

IN THE INCOME TAX APPELLATE TRIBUNAL, JODHPUR BENCH 'DB',
JODHPUR

BEFORE: DR. MITHA LAL MEENA, AM & DR. S. SEETHALAKSHMI, JM

ITA No. 268/JODH/2024
Assessment Year : 2017-18.

Shri Sheshavtar 1008 Shri KallajiVedpith Evam Shodh Sansthan, Nimbahera, Chittorgarh.	Vs.	ITO Exemption Ward, Udaipur.
PAN/GIR No. AADTS9149K		
Appellant		Respondent

Assessee by : Shri Sunil Surana, CA &
Shri Rahul Parmanandanmi, CA.

Revenue by : Shri Karni Dan, Addl. CIT, Sr.DR

Date of Hearing: 05/02/2025

Date of Pronouncement: 01/04/2025

ORDER

PER DR. S. SEETHALAKSHMI, J.M.

This is an appeal filed by the assessee against the order of Id. CIT (Appeals), National Faceless Appeal Centre (NFAC), Delhi dated 26.03.2024 passed under section 250 of the I.T. Act, 1961, for the assessment year 2017-18. The assessee has raised the following grounds of appeal :-

1. That the Id. CIT Appeals has grossly erred in treating the donations received to the tune of Rs. 1,14,06,043/- as revenue instead of corpus and in treating the donations out of the same to the extent of Rs. 95,12,940/- as taxable under section 115BBC at the rate 30 percent though the same are not taxable and the same deserve to be exempt. This is quite arbitrary, unjustified, illegal and not based on facts.
2. That on the facts and in the circumstances of the case, the Id. CIT Appeals has grossly erred in not allowing Investment made in the university building of Rs. 44,13,515/- as

- application of income which is quite arbitrary, unjustified, illegal and not based on the facts.
3. That on the facts and in the circumstances of the case, the Id. CIT Appeals has grossly erred in not allowing claim of purchase of books and periodicals of Rs. 12,825/- which is quite arbitrary, unjustified, illegal and not based on facts.
 4. That on the facts and in the circumstances of the case, the Id. CIT Appeals has grossly erred in interpreting provisions of section 115BBC(2) by holding that (refer para 7.5 and 7.6 of appeal order) the provisions of the said section only applies to religious trust and trust has to maintain records of identity of done. Whereas sub clause (b) to section 115BBC(2) clearly states that the said section not apply to “(b) Any trust or institution created or established wholly for religious and charitable purpose other than any anonyms 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”. Therefore, confirming that the donation received are taxable u/s 115BBC is quite unjustified, illegal and not based on the provisions of Income-tax Act, 1961.
 5. That on the facts and in the circumstances of the case, the Id. CIT (A) has confirmed charge of interest under section 234B and under section 234D of the Income Tax Act, 1961 amounting to Rs. 1182918 and Rs. 4370 respectively which is quite arbitrary, unjustified, illegal and not based on facts.
 6. That on the facts and in the circumstances of the case, the Id. CIT Appeals has grossly erred in dishonoring circular no. 14 dtd. 11th April, 1955 issued by the Central Board of Direct Taxes (CBDT). The relevant extract is reproduced as under : “Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him.”. Hence the Id. CIT Appeal has grossly erred in disallowing the legal and legitimate claim of the assessee only for the reason that it is being claimed during the assessment. Which is quite arbitrary, unjustified and against the law of natural justice.
 7. That during the year the sansthaan has paid Rs. 1.00 crore to Rajasthan State University as endowment fund and this is application of income by the sansthaan. The appellant request your honour to kindly allow us deduction of the aforesaid application of income while calculating taxable income.
 8. That the appellant craves leave, to add, to amend, modify, rescind, supplement, or alter any of the grounds stated herein above, either before or at the time of hearing of this appeal.

2. The brief facts of the case are that the assessee is a religious and charitable trust, registered under Section 12AA of the Income Tax Act, 1961. The assessee filed its return of income for the assessment year 2017-18 electronically on 25.10.2017 in ITR-7 declaring total income Rs. Nil which was processed under section 143(1) of the IT Act, 1961. The accounts of the trust are audited and audit report in Form 10B has been filed electronically on 25.10.2017 by the assessee. The case of the assessee was selected for scrutiny through CASS and notice under section 143(2) dated 17.08.2018 was issued electronically by then Assessing Officer, Ward Exemption, Udaipur on 17.08.2018, which was duly served. Subsequently, notice under section 142(1) was issued to the assessee electronically on 09.07.2019.

2.1 Due to change of incumbent, further notices under section 142(1) were issued by the AO. In response thereto, the assessee filed the requisite details electronically, print outs of which are placed on record. Books of accounts along with supporting bills and vouchers were produced by the A/R, which were put to test check.

2.2 The details filed by the assessee have been examined. The assessee is registered as Society under the Rajasthan Society Registration Act, 1958 vide Registration No. 94/Chittorgarh/2002-2003 dated 16.10.2002. The assessee is also registered u/s 12AA of the IT Act, 1961 vide order no. 101 dated 08.04.2004 (at register no. 06/12) by the Commissioner of Income-tax, Udaipur. The assessee has been granted approval under section 80G of the IT Act, 1961 vide order No. 1185 dated 29.09.2008 of the Commissioner of Income-tax, Udaipur. The assessee is also notified u/s 35AC of the I.T. Act, 1961 for the FY 2014-15, 2015-16 and 2016-17 vide order dated 12.12.2014 of the Finance Ministry. The trust is engaged in the work of

imparting education of related to Vedas etc. Besides, the trust also looks after the temple in the name of Shri Sheshavtaar 1008 Shri Kallaji Maharaj.

2.3 As per the return of income and audit report filed by the assessee, the assessee trust was in receipt of Rs. 43,93,697/-, out of which Rs. 41,03,070/- has been incurred as Revenue Expenditure and Rs. Nil as Capital expenditure.

2.4 During assessment proceedings, the assessee furnished copies of balance sheet, Income & Expenditure account as well as Receipt and payment account on 03.08.2019. The Assessing Officer noted that the Trust had received total receipts of Rs. 1,59,10,740/- during the financial year, out of which Rs. 1,14,06,043/- were corpus donations. The AO observed that Rs. 1,00,13,516/- of these corpus donations were anonymous. The AO, therefore, called upon the Trust to explain why the anonymous donations should not be taxed under section 115BBC(1) of the IT Act. The assessee vide its letter dated 21.10.2019 submitted the query-wise reply which has been discussed by the AO at pages 5 to 41 of the Assessment Order. The AO was of the view that since the anonymous donations exceeded 5% of the total donations received by the Trust, they were liable to be taxed under the provisions of section 115BBC(1), which governs the taxability of anonymous donations. The AO further noted that the Trust was registered under section 80G of the Act, which applies to charitable institutions, and argued that the Trust's registration under this section disqualified it from the exemption under section 115BBC(2)(b) of the Act, which provides an exclusion of religious institutions from the tax on anonymous donations.

2.5 The AO emphasized that the Trust's Charitable activities, including the operation of the university, made it ineligible for this exclusion. In response to the AO's finding, the Trust argued

that the anonymous donations should not be taxed under section 115BBC(1) and that the corpus donations for specific purposes, such as the development of the Gaushala Building should be exempt from taxation. The Trust also contended that the income applied for charitable and religious purposes, including its spiritual and educational activities, should be allowed as an application of income under section 11 of the Act. The AO, however, while completing the assessment, assessed the total income of Rs. 1,07,77,985/- to be taxed @ MMR which includes income taxable @ 30% i.e. u/s 115BBC as against Rs. Nil declared in the return of income.

3. Aggrieved by the order of AO, the assessee preferred appeal before the Id. CIT (Appeals). The CIT(A), in its order, upheld the AO's decision to tax the anonymous donations under Section 115BBC(1), confirming that the donations exceeded the threshold prescribed under the section. The CIT(A) also agreed with the AO's interpretation of the Trust's status as a charitable institution registered under Section 80G, and ruled that the Trust was not eligible for the exclusion from tax on anonymous donations provided under Section 115BBC(2)(b) due to its religious nature. The CIT(A) also rejected the Trust's claim that donations made for specific purposes, such as the establishment of the Vedic university, should be treated as corpus donations.

Now the assessee has come in appeal before the Tribunal, on the grounds mentioned herein above.

4. Before us, the Id. A/R of the assessee submitted the ground-wise written submissions in support of his case, which are being reproduced hereunder :

“ 1. **Ground No.1 and 4**

(1) That the Ld. CIT Appeals has grossly erred in treating the donations received to the tune of Rs1,14,06,043/- as revenue instead of corpus and in treating the donations out of the same to the extent of Rs 95,12,940 as taxable under section 115BBC at the rate 30 percent though the same are not taxable and the same deserve to be exempt. This is quite arbitrary, unjustified, illegal and not based on facts.

(4) That on the facts and in the circumstances of the case, the Ld CIT Appeal has grossly erred in interpreting provisions of Section 115BBC(2) by holding that (refer para 7.5 and 7.6 of appeal order) the provisions of the said section only applies to religious trust and trust has to maintain records of identity of donee. Whereas sub clause (b) to section 115BBC(2) clearly states that the said section not apply to “(b) Any trust or institution created or established wholly for religious and charitable purpose 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”. Therefore confirming that the donation received are taxable u/s 115BBC is quite unjustified, illegal and not based on the provisions of Income-tax Act, 1961.

Submission

1.1 The Assessee, a trust established for both charitable and religious purposes, respectfully submits this appeal against the order of the CIT (A), which upheld the Assessing Officer's (AO) decision to apply Section 115BBC of the Income Tax Act, 1961 (the "Act") to the anonymous donations received by the Assessee. The Assessee asserts that it is a mixed-purpose trust, and as per the provisions of Section 115BBC(2)(b), anonymous donations received by such a trust are not liable to be taxed. The Assessee further contends that the CIT (A) erred in its findings and failed to apply the correct interpretation of the provisions of the Act.

