

IN THE INCOME TAX APPELLATE TRIBUNAL
NAGPUR BENCH, NAGPUR

BEFORE SHRI V. DURGA RAO, JUDICIAL MEMBER AND
SHRI K.M. ROY, ACCOUNTANT, MEMBER

ITA no.2/Nag./2018
(Assessment Year : 2014-15)

Asstt. Commissioner of Income Tax
Circle (Exemption), Nagpur Appellant

v/s

Shri Dadasaheb Gawai Charitable Trust
Rajkamal Chowk, Amravati 444 601 Respondent
PAN – AAFTS5935H

Assessee by : Shri Manoj G. Moryani
Revenue by : Shri Kailash C. Kanojiya

Date of Hearing – 28/05/2024

Date of Order – 11/07/2024

ORDER

PER V. DURGA RAO, J.M.

The present appeal has been filed by the Revenue challenging the impugned order dated 28/09/2017, passed by the learned Commissioner of Income Tax (Appeals)-1, Nagpur, [*learned CIT(A)*], for the assessment year 2014-15.

2. In its appeal, the assessee has raised following grounds:-

"1. Whether on the facts and nd d in int the circumstances of the case, the Ld.CIT(A) has erred in deleting the addition of Rs. 12,63,03,550/- made u/s.115BBC of the I.T.Act, as anonymous donations, even though the AO brought on record defects in maintaining records as per the provision of said section.

2. Whether on the facts and in the circumstances of the case, the Ld.CIT(A), was justified in holding that the Assessee trust is existing solely for the

purpose of education, even though the AO brought on record that the assessee trust is having many objects other than that of education.

3. The appellant craves to leave, to add, alter, amend or delete any of the above Grounds of Appeal."

3. Facts in Brief:- The assessee is a registered Public Charitable Trust formed on 07/12/1991, under the Bombay Trust Act, 1950. It is also registered under section 12A of the Income Tax Act, 1961 ("the Act"). The main activities of the assessee Trust are working for religious and educational purpose for minority Buddhist communities. The main objectives of the Trust are as follows:-

"i) For educational development, establishment of Balak Mandir, Convent, Primary, High School, College, Music School, Engineering, Agriculture Schools, Farming Schools, Medical College, Computer Training Classes, Adult Education Classes, Ashram Schools, Public Libraries, Hostels and all types of Vocational, Technical Educational branches (like degree colleges, M.B.A, Law College, M.B.B.S, B.A.M.S, Engineering Colleges, DMLT, D.Ed., B.Ed., M.P.Ed., B.P.Ed., B.Com., B.A., D.F.M., Science, Commerce, Arts, Technical Schools and Colleges.)

ii) By establishing Vyam shala, Health Clubs and sports departments to provide training in various sports and games, to organize tournaments.

iii) To provide education to the blind, handicapped, dumb and deaf and abnormal children. Also to provide professional education to them.

iv) To provide facilities by establishing Balak Ashram, Orphanages and Old Age Homes.

v) To provide self-employment to women, by providing training in Child Welfare Centres, Day care Centres, Sewing Classes, Mehndi Classes, Embroidery Classes, Cottage Industries, etc.

vi) Various projects conducted by Social Welfare Department, Rural development programmes, Khadi Gramodyog, Central Government and State Government for the development of villages will be run by the Trust.

vii) To organize street plays, camps, to run Rehabilitation Centres, to stop drug addiction, superstition, enforce prohibition, to fight against the dowry system.

viii) To organize camps, symposiums, discussions, lecture series for the development of youths, to conduct mass marriages of the poor.

ix) To establish and Rural Health Centres, Vipassana Centres."

