

**IN THE INCOME TAX APPELLATE TRIBUNAL
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI SUNIL KUMAR YADAV, JUDICIAL MEMBER
AND SHRI. A. K. GARODIA, ACCOUNTANT MEMBER**

ITA No.776/LKW/2014
Assessment Year:2010-11

Income Tax Officer-II(3) Lucknow	v.	M/s Saraswati Educational Charitable Trust B-96, Sector-C, Mahanagar Lucknow
		TAN/PAN:AAFTS8893Q
(Appellant)		(Respondent)

Appellant by:	Shri. Punit Kumar, D.R.		
Respondent by:	Shri. K. R. Rastogi, C.A.		
Date of hearing:	11	06	2015
Date of pronouncement:	17	06	2015

ORDER

PER SUNIL KUMAR YADAV:

This appeal is preferred by the Revenue against the order of the Id. CIT(A), inter alia, on the following grounds:-

1.1. The Ld. CIT (A) has erred in deleting addition of Rs.1,66,30,000/- on account of donations, not found explained by the Assessing Officer.

1.2) The Ld. CIT (A) has erred in law and on facts by ignoring the fact that anonymous donations are also unexplained cash credits as referred to in section 68 of the IT. Act even if they are applied for charitable purpose. Such anonymous-donations are liable to be taxed in the hands of the trust with a view to prevent channelization of unaccounted money into these institutions. (CBDT's circular No.-14 as referred to by CIT (A) in his order). In the "same spirit AO taxed the donations since creditworthiness of the alleged donors and

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genuineness of transactions were not satisfactorily explained, even though the donations might have been applied for charitable purpose and donations might not be anonymous strictly as per definition.

2. During the course of hearing, the Id. counsel for the assessee has invited our attention to the fact that the impugned issue is squarely covered by the judgment of the Hon'ble jurisdictional High Court in the case of CIT vs. Uttaranchal Welfare Society, 42 taxmann.com 361. Besides, he has also placed reliance upon the judgment of the Hon'ble Delhi High Court in the case of Director of Income-tax (Exemption) vs. Keshav Social and Charitable Foundation, 278 ITR 152 (Delhi) and judgment in the case of Director of Income-tax vs. Hansa Raj Samarak Society, 35 taxmann.com 642 (Delhi). The Id. counsel for the assessee has further contended that the assessee has received donation from various persons which was disallowed by the Assessing Officer by making addition under section 68 of the Income-tax Act, 1961 (hereinafter called in short "the Act") having ignored the fact that the assessee has taken the entire receipts of donation to its income and the same was applied for charitable purposes. Therefore, no addition is called for under section 68 of the Act.

3. The Id. CIT(A) has appreciated these facts in the light of the aforesaid judicial pronouncements and has deleted the addition as made by the Assessing Officer. The Id. counsel for the assessee has further contended that in order to establish the identity of the person from whom donation was received, the assessee has filed their PAN details, copy of ITRs, copy of bank statement, their confirmations, financial statements, computation of income, etc. Therefore, provisions of section 115BBC cannot be invoked and no addition under section 68 of the Act is permissible in the case of charitable society where donation was taken as income in its account.

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4. The Id. D.R. has placed reliance upon the order of the Assessing Officer with the submission that wherever the assessee has received any donation from the donors, he is required to prove the creditworthiness of the donors besides proving the identity.

5. Having carefully examined the orders of the lower authorities in the light of the rival submissions, we find that undisputedly the assessee has received donation from various persons which was examined by the Assessing Officer. Being not convinced with the creditworthiness, the Assessing Officer has made the addition under section 68 of the Act, but the Id. CIT(A) has deleted the same having observed that once the receipt was taken to the income of the assessee and has applied for charitable purposes, no addition under section 68 of the Act is called for. While holding so, the Id. CIT(A) has also placed reliance upon the circulars and various judgments of the different High Courts including the jurisdictional High Court. The relevant observations of the Id. CIT(A) are extracted hereunder for the sake of reference:-