1.2 The assessee in its several replies/explanations placed before the Assessing Officer, asserted that the assessee was both a religious as well as charitable trust, and hence it fell within the exception set out in Section 115BBC(2)(b) of the Act. The assessee also pointed out that there were several places of worship within its premises, which evidenced that the assessee was a trust with mixed objects i.e., both charitable and religious. Insofar as the certificate held by the assessee under Section 80G of the Act was concerned, we submit that the term 'charitable purpose' as defined in Explanation 3 below Section 80G, excluded only those entities whose purpose wholly or substantially was religious in nature. The entities having mixed charitable and religious purpose were not excluded.

We also submit that the Assessing Officer's interpretation that the registration under Section 80G was available only to institutions existing solely for charitable purpose was misplaced. Please refer to Section 80G(2)(b) of the Act, under such provision any sum paid by the assessee, to be a place of a renowned public worship, such as Temple, Mosque, Gurudwara, Church etc., was notified by the legislature to qualify as donation eligible for deductions under Section 80G of the Act.

The Appellant submits that Section 80G(5B) of the Act specifically prescribes a limit on the expenditure for religious purposes, stating that such expenditure should not exceed 5% of the total income of the trust. This provision effectively contradicts the Assessing Officer's stance, which implied that Section 80G applies only to trusts that exist solely for charitable purposes. The Assessee, therefore, asserts that in cases where a trust or institution is established for both charitable and religious purposes, and the expenditure on religious activities does not exceed the prescribed limit of 5% of the total income, such trust or institution remains eligible to obtain a certificate under Section 80G of the Act. Hence, the Assessee contends that the application of Section 80G is not restricted to purely charitable trusts but extends to mixed-purpose trusts, provided the religious expenditure is within the statutory limits.

The Appellant has also submitted detailed accounts of the expenses incurred for religious purposes, demonstrating that the expenditure on religious activities was minimal and well within the prescribed limits. Based on this factual material, the Assessee asserts that it does not exist wholly or substantially for religious purposes but rather operates with a mixed-objective framework, encompassing both charitable and religious objectives. Therefore, the Assessee firmly contends that it meets the conditions set out under Section 80G(5B) of the Act, which allows for the inclusion of religious expenditure up to a limit of 5% of total income.

Consequently, the Assessee's registration under Section 80G remains valid, as the trust fulfils the statutory requirements. Furthermore, as the trust exists for both charitable and religious purposes, the Assessee is entitled to benefit from the exclusion provided under Section 115BBC(2)(b) of the Act. This provision explicitly applies to trusts and institutions established for both charitable and religious purposes, subject to the compliance with the relevant conditions, which the Assessee has duly met. Therefore, the Assessee asserts that it is eligible for the exclusion from taxation on anonymous donations under Section 115BBC(2)(b) of the Act.

1.3 We most humbly submit that the present matter is squarely covered by the decision of the Hon'ble Bombay High Court in the case of **CIT Exemption, Mumbai vs. Shree Sai**

Baba Sansthan Trust-Shirdi, as per the order passed by the Hon'ble Court, which was remanded back to the Hon'ble High Court by the Hon'ble Supreme Court of India. The relevant findings in this case can be found in **Para 33 and Para 35** of the judgment, which are reproduced as follows for your kind reference. Copy of order is enclosed at Page no.115-148 of paper book.

Para 33. The entire thrust of the submissions on behalf of the Revenue is referring to the provisions of Section 80G, as applied by the Assessing Officer to contend that once the respondent / assessee is registered under Section 80G, it would only be a charitable institution and would fall outside the provision of sub-section 2 (b) of Section 115BBC of the Act. We are afraid to accept such contentions in as much as, the provisions of Section 80G cannot be intermixed, from what is provided by Section 115BBC (2)(b) of the Act. Both the provisions stand compartmentalized and are independent of each other. It would be too far-fetch to reach to a conclusion that merely the assessee being registered under Section 80G of the Act, it cannot be a religious trust, so as to fall outside the purview of Section 115BBC (2)(b) of the Act. Such an approach would amount to an inappropriate reading of the provisions of Section 80G as also Section 115BBC (2) (b). The very foundation of the operation and effect of Section 115BBC (2) (b) is a conclusive ascertainment, and a factual determination of a trust being religious and charitable as ascertained from the contents of the trust deed. Once such requirement is satisfied, any anonymous donation received by such trust would be eligible / entitled to the benefit of an exemption from tax, by the applicability of sub-section 2(b) of Section 115BBC. On the other hand, Section 80G certainly lays down quantum test that is the amounts spent for its purposes to ascertain whether the charitable trust is eligible for registration or not, which is clear from the provisions of Section 80G (5B) of the Act as noted here in above. (Refer page no.146. of paper book).

Para 35 “..... we are of the clear opinion that the assessee certainly is a religious and charitable trust, hence, the assessee rightly and legitimately claimed an entitlement under sub-section 2(b) of Section 115BBC of the Act. Such entitlement of the assessee is rightly recognized by the CIT (A) and the Tribunal. (Refer page no.148 of paper book)

Application to the Present Case:

In light of the above judgment, it is submitted that the facts of the present case are identical, and therefore, the Assessee in the present case is also entitled to the exemption under Section 115BBC(2)(b) of the Income Tax Act. We emphasize the following points:

A. The Trust is both religious and charitable, as evidenced by the contents of the trust deed and its activities. B. Given the Trust's eligibility under Section 115BBC(2)(b) for exemption on anonymous donations, we submit that the claim for exemption is in line with the legal precedent set by the Hon'ble Bombay High Court. C. Independent Operation of Section 115BBC(2)(b) and Section 80G: The mere registration under Section 80G does not preclude the Trust from being classified as eligible for the benefits under Section 115BBC(2)(b). As held by the Hon'ble High Court, these provisions are distinct and independently applicable.

1.4 The Trust is situated at Shri Kallaji Mandir, where all religious and charitable activities are carried out. As per the provisions of Sub-Section (2) of Section 115BBC, the provisions of Sub-Section (1) of Section 115BBC, which govern the taxability of anonymous donations, are not applicable to any anonymous donation received by a trust or institution that is created or established wholly for religious and charitable purposes. This is clearly applicable in the case of the Assessee Trust.

It has been confirmed by the Assessing Officer that the Assessee Trust is indeed a religious and charitable trust, a position that has been further affirmed by the CIT(A) at Para no. 7.5 in the appeal order. Refer page no.33 of Paper Book.

The nature of the trust, being essentially and predominantly religious and charitable, is a matter of fact. The Trust operates a shrine (temple), where traditional forms of worship are conducted by devotees. All the attributes of religious activities, including rituals, poojas, and ceremonies, are performed regularly, particularly on different festivals, as per established practices.

1.5 Reliance is also placed on following judgments :

1.5.1 In lordship of Bombay High Court 2024 ITL 585: (2024) 338 CTR 632 Ayappa Seva Samgha Bombay v DCIT Central Circle-5(1) Mumbai. (copy of order enclosed kindly refer page no.149-153 of paper book) The hon'ble court held as under:-

Para 9 In the instant case, the assessee is established for religious and charitable purposes and the anonymous donation was not received with specific direction that such donation is for any university or other educational institution, or any hospital or other medical institution run by the assessee-trust. Therefore, the Assessing Officer will not be justified in making the addition even by invoking the provisions of section 115BBC (1). To Strengthen our view, we relied on Hon'ble Delhi High Court in the matter of [2015] 62

taxmann.com 358 (Del.) CIT (E) v. Bhagwan Shree Laxmi Naraindham Trust, [2022]
143 taxmann.com 281 (Mum. - Trib.) DCIT v. Jayananad Religious Trust.

1.5.2 Hon'ble ITAT Delhi in case of Satyug Darshan Trust held as follows:

Section 115BBC of the Income Tax Act, 1961 — Anonymous donation — Donations could not be taxed by invoking the provisions of section 115 BBC as assessee trust was established for charitable and religious purposes and anonymous donation was received by it without any specific direction that such donation was for any university or other educational institutions or any hospital or other medical Institutions run by assessee trust — Income tax Officer vs. Satyug Darshan Trust. (copy of order enclosed kindly refer page no.174-176 of paper book)

1.5.3 Hon'ble Delhi High Court CIT v. Bhagwan Shree Laxmi Naraindham Trust

Assessee was a trust registered under section 12A. It was mainly involved in imparting of spiritual education through lectures/samagam and in distribution of medicines and clothes to needy and destitute. During assessment proceedings, Assessing Officer found that assessee received certain amount as anonymous donation. Assessing Officer took a view that assessee trust was engaged in spreading spirituality and since section 115BBC only exempted religious trust, such anonymous donations would not be exempt from tax.

HELD - religious activity in context of Hindu religion is not confined to activities incidental to place of worship like a temple and, therefore, charitable activities described by assessee as having been undertaken by it during relevant year could be included in broad conspectus of Hindu religious activity.

HELD - consequently, anonymous donations received by assessee would qualify for deduction under section 115BBC(2)(a).

(copy of order enclosed kindly refer page no.177-181 of paper book)

1.5.5 Hon'ble ITAT Mumbai in case of Gurudev Siddha Peeth (2015 ITL 641), 173 TTJ 771

HELD - amount of offerings put by various devotees in donation boxes of assessee-trust, a sidhpeeth/deity, could not be treated as anonymous donations taxable under section 115BBC merely on ground that assessee had not maintained any records of such offerings.

(copy of order enclosed kindly refer page no.194-197 of paper book)

1.6 We also submit that donations from gadi and gupt donations are towards corpus. Many people pay donation on Gadi and this type of donation is collected in boxes for which Identity of donor is not at all verifiable. It is collection like any other temple such as sanwaliya ji or charbhujaji. It included in corpus fund because these boxes are specifically made for corpus like Gaushala or Building and accordingly funds are being treated.