4. For the year under consideration, the assessee filed its return of income on 27/06/2015, declaring total loss at ₹ (-)2,16,087. In the assessment order, the Assessing Officer has noted that from the financials of the assessee, it had shown that the assessee has received corpus donation towards building fund at ₹ 4,36,30,500, and non-corporus fund at ₹ 8,96,20,600. The Assessing Officer asked the assessee to produce the list of the donors and all the relevant details. The assessee filed details of donors which contained two lists. The first list contains names and addresses of 100 donors and each donor contributed ₹ 4,000 cash and the second list of donors contains the names and addresses of 1,308 donors who have contributed ₹ 4,000 each. The total donation during the period is ₹ 52,32,000. In the assessment order, the Assessing Officer has noted that the assessee has not given complete address, full details were not provided and copy of commission receipt book for the donation received were also not provided. The Assessing Officer, in the absence of details sought by him, added to the donations so received by the assessee as income of the assessee under section 115BBC of the Act and taxed accordingly. The order passed by the Assessing Officer was challenged by the assessee before the first appellate authority.

5. Before the learned CIT(A), the assessee filed all the details in respect of each donor numbering 23,135, and such details filed were considered by the learned CIT(A) and the same were verified on 06/03/2017 and called the

remand report from the Assessing Officer and referred to the details to the Assessing Officer for verification on 29/06/2017. The Assessing Officer submitted remand report and the same was reproduced by the learned CIT(A) as under:-

"Kindly refer to your letter in F.No. CIT(A)-4/Ngp/Rem. Rep/DGCT/Remand Report/2016-17 dated 06.03.2017 in the above matter.

2. In the above mentioned case, assessment for A. Y. 2014-15 was completed u/s 143(3) on 26.12.2016. During the course of assessment proceedings, it was noticed that the assessee had failed to maintain required particulars such as name, address and PAN of the donors. Further, the assessee had also failed to submit the particulars of all the donors during the course of assessment proceedings. Resultantly, the income of the assessee was assessed treating the donation of Rs. 12,63,03,545/-as anonymous donation u/s 115BBC.

3. However, during the appellate proceedings, the assessee submitted detailed record of identity of donor indicating the name and address of the person making such contribution, The same have been forwarded to this office for verification and Remand Report in this context, vide this office letter dated 09/03/2017, the assessee was asked to produce documents in respect of donors such as proof of identification, copy of return of income & computation of income and copy of bank account statement of the donors. The assessee submitted his reply on 20/03/2017 enclosing photocopy of PAN Card/Aadhar card of the donors. However, the assessee failed to provide the return of income, computation of income and bank account statement in respect of donors as required by the letter dated 09/03/2017.

4. It is seen from the record submitted by the assessee before the CIT(A) that there are as many as 23136 donor entries in which some names have been found to Be repeated. In order to verify the genuineness of the same, summons were issued by way of speed post to 205 randomly selected persons out of these 23136 donor entries. The position which emerged from the enquiries is as under:

(i) Out of 205 persons, 89 persons attended this office and their statement was also recorded, 76 persons did not attend the office but submitted written reply, 28 persons neither attended nor submitted any reply and in 12 cases summons were returned to this office by the postal department unserved.

(ii) Out of 89 persons who attended before this office, 87 persons affirmed in their statement that they have given the donation to the trust. However, two persons- Shri Pankaj Parasram Nandeshwar and Shri Sudhir Mahadeo Kathane denied that they have given any donation to the assessee trust. It is pertinent to mention here that most of these 89 persons are either working in an institution run by the assessee Trust or they are in some way connected with the assessee Trust.

(iii) Out of 76 persons who did not attend the office but chose to submit written reply, 75 persons affirmed that they have given the donation to the assessee trust. However, in 1 case, Shri Kisna Sitaram Motghare denied that he had given any donation to the assessee trust. Of these 76 persons, 23 persons have given sufficient documents with respect to genuineness but in rest of 53 cases, copy of only PAN Card / Aadhar Card has been furnished. It is pertinent to mention here that all the written submissions of these 76 persons are neatly typed and identical except the reasons given for non-attendance on the date of hearing. It indicates that these persons are also closely connected with the assessee Trust in spite of the fact that they are all living in different places.