"4. I have considered the matter/The appellant trust is registered u/s 12A of the Act. There is no dispute that the entire voluntary donations of Rs 2,09,41,000/- has been disclosed by the appellant trust as income in the Income and Expenditure account of one of its divisions, Saraswati Aviation Academy (Aviation College Division) during the year under consideration. The income so disclosed has been applied for charitable purposes as provided u/s 11(1) of the Act and hence cannot be included in total income of the appellant trust. In my considered opinion adding part of the voluntary donations again as unexplained cash credits u/s 68 to the total income of the appellant amounted to taxing, the same income twice which is not permissible. Reliance is placed on the following judgments

a. Director of Income Tax (Exemption) v. Keshav Social and Charitable Foundation, [2005] 278 ITR 152 (Delhi): The assessee, a charitable trust, was engaged in the activity of providing medical

advice to the poor and needy in various parts of the State. During the relevant previous year, the assessee was asked to furnish the details of donations received by it. However, the Assessing Officer, on finding that the assessee was unable to satisfactorily explain the donations and the donors were fictitious persons, held that the assessee had tried to introduce unaccounted money in its books by way of donations and, therefore, the amount was to be treated as cash credit under section 68. On that basis, the benefit under section 11 was denied to the assessee. On appeal, the Commissioner (Appeals) held that treating donation as income under section 68 was not correct as the assessee had disclosed the donations as its income and had spent 75% of the amount for charitable purposes. On the revenue's appeal, the order of Commissioner (Appeals) was upheld by the Tribunal. On appeal it was held:

To obtain the benefit of the exemption under section 11, an assessee is required to show that the donations were voluntary. In the instant case, the assessee had not only disclosed its donations, but had also submitted a list of donors. The fact that the complete list of donors was not filed or that the donors were not produced, did not necessarily lead to the inference that the assessee was trying to introduce unaccounted money by way of donation receipts. That was more particularly so in the facts of the case where admittedly, more than 75 per cent of the donations were applied for charitable purposes. [Para 10]

Further section 68 had no application to the facts of the instant case because the assessee had in fact disclosed the donations as its income and it could not be disputed that all receipts, other than corpus donations, would be income in the hands of the assessee. There was, therefore, full disclosure of income by the assessee and also application of the donations for charitable purposes. It was not in dispute that the objects and activities of the assessee were charitable in nature, since it was duly registered under the provisions of section 12A. [Para 11]

For the aforesaid reasons, there was no merit in the appeal and no substantial question of law arose from order of the Tribunal.

Therefore, the appeal was to be dismissed. [Para 12] The Hon'ble jurisdictional Allahabad High Court has concurred with the above judgment of the Hon'ble Delhi High Court in the case of CIT, Ghaziabad v. Uttaranchal Welfare Society, [2014] 42 taxmann.com 361 (All.) in which it has been held that the, Delhi High Court further held that Section 68 of the Act has no application in case where the assessee had disclosed donations as its income. It was also not disputed that all receipts, other than corpus donations, would be income in the hands of the assessee. If there is full disclosure of the donation for whatever purpose and that the registration under Section 12A is continuing and valid, exemptions cannot be denied.

b. Director of Income Tax v. Hans Raj Samarak Society, [2013] 35 taxmann.com 642 (Delhi).

Section 68, read with section 11, of the Income-tax Act, 1961 – Cash credits [In case of charitable trust] - Assessment year 2006-07 – assessment year disallowed deduction under section 11 on finding unaccounted money by way of anonymous donation on purchase of capital assets – Tribunal observed that donation received by assessee was not anonymous donation because receipts were issued by assessee which were in custody of Department -Whether Tribunal was justified in holding that section 68 could not be applied, as donations had already been shown by assessee as income -Held, yes [Para 4]

In view of the above it is held that -the AO was not justified in adding voluntary donations of Rs.1,66,30,000/- received from nine persons as unexplained cash credits as section 68 has no application to the facts of the impugned case.

