

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ "बी", चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL, CHANDIGARH BENCH "B", CHANDIGARH

HEARING THROUGH: PHYSICAL MODE

श्री विक्रम सिंह यादव, लेखा सदस्य एवं श्री परेश म. जोशी, न्यायिक सदस्य
BEFORE: SHRI. VIKRAM SINGH YADAV, AM & SHRI. PARESH M. JOSHI, JM

आयकर अपील सं. / ITA NO. 877/Chd/2018
निर्धारण वर्ष / Assessment Year : 2009-10

M/s Surya World Educational Research & Charitable Institute C/o Shri Tejmohan Singh, Advocate # 527, Sector 10-D, Chandigarh	बनाम	The DCIT, Central Circle-1, Chandigarh
स्थायी लेखा सं. / PAN NO: AADAS4869H		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारित की ओर से / Assessee by : Shri Tejmohan Singh, Advocate
राजस्व की ओर से / Revenue by : Smt. Kusum Bansal, CIT, DR
सुनवाई की तारीख / Date of Hearing : 14/11/2024
उद्घोषणा की तारीख / Date of Pronouncement : 07/01/2025

आदेश / Order

PER VIKRAM SINGH YADAV, A.M. :

This is an appeal filed by the Assessee against the order of the Ld. CIT(A)-3, Gurgaon dt. 26/03/2018 pertaining to Assessment Year 2009-10.

2. In the present appeal, the Assessee has raised the following grounds of appeal:

"1. That the Ld. Commissioner of Income Tax (Appeals) has erred in upholding the framing the assessment u/s 153A rws 143(3) of the Act without there being any incriminating material having been found during the course of search and as such the assessment framed is illegal, arbitrary unjustified which merits to be quashed.

2. Without prejudice to the above, the Ld. Commissioner of Income Tax (Appeals) has erred in law as well as on facts in sustaining the addition of Rs.43,00,000/- out of total addition of Rs.85,25,200/- made on account of amounts received towards the corpus fund treating the same to anonymous donations u/s 115BBC which is arbitrary and unjustified.

3. That the Ld. Commissioner of Income Tax (Appeals) has further erred in sustaining addition of Rs. 8,85,00,000/- out of total addition of Rs.29,08,41,007/- made on account of alleged unexplained unsecured loans treating the same to anonymous donations u/s 115BBC in utter disregard of the explanations rendered which is arbitrary and unjustified.

4. That the Ld. Commissioner of Income Tax (Appeals) has further erred in sustaining addition of Rs. 58,96,441/- out of total addition of Rs. 68,90,724/- made on account of alleged unexplained liabilities applying the provisions of Section 68 which is arbitrary and unjustified.

5. That the Ld. Commissioner of Income Tax (Appeals) has further erred upholding the action of Assessing Officer wherein he denied the benefit of Section 11 and 12 of the Act in utter disregard of the explanations rendered and as such the order passed is illegal, arbitrary and unjustified.

6. That the order of the Ld. Commissioner of Income Tax (Appeals) is erroneous, arbitrary, opposed to law and facts of the case and is, thus, untenable."

3. Briefly the facts of the case are that a search operation under Section 132(1) was carried out on Surya Parabolic and Nectar Group of cases on 17/09/2010 and the assessee trust was one of the persons which was covered under the search operation. Subsequently, notice under section 153A was issued on 28/06/2011. Thereafter notice under section 142(1) were issued alongwith detailed questionnaire. Subsequently, request was made by the assessee trust to grant time to file the return of income and thereafter, on 16/10/2012, the assessee filed a letter stating that return earlier filed under section 139 may be treated as a return filed under section 153A of the Act. Thereafter, notice under section 143(2) and 142(1) were issued calling for the necessary information/documentation and taking the same into consideration, the assessment was completed under section 153A(1)(b) r.w.s 143(3) dt. 31/03/2013 wherein the AO held that the assessee is not eligible for exemption under section 11 & 12 of the Act and addition of Rs 29,93,66,207/- was made under section 115BBC of the Act and another addition of Rs. 68,90,274/- was made under section 68 of the Act.

4. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who after calling for the remand report and taking into consideration the submissions so filed by the assessee has allowed part relief to the assessee.

5. Against the addition sustained by the Ld. CIT(A) and the related findings of the Id CIT(A), the assessee is in appeal before us.

