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IN THE INCOME TAX APPELLATE TRIBUNAL
(DELHI BENCH "G" NEW DELHI)
BEFORE SHRI RAJPAL YADAV AND SHRI T.S.KAPOOR

ITA No. 2428/Del/2011
Assessment Year: 2007-08

Sunder Deep Educational Society, c/o M/s. RRA Taxindia, D-28, South Extension, Part-I, New Delhi. (PAN: AAETS5165J) (Appellant)	vs.	Addl. CIT, Range-2, Ghaziabad. (Respondent)

Appellant by: Shri Rakesh Gupta, Adv.
Respondent by: Smt. N. Srivastava, Sr. DR

ORDER

PER RAJPAL YADAV: JUDICIAL MEMBER

The assessee is in appeal before us against the order of Learned CIT(Appeals) dated 31.3.2011 passed for assessment year 2007-08. Originally, the assessee has taken six grounds of appeal but vide letter dated 14.3.2012, it has filed an application along with modified grounds of appeal wherein it has raised nine grounds of appeal. The grounds of appeal are not in consonance with Rule 8 of the ITAT's Rules, they are descriptive and argumentative in nature. In brief, its grievance revolves around a single issue which contains three sub-issues. The grievance is that assessee had received voluntarily donation amounting to Rs.192,35,000. According to the Assessing Officer, these are anonymous donations and, therefore, assessable as an income of the assessee as per section 115 BBC read with section 68/69

of the Income-tax Act, 1961. Apart from this main issue, the assessee has contended that in respect of two amounts from Bharat Ekta Andolan and Nisadh Investments and Finance amounting to Rs. 20 lacs and Rs. 10 lacs respectively. The additions were made on protective basis. These are converted on substantive basis by the Learned CIT(Appeals). According to the assessee, Learned CIT(Appeals) has erred in confirming these additions on substantive basis. Learned CIT(Appeals) further enhanced the income of the assessee by a sum of Rs.11 lacs which is a donation from three persons, namely, Veena Bhsatia Rs. 1 lac, Quitech India Pvt. Ltd., Allegiant Buil Mart Pvt. Ltd. Rs. 5 lacs each. Apart from these, assessee has challenged charging of interest under sec. 234B and 167B of the Act.

2. The brief facts of the case are that assessee is a registered society. It was registered on 20.8.2004 under the Societies Registration Act, 1860. It got registration under sec. 12AA of the Act on 25.1.2005. It is also enjoying exemption under sec. 80G vide order dated 10.3.2005. This exemption is available for the period from 10.09.2004 to 31.3.2008. All these certificates are placed on page Nos. 2 to 4 of the paper book. According to the Memorandum of Association available on page No. 5 of the paper book, the assessee society came into existence for fulfilling the aims and objects enumerated in clause 3 of the Memorandum of Association. The main object

is to establish, maintenance and support schools, colleges, technical institutions and medical college etc. According to the Assessing Officer, the society is having five colleges which are conducting MBA, MCA, B.Pharma, Hotel Management, Architecture courses. It has filed its return of income-tax on 15.10.2007 declaring nil income and claimed refund of Rs.28,090. It also emerges out that a survey under sec. 133A was carried out on the premises of the society on 10.8.2006. Assessing Officer had issued notice under sec. 143(2) of the Act on 14.8.2008, which was duly served upon the assessee and authorized representative from the assessee appeared before the Assessing Officer.

3. On scrutiny of the accounts, it revealed to the Assessing Officer that in the audited balance sheet, assessee has shown receipt of donation at Rs.355,26,801 from different donors. According to the Assessing Officer, he has called for information on test-check basis under sec. 133(6) of the Act from some of donors who have donated more than Rs. 50,000. These letters were sent on 23.1.2009. Ld Assessing Officer observed that some of the donors have confirmed their donations, however, in some cases, the letters were returned unserved. It also emerges out that there are 419 donors, out of which 128 donors have donated less than Rs.20,000 and the total collection from these persons is of Rs.25,46,000. Ld Assessing Officer did not make

inquiry about these donations. He has devoted his energy towards the persons who have donated Rs.50,000 and above. According to the Assessing Officer, the information was called for from 61 donors under sec. 133(6) of the Act. Twenty one Letter returned unserved. Ld Assessing Officer has noticed the details of these persons on page Nos. 2 and 3 of the assessment order. He, thereafter, observed that since the letters sent have been returned unserved, the existence of these donors had not been established and the confirmations filed by the assessee are not genuine. With regard to 26 donors, learned Assessing Officer observed that though notices were served but no information or reply was received. He confronted the assessee as to why the donations should not be treated as anonymous donations and the amount received by the assessee should not be added as its income.

