

IN THE INCOME TAX APPELLATE TRIBUNAL,
VISAKHAPATNAM BENCH, VISAKHAPATNAM

BEFORE SHRI DUVVURU RL REDDY, HON'BLE JUDICIAL MEMBER &
SHRI S BALAKRISHNAN, HON'BLE ACCOUNTANT MEMBER

/ I.T.A. No.175/Viz/2020 / Assessment
Year : 2016-17)

Asst. Commissioner of Income
Tax, Central Circle,
Vijayawada.

(Appellant)

Vs. M/s. Siddhartha Academy of
General & Technical
Education,
1, Siddhartha Nagar,
Vijayawada - 520010.
PAN:AABTS 1271 J
(Respondent)

CO No.23/Viz/2021

(In I.T.A. No.175/Viz/2020)(AY : 2016-17)

M/s. Siddhartha Academy of
General & Technical Education,
1, Siddhartha Nagar,
Vijayawada - 520010.
PAN:AABTS 1271 J

(Appellant)

Assessee by

Revenue by

Vs. Asst. Commissioner of
Income Tax, Central Circle,
Vijayawada.

(Respondent)

Sri C. Subrahmanyam

Sri MN Murthy Naik, CIT-DR

Date of Hearing

Date of Pronouncement

: 27/05/2022

: 14/06/2022

O R D E R

PER S. BALAKRISHNAN, Accountant Member :

This appeal filed by the Revenue against the order of the Ld. CIT(A)-3, Visakhapatnam in appeal No.76/2018 -19/CIT(A)-3/VSP/2019-20, dated 30/01/2020 passed U/s. 143(3) r.w.s 250(6) of the Act for the AY 2016-17.

2. In this appeal, there is a delay of 135 days in filing the instant appeals before the Tribunal. The assessee has not filed any condonation petition. However, as per the decision of the Hon'ble Supreme Court in SMW(A) No.3 of 2020, the period of limitation for filing the appeals under general laws and all special laws falling between 15/3/2020 and 28/02/2022 shall be excluded for calculating the delay. Considering the same, we hereby condone the delay of 135 days in filing the present appeal before the Tribunal and proceed to adjudicate the cases on merits.

3. Brief facts of the case are that the assessee is a Trust running educational institutions in the name and style of Siddhartha Academy of General & Technical Education in and around Vijayawada. The assessee filed its return of income for the AY 2016-17 admitting total income of Rs. NIL. The case was

selected for scrutiny and notice U/s. 143(2) and 142(1) were issued and served on the assessee. The assessee's representative submitted the details as required by the AO. Based on the submissions made by the assessee's representative, AO noted that the assessee has received a corpus donation of Rs. 23,89,57,793/- out of which the assessee could not file the confirmation letters for Rs. 15,44,89,693/-. The Ld. AO treated Rs. 14,19,66,693/- as anonymous donation U/s. 115BBC of the Act. The AO also treated the amount of Rs. 82,52,086/- credited to the income and expenditure account as an anonymous donation U/s. 115BBC of the Act. Aggrieved by the order of the Ld. AO, the assessee filed an appeal before the CIT(A). Before the Ld. CIT(A) the assessee's representative filed letters from all donors numbering to 2300 for an amount of Rs. 23,89,57,793/-. The assessee's representative also submitted before the Ld. CIT(A) that these confirmation letters have been filed and available on the electronic portal of the department and he provided the acknowledgement number before the Ld CIT(A) for the same. Considering the submissions made before the Ld. CIT(A), the appeal was allowed. Aggrieved by the order of the Ld. CIT(A), the Revenue is in appeal before us.

4. The Revenue has raised the following grounds:

- “1. The Ld. CIT (A) erred both in law and on facts of the case in allowing relief to the assessee.
2. The Ld. CIT(A) failed to appreciate the fact that the confirmation / consent letters were filed at the fag end of the assessment proceedings ie 21/12/2018 without giving any scope for the Assessing Officer for verification / cross examination of the donors.
3. The Ld. CIT(A) erred in allowing the appeal without calling for a remand report from the assessing Officer when confirmation / consent letters were filed at the fag-end preventing the AO from causing any enquiry.
4. The Ld. CIT (A) erred in allowing the appeal on the ground that no show cause notice was issued for the proposed addition when the show cause notice was issued on 5/11/2018 and was already discussed in detail in the assessment order.
5. The Ld. CIT(A) erred in allowing the appeal by accepting the assessee’s contention that the amount of Rs. 82,52,084/- is receipts towards building fund and consultation charges from the students through the same has been shown as donation receipts from various institutions in the books of accounts.
6. The Ld. CIT(A) erred in relying on the submissions of the assessee instead of the facts brought out by the AO in the Assessment Order.
7. The Ld. CIT(A) erred in not only getting any enquiries carried out at her end but also not allowing the Assessing Officer to conduct any further enquiries through remand report.
8. The Ld. CIT(A) erred in allowing the appeal without appreciating the fact that some of the confirmations are not corpus donation but are voluntary donations.
9. The Appellant craves leave to amend or alter any ground or add any other grounds which may be necessary.”