6. Ground No. 1 was not pressed during the course of hearing, hence the same is dismissed as not pressed.

7. In Ground No. 2, the assessee has challenged the sustenance of addition of Rs. 43,00,000/- out of total addition of Rs. 85,25,200/- on account of amount received towards the corpus fund treating the same as anonymous donation under Section 115BBC of the Act. In Ground No. 3, the assessee has challenged the sustenance of addition of Rs. 8,85,00,000/- out of total addition of Rs. 29,08,41,007/- on account of unexplained unsecured loans treating the same as anonymous donations under Section 115BBC of the Act.

7.1 In this regard, briefly the facts of the case are that during the course of assessment proceedings, the AO on examination of balance sheet and Income & Expenditure Account observed that the assessee has received corpus fund amounting to Rs. 85,25,200/- and unsecured loans of Rs. 29,08,41,007/-.

7.2 As per the AO, though the assessee furnished the name of the persons but the assessee has not filed any confirmation from the persons who have contributed towards the corpus funds. And as regards the unsecured loans raised by the assessee, it has neither furnished the details of the persons nor the confirmation from the said persons. Accordingly the identity and genuineness of the corpus funds and unsecured loans could not be established. As per the AO, the assessee is an institution referred to in Section 11 being one that has been granted registration under section 12A of the Act and in absence of verification, the corpus funds and unsecured loans shown in the balance sheet takes the form of anonymous donation and liable to be taxed under the provisions of Section 115BBC of the Act. Thereafter referring to the provisions of Section 115BBC of the Act, the AO held that since the assessee did not produce the

record of the identity of persons making such contribution and other details as may be prescribed, the sum of Rs. 29,93,66,207/-, comprising of the corpus fund of Rs. 82,25,200/- and unsecured loan of Rs. 29,08,41,007/-, was treated as anonymous donation liable to be taxed @ 30% and added to the taxable income in the hands of the assessee and not liable for exemption under section 11 of the Act.

8. The assessee thereafter carried the matter in appeal before the Ld. CIT(A) and submitted additional evidence under Rule 46A and it was submitted that the case is covered by the provisions of Rule 46A (1)(a) & (b). Considering the prayer so made by the assessee, the additional evidence submitted by the assessee were admitted by the Id CIT(A) and remand report was called from the AO and thereafter, taking into consideration the relevant material, the submissions of the assessee, the remand report as well as the rejoinder to the remand report submitted by the assessee, the Id CIT(A) allowed part relief to the assessee and part additions so made by the AO were sustained and the relevant findings of the Ld. CIT(A) are contained in para 7.4 & 7.5 of the impugned order which read as under:

"7.4 Ground No. 4 relates to addition of Rs. 85,25,200 (Corpus Fund) as anonymous donation u/s 115BC.

In the assessment order, the AO has noticed that Rs. 85,25,200 has been received by the appellant during the year as Corpus Fund . No details in support of the same were filed by the appellant during the appellate proceedings.

With regard to additional evidence filed in support of the same, report was called from the AO during appellate proceedings. The AO in the Remand Report after considering the submission of the appellant as reproduced at Page 20 of this appellate order has stated that Corpus Fund amounting Rs. 42,00,000 is acceptable. I agree with the submissions of the AO and addition Rs. 42,00,000 out of the total disallowance on account of Corpus Fund is deleted. However, the balance amount of Rs. 43,00,000 is confirmed as the appellant has failed to file supporting documents to establish the identity, genuineness and creditworthiness of the persons who have contributed to Corpus Fund to this content.

7.5 Ground No. 5 relates to addition of Rs. 29,08,41,007 as unexplained unsecured loan u/s 115BBC.

In the assessment order, the AO has noticed that Rs. 29,08,41,007 has been received by the appellant during the year as unsecured loan. No details in support of the same were filed during the assessment proceedings.

The provisions of Sec 115BBC of the Act relate to the anonymous donation received by any trust or institution created for religious and charitable purpose. Sec 115BBC(3) has defined anonymous donation as any voluntary contribution referred to in sub clause (iia) of clause (24) of Sec 2, where a person receiving such contribution does not maintain a record of the identity indicating the name and address of the 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.

