereas in the instant case the addition was made u/s 115BBC by the AO taxing the anonymous donations. Ld. CIT(A) in his order has also held that AO has rightly taxed the income u/s 2(24)(iii) of the Act. The Hon'ble ITAT Jaipur also, in its order dated 22/9/2020 in the case of the appellant has also directed the CIT(A) to examine the contention of the assessee regarding applicability of Section 115BBC of the Act. There is no mention of section 68 of the Income Tax Act or invocation of the same by the Assessing Officer in appellant's case. Hence the facts of appellant's case are totally different and this was pointed to the L.d. Counsel of the appellant. In its submissions filed by the appellant, reliance has been placed on the decision of Hon'ble ITAT in the case of M/s Saraswati Educational Charitable Trust in ITA 776/Lkw/2014 for AY 2010-11.

5.3.2 Further, on perusal of the decision relied upon by the appellant in the case of Sarawati Educational Charitable Trust, it is noted that in that case, the assessee had submitted the details of identity of the its donor's but the Assessing Officer was not satisfied with the creditworthiness of the donors as discussed in para 5 of the order of ITAT. The addition was made in this case u/s 68 of the Income Tax Act and in this context the Hon'ble ITAT had stated that since the assessee had already shown these donations as income and applied for the purpose of trust, addition u/s 68 of the Act was not correct in the facts of the said case. In the present case, the appellant has not maintained details of identity of donors and no details of address and identity of individual donors has been maintained by the appellant and the appellant could not provide to the NFAC/AO/CIT(A) with the identity and address details of these individual donors along with amounts contributed. It has already been discussed above that the identity details of donation collecting volunteers cannot be construed as identity details of individual donors. In this regard, it is relevant to refer to the above referred decision of Hon'ble ITAT in the case of Saraswati Educational Charitable Trust, the provisions of section 115BBC has been discussed in detail and analysed - Para 6- it has been stated that:-

“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 cannot be invoked”

5.3.3 Thus, since in the facts of this case the assessee had filed various documents to prove the identity of donors, section 115BBC was not found applicable, since the donations were not anonymous. However, the facts of the present case are totally different. The appellant has not been able to prove the identity of the donors and it has been highlighted that necessary documentation regarding the identity of the donors who contributed the said amount of Rs 31.69 Lakh has not been maintained. The addition has not been made u/s 68 of the IT act and hence the facts of the appellant are different, In fact, relied upon the decision supports the stand of the Assessing Officer that in absence of identity details of donor's, section 115BBC and section 2(24)(ia) of the Act are squarely applicable. Also Section 115BBC clearly states that the amount of income tax calculated at the rate of thirty percent on the aggregate of anonymous donations in excess of the stated amounts in this section. It has already been pointed out that the case of the appellant is not covered by exceptions to section 115BBC of the Act. Accordingly, the stand of the Assessing Officer in making the addition of donations of Rs 31,69,001/- treating the same as anonymous donation u/s 115BBC is found correct. However, the Assessing officer should compute the amount as stipulated in the Act (i.e amount in excess of 5% of the total donations received by the assessee or one lakh and other stipulated condition) and the correct amount as per the provisions of section 115BBC of the Act be brought to tax.

5.3.4 The ground of appeal challenging the impugned addition of Rs 31,69,001/- is thus partly allowed.

5.4 The other issue being disputed is the computation of income in terms of section 11 and 12 of the Act. The AO has stated in the assessment order that total receipts are Rs 13,77,349/- and application is Rs 9,91,781/- and thus calculated the taxable amount of Rs 1,78,966/- However, the appellant has submitted the copy of the computation of income claimed to be filed along with the ITR and copy of the Audit report to claim that the corresponding figures are much different and the relevant portion is quoted below:-

"No care for following facts granted:-

- (1) That the total gross receipts for 01.04.2015 to 31.03.2016 is Rs. 13,77,349.00 as per audited consolidated income and expenditure account. (Page 6)
- (2) Against this a sum of Rs. 9,91,781.00 (13,77,349.00-surplus 3,85,568.87) has been incurred for the objects of trust (Page 6)
- (3) Further the amount of SAHYOG RASHI (CONTRIBUTION) being voluntary contribution Rs. 31,69,001.00 received during the year has further is

'INCOME" (Though credited directly to balance sheet) & thus total receipts of trust would be Rs. 13,77,349.00+31,69,001.00 Rs. 45,46,350.00 for the year.