4. In response to the query of the Assessing Officer, assessee filed its reply on 21.12.2009. It raised two fold submissions. According to the assessee, it has submitted the list of donors along with their addresses and income-tax particulars. These are not anonymous donations. The assessee has filed confirmation. Alternatively, it was contended that assessee is a charitable institution, duly registered under sec. 12AA of the Act. The donations are to be treated either the income of the assessee under sec. 11(b) or 12 of the Act. In other words, stand of the assessee is that if donations

received by the assessee are corpus donation then, these receipts cannot be brought to tax even if the assessee has not applied these donations for its object because they will go to the corpus of the society. In case, it is considered that donations are not being specifically pointed out towards corpus then, as per section 12, the voluntary contribution received by a trust created wholly for charitable purpose, shall for the purpose of section 11, be deemed to be income derived from the property held under trust wholly for charitable or religious purposes. In support of its contentions, assessee has relied upon the following decisions:

i) Addl. CIT vs. Surat Art Silk Cloth Mfrs. Association [1980-121 ITR 1 (S.C);

ii) Victoria Technical Institute v. CIT (Addl.) (1991) 188 ITR 57 (S.C);

iii) Thiagrarajar Charities v CIT (Addl.) 1997 225 ITR 1010 (S.C);

iv) Dharmadeepti v CIT (1978) 114 ITR 454 (S.C)

5. Ld Assessing Officer was not satisfied with the explanation of the assessee. He considered the cases of major contributors from page Nos. 9 to 19 of the impugned order. He has pointed out how the assessee failed to discharge its onus as per sec. 68 of the Act. Thereafter, learned Assessing Officer has made addition of Rs.196,86,000 by observing as under:

"In view of the above facts and circumstances, it is concluded that there are neither genuine donation nor it is voluntarily. It is basically purchased entry and the nature of which has unexplained. This view is further strengthened from the decisions of Hon'ble Supreme Court in the cases of Sumit Dayal vs. CIT, CIT vs. P. Mohan Kala, 271 ITR & 278 ITR of 2007 and CIT West Bengal-II vs. Durga Prasad More, 82 ITR 540, in which it has been stated that merely showing transactions through banking entry is not sufficient. The transactions apparently were held to be but not the real one. A society receiving donation to the tune of Rs. 3.52 crores and above could not produce the donors and the donations at such larger quantum of that person who has meager income shows beyond the test of human probabilities. Therefore, the above transaction is held as fictitious/anonymous and unexplained cash credit and added in assessee's total income in view of the provisions of 115BBC & 68 of the IT Act. The benefit of application of provisions of sec. 11 & 12 of IT Act, cannot be given because the donation is neither genuine nor voluntarily from any angle and neither synonymous u/s. 115BBC. Therefore, the reliance of case of DIT(Exem.) vs. Keshav Social and Charitable Trust reported in 278 ITR 152 (Del.) is not application in this case. Penalty proceedings u/s. 271(1)(c) is initiated separately for furnishing inaccurate particulars of its income. The total additions as discussed in above paras amounting to Rs.1,96,85,000 is added as per provisions of Sec. 115BBC of the IT Act, treating it anonymous donations.

Total Addition: 1,96,85,000/-"

6. Learned CIT(Appeals) has partly allowed the appeal of the assessee.

7. The learned counsel for the assessee while impugning the orders of Learned Revenue Authorities has submitted that assessee has given complete details of the donors. It has been maintaining a record of the identity indicating the name and address of the persons making such contribution and such other particulars as may be prescribed by the Act. While taking us through the findings of the Assessing Officer recorded in paragraph 11 (extracted supra), he pointed out that Assessing Officer has basically observed that donations are anonymous, therefore, as per sec. 115BBC of the Act, they cannot be deemed as income derived from the property held under a trust under sec. 12 of the Act, otherwise if the assessee is able to establish the identity of the donors then, section 115BBC would not be applicable. At the most, the donations would be treated as income received by the assessee and if income is applied for charitable purposes more than 85% of the total receipts then, no amount would be taxable in the hands of the assessee. He made reference to sections 11 and 12 of the Income-tax Act, 1961. He also pointed out that learned Assessing Officer has made a distinction on the facts with the decision of Hon'ble Delhi High Court in the case of DIT(Exemptions) vs. Keshav Social & Charitable Trust reported in 278 ITR 152 relied upon by the assessee.