With regard to additional evidence filed in support of the same during appellate proceedings, report was called from the AO. The AO in the remand report after considering the submission of the appellant as reproduced at Pg. 16-20 of this appellate order has discussed the evidence filed in support of each party from whom unsecured loan has been received and has found loans amounting Rs. 20,23,41,007 as acceptable. These mainly relate to corporate which are assessed by the concerned AO and one loan raised from PNB Sangrur. I agree with the submissions of the AO and addition of Rs. 20,23,41,007 out of the total disallowance of account of unexplained unsecured loan is deleted.

However, the balance amount of Rs. 8,85,00,000 is confirmed as the appellant has failed to provide/file any supporting documents to establish the identity, genuineness and creditworthiness of the person(s) who have advanced unsecured loan to the appellant."

9. Against the additions sustained by the Id CIT(A), the assessee is in appeal before us.

10. During the course of hearing, the Ld. AR submitted that the AO has invoked the provisions of Section 115BBC of the Act relating to anonymous donation while bringing to tax the amount received by the Assessee as part of the corpus donation as well as the amount received by way of unsecured loans. It was submitted that the provisions of Section 115BBC can be invoked where the total income of the assessee include any income by way of any anonymous donation. It was submitted that the term "anonymous donation" has been specifically defined under Sub-Section (3) to Section 115BBC of the Act wherein it has been provided that the anonymous donation means any voluntary contributions 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. It was accordingly submitted that the law therefore requires the maintenance of the record in terms of name and address of the persons making the contribution and other than that no other particulars as such have been prescribed as on date and in the instant case, the assessee has maintained necessary records in terms of the name and address of the persons making the contribution as well as the name and address of the persons who has provided the unsecured loans to the assessee and the same were duly submitted before the lower authorities. It was accordingly submitted that the provisions of Section 115BBC have been wrongly invoked by the AO and sustained by the Ld. CIT(A).

11. In this regard, our reference was drawn to the remand report submitted by the AO and it was submitted that it is evident that the assessee has not just maintained the particulars of the persons providing the unsecured loans but has also submitted the requisite particulars to the AO during the Remand proceedings and inspite of that the addition have been sustained by the Ld. CIT(A) and the relevant extract of the Remand Report read as under:

"9. On the basis of details furnished and on the test of abovementioned criteria, comments in respect of the unsecured loans are offered in ensuing paragraphs

1....

2....

3....

4. *Amarnath Industries Pvt. Ltd.*

As per the Balance Sheet as on 31/03/2009, the assessee has shown taken loan of Rs. 78,00,000/- from the said Company. As per the details furnished, the said company is having PAN AALFA2995D The transaction has been confirmed however bank statement & details of the AO, Balance Sheet etc has not been enclosed.

In view of the details furnished, the loan shown in the name of the said person cannot be considered as explained.

5....

6. *International Eletron Devices Ltd.*

As per the Balance Sheet as on 31/03/2009, the assessee has shown taken loan of Rs. 8,00,00,000/- from the said Company. As per the details furnished, the said company is having PAN AAACI0075N The transaction has been confirmed, however bank statement & details of the AO, Balance Sheet etc has not been enclosed.

In view of the details furnished, the loan shown in the name of the said person cannot be considered as explained.

7. *Real Gas & Chemical Pvt Ltd.*

As per the Balance Sheet as on 31/03/2009, the assessee has shown taken loan of Rs. 5,00,000/- from the said Company. As per the details furnished, the said company is having PAN AABCR0281L The transaction has been confirmed. However, details of the AO & Balance Sheet etc has not been enclosed.

In view of the details furnished, the loan shown in the name of the said person cannot be considered as explained.

8....

9....

10. *Xpert Distributors Pvt Ltd.*

As per the Balance Sheet as on 31/03/2009, the assessee has shown taken loan of Rs. 2,00,000/- from the said Company. As per the details furnished, the said company is having PAN AAACX0392D. The transaction has been confirmed. However, details of the AO & Balance Sheet etc have not been enclosed.

In view of the details furnished, the loan shown in the name of the said person cannot be considered as explained."