(4) Thus 85% of total gross receipts Rs. 45,46,350.00 is Rs. 38,64,397.00 (85% of Rs. 45,46,350.00) capital addition made during the year are at Pattikatalla (Ajmer Rs. 31,21,635.46 at Pushkar Rs. 35,450.00 Rs. 31,57,085.46). (Page 14)

Revenue expenses incurred for the year Rs. 9,91,781.00 (13,73,349.00 - 3,85,568,87). (Page 6)

Thus total application of funds/income in-terms of section 11(1) of act are Rs. 41,48,866.46 (Rs. 31,57,085.46 addition to fixed assets Rs. 9,91,781.00 exp. of revenue for object of trust).

Total gross receipts are Rs. 45,46,350.00 85% of this is Rs. 38,64,397.50

Thus the assessee has already utilized / applied for the object of trust Rs. 41,48,866.46 (being more than 85% of gross receipts) & thus nothing is taxable"

In view of these above stated facts, the claim of the appellant is found correct and the addition of Rs 1,78,966/- is directed to be deleted. The grounds of appeal challenging this addition of Rs 1,78,966/ are thus allowed.

5.5. Based on the above decision, this appeal is being treated as partly allowed."

6. Aggrieved from the order of the Id. CIT (A) the assessee has preferred this appeal before us on the grounds as reiterated in para 2 above. To support the grounds so raised, the Id. AR appearing on behalf of the assessee has placed reliance on the written submission which is extracted herein below:-

"The brief of facts of case are as under:-

(1) Assessment u/sec. 143(3) of Act dated 08.12.2018 was passed; considering the amount / income of Rs. 31,69,001.00 received by assessee is an anonymous donation & thus provision of section 115BBC were applied.

(2) Ld. CIT(A) vide order dated 01.03.2019 (Appeal No. NFAC/2015-16/10028868) dismissed the appeal.

(3) Hon'ble ITAT vide appeal No. 587/JP/2019 dated 22.09.2020 "SET - ASIDE" the order back to CIT(A) with direction (As per page 2 Para "6") of CIT(A) NFAC order dated 25.08.2023. (Page 1 to 6)

(4) The Ld. CIT(A) NFAC vide his order dated 25.08.2023 has partly allowed the ground for addition of donation of Rs. 31,69,001.00 (As anonymous Donation) u/sec. 115BBC by directing the A.O. to compute income u/sec. 115BBC in excess of 5% of total donation received.

Ground No. 1:- Considering the amount of donation of Rs. 31,69,001.00 received as anonymous donation u/sec. 115BBC, without considering the facts & legal aspects.

And

Ground No. 2:- Even after inclusion such donation amount of Rs. 31,69,001.00 as "INCOME" in return income, addition made.

And

Ground No. 3:- Not Granting the benefit of section 11(1) for Rs. 31,57,085.00 as capital application.

Being interlinked & common so dealt together

(1) The society/trust is registered u/sec. 12A/80G of Income Tax Act' 1961 needful copy of certificates enclosed.

(a) u/sec. 12A dated 19.12.2001 no. 17/02

(b)u/sec. 80G dated 11.11.2014 no. 1480

(2) The society is also registered with registrar of societies vide registration no. 20 of 1953-54 (As amended in year 2010) dated 29.12.1953.

(3)The objects of the trust / society are mainly / wholly "CHARITABLE PURPOSE" which includes relief to poor, education, medical relief (Preservation of environment, forest & wild life) & preservation of monuments, historical places and advancement of any object of General Public Utility.

4)Complete books of accounts, records & documents which are subject to "AUDIT" were presented before the A.O. & later in appeals. (Page 8 to 23) The A.O. felt that amount of donation received during the year a sum of Rs. 31,69,001.00 SAHYOG RASHI is "ANONYMOUS DONATION" & thus invoked provisions of section

115BBC of Act considering that requisite details of the donors who have contributed the said amount to the assessee trust not filed/ verifiable.

(5) That complete details with identity of "DONORS" in terms of name & addresses & other requisite particulars as sought by A.O. were filed before A.O. (Refer Letter No. 519 dated 21.01.2019-CIT(A)'s order page 3 para 2A). It was also stated that out of total Sahyog Rashi of Rs. 31,69,001.00 (Rs. 21,55800.00 received in cash & Rs. 10,13,201.00 received by account payee cheques as per details. (Page 55 to 67) (Page 25 to 49)

(6) The Hon'ble ITAT while set asiding the order states "That the details so filed by assessee needs to be duly examined and basis of such examination & finding should be clearly recorded as to whether & to what extent the donation so received qualify as anonymous donation or not.