4.1 I also find that despite the fact that section 68 has no application to the facts of the case the appellant trust has duly discharged its onus to prove the identity and capacity of the donors and genuineness of the transactions with them. On perusal of the details and reasons recorded by the AO it is noted that addition u/s 68 as unexplained cash credits has been made by the AO on mere

suspicion without conducting proper enquiries and bringing material evidence on record whereas the appellant has furnished large number of details and documents to prove the identity and capacity of the donors and genuineness of transactions with them which is listed in the table furnished by the AR of the appellant. In Dhakeshwari Cotton Mills Ltd. v. CIT, 26 ITR 775 (SC), the Hon'ble Apex Court has laid down that an ITO is entitled to act on material which may not be accepted as evidence in a Court of law, but the ITO is not entitled to make a pure guess and make an assessment without reference to any evidence or any material at all. There must be something more than bare suspicion to support the assessment. In view of the above it is held that the addition of Rs. 1,66,30,000/- as unexplained cash credit has been made by the AO without any material or evidence which cannot be sustained.

4.2 *During the appellate proceedings it was also submitted that the provisions of section 115 BBC of the Act were not violated by the appellant trust and the donations received from the nine donors cannot be categorized as anonymous donations. Section 115BBC reads as under:*

"Anonymous donations to be taxed in certain case

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

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

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

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

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

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

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

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

Sub-section 1 provides that where the total income of an assessee being a person in receipt of income on behalf of any trust or institution referred to in section 11 includes income by way of anonymous donation, the income tax is payable by it on this amount as prescribed in the section. Sub-section 3 defines the expression anonymous donation in an exhaustive manner to be a case where the person receiving the donation does not maintain records of identity indicating the name and address of the contributor and such other particulars as may be prescribed. No other particular has been prescribed under this provision. The Board Circular No. 14 reported in 288 ITR (St.) 9 has explained these provisions which were introduced by the Finance Act, 2006 w.e.f. assessment year 2007-08, which is as under:

"25.1 Income of wholly charitable or religious trusts or institutions as well as partly charitable or religious trusts or institutions is exempt from income-tax under sections 11 and 12, subject to the fulfilment, inter alia, of certain conditions of

application of income and investment in specified modes. Similarly, income of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (via) or any hospital or other medical 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, is exempt from income-tax subject to the fulfilment of conditions specified in the said clause.

25.2 With a view to prevent channelisation of unaccounted money to these institutions by way of anonymous donations, a new section 115BBC has been inserted to provide that any income of a wholly charitable trust or institution by way of anonymous donation shall be included in its total income and taxed at the rate of 30 per cent. Anonymous donation made to wholly charitable and religious trusts or institutions, i.e. mixed purpose trusts or institutions shall be taxed only if it is for any university or other educational institution or any hospital or other medical institution run by them. Anonymous donation to wholly religious trusts or institutions will not be taxed.

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

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

has not only furnished the names and addresses of the donors but also furnished a number of other details in respect of such donors viz. their PANs, copy of ITRs, copy of bank statements, their confirmations, financial statements, computation of income etc. In view of the above it is held that the appellant has established the identity of donors as provided u/s 115BBC of the Act and the donations received by the appellant cannot be categorized as anonymous donations and subjected to tax as per provisions of section 115BBC of the Act."

6. Though the Revenue has taken a plea that for anonymous donation, provisions of section 115BBC of the Act can be invoked but in the instant case where the assessee has filed various documents to prove the identity of the donors, these donations cannot be called to be anonymous. So far as applicability of provisions of section 68 of the Act is concerned, it has been held by various High Courts including the jurisdictional High Court that once donation received was taken as income of the assessee which was applied for charitable purposes, provisions of section 68 of the Act cannot be invoked. Since we do not find any infirmity in the order of the Id. CIT(A), we confirm the same as he has adjudicated the issue in the light of various judicial pronouncements. Accordingly we confirm his order.

7. In the result, appeal of the Revenue stands dismissed.

Order was pronounced in the open court on the date mentioned on the captioned page.

Sd/-
[A. K. GARODIA]
ACCOUNTANT MEMBER

Sd/-
[SUNIL KUMAR YADAV]
JUDICIAL MEMBER

DATED: 17th June, 2015

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Copy forwarded to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR

Assistant Registrar