Procedure for opening collection boxes and about amount from gadi is as follows:-Shri KallajiVedpeeth and ShodhSansthan situated in Shri Kallaji mandir where from for all religious and cultural activities governed. Except Mandir collection boxes are also placed in meditation hall at proposed kallaji Vedic vishvavidyalaya. These all bhandar boxes opens on every Shukla pakshashthmi every month. This procedure is followed through out the year.

Some amount has also been received on gadi (gadhi). The Chal vigrah of Shree Kallaji Maharaj according to the prayer of the devotees for Chal mandir darshanarth for service worship and to alleviate the sufferings of the oppressed devotees are established here. This is called gadi (gadhi) The amount given by the devotees in the said programs is called the amount received from gadi (gadhi). Which ultimately becomes a part of bhandar but deposited separately.

Appellant trust has received Corpus Fund and utilized for Specific Purpose, therefore treating the Corpus Donation as Voluntary donation without any basis and Computing the Income on much higher side deserves to be reduced substantially.

1.7 In addition to the above, we respectfully submit that if the contention of the Ld. AO and CIT(A) is accepted, it would effectively render it impossible for religious trusts to use their funds for charitable purposes. According to the AO, if a religious trust utilizes its funds for charitable activities and receives anonymous donations at the temple, such donations would be taxable under section 115BBC. This interpretation, if upheld, would undermine the very objective of the legislature in promoting charitable work by religious trusts. It is well-established that religious trusts, including temples, have traditionally utilized all donations received, whether anonymous or otherwise, towards charitable activities. Accepting the AO's interpretation would frustrate this long-standing practice, which is in line with the broader intent of fostering charity and welfare.

In light of the above facts and legal precedents, it is most humbly prayed that the addition made by the Assessing Officer is incorrect, and the appellant is entitled to relief. The above judgments and legal position clearly supports the appellant's position that anonymous donations, un earmarked for any specific purpose, are not taxable under Section 115BBC(1).

Ground No. 2

That on the facts and in the circumstances of the case, the Ld. CIT Appeals has grossly erred in not allowing Investment made in the university building of Rs.44,13,515/- as application of income which is quite arbitrary, unjustified, illegal and not based on the facts.

Submission

2.1 The Ld. AO erred in Law, Facts and Circumstances of the case in not allowing Rs. 44,26,340 Capital expenditure made during the year and the details of above expenses alongwith Ledger & Vouchers were submitted to Ld. AO with reply dated 21.10.2019 and no question was asked by Ld. AO during the course of Proceedings for genuineness of above Capital expenditure and also in his order passed dated 20.12.2019.

But while Considering Rs.15910740 Income as mentioned on Page No.4 of his order dated 20.12.2019, Ld.AO has not appreciated the Facts in Correct Perspective and passed the Order without allowing the Capital Expenditure of Rs. 44,26,340 by simple wording that as the appellant has not claimed the Capital expenditure in Return therefore the Capital Expenditure is not allowable.

The Return of Income Proforma and system is so Formulated that once the Income minus Expenditure (Revenue or otherwise) is Nil then more figure as Expenditure cannot be filled in Return as it results in Negative balance (Loss).

2.2 Similarly in this case the Return was filled on following Facts:-

<u>Particulars</u>	<u>Amount</u>
Revenue Income on Page	4392697
5 of Income Tax Return	
Less:- Revenue Expenses	4173070
Less:- Set apart 15%	219627
	-4392697

(Allowable Rs. 658905 i.e.15% of 4392697)

Net

NIL

Once the net Income come is Nil as above the system did not allow to claim capital expenditure in Return further as it would amount to Negative Figure (Loss). Though these figures were there in Audited Accounts. Copy of relevant page of ITR is enclosed refer page no.172-173 of Paper Book.

2.3. Now once the AO added /increased the Income then its was his first Duty to allow Capital expenditure of Rs. 44,26,340/- against the Increased Income. This the AO did not do so resulting in unjust disallowance of allowable claim of Capital Expenditure of Rs.44,26,340/-, which deserves to be allowed on such Facts, Circumstances Hence Kindly allow this Capital expenditure of Rs. 44,26,340/- against the Income assessed.

Further Appellant is Registered trust having valid registration under section 12AA on the date when the order were passed, therefore the Ld. AO have to applying all the Provisions of Section 11 and 13 of the IT Act, therefore the capital Expenditure of Rs. 44,26,340/- incurred by Appellant trust during the year under assessment has to be allowed while passing the Assessment order, but the Ld. AO have not done it and passed the assessment without allowing Capital Expenditure and not applying Substantial Question of Law.

2.4. As per section 11 income of a eligible institution to the extent of which such income is applied to charitable purposes in India is not be included in the total income. The application of the income towards charitable purposes include application towards acquisition of assets i.e. capital expenditure. As we have already discussed hereinabove that income of the Trust is to be computed in accordance with the provision of section 11 and 12 of the Act, there for the Ld. AO has to consider capital expenditure incurred during the year as application of income towards charitable purposes while computing income under section 11 of the Act.

2.5 The above facts has been accepted by Hon'ble ORISSA HIGH COURT while allowing Capital Expenditure incurred by a trust for acquiring/Constructing Capital asset would be application of Money and the assessee would be entitled to exemption u/s 11 in Case of COMMISSIONER OF INCOME TAX vs. SILICON INSTITUTE OF TECHNOLOGY [2014] 272 CTR 319 (ORISSA), [2015] 370 ITR 567 (ORISSA) (Order copy enclosed at Page No.159-165. of paper book) with States that:-

Capital Expenditure if incurred by an Educational Institution for attainment of the object of the society, it would be entitled to exemption under section 11 of the I. T. Act."

2.6. The above Judgment was passed with relaying the decision of Hon'ble Supreme Court in the Case of Sir Shunilal V. Mehta and Sons Ltd. Vs. Century Spinning Manufacturing Co. Ltd. AIR 1962 SC 1314, held as under:

"The proper test for determining whether a question of law raised in the case is substantial would, in our opinion, be whether it is of general public importance or whether it directly and substantially affects the rights of the parties and if so whether it is either an open question in the sense that it is not finally settled by this Court or by the Privy Council or by the Federal Court or is not free from difficulty or calls for discussion of alternative views. If the question is settled by the highest court or the general principles to be applied in determining the question are well settled and there is a mere question of applying those principles or that the plea raised is palpably absurd the question would not be a substantial question of law."

2.7. Further the assessee's trust is registered as charitable trust under section 12A of the Act. After the construction of the building the assessee trust is running Educational Institute for the benefit of general public. Further the amount received towards donation and spent for the construction of building required for running the Educational Institute was the application of such money for charitable purposes. Therefore the income was spent in the construction of building in question for the purposes of Education was an expenditure incurred for the purposes of carrying out the charitable objects and was an application of the income for charitable purposes within the meaning of section 11 (1)(a) of the Act. Therefore if any amount is incurred to achieve the object which is in the charitable nature, the amount incurred will be considered to be an expenditure and application of amount for charitable purposes within the meaning of section 11 (1)(a) of the Act

2.8. Hence as discussed above the facts/reasons for not able to claim the Capital expenditure and as per above case Laws, it is clear that Capital Expenditure of Rs.

44,26,340/- made during the year claimed before computation of assessment is allowable expenditure and the above Capital Expenditure of Rs. 44,26,340 is allowable as "Amount applied to Charitable or religious purpose in India during the Previous year as Capital expenditure is entitled for u/s 11. of the Income Tax act".

Ground No. 3

That on the facts and in the circumstances of the case, the Ld. CIT Appeals has grossly erred in not allowing claim of purchase of books and periodicals of Rs. 12,825/- which is quite arbitrary, unjustified, illegal and not based on facts.

Submission

3.1 The appellant, a religious and charitable trust, is engaged in activities aimed at furthering education, spiritual learning, and social welfare. As part of its educational and research activities, the Trust purchased books and periodicals for the purpose of enhancing its library resources and supporting its educational initiatives. The total expenditure on these books and periodicals amounted to Rs. 12,825/-.

3.2 Under Section 11 of the Income-tax Act, the income applied for charitable purposes, including the advancement of education, is exempt from taxation. The purchase of books and periodicals is directly related to the Trust's educational objectives and, thus, qualifies as an expenditure for charitable purposes. Therefore, the amount spent on such purchases should have been allowed as a deduction while calculating the Trust's taxable income.

3.3 In light of the above, the appellant respectfully requests that the Hon'ble Tribunal allow the legitimate claim of Rs. 12,825/- for the purchase of books and periodicals. The appellant further prays that the Tribunal directs the necessary adjustments to be made in the computation of the Trust's taxable income and ensures that the expenditure incurred for charitable and educational purposes is properly recognized and allowed.

Ground No. 5

That on the facts and in the circumstances of the case, the Ld CIT (A) has confirmed charge of interest under section 234B and under Section 234D of the Income Tax Act 1961 amounting to Rs 11,82,918/- and Rs 4,370/- respectively which is quite arbitrary, unjustified, illegal and not based on facts.

Submission

5.1 The appellant has already demonstrated that the demand raised is incorrect and is not based on the correct interpretation of the law or facts. The demand, as it stands, is based on misapprehension and does not reflect the actual tax liability of the appellant. Therefore, interest charged on such a wrong demand is unjustified and amounts to undue hardship for the appellant.

5.2 In view of the above, the appellant respectfully prays that the Hon'ble Tribunal allow the deletion of the demand raised by the AO, and consequently, delete or reduce the interest charged under sections 234B and 234D. The appellant further prays that the Tribunal provide appropriate directions to ensure that the appellant is not penalized for a demand that is incorrect and unjust.