(7) That thus complete details, documents & sworn affidavit were again filed to CIT(A) NFAC/Page 4 of CIT(A) order). (Page 24)

(8) Section 115BBC(2) further states that 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."

Thus from above; it is clear that vide section 115BBC(2) it is settled that such the provisions of sub section (1) shall not apply to trust or institutions credited or established wholly for charitable or religious purposes;

Since the assessee has been granted registration u/sec. 12A(a)/80(G) of Act, there is no doubt that trust is not a "CHARITABLE AND RELIGIOUS TRUST", the said registration is still in force as on date; nor A.O. has doubted for same.

Further in following decided cases it has been held that (Page 38 to 51)

(a) M/s Saraswati Educational V/s Department of Income Tax (ITAT Lucknow Bench Order dated 17.06.2015) Appeal No. 776/LKW/2014 A.Y. 2010-11

(b) CIT V/s Uttaranchal Welfare Society (2014), 42 taxman.com 361.

(c) Delhi Court in case of Director of Income Tax (Exem.) V.s Keshav Social 278 ITR 152 (Delhi).

(d) Director of Income Tax V/s Hansraj Samarak Society (2013) 35 Taxman.com 642 (Delhi)

It has been held that once the assessee trust has taken entire receipt of donation to its income and same was applied for charitable purposes no addition u/sec. 68/115BBE can be made.

Besides individual donors details. Identity also filed to A.O. justify the funds so received.

Under these circumstances considering the "VOLUNTARY CONTRIBUTIONS" as "ANONYMOUS DONATION" by CIT(A) is bad in law.

"There is no line of demarcation in the Hindu system between religion and charity. The "RELIGIOUS PURPOSE" also includes relief to the poor, education, and medical relief, etc. Thus, where the objects of a trust exhibits the dual tenor of religious and charitable purpose and activities and anonymous donation is received by it without any specific direction that such donation is for any university or other educational institutions or any hospital or other medical institutions run by the trust, such donation cannot be taxed by invoking provisions of section 115BBC".

(9) The procedure for collection of funds by such a charitable institution was explained that it is a case of "CHARITABLE INSTITUTION" & to raise funds for objects of trust, all office bearers are granted "RECEIPT BOOK" to collect the funds & to persuade the masses to get aware of objects of trust, charity cause & to contribute generously. Thus these ledger accounts are of persons/office bearers who collect money from masses. The ledger is in their name but each receipt contains the name & address of "DONOR". It is only authorized person (office bearer) can issue the receipt. The name in ledger is of office bearer details below. (With their Adhar Card as identity)

(A) Page 33/45 Motilal Ji Soni S/o Bhagchand Soni:- Address - Gali No. 7

Narsingpura, Foy Sagar Road, Ajmer (Page 25 to 49) The person (office bearer) has collected vide Receipt No. 271 to 280 & Receipt No. 142 to 146 from various donors whose names are also appearing in ledger account Motilal Ji on 01.04.2015 Rs. 50,000.00 is opening balance for the year.

Copy of Adhar Card of Motilal ji Enclosed. (Page 45)

(B) Page 34/46 Nemi Chand Soni S/o Sujanmal Ji:- Address - Gali No. 3; Prakash Nagar, Foy Sagar Road, Ajmer The said office bearer has collected funds, vide receipt no. 251 to 260 & 73 to 87 on various details, Name of contributors & details are as per individual receipt & in ledger Rs. 50,000.00 is not received from a single person on same date refer names in ledgers. Adhar Card enclosed (Page 46)

(C) Page 36/47 Omji S/o Golab Chand:- Address - H.No. 798 Hanuman Vihar, B.K. Kaul Nagar, Ajmer (Page 47) Rs. 1,00,000.00 is from receipt no. 315 to 324 from various persons as per name in ledger account & not from Omji; Omji is only office bearer who holds the receipt & collect the money from Donors. Adhar copy enclosed.

(D)Page 37/49 Rajesh Ji S/o Ramnarayan Ji: Address - Moti Marg, Near Pushkar Road, Foy Sagar Road, Ajmer (Page 49) This is again Rs. 1,00,000.00 opening balance of collection made as on 01.04.2015 towards "SAHYOG RASHI" & balance amount received from receipts no. 261 to 270; from various Donors name as per ledger.