5. It is worth mentioning here that in the assessment order the A.O. has noted that the assessee has neither maintained complete list of donors with their address nor it has provided the same before her for verification thereby failing to discharge the initial onus of providing the same as required under the Income Tax Act. In this regard, the Authorised Representative of the assessee was given the opportunity to produce the individual donors for establishing their existence, credit-worthiness and the genuineness of transaction. The Authorised Representative was asked to produce donors with (i) Identification proof of donor such as PAN card, Aadhar card etc., (ii) Copy of R.O.I, 26AS (if any) to verify the source and (iii) Copy of Bank passbook for the period 01.04.2013 to 31 032014. However, the Authorised Representative failed to avail the opportunity or even to make a written submission. The Assessing Officer has noted that even after providing repeated opportunity, the Authorised Representative did not furnish the list of donors who contributed towards Building fund. The Assessing Officer has further noted that a letter dated 15.12.2016 was also issued to the assessee to show cause as why the corpus and non-corpus donations should not be viewed as anonymous donations attracting section 115BBC of Income Tax Act. In response to the said show cause letter, the Authorised Representative merely attended without making any submission or furnishing the details sought. The Assessing Officer was thus left with no other choice other than treating the anonymous donation taxable as per the provision of sec 115BBC of I.T. Act.

6. It is requested that the submissions now being made by the assessee Trust may kindly be examined in the backdrop of the above factual position. The documents submitted by the assessee Trust (in 10 volumes) are returned herewith."

6. The learned CIT(A), on receipt of remand report, forwarded the same to the assessee and the assessee also made a detailed submissions before the learned CIT(A) which are reproduced below:-

"The assessee has received the corpus donation towards building fund at Rs. 4,36,30,500/- and non corpus donation at Rs. 8,96,20,600/- during the previous year relevant to A.Y. 2014-2015 and same were duly reflected the in books of account of the assessee. The assessee has claimed benefit of income derived by donation being exempt under section 80G and Section

10(23C)(iiiab) of the Income Tax Act, 1961 in the return of income. The assessee has maintained data of all donors such as name and address as per section 115BBC of the Income Tax Act. The assessee society is existing solely for educational purposes and has been substantially financed by government and this income of assessee society is exempt under section 10(23C)(iiiab) of the Income Tax Act and there is no tax payable.

The addition made by the assessing officer may kindly allowed on following reasons

- i. The assessee has received donation from various persons and taken entire receipts of donation to its income and same was applied for charitable purposes.
- ii. The assessee has filed PAN details, copy of ITRs and computation of income, copy of bank statement, confirmation in affidavit, from whom donation was received in order to establish the identity of persons.
- iii. There is no dispute that the entire voluntary donations has been disclosed by the assessee trust as income in the Income and Expenditure account.
- iv. The income so disclosed has been applied for charitable purposes as provided U/s. 11(1) of the Act, hence cannot be included in total income of the assessee trust.
- v. The donation was fully disclosed for the purpose of charitable and the registration under section 12A is continuing and valid, therefore there is no question of denial of exemption.
- vi. The donation received by assessee was not anonymous donation because receipts were issued by assessee from time to time & the assessee has submitted list of persons with donation received, name, address, PAN no. & Aadhaar no. etc.
- vii. The addition made U/s. 68 was not applicable in case of the assessee trust, since the assessee trust has duly discharges its onus by proving the identity and capacity of the donors and genuineness of the transaction.
- viii. The assessee has not violated the provision of section 115BBC of the Act and the donations received from the doners cannot be categorized an anonymous donations.
- ix. The assessee has maintained a record of the identity indicating the name and address of the persons making such contribution and such other particulars as may be prescribed & the same were also submitted before the CIT(a) & the CIT(A) also called remand report & the said report also support the case of the assessee in following points :
 - a. The Asstt. Commissioner of Income Tax accepted in the remand proceeding in the remand report all the confirmation of donors/affidavit/identity of donors.