Ground No.06

That on the facts and in the circumstances of the case, the Ld CIT Appeal grossly erred in dishonouring circular no. 14 dt. 11th April 1955 issued by the Central Board of Direct Taxes (CBDT). The relevant extract is reproduced as under:

“Officers of the Department must not take advantage of ignorance of an assessee as to his rights. It is one of their duties to assist a taxpayer in every reasonable way, particularly in the matter of claiming and securing reliefs and in this regard the Officers should take the initiative in guiding a taxpayer where proceedings or other particulars before them indicate that some refund or relief is due to him.”

Hence the Ld. CIT Appeal has grossly erred in disallowing the legal and legitimate claim of the assessee only for the reason that it is being claimed during the assessment. Which is quite arbitrary, unjustified and against the law of natural justice.

Submission

6.1 The Ld. CIT(A) has erred in disallowing the legal and legitimate claim of the appellant solely on the ground that the claim was made during the assessment proceedings i.e. Acquisition of Fixed Assets, Purchase of Books and Periodicals and Payment of endowment fund to university of. This approach is arbitrary, unjustified, and against the principles of natural justice. The circular specifically emphasizes the duty of the tax officers to assist taxpayers in claiming legitimate reliefs, especially where a refund or relief is due. By disregarding this directive, the Ld. CIT(A) failed to uphold the taxpayer’s right to claim the relief, which the Department was duty-bound to facilitate.

6.3 We respectfully submit that Ld. CIT Appeal has given reference of Goetze (India) Ltd. v. CIT (2006) case for not allowing deduction during assessment. We want to submit the following points regarding the issue of whether a taxpayer can claim a deduction that was not included in the original return, in light of the Supreme Court’s judgment in Goetze (India) Ltd. v. CIT (2006), subsequent clarifications issued by the CBDT, the judicial interpretation by various High Courts, particularly the Rajasthan High Court, and the provisions of Rule 37BA.

6.4 CBDT Circulars — Flexibility in the Tax Assessment Process:

The CBDT, through Circular No. 14(XL-35) of 1955, clarified that taxpayers may raise claims during the assessment proceedings, even if they were not included in the original return, provided that the claim is genuine and supported by proper documentation. The circular recognizes the Assessing Officer’s discretion to entertain such claims, particularly when the taxpayer can substantiate the deduction with valid evidence.

This interpretation supports the principle of substantive justice, ensuring that taxpayers are not unjustly deprived of legitimate claims due to procedural lapses, and aligns with the objective of collecting the correct amount of tax without penalizing taxpayers for minor mistakes.

6.5 In respect of admissibility of claim by way of rectification or otherwise, kindly note that Article 265 of the Constitution states that “no tax shall be levied or collected except by the authority of law”. Therefore, no tax can be levied or collected in India, unless it is explicitly and clearly authorized by way of legislation. Reliance is placed on the decision of Hon’ble Apex court in the case of ***CIT-vs.- Shelly Products and Another (2003) 129 Taxmann 271 (SC)*** wherein it was held that:

“if the assessee has by mistake or inadvertence or on account of ignorance included in his income any amount which is exempted from payment of income tax or is not income within the contemplation of law, the assessee may bring the same to the notice of the assessing officer which, if satisfied, may grant the assessee necessary relief and refund the tax paid in excess, if any. Such matters can be brought to the notice of the concerned authority in a case when refund is due and payable, and the authority concerned, on being satisfied, shall grant appropriate relief. In cases governed by section 240, an obligation is cast upon the revenue to refund the amount to the assessee without his having to make any claim in that behalf.”

Copy of the order is attached Refer Page no. 182-193 of paper book.

6.6 Judicial Interpretation — Rajasthan High Court:

(RAJ-HC) 2016 ITL 3088 : (2016) 240 Taxmann 527 : (2017) 390 ITR 59 : (2017) 293 CTR 348 : (2016) 144 DTR 261 Commissioner of Income-tax, Bikaner v. Krishi Upaj Mandi Samiti, Raisinghnagar upheld the principle of substance over form and ruled that a taxpayer should not be deprived of legitimate deductions simply due to procedural omissions in the original return, especially when the claim is backed by proper evidence. The Court also acknowledged the Assessing Officer’s discretion to entertain such claims during the assessment process, even if they were not initially raised in the return. Copy or order is enclosed at page no.166-171 of Paper Book.

(MAD-HC) 2024 ITL 4040- SREE VENKATESWARA EDUCATIONAL TRUST V. THE INCOME TAX OFFICER, EXEMPTIONS WARD, SALEM Held as under:-

In our view also, if assessments are to be completed, deductions and applicable exemptions that are otherwise available to an assessee ought to have been extended by the Assessing Officer to an assessee before finalizing the assessment. Since the appellant/assessee was not entitled to exemption as a Trust under Sections 11, 12 and 12A of the Act in absence of registration under the Act as it stood Section 12AA of the Act, the benefit of other deductions under the Act ought to have been given. The Assessing Officer is not expected to act mechanically to confirm the liability to fasten an unjust tax liability on an assessee.

(DEL-HC) 2021 ITL 658 : (2021) 435 ITR 85 : (2021) 323 CTR 650 : (2021) 203 DTR 81- INTERNATIONAL TRACTORS LTD. v. DEPUTY COMMISSIONER OF INCOME TAX & ANR.

“Para 16. In any event, we are of the view that, if a claim is otherwise sustainable in law, then the appellate authorities are empowered to entertain the same. This view finds reflection in a judgment of the Co-ordinate Bench of this Court dt. 28th Nov., 2011, passed in IT Appeal No. 1233 of 2011, titled CIT vs. Aspentech India (P) Ltd. The relevant observations made by the coordinate bench of this Court, which are apposite, are extracted hereafter:”

(JP-ITAT) 2019 ITL 6154 BIRMA DEVI V. I.T.O., WARD 6 (2), JAIPUR has mentioned that

Para 9-(ii) 16. Having heard the rival submissions and perused the relevant material on record, we find that the purpose of income-tax assessment is to determine correct income of the assessee. As the Revenue cannot allow an assessee to depress his income, in the same manner, it is not permissible to the Revenue to take advantage of the ignorance of mistake of the assessee in offering more than due income. It is trite that no tax can be collected except as per law. *Circular No. 14(XI-35) of 1955 dt. 1-4-1955* cautions the officers of the Department from taking advantage of ignorance of an assessee as to his rights. The HonTale Bombay High Court in the *Nirmala L. Mehta v. A. Balasubramaniam, CIT (2004) 269 ITR 1 (Bom)* has held that there cannot be any estoppel against the statute. Article 265 of the Constitution of India clearly provides that no tax shall be levied or collected except by authority of law. Similar view has been taken recently by the Honble jurisdictional High Court in *Sancheti Software & Solutions (P) Ltd. v. CIT (2012) 349 ITR 404 (Bom)*. In our considered opinion there can be no escape from the proposition that the assessee is entitled to argue at least before the appellate authorities that a wrong stand taken at the time of filing the return of income should be allowed to be modified. The learned Authorised Representative has rightly relied on order passed by the Mumbai Bench of the Tribunal in the case of *A.M. Tod Company*

India (P) Ltd. vs. ITO (ITA No. 492/Mum/2006). Vide order dt. 24-6-2009, the Tribunal accepted the assessee's contention for exclusion of certain cases which were wrongly included in the transfer pricing study but were actually not comparable. It is observed that the Special Bench of the Tribunal in the *Dy. CIT v. Quark Systems (P) Ltd. (2010) 132 TTJ (Chd)(SB) 1* also allowed the assessee to claim exclusion of certain cases from the list of comparables which were inadvertently included by it in its transfer pricing study. In view of the aforementioned discussion and the ratio of these precedents, we direct the AO/TPO to examine the correctness of the figures placed on record by the assessee in support of its contention that the case of *Goldstone Teleservices Ltd.* was wrongly included by it in the list of comparables, which is actually not comparable. We want to make it clear that the above discussion made by us considering the figures given by the learned Authorised Representative is only for a *prima facie* ascertainment as to whether this case is passing through the filter chosen by the TPO. The AO/TPO in the fresh proceedings will decide the question of inclusion or exclusion of this case afresh independent of our above observations, albeit keeping in mind the aforementioned filter of Companies whose export revenues are more than 25 per cent of the revenues.

6.7 We also submit that there are similar provisions in Rule 37BA — Adjustment of Claims and Deductions:

Rule 37BA of the Income Tax Rules plays a critical role in this context, particularly when a taxpayer seeks to adjust claims that were not made in the original return but are substantiated during the assessment proceedings. Rule 37BA provides that Assessing Officers can adjust certain claims based on the available evidence, even if these claims were not originally part of the return.

This rule is particularly relevant when the taxpayer is seeking deductions or adjustments that were omitted from the original return due to genuine reasons. Rule 37BA recognizes that the correctness of the tax assessment is paramount, and adjustments can be made during the assessment process to ensure that the correct amount of tax is levied, reflecting the taxpayer's actual liability.

In light of the CBDT circulars, judicial precedents from the Apex Court and the Rajasthan High Court, it is submitted that all the genuine claims should be entertained during the assessment process, provided they are genuine and supported by adequate documentation.

6.8 In light of the above, the appellant respectfully requests that the Hon'ble Tribunal allow the legitimate claim of the appellant in accordance with the

provisions of Circular No. 14/1955 and all legal precedents stated above. The appellant further prays that the Tribunal issue appropriate directions to ensure that taxpayers are not unfairly penalized for procedural matters when they are entitled to relief.

Ground No. 7

That during the year the sansthaan has paid Rs.1.00 Crore to Rajasthan State Unviersity as endowment fund and this is application of income by the sansthaan. The appellant request your honour to kindly allow us deduction of the aforesaid application of income while calculating taxable income.

