

IN THE HIGH COURT OF DELHI

ITA No.1501 of 2010

DIRECTOR OF INCOME TAX

Vs

MODERN CHARITABLE FOUNDATION

A K Sikri and M L Mehta, JJ

Dated: May 18, 2011

JUDGEMENT

Per: A K Sikri:

1. The assessee is a Charitable Trust registered under the Societies Registration Act XXI of 1860. It had filed the return for the assessment year 1999-2000 declaring the income at nil, which was accepted by the Assessing Officer under Section 143(1)(a) of the Income Tax Act. However, thereafter, the assessment was re-opened by issuing a notice dated 30.3.2006 under Section 148 of the Act, on the basis of the information received from the Director of Income Tax (Investigation) that the assessee had received certain accommodation entries in its account on 08.1.1999. After the re-opening of the case, the Assessing Officer went through the records again and found that the assessee had taken donations in the sum of Rs. 53,52,900/- and unsecured loan of Rs. 1,14,58,500. The Assessing Officer asked the assessee to give details in respect thereof. A numbers of opportunities were provided by the Assessing Officer for this purpose but the assessee failed to avail the said opportunities and furnish the details thereof to the following effect:-

(i) List of donors alongwith confirmations in respect of donation received, giving complete address, PAN, Ward No., mode of payment received with cheque No., DD No., Pay Order No., date & address of the bank.

(ii) Details of loans & liabilities alongwith confirmation of Rs. 1 lac and above.

(iii) Details of relief made to poor with evidence.

(iv) A copy of the bank statement for the relevant period.

(v) Books of accounts and vouchers for the period, under consideration.

2. In these circumstances, the Assessing Officer passed re-assessment order treating the donations of Rs. 53,52,900/- and unsecured loan of Rs. 1,14,58,500 as undisclosed income and made the additions under Section 68 of the Income Tax Act.

3. The assessee filed an appeal there against before the CIT(A) and produced some documents/evidence for the first time before the CIT(A). On the evidence, the CIT(A)

asked for remand report. The Assessing Officer in his remand report objected to the admission of the additional evidence on the ground that the requirements of Rule 46A of the Income Tax Rules were not satisfied as the assessee had failed to produce the same before the Assessing Officer in spite of various opportunities given and no reasons whatsoever were given by the assessee as to why such evidence could not be produced before the Assessing Officer, which the assessee is sought to produce before the CIT(A). However, the documents which were produced were not verified by the Assessing Officer and, therefore, he did not furnish any comments thereupon. The CIT(A) admitted the evidence and allowed the appeal of the assessee on the basis of the said additional evidence holding that on the basis of this evidence, the assessee was able to point out the source of donations as well as loans and how the said donations and loans were duly applied for the objective of the assessee/society.

4. The ITAT has upheld this order of the CIT(A) by the impugned order dated 06.8.2009.

5. Challenging that order, present appeal is preferred under Section 260A of the Income Tax Act (hereinafter referred to as 'the Act'). The main plank of challenge is that there was no reason to admit the additional evidence when the assessee failed to produce the same in spite of number of opportunities granted to the assessee. In the alternative, it was submitted that since the AO had objected to the admission of the additional evidence, even if the same is to be admitted, opportunity should be granted to the AO to verify the same.

6. Learned counsel for the assessee, on the other hand, has contested the appeal by relying upon the orders of the CIT(A) as well as the Tribunal.

7. After hearing the counsel for the parties, we are of the opinion that at this stage admission of the additional evidence admitted by the CIT(A) be not interfered with. It is moreso when the assessee is a Charitable organization. We may also record the submission of the learned counsel for the respondent that insofar as unsecured loans are concerned, they were paid back in subsequent years, which shows that these were the genuine loans taken by the assessee. At the same time, we find that the CIT (A) after admitting the evidence relied upon the same without any verification. No doubt, the remand report of the AO was called for and it was found that the AO did not go into to the veracity of the same and reproduced some facts from the assessment order. It was because of the reasons that the AO strongly felt that there was lapse on the part of the assessee in not producing the evidence before him when he had been given number of opportunities and therefore, he objected to the admission of the said evidence and did not do any further exercise to verify the same. At the same time, we also find that even the CIT (A) did not go into these documents and simply relied upon these documents and gave benefit to the AO. Therefore, in order to balance the equities, we are of the opinion that on one hand, the assessee be permitted to rely upon the additional evidence produced before the CIT (A), at the same time, the AO also be given opportunity to verify these documents.

8. Accordingly, we remit the case back to the AO who shall go into the veracity of these documents. The assessee shall also be entitled to show that the unsecured loans had been repaid. If the assessee is able to explain the donations as well as unsecured loans properly, the AO shall accept the same.

9. This appeal stands disposed of in the aforesaid terms.