- b. *In the remand proceedings in the remand report the Asstt. Commissioner of Income Tax stated that proof of identification of donor were also submitted.*
- c. *In the remand proceedings in the remand report, The Asstt Commissioner of Income Tax also sent summons to various donors on test check basis and most of them confirmed that they have given donation to the trust.*
- d. *In the remand proceedings in the remand report, The Asstt Commissioner of Income Tax stated that donors to whom summons were issued, most of them have given sufficient documents with respect to genuineness of transaction & their confirmation.*

On the abovementioned preposition assessee placed reliance on

1. *Judgment of Hon'ble Income Tax Appellate Tribunal, Lucknow Bench "A", Lucknow dated 11/06/2015 Vide ITA No. 776/LKW/2014 in case of Income Tax Officer, -Vs.- Saraswati Educational Charitable Trust*
2. *Judgment of Hon'ble Income Tax Appellate Tribunal, Delhi Bench "G", New Delhi dated 11/06/2015 Vide ITA No. 2428/Del/2011 in case of Sunder Deep Educational Society -Vs.- Addl. CIT, Range-2 Ghaziabad*
3. *(2014) 364 ITR 0398 (All)
Commissioner of Income Tax -Vs.- Uttaranchal Welfare Society*
4. *(2005) 278 ITR 0152
Director of Income Tax (Exemption) -Vs.- Keshav Socieal & Charitable Foundation*
5. *(2012) 133 DTR 0123
Hans Raj Samarak Society -Vs.- Assistant Director of Income Tax*
6. *ITA No. 607 & 608/Lkw/2013
M/s. Sahyog Jan Kalyan Samiti Vs. Asstt. Commissioner of Income Tax*
7. *ITA No. 15/LKW/2015
The Income Tax Officer (Exemption) Vs. Shri Narain Educational & Welfare Trust"*

7. The learned CIT(A), after considering the remand report and explanation given by the assessee, deleted the addition made by the Assessing Officer. Para-6 to 6.4 of the learned CIT(A)'s order is reproduced below:-

"6.0 Appellant's submission alongwith assessment order have been considered carefully, Assessment records of the AO have also been perused.

The appellant has filed return claiming exemption u/s. 10(23C)(iiiab) of the I.T. Act being an educational institution existing solely for educational purposes and not for purposes of profit and being wholly or substantially financed by the Government. During the entire course of assessment as well as remand proceedings, AO has not brought on record even a single piece of documentary evidence to show that the appellant does not fulfil these criteria or that it has violated any of the prescribed conditions for claiming the said exemption. AO has not at all controverted these submissions of the appellant as made in assessment or appeal and which have been sent to him also. These undisputed facts are found duly reflected in the audit report also. Further, the appellant is also found to be duly registered u/s 12A along with 80G of the IT Act making these donations exempt.

6.1 Now coming to addition of Rs. 12,63,03,550/- made by the AO by applying provisions of section 115 BBC of the IT Act treating them to be anonymous donations. For better appreciation of facts, relevant provisions of section 115BBC are reproduced as under:-

"Anonymous donations to be taxed in certain cases

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(iiiiae) 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

- (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*

*.....
.....*

(3) For the purposes of this section, "anonymous donation" means any voluntary contribution referred to in sub-section(iia) of clauses(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."

6.2 It is evident that provisions of section 115BBC are applicable to university educational institution or hospital, as the case may be, referred to in sub-clause (iiiad) or (vi) or (iiiae) or (via) or (v) of section 10(23C) of the Act. The appellant's case falls U/s. 1023(c)(iiiab). Thus, it does not fall in the categories of institutions as prescribed u/s. 115BBC and, therefore, provisions of Section 115 BBC in pursuance of which AO has made the impugned addition are not found applicable to the appellant.