(E) Page 43/49 Subhashji S/o Lalchandji: Address H.No. 324/15, Ghee Mandi, Nava Bazar, Ajmer (Adhar copy enclosed Page 49) This is again amount received vide receipts no. 291 to 300 on various dates from various donors name as per ledger. Thus these are ledger account of 'OFFICE BEARERS" who issue receipts to donors. The copy of "ADHAR CARD" of these office bearers are as enclosed to establish the identity of DONORS/COLLECTORS still we request to kindly Remand the matter to A.O. to get the IA enquiry of each DONOR / COLLECTOR for satisfaction The receipt contain the brief of each donor & we are ready to get verify the individual such DONOR; request to remand, the matter to A.O. (Jurisdiction) for IA enquiry still to identify these person we are enclosing the copies of Adhar Cards of main Donors/Collectors. Thus the Modus Operandi of the "COLLECTION OF FUNDS" for a charitable institution is that the office bearer issue the receipt to Donor of his area & maintains the record to avoid malpractices. All these receipts money have been accounted for as per audited accounts & utilized for "BHAWAN NIRMAN SAHYOG FUND" thus from above it is clear the "MODUS-OPERANDI" & request to remand the matter to A.O. for details enquiry if needed.

(10) Technical issues:-

Section 115BBC of Act clause 2 states for "ANONYMOUS DONATION" that

"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"

Similarly clause 3 of said section further specify that

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.

Thus here section 115BB(3) do not requires to prove creditworthiness of "DONOR" but only to maintain a record of the identity indicating he names & address of the person making such contribution. We have now submitted complete Adhar Card of named persons through whom collection made, random copies of receipt & donation/contribution received ledger / register name wise. Thus the provisions of section 115BBE (Income referred u/sec. 68 to 69B & 69C & section 69D) are different than to provisions of section 115BBC where only records/identity of donor needed & same provided to y our office & once again enclosed.

Further sub section 2(b) to section 115BBC specifically mention "SHALL NOT APPLY TO ANY ANONYMOUS DONATION RECEIVED BY" any trust or institution credited or established wholly for religious & charitable purposes other than any anonymous donation made with a specific direction that such donation is for any university/educational institution or any hospital/medical institutions run by such trust.

Here the assessee is neither educational trust nor medical/hospital trust or institution. The decision of Hon'ble ITAT as cited by us M/s Saraswati Educational & Charitable Trust Lucknow V/s ITO-II(3) of Lucknow ITAT order ITA No. 776/LKW/2014; A.Y. 2010-11 order dated 17.06.2015 is departmental appeal (of Revenue) which stands dismissed on the Ground That " so far.

As the 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 assessee which was applied for charitable purposes, provisions of section 68 of Act cannot be invoked" (Page 51 to 54 of our paper book (Page 6 of Case law coy).

On the similar facts the following judgements also made in favour of assessee:-

(a) Director of Income Tax (Exemption) v/s Keshav Social & Charitable Foundation (2005) 278 ITR 152 Delhi.

(b) Hon'ble Delhi High Court in case of CIT Ghaziabad V/s Uttranchal Welfare Society (2014) 42 taxman.com 361 (All).

Had also same views that once "DONATION RECEIVED" disclosed as income & registration u/sec. 12A is continuing & valid, exemption cannot be denied & no application of section 68 to made.

Further DIT V/s Hans Raj Samark Society (2013) 35 Taxman.com 642 (Delhi) has also confirmed the aforesaid views.

Para 25.2 of circular no. 14/2006 dated 28.12.2006 has further clarified that- Anonymous donation made to wholly charitable and religious trust or institution i.e. Mixed Purpose trust or institutions shall be taxed only u/sec. 115BBC; if it is for any university or other educational institution/or hospital/medical institution here it is important to note that even though such donation/receipts (Sahyog Rashi) has been taken directly to balance sheet & not in income & expenditure account but in computation & return same declared as income in terms of section 2(24)(iii). Kindly verify.

(1) With respect to circular no. 14 dated 28.12.2006 and circular no. 5 dated 03.06.2010 your attention on clause 25.2 is solicited which states "With a view to prevent channelization of unaccounted money to these institutions by way of anonymous donations, a new section 115BBC has been inserted to provide that any income of a wholly charitable trust or institution by way of anonymous donation shall be included in its total income and taxed at the rate of 30 percent. Anonymous donation made to wholly charitable and religious trusts or institutions, i.e. mixed purposes trusts or institutions shall be taxed only if it is for any university or other educational institution or any hospital or other medical institution run by them. Anonymous donation to wholly religious trusts or institutions will not be taxed.