12. It was submitted that the addition of Rs. 8,85,00,000/- has been sustained by the CIT(A) holding that the assessee has failed to provide supporting documents to establish the identity, genuineness and creditworthiness of the persons who have advanced unsecured loans to the assessee. It was reiterated that Section 115BBC which has been invoked by the AO for making the addition and which has been similarly invoked by the Id CIT(A) while sustaining the

addition mandates the maintenance of the record in terms of name and address of the persons making the contribution and other than that no other particulars as such have been prescribed as on date. It was submitted that in respect of all four persons which have provided the unsecured loan to the assessee, the assessee has maintained the necessary particulars and the same have been submitted before the lower authorities. It was submitted that in respect of Amarnath Industries Pvt. Ltd. from whom the assessee has taken loan of Rs. 78,00,000/-, its name, address, the PAN particulars have been duly furnished and besides that, the said company has also submitted the confirmation of advancing the funds to the assessee. Similarly, in respect of International Eletron Devices Ltd. from whom the assessee has taken loan of Rs. 8,00,00,000/-, its name, address, the PAN particulars have been duly furnished and besides that, the said company has also submitted the confirmation of advancing the funds to the assessee. Similar, in respect of Real Gas and Chemicals Pvt Ltd from whom the assessee has taken loan of Rs. 5,00,000/- and in respect of Xpert Distributors Pvt Ltd from whom the assessee has taken loan of Rs 2,00,000/-, their name, address, the PAN particulars have been duly furnished and besides that, these companies have also submitted the confirmation of advancing the funds to the assessee. It was submitted that the AO is himself accepting the said fact in the remand report that the assessee has provided the name and address, PAN and confirmation of these persons therefore in such circumstances, how can the unsecured loans be called as anonymous donation and provision of Section 115BBC of the Act be invoked and the additions sustained by the Id CIT(A). It was submitted that the Id CIT(A) has merely gone by the remand report and even as per the remand report, the assessee has made duly compliance and the provisions of section 115BBC have been wrongly invoked and the addition so made be directed to be deleted.

13. Further, regarding the corpus donation, our reference was again drawn to the remand report submitted by the AO and the relevant extract thereof reads as under:

"10. As regards the donations to the corpus fund amounting to Rs. 85,25,200/- added by the AO as anonymous donation, the assessee found to have furnished a list of 19 persons vide submission dt. 18/04/2016. Ongoing through the list, it is seen that the assessee has given names, addresses & PAN of these persons. However, it could not file confirmations in many cases. On the basis of details furnished, the credits appearing in the name of these person which are acceptable & which are not acceptable are depicted in tabular format as below

Donations acceptable		Donations not acceptable	
Name	Amount in Rs.	Name	Amount in Rs.
Bassi Steel Ltd.	500000/-	Mr. P.K.Jain	100000/-
Good Earth Infra. Pvt. Ltd.	200000/-	Mr.Anil Kohli	100000/-
Goyal Electric Co	1000000/-	Mr. Rajesh Garg	100000/-
Mandi Alloys Pvt. Ltd.	500000/-	Mr. Sanjay Singla	100000/-
Mr. Rajesh Singla & Rashmi	100000/-	Mr. Rajender jain	100000/-
Mr. Rajiv Goyal	100000/-	Mr. Sanjay Singla	1000000/-
Mr. Rajesh Singla	1000000/-	Mrs. Surekha Thukral	200000/-
Mrs. Alka Goyal	100000/-	New Tech Engineers	2500000/-
Mrs. Krishna Rani	200000/-	Jain Furnishing Pvt Ltd	100000/-
Om Sai Ram Industries	500000/-		
TOTAL	4200000/-		4300000/-

In respect to fees received & misc. receipts, it is seen that the assessee is engaged in the activity of imparting education in various streams. As such, it is obvious that it would receive fees from students. Similarly, misc., receipts would be generated. Therefore, such receipts cannot be considered as donations."

14. It was submitted that the reasons why the addition of Rs. 43,00,000/- has been sustained by the CIT(A) is basis the remand report wherein the AO has held that the assessee has only given the name, address and PAN of these persons. It was reiterated that the AO is himself accepting the fact that the assessee has provided the name and address and PAN of these persons therefore in such circumstances, how can the donation be called as anonymous donation and provision of Section 115BBC of the Act be invoked. Further our reference was

drawn to the details of the donation so received which is contained at page 193 of the assessee's paper book and the contents thereof reads as under:

Donations Received					
For the FY 2008-09					
S. No.	Donor Name	PAN	Amount	Mode of Payment	Cheque No.
1	Mr. P.K.Jain	AEPJ8926H	100,000	Cheque	636168
2	Bassi Steel Ind.	AABC2610D	500,000	Cheque	837404
3	Goodearth Infrastructure Development Ltd.	AACCG6085C	200,000	Cheque	467857
4	Goyal Electric Co.	ABGPL7851D	1,000,000	Cheque	102367, 102363
5	Mandi Alloys P Ltd.	AADCM9372M	500,000	Cheque	125370
6	Mr. Anil Kohli, # 40, Sector-12, Panchkula	ABCPK6535D	100,000	Cheque	641548
7	Mr. Rajesh Garg, House no. 147, Sector-8A, Chandigarh	ABYPG9212D	100,000	Cheque	654411
8	Mr. Rajesh Singla & Rashim Singla	ACFPS0978N	100,000	Cheque	892301
9	Mr. Rajiv Goyal, House no. 64, Sector-9A, Chandigarh	AATPG7232M	100,000	Cheque	543681
10	Mr Sanjay Singla, #6458/1, Lahori Gate, Patiala	ACFPS0976C	100,000	Cheque	892004
11	Mr. Rajender Jain, #3698, Sector-46C, Chandigarh	AASPI0670K	100,000	Cheque	992945
12	Mr. Rajesh Singla, #6458/1, Lahori Gate, Patiala	ACFPS0978N	1,000,000	Cheque	965753
13	Mr. Sanjay Singla	ACFPS0976C	1,000,000	Cheque	988007
14	Mrs. Alka Goyal, House no. 64, Sector-9A, Chandigarh	AATPG7287Q	100,000	Cheque	413439
15	Mrs.Surekha Thukral, #252/2, Sector-45A, Chandigarh	ABLPT5298H	200,000	Cheque	10914
16	Mrs. Krishna Rani	AAPPR6281B	200,000	Cheque	972197
17	New Tech Engineers	APNPK1046E	2,500,000	Cheque	RTGS
18	Om Sai Ram Industries	AABCE0631K	500,000	Cheque	948018
19	Jain Furnishing Pvt Ltd, SCO-16, Sector-7C, Chandigarh	AAACJ3894Q	100,000	Cheque	144627
	Total		8,500,000.00		

15. It was submitted that as evident from the above details in respect of the addition sustained by the Id CIT(A) to the extent of Rs. 43,00,000/-, the assessee has provided the necessary details in terms of name, address and PAN of the persons making the donation and mode of payment which is through cheque towards the corpus fund. It was submitted that in respect of Shri Sanjay Singla who has donated an amount of Rs. 1,00,000/- as well as 10,00,000/- vide through separate cheque, his confirmation is already available on record at page 213 of the assessee's paper book and which was also submitted before the AO and

even going by reasoning adopted to by the AO, the addition cannot be sustained.

16. Per contra the Ld. DR has relied on the orders of the lower authorities.

17. We have heard the rival contentions and perused the material available on record. As per the AO, the assessee is an institution referred to in Section 11 being one that has been granted registration under section 12A of the Act and in absence of verification, the corpus funds and unsecured loans shown in the balance sheet takes the form of anonymous donation and since the assessee did not produce the record of the identity of persons making such contribution and other details as prescribed, a sum of Rs. 29,93,66,207/-, comprising of the corpus fund of Rs. 82,25,200/- and unsecured loan of Rs. 29,08,41,007/-, was treated as anonymous donation and was brought to tax invoking provisions of Section 115BBC of the Act. During the appellate proceedings, the assessee furnished additional evidence which were subject matter of verification by the AO and taking into consideration the remand report so submitted by the AO, the Id CIT(A) has sustained the anonymous donation under Section 115BBC of the Act to the extent of Rs 43,00,000/- out of corpus donation of Rs. 82,25,200/- and Rs. 8,85,00,000/- out of unsecured loans of Rs. 29,08,41,007/- which is under challenge by the assessee before us.

18. The provisions of Section 115BBC which are subject matter of consideration for the adjudication of the present dispute, as relevant for the impugned assessment year, read 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 (iiiae) 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 (230) 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 on the income by way of any anonymous donation, at the rate of thirty per cent; and
- (ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause(i).