8. He further contended that the Learned First Appellate Authority has accepted the contentions of the assessee that donations are not anonymous. Section 115BBC is not applicable. The revenue has not filed any appeal nor challenged this finding of the Learned CIT(Appeals). For buttressing his contentions, he took us through page 79 of the Learned CIT(Appeals)'s order. We deem it necessary to take note of Learned CIT(Appeals)'s finding in this connection as under:

> "But section 115BBC would apply to anonymous donations, i.e., donations having no identifiable names and addresses. Once an assessee himself/itself claims some receipts as 'anonymous donations, he would be liable to lay due tax on that.
>
> The important issue, even from A.Y. 2007-08 onwards, would still remain that if certain donations are not categorized as 'Anonymous donations', then section 68 would be applicable to such cash credits, in case assessee is not able to discharge the duties cast upon by provisions of sec. 68 i.e. to establish the identity of donor, genuineness of the donation, and creditworthiness of the donor.
>
> I do not agree with A.O's view of treating these donations as 'Anonymous', and to that extent, I agree with assessee's arguments.
>
> But, even if donations are not coverable u/s. 115BBC; still the appellant cannot get away from purview of sec. 68/69/69C. If borrowings/donations/investments are unproved, they may well be

treated as income unaccounted and brought to tax u/s. 11(4) r.w.s. 68/69/69C."

9. According to the learned counsel for the assessee, Learned CIT(Appeals) failed to note that registration granted under sec. 12AA of the Act is in tact. The exemption granted under sec. 80-G is still available to the assessee. The moment it is held that the donations are identifiable and assessee has maintained the details of donors as required under sec. 115BBC of the Act, it is to be considered that voluntary donations received by the assessee are its income. The moment it is held that these receipts are the income of the assessee then its computation would be as per sec. 11 and 12 because it is enjoying the registration under sec. 12AA. He pointed out that the application of income by the assessee towards fulfillment of its objects is manifolds. The total income as per income and expenditure account was Rs.90,79,412 and the total expenditure was Rs.533,22,666. The total expenditure is more than five times the income earned during the year. Therefore, ultimately the assessed income of the assessee would be at nil. He further contended that this issue has come up before the different Benches of the ITAT on number of occasions. He placed on record copies of the ITAT's orders in the cases of Ideal Education & Welfare Vs. ADIT (ITA No. 1376/Del/2011); (b) Hansraj Smarak Society vs. ADIT (ITA

No.882/Del/2011) and ITA No. 123/Del/2011 and (c) ITO vs. MPJS Educational Trust (ITA No. 2592/Del/2012), (d) Shri Vivekanand Education & Welfare Society (ITA No. 3562/Del/2012). The learned counsel for the assessee further submitted that all these orders of the ITAT are based upon the judgment of Hon'ble Delhi High Court in the case of DIT(Exep.) vs. Keshav Social & Charitable Foundation (supra). In this case, assessee had received donation of Rs.18,24,200. It was asked to furnish details of these donations i.e. the names and addresses of the donors and the mode of receipt of donations. The assessee was unable to explain satisfactorily the donations and the donors were perhaps fictitious persons. Assessing Officer was of the view that the assessee had tried to introduce unaccounted money into its books by way of donations and, therefore, the amount was treated as cash credits under sec. 68 of the Act. Hon'ble High Court has observed that sec. 68 of the Act has no application to the facts of the case because assessee had, in fact, disclosed the donations as its income and it cannot be disputed that all receipts other than corpus donations, would be income in the hands of the assessee. According to the Hon'ble High Court, once assessee had disclosed the donation as its income and its application for charitable purposes then benefit of sec. 11 would not be denied to the assessee. The learned counsel for the assessee thereafter relied upon the decision of