Submission

7.1 The Trust has been established with the objective of promoting religious, educational, and charitable activities, and it operates a temple, a gaushala, and engages in regular charitable activities, including conducting bhandaras for the needy. Recently, the Trust has expanded its scope by initiating plans to establish a Vedic university. As part of these initiatives, the Trust contributed Rs. 1.00 Crore to Rajasthan State University as an endowment fund to support educational endeavors, which aligns with the Trust's charitable and educational objectives.

7.2 Under Section 11 of the Income-tax Act, 1961, income applied for charitable purposes is eligible for exemption, provided it is used for the advancement of religion, education, or any other object of general public utility. The contribution to Rajasthan State University, a recognized educational institution, directly supports the Trust's educational objectives and, thus, constitutes an application of income in furtherance of its charitable and educational purposes.

7.3 The payment made by the Trust to Rajasthan State University qualifies as an application of income under Section 11 of the Act, as it has been made for a specific charitable purpose, i.e., the promotion of education. The Trust's initiative to contribute to the establishment and growth of an educational institution aligns with its broader goal of serving society through educational activities, which has been one of its primary objectives since its inception.

7.4 In this regard, it is submitted that the contribution of Rs. 1.00 Crore to the university should be treated as an application of income and should be allowed as a deduction in the calculation of the Trust's taxable income. The endowment fund, being a direct contribution to the educational cause, is an integral part of the Trust's educational activities and, therefore, should be considered as income applied for charitable purposes.

7.5 In light of the above facts and legal framework, the appellant respectfully requests that the Hon'ble Tribunal consider the Rs. 1.00 Crore paid to Rajasthan State University as an application of income under Section 11 of the Income-tax Act, 1961, and grant a deduction for the same while computing the Trust's taxable income for the relevant assessment year.

7.6 Copy of payment receipt and government order is enclosed herewith at paper no.154-157 of paper book.

Ground No. 8

That the appellant craves leave, to add, to amend, modify, rescind, supplement, or alter any of the grounds stated here in above, either before or at the time of hearing of this appeal.

Submission

General Ground. In view of the complexity of the matter at hand, the appellant may, during the course of the proceedings, identify additional facts, arguments, or legal contentions that could be relevant to the case. The appellant reserves the right to amend, supplement, or modify the grounds of appeal, as may be necessary, in light of any new developments, submissions, or judicial pronouncements that may arise during the course of the hearing.

In view of the foregoing, the appellant respectfully seeks the Hon'ble Tribunal's leave to amend, modify, or supplement any of the grounds of appeal, either before or at the time of hearing, to ensure that the case is adjudicated on the most complete and accurate basis.

PRAYER

In view of the foregoing submissions, the appellant respectfully prays that the Hon'ble Income Tax Appellate Tribunal may be pleased to grant appropriate relief to the appellant, including but not limited to allowing the grounds of appeal, setting aside the orders of the lower authorities, and granting such other reliefs as may be deemed just and proper in the circumstances of the case.”

As per directions of the Bench, the Id. A/R of the assessee has further submitted the following written submissions for consideration of the Bench :

1. “Ground No.1 and 4 of Appeal Memo

1.1 In continuation of our written submission and Paper Book filed on **19.12.2024**, and pursuant to the hearing held on **19.12.2024**, we most respectfully submit the required proof regarding the religious nature of the trust. Your Honour had directed us to provide supporting documents, and case laws related to 115BBC and accordingly, we are enclosing a copy of the **Memorandum of Association (MOA) and Articles of Association (AOA)** of the trust **Page no. 1 to 16 of Current Paper Book**. These documents demonstrate that the Appellant Sansthaan is a religious-cum-charitable trust.

For further clarity, we reproduce below the main objects clause of the Sansthan as stated in its MOA: **(Current paper Book page No.3-5)**

- I. वेद पीठ की स्थापना ।
- II. वैदिक साहित्य पर शोधकार्य करना वेदों के अंतर्गत आने वाले सभी प्रकल्पों एवं प्रकोष्ठों पर कार्य करना।
- III. प्राचीन भारतीय ग्रंथों का संकलन, शोध एवं प्रकाशन करना ।
- IV. अन्य उद्देश्य जो समय समय पर संस्था द्वारा मूल उद्देश्यों की प्राप्ति हेतु निर्धारित किये जाये ।
- V. संस्थान द्वारा, अपंग, अपाहिज, एवं निराश्रित पशुओं का पालन पोषण करना, दुर्घटना ग्रस्त पशुओं को समय पर चिकित्सा उपलब्ध कराने हेतु एम्बुलेंस एवं चिकित्सालय कानिर्माण एवं सन्चालन करना ।
- VI. बुजुर्ग व्यक्तियों का सम्मान बनाये रखने एवं उनकी समाजिक प्रतिष्ठा को बरकरार रखने हेतु वृधाश्रम की स्थापना करना एवं उनका सन्चालन करना ताकि उनके अनुभव का लाभ समाज को मिल सके ।
- VII. संस्थान द्वारा संस्कृत एवं वेदों की शिक्षा एवं प्रशिक्षण के साथ-साथ आधुनिक शिक्षा एवं प्रशिक्षण गरीब एवं निर्धन विधार्थियों को उपलब्ध कराना ताकि उनको रोजगार उपलब्ध कराया जा सके, इस हेतु विद्यालय महाविद्यालय विश्वविद्यालय एवं प्रशिक्षण केंद्र की स्थापना करना।
- VIII. ार्वजानिक चिकित्सालय, अनाथ आश्रम, पुस्तकालय, नशामुक्ति केंद्र, प्राकृतिक चिकित्सा एवं योग केन्द्रों का सन्चालन करना ।
- IX. संस्थान की बढ़ती गतिविधियों एवं कार्यकलापों के फलस्वरूप संस्थान का कार्यक्षेत्र जिलास्तर से बढ़ाकर राज्यस्तरीय करना अनिवार्य हैं। सम्मति से संस्थान का कार्य क्षेत्र राजस्थान बढ़ाने का निर्णय लिया गया ।
- X. समितिशैक्षणिक गतिविधियों एवं तत्सम्बंधित क्षेत्रों जैसे नर्सरी विद्यालय, प्रार्थमिक वेद विद्यालय, प्रार्थमिक एवं उच्च प्रार्थमिक विद्यालय, माध्यमिक एवं उच्च माध्यमिक विद्यालय, माध्यमिक

एवं उच्चमाध्यमिक संस्कृत विद्यालय, शिक्षण प्रशिक्षण महाविद्यालय, शिक्षा शास्त्री एवं वेद विद्यालयों के साथ साथ महाविद्यालयो शिक्षा से सम्बंधित अध्ययन एवं अनुसंधान को प्रोत्साहित करने के साथ उच्चतर शिक्षा एवं अनुसन्धान के लिये सतत प्रयास करेगी, समिति के माध्यम से वैदिक एवं संस्कृत साहित्य में पारंपरिक अध्ययन एवं अनुसन्धान के साथकला, मानविकी, वाणिज्य, विज्ञान, प्रार्विधिक, आयुर्वेदिक, आयुर्विज्ञान, औषधि विज्ञान, दन्तचिकित्सा, प्रबन्धन, संगीत, ललितकलाएं, योजना एवं स्थापत्य, विधि, कम्प्युटर एवं सूचना प्रौद्योगिकि, पर्यटन, खेलकूद-विज्ञान, अभियांत्रिकी, फैशन प्रद्योगिकी तथा नर्सिंग पाठ्यक्रम को सम्मिलित करते हुए ग्रामीण स्वास्थ्य परिचर्चा से सम्बंधित सेवाओं को स्थान दिया जाएगा।

- XI. समिति संस्कृत के साथ –साथ मेवाड़ी तथा राजस्थानी भाषा तथा राजस्थानी भाषा के विकास एवं सम्बंधित साहित्य के प्रकाशन को महत्त्व देगी।
- XII. समिति के माध्यम से नवीन चिकित्सालयों की स्थापना करना अथवा अधिग्रहित करने जिससे उनका नए अनुसंधानों के अनुरूप विकास किया जा सके तथा यहाँ पर क्षेत्रीय जनता के लिये चिकित्सा की बेहतर व्यवस्था उपलब्ध कराई जा सके इसके साथ ही समिति अन्य संस्थानों के साथ भी सहयोग करेगी जिसको न्यासीगण उचित तथा समिति के उद्देश्यो के अनुरूप समझते हैं।
- XIII. विद्यार्थियों, अध्यापकों एवं प्राध्यापकों को विज्ञान के सभी क्षेत्रों में अनुसंधान के लिए उत्साहित किया जाएगा तथा समिति के माध्यम से हर सम्भव सहायता प्रदान की जाएगी।
- XIV. यह सभी कार्य समिति के द्वारा कल्याणार्थ किये जाएंगे न कि किसी भी प्रकार के लाभ के लिए।
- XV. समिति इसके लिए सभी प्रकार के उपहार, दान जो वस्तु या नगद धन के रूप में हो सकता है। स्वीकार करेगी लेकिन यदि यह समिति की व्यवस्था के अनुकूल नहीं है तो अस्वीकार भी किया जा सकता है साथ ही समिति दान प्राप्त करने के लिए आग्रह के साथ-साथ समाचार पत्रों के माध्यम से भी निवेदन कर सकती है।
- XVI. इस तरह से समिति शिक्षा के प्रचार प्रसार के उद्देश्य को ध्यान में रखते हुए श्री कल्लाजी वैदिक विश्वविद्यालय की स्थापना के माध्यम से विश्व व देश में ज्ञान के सभी क्षेत्रों में तीव्र विकास के साथ-साथ युवाओं को उनके निकटतम स्थान पर अधुनातन शैक्षणिक सुविधाओं को उपलब्ध कराने के लिए राजस्थान तथा विशेष रूप से मेवाड़ में विश्व स्तरीय आधुनिक अनुसंधान एवं अध्ययन की सुविधाओं का सृजन करेगी जिससे आने वाली पीढ़ी को विश्व की उदार, आर्थिक व सामाजिक व्यवस्था में मानव संसाधन से संगत बनाये जा सके।

XVII. समिति ने सर्वसम्मति से यह प्रस्ताव भी पारित किया कि श्री कल्लाजी वैदिक विश्वविद्यालय की स्थापना के अन्तर्गत वेदों के प्रचार एवं प्रसार के लिए देश के अन्य राज्यों में भी इसके विस्तार के रूप में नियमानुसार प्रयास किया जाएगा।

We respectfully submit that the above objectives clearly show that the Appellant is registered and working towards both religious and charitable purposes.