6.3 Secondly, the said addition has been made for anonymous donations. As mentioned above, anonymous donation means where the person, receiving such voluntary contribution, as referred in section 2(24)(iia), does not maintain a record of the identity indicating name and address of the donors.

First of all, these donations have been received by an educational institution which is claiming exemption u/s 10(23C)(iiiab). However, Section 2(24)(iia) nowhere mentions such institutions as falling u/s. 10(23C)(iiab). Further, these donations are not found to be anonymous donations. The appellant has given complete details, albeit in appeal proceedings indicating name, address, PAN/Adhar No. of all 23136 donors. AO himself has submitted in the remand report that to test check the veracity of appellant's submissions, summons have been issued to 205 randomly selected persons out of these 23136 donors entries. Statement of as Many as 89 persons have been recorded by the AO in remand proceedings whereas 76 persons have submitted their confirmations. Out of these, only 3 persons have denied to making any donation to the appellant society. However, this fact alone does not make the entire donations received to be called as anonymous donation, as has been held by the AO. Even in respect of these donors, who have denied of making any donation, the appellant has not been given any opportunity by the AO to cross examine them. It has been held by Hon'ble Rajasthan High Court in case of CIT vs. Geetanjali Education Society (2008) 174 Taxman 440 that AO cannot declare the donations as anonymous or bogus, as some of them were not examined nor those who were examined had been allowed to be cross examined. Therefore, any donation given in favour of the society could not have been held to be bogus without examining the donors and subjecting them to cross examination. In the instant case under appeal, almost all of the donors, who have been examined have categorically accepted of giving donation. Those very few, in fact only three, who have denied, have not been allowed to be cross examined in violation of principles of natural justice. AO has also mentioned the fact of relation/connection of donors with the appellant's society in view of same typewritten confirmation, as submitted in remand proceedings. This fact is also not found to be entirely correct as only 16 such persons, out of 76, have submitted before AO that either they or their family member is/was employed in the institutions run by the society or that their wards/relatives re studying therein. However, this fact, by no stretch of imagination, can make the donation given, and as confirmed by them, to be anonymous donation without any adverse corroborative evidence on records. AO is found to have drawn adverse conclusion more on suspicion alone. Many of the donors have also submitted copy of their bank account statement and returns. All the donors have submitted their name and address alongwith PAN/Aadhar Number. Moreover, AO has added corpus donations too as anonymous donations. It is not understood if a donation has been received with specific direction/information by the donor, as is evident from receipt, then how such direction can come anonymously and how can it be substantiated further by the appellant. Further, AO cannot have recourse to section 68 also in the instant case in respect of these donations. The appellant has duly declared these donation in its audited books of account and have shown as a part of its income. Therefore, there have been full disclosure of income and its application by the appellant society as per its books of accounts. It is further to be noted that AO himself has accepted appellant's audited books of accounts without mentioning even a single defect or deficiency therein either by him or the auditor. It is not the AO's case either that the appellant is trying to introduce unaccounted money by way of donation receipts whether in the nature of corpus or other voluntary contributions. Thus, neither section 68 nor section 115 BBC of the IT Act is found applicable in case of the appellant society as the appellant has duly maintained and submitted record of the identity indicating the name and address of each of the person making the said contribution. The onus to