Hon'ble Karnataka High Court in the case of DIT(E) & Ors. Vs. Belimatha Mehasanthana Socio Cultural & Educational Trust reported in 336 ITR 694. In this case, assessee had received donation to the extent of Rs.28,30,094. According to the Assessing Officer, it was received in violation of the Prohibition of Capitation Fees Act, 1984. A sum of Rs.14,36,500 was received towards corpus donation. The ITAT has held that once assessee has treated the donation as its income and it has utilized for charitable purpose then the said amount would be eligible for exemption under sec. 11(1)(d) of the Act. Hon'ble High Court has upheld the order of the ITAT. The learned counsel for the assessee further relied upon the order of the ITAT, Jodhpur in the case of ACIT vs. Geetanjali Education reported in 114 TTJ page 697. He also relied upon the decision of Hon'ble Delhi High Court in the case of DIT (E) vs. Friend Kalyan Parthisthan reported in 257 ITR 609 and in the case of DIT vs. Raunaq Education Foundation reported in 294 ITR 76 (Del.). The learned counsel for the assessee further submitted that the order of the ITAT in the case of Hansraj Smarak Society (supra) has been upheld by the Hon'ble Delhi High Court in ITA No. 534 of 2012.

10. Learned DR on the other hand relied upon the order of the Learned CIT(Appeals).She took us through the observations of the Learned First

Appellate Authority available on page 78 of the impugned order. She pointed out that it appears that these amounts have been taken by the assessee at the time of admission from the student in the shape of voluntary donation otherwise these are forced contributions. She further contended that additions under sec. 68 & 69 of the Act, if any, made then it is an income from other sources and benefit of sec. 11 and 12 will not be available to the assessee on such additions on account of unexplained credit.

11. We have duly considered the rival contentions and gone through the record carefully. There is no dispute between the parties that assessee is a registered society under Society Registration Act. 1862. It is also enjoying registration under sec. 12AA of the Act and it is also enjoying exemption under sec. 80G of the Act. All these registrations are in tact during the accounting year relevant to this assessment year. Assessing Officer has basically distinguished the facts of Hon'ble Delhi High Court's decision in the case of Keshav Charitable Trust, on the ground that sec. 115BBC has been introduced in the Act, it is applicable in this assessment year and if donations are to be treated as anonymous donations then, it would not be construed that such donations are deemed to be income derived from the trust as per sec. 12 of the Act. This fact has been reversed by the Learned

CIT(Appeals) in the findings extracted supra. Learned CIT(Appeals) has held that sec. 115BBC is applied to anonymous donations. He did not agree with the Assessing Officer's view of treating these donations as anonymous to that extent he agreed with the assessee's arguments. This finding of fact has not been challenged before us by the revenue. The order of the Learned CIT(Appeals) is dated 31.3.2011. The appeal of the assessee was listed on six occasions, but no steps were shown by the revenue that it is going to challenge the findings of Learned CIT(Appeals) extracted supra. Thus, we have to proceed from the point that assessee has been maintaining complete details of the donors as required under sec. 115BBC. The donations are not by anonymous donors. If these are not anonymous then let us see how the income would be computed. Section 12 of the Act has a direct bearing on the controversy in hand, therefore, it is imperative upon us to take note of this section as under:

> "**12. Income of trusts or institutions from contributions.-** (1) Any voluntary contributions received by a trust created wholly for charitable or religious purposes or by an institution established wholly for such purposes (not being contributions made with a specific direction that they shall form part of the corpus of the trust or institution) shall for the purposes of section 11 be deemed to be income derived from property held under trust wholly for charitable or religious purposes and the provisions of that section and section 13 shall apply accordingly.

(2) The value of any services, being medical or educational services, made available by any charitable or religious trust running a hospital or medical institution or an educational institution, to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13, shall be deemed to be income of such trust or institution derived from property held under trust wholly for charitable or religious purposes during the previous year in which such services are so provided and shall be chargeable to income-tax notwithstanding the provisions of sub-section (1) of section 11.

Explanation.—For the purposes of this sub-section, the expression "value" shall be the value of any benefit or facility granted or provided free of cost or at concessional rate to any person referred to in clause (a) or clause (b) or clause (c) or clause (cc) or clause (d) of sub-section (3) of section 13.