1.2 We also submit that it has also been confirmed by the Assessing Officer that the Assessee Trust is indeed religious and charitable, a position that has been further affirmed by CIT(A) in the appellate order. **Kindly refer Earlier paper book page no. 104 and Internal page no.42 of 143(3) order,second para:-**

“From the above, it is clear that section 115BBC does not apply to religious trust and the assessee is required to maintain a record of identity indicating the name and address of the person making such contribution voluntarily. As mentioned in earlier paras and as is evident from the trust deed that the trust is engaged in the work of imparting education of related Vedas etc. it cannot be said to be religious trust. Besides, it also looks after the temple in the name of Shri Sheshavtaar 1008 Shri KallajiMaharaj. Thus the object of the trust exhibits the dual nature of religious as well as charitable purpose. Hence, it is crystal clear that the assessee trust is not existing wholly for religious purposes.”

From the above, it is clear that the Assessing Officer (AO) has misinterpreted the legal provisions of Section 115BBC and erroneously made an addition despite acknowledging that the trust serves dual purposes, encompassing both religious and charitable objectives.

We also submit that the Trust operates a temple, where traditional forms of worship are conducted by devotees. All the attributes of religious activities, including rituals, poojas, and ceremonies, are performed regularly, particularly on different festivals, as per established practices. This also has been affirmed by Ld. CIT Appeals in the above Para. In support of this, **we are enclosing photographs of the temple and activities carried out by the Sansthan on page no. 17 to 29 and news paper cutting Page No. 30 to 84 of current Paper Book.**

It is submitted that these religious activities, including the rituals and poojas conducted throughout the day for the devotees, were unfortunately overlooked by the Assessing Officer and the CIT(A). Additionally, Shri Sheshavtar 1008 Shri KallajiVedpith Evam ShodhSansthan is widely regarded as one of the most visited religious places in the State of Rajasthan, attracting both tourists and the general public. The Assessing Officer and CIT(A) has, therefore, failed to recognize the full scope of religious attributes of the Trust in the present appeal.

- 1.3 The Ld. CIT Appeal has accepted the assessee's (trust) contention that the Sansthan (trust) is having mixed objects of religious and charitable both. However, the Ld. CIT Appeal has wrongly concluded the legal provisions of Section 115BBC by stating that these provisions exempt only wholly religious trust from anonymous donation. The assessee's trust is religious cum charitable trust, the term religious and charitable is defined by honourable Apex Court in the case of Commissioner of Income tax, Ujjain v. Dawoodi Bohara Jamat (SC) (SC)[2014] 222 Taxman 228 [2014] 364 ITR 31 [2014] 268 CTR 1: (2014) 102 DTR 361:-

“Para 35. Unlike the phrase "charitable purpose", "religious purpose" is not defined under the Act. According to lexicographers, the term religious would mean "of or relating to religion." (Merriam Webster Dictionary, Macmillan English Dictionary). The Shorter Oxford English Dictionary defines the term as follows:

"Devoted to religion; exhibiting the spiritual or practical effects of religion, following the requirements of religion; pious, godly, devout." In Kanga, Palkhivala and Vyas, Law and Practice of Income Tax, Vol. 1, Ed. 9th (at p. 544) religious purposes are indicated to include the advancement, support or propagation of a religion and tenets. Thus, a religious purpose would be one relating to a particular religion and broadly would encompass objects relating to observance of rituals and ceremonies, propagation of tenets of the religion and other allied activities of the religious community. An example of such would entail activities such as the dance performances (Garba) or distribution of food

specifically for people on fast during the Hindu festivities of Navratri. **(Page.90-91 of current Paper Book and internal page 6-7)**

36. In certain cases, the activities of the trust may contain elements of both: religious and charitable and thus, both the purposes may be overlapping. More so when the religious activity carried on by a particular section of people would be a charitable activity for or towards other members of the community and also public at large. For example, the practice of optional charity in the form of Khairat or Sadaquah under Mohammadan Law would be covered under both charitable as well as religious purpose. Further, while providing food and fodder to animals especially cow is religious activity for Hindus, it would be charitable in respect to non Hindus as well. Similarly, service of water to the thirsty would find mention as religious activity in sacred texts and at the same time would qualify as a charitable activity. **(Page 91 of current Paper Book internal page 7)**

Copy of complete order is enclosed for your kind perusal on **Page No.85 to 93 of this Paper Book.**

2. **Regarding the applicability of Section 115BBC**, we respectfully submit that Section 115BBC(2)(b) specifically exempts religious-cum-charitable trusts from its purview, except in cases where 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.

Your Honour had directed us to submit relevant case laws. In compliance with this directive, we respectfully present additional case laws involving similar facts and grounds. Enclosed herewith is a compilation of case laws directly pertinent to this matter. These references are submitted to clarify the principles applicable to the appellant's case and to provide judicial precedents for Your Honour's kind consideration.

2.1 Reliance is placed in lordship of Honourable Delhi High Court confirming the order of honourable (Delhi - Trib.) 2014 ITL 1006 [2015] 153 ITD 609 Bhagwan Shree Laxmi Narain v. Income Tax Officer (E), Trust Ward-III, Delhi double bench:-

2.1.1 Assessee was a trust registered under section 12A. It was mainly involved in imparting of spiritual education through lectures/samagam and in distribution of medicines and clothes to needy and destitute. During assessment proceedings, Assessing Officer found that assessee received certain amount as anonymous donation. Assessing Officer took a view that assessee trust was engaged in spreading spirituality and since section 115BBC only exempted religious trust, such anonymous donations would not be exempt from tax.

2.1.2 In response to the above, both the Honourable ITAT and the Honourable Delhi High Court ruled in favour of the assessee. The High Court upheld the ITAT's decision, concluding that the anonymous donations received by the trust were exempt from tax. It was observed that the assessee, a trust registered under Section 12A, was primarily engaged in imparting spiritual education through lectures and samagams, as well as distributing medicines and clothes to the needy and destitute. The Court held that the activities of the trust reflected both charitable and religious purposes. Hence, the Assessing Officer's interpretation of Section 115BBC, claiming that the trust was not a religious entity and therefore not exempt, was found to be incorrect.

2.1.3 We are reproducing relevant Para of the Hon'ble High Court Order:-

“Para 11. Therefore, it becomes necessary to examine whether the ITAT was on the facts of the present case justified in coming to the conclusion that the Assessee would be entitled to the benefit of section 115BBC as far as the anonymous donations received by it were concerned. As rightly pointed out by the ITAT itself, the above question cannot be addressed within the narrow scope of the specific wording of some of the clauses of the Trust Deed but in the overall context of the actual activities in which the Trust is involved in including imparting spiritual education to the persons of all castes and religions,

organizing Samagams, distribution of free medicines and clothes to the needy and destitute, provision of free ambulance service for needy and destitute patients and so on. **(Page 97 of current Paper Book and Internal Page 4)**

Para 15. It might well be that a Hindu religious institution like the Assessee is also engaged in charitable activities which are very much part of religious activity. In carrying on charitable activities along with organising of spiritual lectures, the Assessee by no means ceases to be a religious institution. The activities described by the Assessee as having been undertaken by it during the assessment year in question can be included in the broad conspectus of Hindu religious activity when viewed in the context of the objects of the Trust and its activities in general.

Para 16. For the aforementioned reasons, the Court finds no legal infirmity in the conclusion of the ITAT that for the purpose of section 115BBC(2)(a) anonymous donations received by the Assessee would qualify for deduction and it cannot be included in its assessable income.” **(Page 98 of current Paper Book and Internal Page-5)**

Copy of above order is enclosed for your kind perusal on **Page No.94 to 98 of this paper book.**

2.2 Reliance is placed on decision of Honourable ITAT (Asr - Trib.) 2016 ITL 1585 : (2016) 178 TTJ 602 : (2016) 158 ITD 410 : (2016) 47 ITR(Trib) 1 : (2016) 141 DTR 153 Deputy Commissioner of Income-tax, Circle -IV, Amritsar v. All India Pingalwara Charitable Society IN THE ITAT AMRITSAR BENCH wherein it was held that :-

2.2.1 In the above appeal the assessee society was 100% charitable society for welfare of handicapped persons. The question raised before Ld. CIT(A) and thereafter before Hon'ble ITAT (Asr) was that:-

“5.2 That the number of in-mates, children, young and old suffering from various disabilities as mentioned above, who were being served by the Pingalwara Society was more than 1600 during the previous year and this was itself a religious activity by any concept of any religion of the World and, therefore, the provisions of Section 115BBC(1)

were not applicable to the charities received by Pingalwara Society through Society through Golaks or/otherwise.”(Page 180 of current Paper Book and Internal Page 2)

2.2.2 In answer to above question Hon’ble ITAT grant relief and held as follows:-

“26. Moreover, as contended, the concept and importance of charity, against the backdrop of the Indian Society, has been in existence from time memorial in all religions, without exceptions. The assessee, in this regard, has cited Zakaat from Islam, Dasvand from Sikhism and the recognition of this concept from Manu-Samriti, the original magnum opus on the Indian social system. That this concept has continued to be accepted and practiced in India all along down the ages, and thus it is firmly entrenched in our society, cannot be questioned.(Page 122 of current Paper Book and Internal Page 24)

27. All the above has been extensively considered in the above decisions cited. Two of them, i.e., "BarkateSaifiyah Society"(supra) and "Pt. Ram Chandra Shukla" (supra) have been followed by the ld. CIT(A). The ld. CIT(A), though, did not have the benefit of "Bhagwan Shree Laxmi Narain" (supra), since this decision was rendered post the CIT(A)'s order. The decision of the ITAT, Delhi Bench in the case of "Bhagwan Shree Laxmi Narain" (supra), as confirmed by the Hon'ble High Court, has considered this matter in much detail. "Dawoodi Bohra Jamat" (supra), handed down by the Hon'ble Supreme Court, has been followed. The Department has remained unable to persuade us to deviate therefrom.