(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. As can be seen from the perusal of the aforesaid provisions, Section 115BBC can be invoked where the total income of the assessee, being a person in receipt of income on behalf of the trust or institution referred to in Section 11, includes any income by way of any anonymous donation. The term "anonymous donation" has been specifically defined under Sub-Section (3) to Section 115BBC of the Act as any voluntary contributions 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. Besides maintenance of the record in terms of name and address of the persons making such voluntary contribution, nothing has been brought on record by the AO as well as by Id CIT(A) or by the Id CIT/DR even during the course of hearing before us as to what other particulars have been prescribed in the statute and/or Rules by way of any subsequent amendment, notifications etc. The Id AR has also made a statement at the Bar that other than the maintenance of the record in terms of name and address of the persons making the contribution, no other particulars as such have been prescribed as on date

of the present hearing. Therefore, in light of the aforesaid discussion, in order to classify the amount so received by the assessee as anonymous donation and invocation of provisions of Section 115BBE, there has to be a finding by the AO that the assessee has not maintained the record of the identity of the person indicating the name and address of the person making such voluntary contribution and such a finding has to be recorded in respect of the each of the transactions of donations so received by the assessee during the financial year and for arriving at such finding, necessary records so maintained by the assessee need to be called for and after examination thereof, the finding has to be recorded.

20. In the instant case, on perusal of records, we find that both in respect of corpus donations and unsecured loans, the AO has invoked the provisions of Section 115BBC of the Act. Whether unsecured loans can be reclassified as voluntary donation or not is a subject matter of separate examination and since no arguments have been advanced in this regard by either parties we are limiting ourselves in expressing any views in this regard and restricting our discussion on the assumption that such unsecured loans are in nature of voluntary contribution and basis that, whether the assessee has maintained the necessary records in terms of establishing the identity of the person making such voluntary contribution or not.

21. In respect of Amarnath Industries Pvt. Ltd. from whom the assessee has received an amount of Rs. 78,00,000/-, in respect of International Eletron Devices Ltd. from whom the assessee has received an amount of Rs. 8,00,00,000/-, Real Gas and Chemicals Pvt Ltd from whom the assessee has taken an amount of Rs. 5,00,000/- and in respect of Xpert Distributors Pvt Ltd from whom the assessee has received an amount of Rs 2,00,000/-, the assessee has furnished and thus maintained the necessary records in terms of establishing the identity of these entities in terms of name, address and the PAN particulars and the same is

evident from the remand report so submitted by the AO and therefore, the amount so received from these entities cannot be termed as anonymous as the identity of these entities have been duly established and the provisions of Section 115BBC cannot be invoked and the action of the AO and that of the Id CIT(A) in sustaining the said action is hereby set-aside.

22. Similarly, in respect of corpus donation received from Mr P.K Jain, Mr Anil Kohli, Mr Rajesh Garg, Mr Sanjay Singla, Mr Rajender Jain, Mrs Sureka Thukral, M/s New Tech Engineers and M/s Jain Furnishing Pvt Ltd, the assessee has furnished and thus maintained the necessary records in terms of establishing the identity of these individuals/entities in terms of name, address and the PAN particulars and the same is evident from the remand report so submitted by the AO and therefore, the amount so received from these individuals/entities cannot be termed as anonymous donations as the identity of these individuals/entities have been duly established and the provisions of Section 115BBC cannot be invoked and the action of the AO and that of the Id CIT(A) in sustaining the said action is hereby set-aside.

23. In the result, the addition of Rs. 43,00,000 and addition of Rs. 8,85,00,000/- is hereby directed to be deleted as there is no basis to bring the same to tax by invoking the provisions of Section 115BBC and thus, ground no. 2 and 3 of the assessee's appeal are allowed.

24. In Ground No. 4, the assessee has challenged the sustenance of addition of Rs. 58,96,441/- out of total addition of Rs. 68,90,724/- made on account of unexplained liabilities invoking provisions of Section 68 of the Act.

25. In this regard, briefly the facts of the case are that during the course of assessment proceedings, the AO on perusal of the balance sheet filed by the Assessee observed that the assessee has shown current liability of Rs. 68,90,274/- which include creditors for capital items but the assessee has merely furnished

the name of the parties but has not given any ledger or details of such parties leave aside furnishing of documentary evidence to prove identity, genuineness and creditworthiness of the outstanding liability and since the assessee has failed to discharge the necessary onus, the liability amounting to Rs. 68,90,274/- was treated as bogus liability and addition under Section 68 of the Act was made in the hands of the assessee.