(3) Notwithstanding anything contained in section 11, any amount of donation received by the trust or institution in terms of clause (d) of sub-section (2) of section 80G in respect of which accounts of income and expenditure have not been rendered to the authority prescribed under clause (v) of sub-section (5C) of that section, in the manner specified in that clause, or which has been utilised for purposes other than providing relief to the victims of earthquake in Gujarat or which remains unutilised in terms of sub-section (5C) of section 80G and not transferred to the Prime Minister's National Relief Fund on or before the 31st day of March, 2004 shall be deemed to be the income of the previous year and shall accordingly be charged to tax".

12. A bare perusal of sub-clause (i) of sec. 12 would indicate that if an assessee had received donations which were not with a specific directions that they shall form part of the corpus donation then, for the purpose of

section 11 be deemed to be income derived from property held under the Trust wholly for charitable or religious purpose. It has not been specifically demonstrated before us that these donations were towards the corpus. The learned counsel for the assessee submitted that once the donations are held by the Learned CIT(Appeals) as synonymous and assessee is able to demonstrate the maintenance of the complete record then sec. 115BBC of the Act would not be applicable. The receipts are to be governed by sec. 11 and 12 of the Act. The moment assessee has treated the donations as its income and it is deemed to be an income derived from the property held under the trust as per sec. 12(1) then, the only aspect remained is to verify whether such amounts have been applied for the objects of the society to the extent of 85% or not? According to the assessee, it has applied Rs.533,22,266 as expenditure towards fulfillment of assessee's objections and it has an income of only Rs.90,79,412. This fact was brought to the notice of the Assessing Officer in the reply dated 21.12.2009 which has been reproduced by the Assessing Officer on page 5.

13. In the judgment referred by the assessee, a similar issue was involved. The ITAT in the case of St. Vivekanand Education & Welfare Society has considered this aspect. The discussion made by the ITAT reads as under:

"7. Having gone through the decisions relied upon by the Ld. A.R., we find that in the case of DIT(E) Vs Keshav Social & Charitable Foundation (supra), before the Hon'ble Delhi High Court, the charitable institution made disclosure of donations along with list of donors. There was no dispute that more than 75% of the donations were applied for charitable purposes. It was held that the facts that complete list of donors was not filed or that the donors were not produced, does not necessarily lead to the inference that the assessee was trying to introduce unaccounted money by way of donation receipts and Section 68 has no application to the facts of the case as the assessee had in fact disclosed the donations as income. The Hon'ble Delhi High Curt approved the decision of the Tribunal that addition u/s 68 was not correct and exemption u/s 11 cannot be denied.

8. Again, in the case of DIT(E) VS Motibagh Mutual Aid Education (supra), before Hon'ble High Court, the assessee received 'guptdaan' which was shown as unsecured loan by mistake. Some other donations were also there. The donations were utilized for construction of school building. It was held that when there is no deviation of funds there are minor contradictions or deviation in the accounts, this by itself cannot substantiate the allegation that the assessee exists for profit motive, therefore, exemption u/s 10(22) of the Act cannot be denied to the assessee. It was held that the amount of 'guptdaan' is a receipt and not an outflow from the corpus of the assessee. Therefore, the question in this regard is whether the amount was received by was of a loan or by way of guptdaan. In either case,

it cannot be said that the amount was received with a profit motive, unless it was not meant for utilization for educational purpose for which there is no evidence on record. It was held further that even if donors were not produced, it was not necessarily lead to an inference that the assessee was trying to introduce unaccounted money by way of donation receipts. The donations were utilized for construction of school building, is clearly an educational /charitable purpose. But at no stretch of imagination it can be said that the donations were received with some profit motive as held by Hon'ble Delhi High Court.