28. Accordingly, we hold that the ld. CIT(A) has correctly deleted the addition for both the assessment years under consideration. Our observations are, mutatis mutandis, squarely applicable to both the years, since the issues in both the appeals are common, as noted in the opening portion of this order.”.(Page 122 of current Paper Book and Internal Page 24)

The Honourable ITAT has allowed relief even in cases where the trust was charitable, interpreting the term "religious" in a broader sense. Based on the facts and the specific position of our case, it is well established that the trust is both religious and charitable in

nature. Furthermore, the trust has not received any specific donations designated for education or medical activities.

In light of the above, we most respectfully request your honour to kindly grant relief in our case. A copy of the complete order passed by the Honourable Amritsar ITAT is enclosed on **Page No.99 to 122 of this Paper Book** for your kind perusal.

3. We also respectfully request your honour to kindly consider our submission made during the hearing on 19.12.2024. Furthermore, in the event that the Learned Assessing Officer (AO) determines the amount of ₹95,12,940/- to be non-corpus, we humbly request that the corresponding expenditure be simultaneously allowed. This includes an investment of ₹44,26,340/- towards the acquisition of fixed assets (comprising ₹44,13,515/- for fixed assets and ₹12,825/- for books and periodicals) and a contribution of ₹1.00 crore (Rupees one crore) made as an endowment fund to Rajasthan State University.

We respectfully draw your attention to our earlier submission dated 19.12.2024, under Ground Nos. 2, 3, 6, and 7 for further reference.

4. PRAYER

In light of the above facts and legal position, it is most respectfully prayed before your honour that the assessment be annulled and/or the additions be deleted.”

5. On the other hand, the ld. D/R supported the orders of the revenue authorities. In this regard, he further submitted that –

“ i) The AO has made assessment on two issues. First is regarding receipts of the trust not shown in the ITR and second is anonymous donation out of total receipts taxed at MMR 30% as per section 115BBC.

ii) The assessee trust has shown total receipts of Rs. 43,92,697/- in the ITR out of which Rs. 41,73,070/- were applied for the charitable or religious purposes and rest Rs.

2,19,627/- were set apart being less than 15 percent of total receipts as mandated by the provisions of the Act.

iii) During assessment proceedings, it was noticed that an amount of Rs. 1,15,18,043/- was not declared in the ITR. The assessee submitted these receipts were donations for Building corpus.

iv) Section 11(1)(d) deals with voluntary donations for corpus which is as under :

“ 11. Income from property held for charitable or religious purposes.

- (1) Subject to the provisions of sections 60 to 63, the following income shall not be included in the total income of the previous year of the person in receipt of the income –
 - (a) Income derived from property held under trust wholly for charitable or religious purposes, to the extent to which such income is applied to such purposes in India; and, where any such income is accumulated or set apart for application to such purposes in India, to the extent to which the income so accumulated or set apart is not in excess of fifteen per cent of the income from such property;
 - (b) Income derived from property held under trust in part only for such purposes, the trust having been created before the commencement of this Act, to the extent to which such income is applied to such purposes in India; and, where any such income is finally set apart for application to such purposes in India, to the extent to which the income so set apart is not in excess of fifteen per cent of the income from such property;
 - (c) Income derived from property held under trust – (i) created on or after the 1st day of April, 1952, for a charitable purpose which tends to promote international welfare in which India is interested, to the extent to which such income is applied to such purposes outside India, and (ii) for charitable or religious purposes, created before the 1st day of April, 1952, to the extent to which such income is applied to such purposes outside India : Provided that the Board, by general or special order, has directed in either case that it shall not be included in the total income of the person in receipt of such income;
 - (d) Income in the form of voluntary contributions **made with a specific direction** that they shall form **part** of the corpus of the trust or institution [**subject to the condition that such voluntary contributions are invested or deposited in one or more of the**

forms or modes specified in sub-section (5) maintained specifically for such corpus].

Explanation 1 to section 11 reads as –

“Explanation 1. – For the purposes of clauses (a) and (b), - (1) in computing the fifteen per cent of the income which may be accumulated or set apart, any such voluntary contributions as are referred to in section 12 shall be deemed to be part of the income,”

v) As per above, any corpus donation must be with a specific direction that they shall form part of the corpus of the trust and they need to be invested in one or more of the forms or modes specified in sub-section (5) maintained specifically for such corpus. The assessee was required to show these receipts as income and apply not less than 85% percent to the charitable or religious purposes. These donations are neither with specific directions nor these have been applied for the purposes as held by the AO. The assessee has not proved that at least 85% of the receipts have been either applied for the purposes or invested in specified modes of investment.

vi) The assessee has claimed that capital expenditure of Rs. 44,26,340/- may be allowed as application of income but the same was not claimed in the ITR and hence not allowable.

vii) In view of the above, the AO has rightly assessed income of Rs.1,07,77,985/- as the same is neither applied for the charitable or religious purposes nor invested in the specific modes of investment as mentioned in section 11(5) of the Act. Also the AO has rightly taxed amount of Rs. 95,12,840/- at MMR u/s 115BBC as these donations were anonymous. Ld. CIT (A) has rightly upheld the assessment order.”

6. We have heard the rival submissions, perused the material on record and gone through the orders of the revenue authorities. **In ground no. 1 and 4** the appellant has claimed that the ld. AO has erred in considering a sum of Rs. 1,14,06,043/- as donation of revenue nature and out of the same he has considered a sum of Rs. 95,12,940/- as anonymous liable for taxation @ 30%.

The appellant had filed its ITR on 25.10.2017 declaring an income of Rs. 43,92,697/- as gross income out of which it claimed to had spent Rs. 41,73,070/- and rest income being less than 15% of gross income claimed the same as exempt u/s 11 of the Income Tax Act, 1961. During assessment proceedings it was noticed by the ld. AO that the appellant did not declare the donation claimed as corpus donations for Rs. 1,15,18,043/- in its ITR. Such corpus donations were shown as Corpus donation received for Building Corpus fund, Subsidy from Govt. for salary, Goshala corpus and Donation from Bhandar etc. As per the ld. AO such corpus donation was not corpus but was revenue in nature and out of this sum the ld. AO considered a sum of Rs. 95,12,940/- as anonymous for which the appellant did not have any details about the identity of the payer and he taxed the same in terms of section 115BBC of the Income Tax Act, 1961 at MMR.

Regarding treatment of donations of Rs. 1,14,06,043/- as Corpus donations the ld. AR has submitted as under :-

Donations from gadi and gupt donations are towards corpus as many people pay donation on Gadi and this type of donation is collected in boxes for which Identity of donor is not at all verifiable. It is collection like any other temple such as sanwaliya ji or charbhujaji. It included in corpus fund because these boxes are specifically made for corpus like Gaushala or Building and accordingly funds are being treated.

Procedure for opening collection boxes and about amount from gadi is as follows:-Shri KallajiVedpeeth and ShodhSansthan situated in Shri Kallaji mandir where from for all religious and cultural activities governed . Except Mandir collection boxes are also placed in meditation hall at proposed kallaji Vedic vishvavidyalaya. These all bhandar boxes opens on every Shukla pakshashthmi every month. This procedure is followed through out the year.

Some amount has also been received on gadi (gadhi). The Chal vigrah of Shree Kallaji Maharaj according to the prayer of the devotees for Chal mandir darshanarth for service worship and to alleviate the sufferings of the oppressed devotees are established here. This is called gadi (gadhi) The amount given by the devotees in the said programs is called the amount received from gadi (gadhi). Which ultimately becomes a part of bhandar but deposited separately.

Appellant trust has received Corpus Fund and utilized for Specific Purpose, therefore treating the Corpus Donation as Voluntary donation without any basis and Computing the Income on much higher side deserves to be reduced substantially.

We have gone through the submissions of the appellant and have noticed that all such donations were received by the assessee institution through Gadi and Gupt which are normally given by the donors for some specific purposes. Normally the voluntary donations of revenue nature are given in small amounts but substantial amounts are given by the donors for some specific purpose. Even if such donations are not considered as corpus donations the appellant is otherwise going to get deduction on account of spendings for charitable activities as mentioned in below part of our order.

6.1 Regarding the taxation of Rs. 95,12,940/- as anonymous donation subject to tax at MMR in terms of section 115BBC of the Income tax Act, 1961, the ld. AR of the appellant has submitted that as per sub section 2(b) of section 115BBC the case of the assessee do not fall in the category of treatment of such anonymous donation. The provisions of section 115BBC are being reproduced for better understanding of the matter :-

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

(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.