Kindly verify these in view clause 3 to section 115BBC the assessee is a mixed trust e.g. Religious cum charitable & is not a educational or medical trust & thus in view of clause / sub section 3 to section 115BBC "ANONMOUS DONATION" do not apply.

(11) An Video Conferencing (VC) was also provided on request & the Ld. CIT(A) has concluded

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| (a) That complete details of the doner, address Id's were filed; but these are Id's of persons from whom these donations have been claimed to receive the copies of Adhar & receipts issued of such persons filed. | (a) Refer procedure for collection of funds. (b) individual receipt down of petty amount being collected through management persons. (c) Hence confirmation of management person filed. (d) thus individual receipt (donor) was verifiable only on personal verification. |
| (b) As per CIT(A) the trust is "wholly charitable" institution (as per ITAT para | b) (1) There is no line of demarcation in the Hindu system between religion and |

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| <p>3 order); thus provision of section 115BBC are clearly applicable. Since it is not a case of “mixed Trust”.</p> | <p>charity. The religious purpose also includes relief to the poor, education, and medical relief, etc. thus, ! where the objects of a trust exhibit the dual tenor of religious and charitable purpose and activities and anonymous donation is received by it without any specific direction that such donation is for any university or other educational institutions or any hospital or other medical institutions run by the trust, such donation cannot be taxed by invoking provisions of section 115BBC.</p> <p>Thus any charitable trust is trust is a “mixed trust”& exception to section 115BBC are applicable.</p> |
| <p>(c) Decision of M/s Saraswati Education Charitable Trust (ITA No. 776/LKW/2014 for A.Y. 2010-11) where addition made u/sec. 68.</p> | <p>(1) Though in the instant case addition made are u/sec. 115BBC; but nature of addition section 68 & section 115BBC are on similar pretext.</p> <p>(2) Further once any such amount if included as part of income; no provision of section 68 or section 115BBC can apply.</p> <p>(3) Section 2(24)(iia) also speaks for identity details of donors & records thereof.</p> |

"As held in case of High Court of Delhi CIT(Exemption) V/s Patanjali Yogapeeth (Nyas) in ITA 886/2017 it has been held that donations collected through coupons from various yoga camp shall not be anonymous donations. Further even in absence of name & address of Donor: An Affidavit by organization & corroborative evidence shall be advisable."

Similarly, it has been held in the following cases that where registration /sec. 12A/80G granted an on verification of donors w/sec. 133(6) of Act, even if no response received back even though such contributions cannot be considered as "ANONYMOUS" since the name & address of the donor is maintained.

Similarly, in case of Hon'ble ITAT Pune Bench ACIT (Exemption Circule) Aurangabad V/s Gurubutla Shikshan Sansthan (2017) 87 taxman.com 214 (Pune).

That the assessee trust is to maintain name and address of such donors to come out of the ambit of section 115BBC of Act.”

7. Per contra, the ld. DR stated at bar that the ld. CIT(A) has already readdress the grievance of the assessee and since the ld. CIT(A) has decided the issue raised by the assessee in the grounds has already set in favour of the assessee.

8. We have heard the ld. DR and perused the material placed on record. The Bench noted that the assessee in ground No. 1 to 3 challenged the addition of Rs. 31,69,001/-, considering the same was anonymous donation. Since, these issues is already decided in favour of the assessee and the ld. DR did not controvert the finding of the ld. CIT(A) and therefore, from the facts and circumstances of the case and the order of the ld. CIT(A), we arrived at the conclusion that the case is premature before us and hence, we dismissed the appeal of the assessee in limine.

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

Order pronounced in the open Court on 27/05/2024.

Sd/-

(राठौड कमलेश जयन्तभाई)
(RATHOD KAMLESH JAYANTBHAI)
लेखा सदस्य / Accountant Member

Sd/-

(डॉ.एस.सीतालक्ष्मी)
(Dr. S. Seethalakshmi)
न्यायिकसदस्य / Judicial Member

जयपुर / Jaipur

दिनांक / Dated:- 27/05/2024

*Santosh

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

1. अपीलार्थी / The Appellant- Shri Merh Kshtriya Sabha, Ajmer.
2. प्रत्यर्थी / The Respondent- CIT(Appeals), Delhi.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त / CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur.
6. गार्ड फाईल / Guard File { ITA No. 632/JPR/2023 }

आदेशानुसार / By order

सहायक पंजीकार / Asst. Registrar