9. In the case of DCIT(E) VS New Anand Education Society (supra) before Delhi Bench of the Tribunal, the dispute was raised against the donation receipt of RS.7,65,467/-. The assessee trust duly registered u/s 12A(a) of the Act had furnished details of donations received. The A.O. held that these were only accommodation entries as per the report of the Investigation Wing. He accordingly subjected the said donation receipts for charge of tax at maximum marginal rate. Ld CIT(A) deleted the same. The Tribunal upheld the first appellate order on the issue with this finding that to obtain benefit of exemption u/s 1`1, the assessee is required to show that the donations were voluntary. It was observed that the assessee had not only disclosed the donations but had also submitted list of donors. It was held further that the fact that complete list of donors were not filed and the donors were not produced, does not necessarily lead to the inference that the assessee was trying to introduce unaccounted money by way of donation receipts. The Tribunal respectfully followed the above ratio

laid down by the Hon'ble Delhi High Court in the case of Keshav Social and Charitable Foundation (supra) declined to interfere with the first appellate order on the issue.

10. In view of the ratio laid down in the above cited decisions of Hon'ble Delhi High Court when we examined the orders of authorities below, we do not find justification in the action in sustaining the addition of Rs.140 lacs u/s 68 of the Act, only because members of the donors could not be verified when there is no dispute that the assessee had made disclosure of donations along with list of donors, amounts were paid through banking channels and due to this non-availability / non existence on their given addresses the amounts so received in donations were applied for charitable purposes. It is pertinent to mention over here that during the year, the assessee had received corpus donations of Rs.1,99,86,101/- and it had collected RS.3,51,76,220/- as per income and expenditure account, thus the total amount available with the assessee from these two accounts was Rs.5,51,62,321`/- against which it had spent Rs.4,03,76,796/- on the fixed assets and Rs.3,09,80,493/- on recurring expenses. After depreciation of Rs.63,08,433/-, the total application of funds comes to Rs.6,50,48,856/-. Thus, when there is no dispute that the amount in question was applied for educational purposes, the fact that the donations remained unverifiable due to non availability of donors at the addresses given in their confirmations does not necessarily lead to the inference that the assessee was trying to introduce unaccounted money by way of donation receipts. We, therefore, respectfully

following the decision of Hon'ble Delhi High Court in the case of Keshav Social & Charitable Foundation (supra), hold that the provision of Section 68 of the Act has no application to the facts of the present case when list of donors with supporting evidence was filed, amounts were paid through banking channels, there is also no dispute that the objects and activities of the assessee were charitable in nature and it was duly registered under the provisions of Section 12A of the I. T. Act, 1961. We thus direct the A.O. to delete the addition of Rs.140 lacs made u/s 68 of the Act in question. So far applicability of the provisions under section 115BBC are concerned, we do not find substance in the contention of the Ld. DR as the donations in question can not be turned as anonymous since list of the donors was filed and undisputedly payments have been through banking channels. The ground Nos.1-10 invoking the issue are thus allowed in favour of the assessee".

14. The issue in all other judgments referred by the assessee is similar. The orders of the ITAT, Delhi are basically based upon the judgment of Hon'ble Delhi High Court in the case of Keshav Trust. The order in the case of Hansraj Smarak Society has also been upheld by the Hon'ble Delhi High Court. Respectfully following the judgment of the Hon'ble Delhi High Court and orders of the Co-ordinate Bench, we are of the view that benefit of sections 11 & 12 in computing the income received on account of donations from identified donors cannot be denied. Consequently, we allow the appeal

of assessee and direct the Assessing Officer to verify the facts that assessee has applied 85% of its income during the year including these donations on its objects. If the claim of the assessee that it has incurred an expenditure of Rs.533,22,266 towards fulfillment of its object during the year then, its income would be assessable at nil because the incurrence of this expenditure would take care the additions of Rs.192,35,000, Rs. 30,00,000 and Rs.11,00,000. Charging of interest under sec. 234B and 167B of the Income-tax Act, 1961 would be consequential.

15. In the result, the appeal of the e is allowed for statistical purposes.

Decision pronounced in the open court on 6.12.2013

(T.S. KAPOOR)
ACCOUNTANT MEMBER

(RAJPAL YADAV)
JUDICIAL MEMBER

Dated: 6/12/2013
Mohan Lal

Copy forwarded to:

1) Appellant - By Hand

2) Respondent

3) CIT

4) CIT(Appeals)

5) DR:ITAT

ASSISTANT REGISTRAR
सहायक पंजीकार
Assistant Registrar,
आयकर अपीलीय अधिकरण
Income Tax Appellate Tribunal
दिल्ली पीठ, नई दिल्ली
Delhi Benches, New Delhi