prove that the apparent is not the real is one the party who claims it to be so, which, in the instant case, has not been discharged by the AO while rejecting appellant's submissions. The fact that the appellant has not produced copy of bank account statement, income tax return filed/26AS of each of the donor cannot lead one to the conclusion of 'anonymous' donations keeping in view the fact of number of persons and amount involved in each case where the recipient of donation is not required to call for and maintain these details. Though, most of the donors, examined by the AO, have submitted these details also in remand proceedings. IN any case, it has been held by various courts [CIT Vs. Daulat Ram Rawat Mull (1973) 87 ITR 349 (SC); Labh Chand Bohra vs. ITO (2010) 189 Taxman 141 (Raj)] that capacity of the donee is not a matter which would be required by the recipient to be established. Section 115 BBC (3) provides that the receiver has the obligation to maintain the identity indicating the name and address of the donor and such other particulars as may be prescribed. No other particular has been prescribed under this provision or elsewhere in the Act or Rules. It has been held by Hon'ble ITAT, Delhi in the case of Hans Raj Samarak Society Vs. ADIT (Exemption), Trust Circle-II (2016 16 Taxmann.com 103 that the expression of a valid voluntary contribution has been defined in an exhaustive manner and, therefore, no other word can be read in section 115 BBC(3) other than the words finding place therein. Thus the society has the obligation to maintain the identity indicating the name and address only and nothing more. In that case, AO had taxed the amount by mentioning that confirmation letters from the donors have not been filed. As per Hon'ble ITAT, Delhi, such confirmations are not required to be filed for coming to the conclusion as to whether the donation was anonymous or not. "Anonymous donation" is different from unaccounted donation. In case of anonymous donation, the donations are on record but the trace of donors is not available. This is not found the case in the instant appeal of the society. It is also seen that on similar facts, AO himself has accepted similar donation of Rs. 8,27,30,000/- for AY 2013-14 u/s. 143(1) and Rs. 8,21,45,000/- for A.Y. 2012-13 vide order dated 23.03.2015 passed U/s. 143(3) of the Act.

6.4 After perusal of entire material on records, action of the AO in making the impugned addition of Rs. 12,63,03,550/- u/s 115BBC for anonymous donation is not found sustainable and hereby, deleted."

On being aggrieved, the Revenue is in appeal before the Tribunal.

8. Before us, the learned Departmental Representative ("*the learned D.R.*") submitted that the assessee has failed to submit details of the donors and also not provided PAN Card details, residential address of the donors, etc. and, therefore, the Assessing Officer has rightly invoked the provisions of section 115BBC of the Act. Even after filing the details before the learned CIT(A), the learned D.R. has pointed out that out of 23,136 donors, the

Assessing Officer selected 205 persons randomly and out of 205 persons, 89 persons attended the office of the Assessing Officer and their statements were recorded, but 76 persons did not attend the office of the Assessing Officer who submitted written reply; 22 persons neither attended nor submitted any written reply; in case of 12 persons, summons were returned back to the office of the Assessing Officer by the Postal Department with remark "*unserved*". The learned D.R. further submitted that the assessee even during the course of remand proceedings not able to discharge the burden on it. The learned D.R. submitted that out of 8 donors who appeared before the Assessing Officer, 2 persons denied the payment of donation and, therefore, the assessee failed to discharge the burden cast upon the it. The learned D.R. strongly supported the order passed by the Assessing Officer.

9. On the other hand, the learned Counsel for the assessee submitted that with regard to donor numbering 23,136, the assessee has already submitted all the details before the Assessing Officer during the remand proceedings, complete details of donors from whom the assessee trust has received the donation along with their name, complete address, PAN Card details of the donors, Aadhar Card of the donors with respect of identification proof of donors.

10. He submitted that the Assessing Officer, out that out of 23,136 donors, has selected randomly 205 donors, out of which 89 donors appeared before the Assessing Officer and admitted payment of donation to the assessee.

11. Submitted that 76 donors admitted payment of donation and filed confirmation before the Assessing Officer. Insofar as non-appearance of 25 persons are concerned, the learned Counsel submitted that the Assessing Officer has not issued any notices to the assessee to produce these 25 persons before the Assessing Officer. Even in case of 12 persons, summons were returned back, but the Assessing Officer has not asked the assessee to produce those donors before him. Therefore, the assessee has made available all the details with regard to the donors and, therefore, the assessee has discharged the onus and submitted that the learned CIT(A) has rightly deleted the addition.