26. Being aggrieved, the assessee carried the matter in appeal before the Ld. CIT(A) who has sustained the part addition and against the addition so sustained, the assessee is in appeal before us.

27. During the course of hearing, the Id AR drawn our reference to the findings of the Ld. CIT(A) wherein the Ld. CIT(A) referred in to the remand report and has held that the deposit from third parties amounting to Rs. 9,94,283/- has been treated as explained and the balance amount of Rs. 58,96,441/- was treated as unexplained credit and the same was confirmed.

28. In this regard, our reference was drawn to the findings of the AO in the Remand Report and the contents thereof read as under:

"12. The AO also made addition in respect of current liability at Rs. 68,90,274/- as unexplained cash credits u/s 68 of the Act. On going through the details available in the Balance Sheet as on 31/03/2009, it is seen that the liabilities are on account of expenses debited but remained payable, deposits accepted, Govt. Dues payable etc. Apart from the deposits accepted, other amounts have appeared from the expenses debited to P & L account & as such cannot be an unexplained cash credit as envisaged u/s 68 of the Act. Therefore, other than the deposits appearing in the following names:

Oasis Construction	- Rs. 4,67,908/-
Setya Builders	- Rs. 3,99,392/- &
MM Enviro	<u>Rs. 1.26.983/-</u>
TOTAL	- Rs. 9,94,283/-

Other amounts cannot be considered as unexplained cash credits u/s 68 & doesn't deserve to be added."

29. It was submitted that out of total current liability of Rs. 68,90,274/-, only an amount of Rs. 9,94,283/- in respect of three parties has been held as unexplained cash credit by the AO and the Ld. CIT(A) has wrongly understood the said numbers as explained and the remaining amount as unexplained. It was further submitted that even in respect of these three parties, the amount represent the retention/security deposit which the assessee has retained against the running construction and relates bills presented by these parties from time to time and our reference was drawn to the balance sheet where these amounts have been shown payable as security deposits at APB page 138 and the bank book available at APB Pages 89-120 where the payments and retention amount out of running bills have been reflected against these parties. It was submitted that the said amounts were retained as per the terms of the respective contracts and which were lateron released after satisfactory completion of the construction and relates activities. It was submitted that where the whole of the construction expenses which have been shown under capital work-in-progress and which has been capitalized subsequently has not been doubted, there is no basis for the AO and the Id CIT(A) to disallow these amounts which have been shown as payable at the end of the financial year and therefore in respect of these three parties as well, the addition has been wrongly made and sustained by the Ld. CIT(A) and therefore the necessary relief be provided to the assessee.

30. Per contra, the Ld. DR has relied on the orders of the lower authorities.

31. We have heard the rival contentions and purused the material available on record. We find merit in the contention advanced by the Id AR that the AO in his remand report has held the amount of Rs. 9,94,283/- in respect of three parties, namely Oasis Construction, Setya Builders and MM Envro as unexplained and the remaining amount has been found explained and therefore, where the Id CIT(A) has relied on the findings of the AO in the remand report, the addition

to the extent of Rs 9,94,283/- is required to be sustained as against the figure of Rs. 58,96,441/-. Further, even in respect of Rs 9,94,283/- payable to these parties are concerned, we agree with the explanation of the Id AR that the amount represent the retention/security deposit which the assessee has retained as per the terms of the respective contracts against the running construction and relates bills presented by these parties from time to time and where the whole of the construction expenses shown under capital work-in-progress has not been doubted, there is no basis for the AO and the Id CIT(A) to sustained the disallowance of these amounts which have been shown as payable at the end of the financial year. In the result, the whole of the addition so made is directed to be deleted and the ground of appeal is allowed.

32. In light of the aforesaid, other grounds of appeal have become academic and the same are dismissed as infructious.

33. In the result, the appeal of the assessee is partly allowed.

Order pronounced in the open Court on 07/01/2025.

Sd/-

परेश म. जोशी
(PARESH M. JOSHI)
न्यायिक सदस्य / JUDICIAL MEMBER

Sd/-

विक्रम सिंह यादव
(VIKRAM SINGH YADAV)
लेखा सदस्य/ ACCOUNTANT MEMBER

AG

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. आयकर आयुक्त (अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
6. गार्ड फाईल/ Guard File

आदेशानुसार/ By order,
सहायक पंजीकार/ Assistant Registrar