The Id. AR has claimed that the appellant institution exist for charitable as well as religious activities and it has not received any donation 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 of institution and therefore such anonymous donations can not be covered under section 115BBC of the Income tax Act, 1961 for application of MMR. He has claimed that the

appellant institution maintains a Mandir wherein all religious rituals are being performed as evidenced with its final accounts and the institution is also engaged in several other charitable activities and therefore the appellant institution exist for charitable as well as religious activities. So far as granting of approval under section 80G is concerned merely granting of such approval does not mean that the institution so approved only exist for charitable activities. As per section 80G (5B) of the Income tax Act, 1961 an institution which incur less than 5% of its total income for religious activities shall be deemed to be an institution to whom provisions of section 80G shall be applicable. It has been claimed by Id. A/R that the spending of the institution for religious activities are less than 5% of its total income and therefore mere granting of approval under section 80G does not automatically hold such institution ineligible for application of section 115BBC. The Id. AR in this regard has relied on various case laws as under :-

1. **CIT Exemption, Mumbai vs. Shree Sai Baba Sansthan Trust-Shirdi (Bombay High Court) (341 CTR 201) :** In this case the Id. AO taxed hundi receipts of Rs. 147.72 Crores which is anonymous as per provisions of section 115BBC of the Income tax Act, 1961 on the pretext that the assessee was granted approval u/s 80G of the Income Tax Act, 1961 and hence it was wholly charitable trust and hence its anonymous donations are liable to be taxed at MMR in terms of section 115BBC. The Id. AO was of the view that the objects as defined in the constitution document comprised of only charitable objects and hence it can not be treated as institution engaged both for charitable as well as religious activities. On appeal the Id. CIT (A) reversed the order by holding that the assessee existed both for religious as well as charitable activities. The Id. CIT (A) examined the objects of the institution in detail and discussed the meaning of the term 'religious purposes' in details held that such term can not be interpreted in narrow sense to denote furtherance of only a particular religion, but the same has to be interpreted inclusively and in a broad sense and based thereon he held that the assessee institution existed for charitable as well as religious activities and deleted the application of provisions of section 115BBC of the Income Tax Act, 1961. Against the order of the Id. CIT (A) the department filed appeal before the ITAT which was dismissed and the order of the Id. CIT (A) was confirmed. On

further appeal by the department before the Hon`ble Bombay High Court the order of the ITAT was confirmed by holding as under :-

33. The entire thrust of the submissions on behalf of the Revenue is referring to the provisions of Section 80G, as applied by the Assessing Officer to contend that once the respondent / assessee is registered under Section 80G, it would only be a charitable institution and would fall outside the provision of sub-section 2 (b) of Section 115BBC of the Act. We are afraid to accept such contentions in as much as, the provisions of Section 80G cannot be intermixed, from what is provided by Section 115BBC (2) (b) of the Act. Both the provisions stand compartmentalized and are independent of each other. It would be too far-fetched to reach to a conclusion that merely the assessee being registered under Section 80G of the Act, it cannot be a religious trust, so as to fall outside the purview of Section 115BBC (2) (b) of the Act. Such an approach would amount to an inappropriate reading of the provisions of Section 80G as also Section 115BBC (2) (b). The very foundation of the operation and effect of Section 115BBC (2) (b) is a conclusive ascertainment, and a factual determination of a trust being religious and charitable as ascertained from the contents of the trust deed. Once such requirement is satisfied, any anonymous donation received by such trust would be eligible / entitled to the benefit of an exemption from tax, by the applicability of sub-section 2(b) of Section 115BBC. On the other hand, Section 80G certainly lays down quantum test that is the amounts spent for its purposes to ascertain whether the charitable trust is eligible for registration or not, which is clear from the provisions of Section 80G (5B) of the Act as noted hereinabove.

35. From a cumulative reading of the objects of the assessee, read with the provisions of the Sai Baba Trust Act which is a special legislation promulgated by the State Legislature reflecting the objects and activities of the assessee, as also, considering the provisions of the Bombay Public Trusts Act, we are of the clear opinion that the assessee certainly is a religious and charitable trust, hence, the assessee rightly and legitimately claimed an entitlement under sub-section 2 (b) of Section 115BBC of the Act. Such entitlement of the assessee is rightly recognized by the CIT (A) and the Tribunal.

6.2 The Id. AR also relied on another judgement viz. **Ayyappa Seva Samagam Bombay v/s DCIT, CC 5(1), Mumbai (Bombay High Court) (467 ITR 672)** : In this case the ITAT allowed the appeal of the assessee on the issue of application of provisions of section 115BBC in

case of the trust which was having charitable as well as religious objects. The ITAT allowed the appeal of the assessee by holding as under :-

*9. In the instant case, the assessee is established for religious and charitable purposes and the anonymous donation was not received with specific direction that such donation is for any university or other educational institution, or any hospital or other medical institution run by the assessee-trust. Therefore, the Assessing Officer will not be justified in making the addition even by invoking the provisions of section 115BBC(1). To Strengthen our view, we relied on **Hon'ble Delhi High Court in the matter of [2015] 62 taxmann.com 358 (Del.) CIT (E) v. Bhagwan Shree Laxmi Naraindham Trust, [2022] 143 taxmann.com 281 (Mum. - Trib.) DCIT v. Jayananad Religious Trust.***

10. A careful reading of the entire section of section 115BBC reveals that the provisions have been meant to check the inflow of black money/unaccounted money into the system/institutions such as universities, educational institutions, medical institutions, etc. and it has been provided that the record of the donor along with name and address etc. should be maintained. Sub-section (2) specifically excludes anonymous donations received by an institution which are other than any anonymous donations made with a direction that such donation is for university, medical institution etc. When we read clause (a) and clause (b) of sub-section (2) in harmony and in conscience with each other then it becomes clear that the provisions of sub-section (1) will not apply to the donations like that has been received by the assessee in donation boxes from numerous devotees who have offered the offerings on account of respect, esteem, regard, reference and their prayer for the deity/siddha peeth. Such type of offerings are made/put into the donation box by numerous visitors and its generally not possible for any such type of institutions to make and keep record of each of the donor with his name address etc. Even sometimes the donors out of their esteem, respect and regard and selflessness they do not want that their name be registered as a donor before the deity for whom they make the prayer in the belief that the deity is the ultimate giver of all the worth and virtues of their life. Now reverting to the definition of anonymous donations under sub-section (3) of section 115BBC, it is found that it has been mentioned that anonymous donations means voluntary contributions where the person receiving such contributions does not maintain a record of the identity indicating the name and address of the person making such contribution and charitable trust as in the case of the assessee. It is generally not only difficult but also not possible to maintain such type of record. A perusal of the entire section 115BBC shows that the provisions of said section are not applicable to the

institutions like that of assessee-trust as the same are meant to check the inflow of unaccounted/black money into the system with a modus operandi to make out as a part of the accounts of the institutions like university, medical institutions where the problem relating to the receipt of capitation fees, etc. is generally highlighted. Under such circumstances, there is no justification on the part of the Commissioner (Appeals) in taxing the offerings received in the hundis/donation boxes as income of the assessee under section 115BBC.”

On appeal the Hon`ble Bombay High Court sustained the view of the ITAT.

6.3 In view of above, we are inclined to accept that the provisions of section 115BBC of the Income Tax Act, 1961 cannot be applied in the instant case as the assessee institution existed for both charitable as well as religious purposes and are covered in exception as carved out in sub section 2(b) of section 115BBC of the Income Tax Act, 1961. We therefore allow ground no. 1 and 4 of the appellant.

In ground no. 2 the appellant has challenged the action of the ld. AO in not considering a sum of Rs. 44,13,515/- being the amount spent for construction of university building. He has also stated that the ld. AO was provided with complete vouchers about this spending and no query was asked by ld. AO on such vouchers etc. but in the order he did not allow the benefit of said amount as application for charitable purposes.

6.4 We have gone through the submissions of both sides in this regard and even the ld. DR has also accepted this fact and accepted that this was deserves to be allowed but he challenged the same in view of the fact that no such claim was made by the appellant in its ITR. In our opinion the objection so raised by the ld. DR is not acceptable as an assessee can not be penalized for any error in submitting details in ITR where such deduction is otherwise allowable to the assessee. We therefore are of the opinion that the benefit of this capital expenditure be allowed to the appellant. We accordingly allow this ground.

6.5 In ground no. 3 the appellant has challenged the action of the Id. AO in not allowing the utilization of Rs. 12,825/- for purchase of books etc. In view of our verdict in ground no. 2 we allow this ground also.

6.6 In ground no. 5 the appellant has challenged the action of the Id. AO in charging excess interest u/s 234B and reversing interest u/s 234D. We direct the Id. AO to work out chargeable interest as per Law while giving effect to our order. This ground is therefore allowed for statistical purposes.

6.7 In ground no. 6 the appellant has challenged the action of Id. CIT (A) in not considering the contents of circular no. 14 dated 11.04.1955 issued by Central Board of Direct Taxes (CBDT) while rendering the decision. Since we have heard the case in length and are giving our verdict by considering all the contents of cited circular and hence this ground is only for academic purposes and we are not making any comment thereon.

6.8 In ground no. 7 the appellant has challenged the action of the Id. CIT (A) in not considering the claim of the appellant for Rs. 1.00 Crore given to Rajasthan State University as endowment fund as application for charitable purposes. There is no dispute about the fact that this sum had been given by the appellant to the Rajasthan State University and such contribution is directly related to the activities of the appellant and therefore we do not see any reason in not allowing the benefit of such utilization. We accordingly direct the Id. AO to consider this contribution of Rs. 1.00 Crore as application for charitable purposes. Accordingly this ground of appeal is allowed.

6.9 Ground no. 8 does not require any adjudication as no any new ground has been raised by the appellant and none of the ground has been modified or withdrawn.

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

Order pronounced under Rule 34(4) of the Income Tax (Appellate Tribunal) Rules, 1963 by placing the details on the notice board.

;

Sd/-
(Dr. Mitha Lal Meena)
Accountant Member

Sd/-
(DR. S. Seethalakshmi)
Judicial Member

Dated 01/04/2025

Santosh- Sr. P.S

Copy of the order forwarded to:

- (1)The Appellant
- (2) The Respondent
- (3) The CIT
- (4) The CIT (Appeals)
- (5) The DR, I.T.A.T.

True Copy
By order