12. The learned Counsel further submitted that the assessee is maintaining the details of donations received, names and address of the donors and other details, therefore, provisions of section 115BBC of the Act is not applicable to the present case. The assessee Trust is running with the help of Government grant as per the objectives of the assessee Trust. There is no violation in the activities of the assessee in respect of donations received. The Assessing Officer has wrongly invoked the provisions of section 115BBC of the Act.

13. We have heard the rival arguments, perused the material available on record and gone through the orders of the authorities below. The assessee is a Public Charitable Trust registered under the Bombay Trust Act, 1950. It is also registered under section 12A of the Income Tax Act, 1961 ("*the Act*"). We have gone through the objective of the assessee Trust and the main objective of the assessee Trust is only to carry on educational activities with the aid of the Government grant. It is not the case of the Assessing Officer

that the assessee is not doing charity. The only case of the Assessing Officer is that, the assessee has received donations from approximately 23,136 donors and no details were filed in respect of these donors. Initially, the assessee has submitted all the details before the Assessing Officer during the remand proceedings, complete details of donors from whom the assessee trust has received the donation along with, complete address, PAN Card details of the donors, Aadhar Card of the donors with respect of identification proof of the donors, but the Assessing Officer was not satisfied with these details. The Assessing Officer, therefore, by invoking provisions of section 115BBC of the Act, the entire donation received by the assessee was taxed as income of the assessee.

14. The assessee has filed complete details of the donors before the learned CIT(A). The learned CIT(A) called for the remand report from the Assessing Officer by sending all the details filed by the assessee. The Assessing Officer, after examining all the details of the donors filed by the assessee, sent the remand report to the learned CIT(A). We find that out of 23,136 donors, the Assessing Officer selected 205 donors randomly and out of 205 donors, 89 donors attended the office of the Assessing Officer and their statements were recorded, but 76 persons did not attend the office of the Assessing Officer, but confirmations were filed; 22 persons neither attended nor submitted any written reply; in case of 12 persons, summons were returned back to the office of the Assessing Officer by the Postal Department with remark "unserved". Regarding 89 donors, they appeared before the Assessing Officer their statements were recorded and out of these 89 donors, except 2 persons,

the Assessing Officer has not doubted having paid donation to the assessee. We further find that out of 89 persons appeared before the Assessing Officer, 2 persons namely Shri Pankaj Parasram Nandeshwar and Shri Sudhir Mahadeo Kathane, denied payment of donation and hence, the Assessing Officer has doubted the entire donations. Insofar as these 2 persons are concerned, who denied having paid donation to the assessee, we find that the assessee has submitted all the details in respect of these 2 persons namely Shri Pankaj Parasram Nandeshwar and Shri Sudhir Mahadeo Kathane. The Assessing Officer ought to have forwarded the statements of these 2 persons who denied payment of donations to the assessee and opportunity should have been given to cross-examine these two donors. Simply believing the statement of the donors, the Assessing Officer was not correct to doubt the entire donations paid to the assessee.

15. Insofar as 76 donors are concerned, these donors have confirmed having paid the donations to the assessee Trust. If the Assessing Officer has any doubt regarding payment of donations, he should have been called further details to substantiate the same. Without doing so, the Assessing Officer has doubted the statements of 76 donors on the ground that all the 76 donors are closely connected to the assessee Trust, but these donors are living in different places. In this regard, we find that there is nothing on record to show that these 76 donors, who made payment of donation to the assessee trust, are closely connected to the assessee. Even the Assessing Officer has not discussed anything in this regard. Even assuming for a while that these 76 donors are connected to the assessee Trust, but there is no bar

under any law to give donation by closely related person. It is merely suspicion in the mind of the Assessing Officer who doubted the transaction despite filing of all the details of the donors by the assessee Trust.

16. Insofar as 28 donors are concerned, summons were issued by the Assessing Officer to these 28 donors by the Assessing Officer, however, neither these donors attended office of the Assessing Officer nor any confirmation of having paid donation to the assessee were filed and hence the Assessing Officer doubted the entire donations. Regarding the donors who have neither appeared before the Assessing Officer nor filed any confirmation before the Assessing Officer, under these circumstances, the Assessing Officer ought to have asked the assessee to produce them before the Assessing Officer. However, the Assessing Officer, without adopting such process, has simply doubted the donations received by the assessee.

17. Insofar as 12 donors are concerned, the Assessing Officer issued summons to these donors, but these summons were returned back to the Assessing Officer with remark "*unserved*". The assessee has filed all the details in respect of these donors before the Assessing Officer. The reason for unserved summons to the donors may be due to the reason that the donors have left the address or the donors must have changed their address. However, it was the duty of the Assessing Officer to call the assessee to find out the whereabouts of the donors but the Assessing Officer failed to do so. Once the donations are received by the assessee, it is not the duty of the assessee to have a watch on the donors about their whereabouts whether they are staying in the same place which the addresses were given at the

time of payment of donation. The donors are not under the control of the assessee, they may shift anywhere or change their residence. It was the duty of the Assessing Officer to ask the assessee to produce those 12 person before him which the Assessing Officer failed to do so.

18. In view of the forgoing discussions and by considering the entire facts and circumstances of the case, we are of the opinion that the Assessing Officer invoked the provisions of section 115BBC of the Act for the only reason of doubting the genuineness of the donors. The assessee has discharged the onus casted upon it and, therefore, if at all the Assessing Officer is having any doubt, he should have been brought the evidence on record that the donations are not genuine. Once the assessee has filed all the details of the donors and enquiry made by the Assessing Officer, the Assessing Officer cannot doubt the donors. We also find that some of the donors appeared before the Assessing Officer and stated that they had paid the donations. Some of them had filed confirmation stating that they paid donation to the assessee trust. A few of them did not appear before the Assessing Officer. The Assessing Officer without giving opportunity to the assessee to produce the donors before the Assessing Officer, simply doubted the entire donation received by the assessee as not genuine. In our opinion, the Assessing Officer was not correct in doubting the entire donations as not genuine. Insofar as application of provisions of section 115BBC of the Act is concerned, the same is reproduced below:–

"Anonymous donations to be taxed in certain cases.

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 (iii ae) 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—

(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 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 (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."

19. Insofar as the anonymous donations are concerned, the assessee maintained the record of the identity and address of the persons who are making contribution and other particulars and, therefore, provisions of section 115BBC of the Act are not applicable. In the present case, the assessee has maintained identity of the donors i.e., complete details such as name, address, PAN card details, Aadhar details and, hence, provisions of section 115BBC of the Act are not applicable to the assessee Trust. We find that the assessee has given all the details of the donors including names, address, PAN card details, Aadhar details, etc. Thus, the assessee discharged onus

casted upon it by producing all the details before the Assessing Officer. The Assessing Officer, without following the procedure and without providing proper opportunity to the assessee, doubted the genuineness of the donations and invoked the provisions of section 115BBC of the Act, which is not correct. The learned CIT(A) after considering all the facts and explanation given by the assessee, deleted the addition. We find no infirmity in the order passed by the learned CIT(A). Consequently, we uphold the order passed by the learned CIT(A) and dismiss the grounds of appeal raised by the Revenue.

20. In the result, appeal filed by the Revenue is dismissed.

Order pronounced in the open Court on 11/07/2024

Sd/-
K.M. ROY
ACCOUNTANT MEMBER

Sd/-
V. DURGA RAO
JUDICIAL MEMBER

NAGPUR, DATED: 11/07/2024

Copy of the order forwarded to:

- (1) The Assessee;
- (2) The Revenue;
- (3) The PCIT / CIT (Judicial);
- (4) The DR, ITAT, Nagpur; and
- (5) Guard file.

Pradeep J. Chowdhury
Sr. Private Secretary

True Copy
By Order

Sr. Private Secretary
ITAT, Nagpur