5. The Ld. DR submitted that confirmation letters from 933

donors were filed before the Assessing Officer (AO) and

accordingly it was considered by the AO. The AO disallowed only the balance amount of Rs. 14,19,66,693/- as anonymous donations in the absence of confirmation from the donors. Ld. DR also submitted that no receipt books were produced before the Ld. AO. The Ld. DR also acceded that the Ld. CIT(A) has accepted the remaining confirmation letter by violating the Rule 46A of the IT Rules, 1962. On the other hand, Ld AR explained that since the data has been filed online before the Ld AO and due to size restrictions in uploading the files into the portal of the Income Tax Department the files were split into multiple files and filed accordingly. The Ld. AR also submitted that as per section 115BBC of the Act it is sufficient that if the names and addresses of the donors have been provided with respect to donations received from them. The Ld. DR objected to that and stated that no PAN details were submitted for some of the donors and it is evident from the paper book submitted by the Ld. AR. The Ld. DR also submitted that donations for the building fund have been collected from the students of various institutions being inmates in the hostels and the concerned institution aggregated and remitted to the assessee. The Ld. DR also submitted that as per the income and expenditure statement

submitted by the Ld AR the assessee has received a sum of Rs. 48,99,036/- towards consultancy charges.

6. We have heard both the sides and perused the material available on record and the orders of the Authorities below. We find merit in the arguments of the Ld. AR that the submissions were made online in piecemeal due to size restrictions. We also note from the paper book submitted by the Ld. AR that the names and addresses of every donor is being submitted and available in records. We also note that the donations were made either by cheque or DD or through other banking channels only. Further, we also observe that the assessee has published advertisements requesting for donations. We find force in the argument of the Ld. AR that section 115BBC requires the recipients to maintain record of identity, name and address of the person making such contribution. For the sake of convenience, section 115BBC of the Act is reproduced herein below:

“115BBC. Anonymous donations to be taxed in certain cases.— (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 (iiid) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) or any fund or institution referred to in sub-clause (iv) or any trust or institution referred to in sub-clause (v) of clause (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 on the income by way of any anonymous donation, at the rate of thirty per cent; and

(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (i).

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

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

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

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

7. It is to be noted that anonymous donation has been defined to mean 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 definition of anonymous donation therefore prescribed that the person receiving the donation is required to maintain identity indicating name and address of the contributor and such other particulars as may be prescribed. Since no other particulars have been prescribed under the provisions of the Act, the person receiving the

donation is under obligation to maintain the identity of the donors indicating the name and address and other particulars only. In the case of ITO vs. Saraswati Educational Charitable Trust the Coordinate Bench of Lucknow has held that the record of identity of the donor should be maintained as prescribed and also should stand the test of scrutiny by the Revenue Authorities. In the instant case, the Ld. AR has provided the details of 2300 donors along with the names and addresses of the donors before the AO. We find that the AO has failed to scrutinize the donations received from various donors. We also find from the paper book filed by the Ld. AR that confirmation letters from the donors have been obtained and provided before the Ld. Revenue Authorities. Mere absence of PAN in the confirmation letters of the donors does not give raise to suspicion that they are anonymous donations as the maintenance of name and address details of the contributors is a sufficient document as prescribed u/s. 115BBC of the Act. It is also seen from the order of the Ld. AO that he has not doubted the genuineness of the donations in the assessment order. Section 68 has no application in the instant case because the assessee has disclosed the donation as its income and applied the same for charitable purpose. In view of the above, we are of the considered view that the assessee has established the identity of the donors as provided U/s. 115BBC of the Act and hence the donations received by the assessee cannot be categorized as

anonymous donations and cannot be subjected to tax as per the provisions of section 115BBC of the Act. We therefore, find no infirmity in the order of the Ld. CIT(A) and no interference is required.

8. In the result, appeal of the Revenue is dismissed.

9. The Cross Objection filed by the assessee is supportive in nature and need no adjudication.

10. Ex-consequenti, the Revenue appeal is dismissed and the Cross Objection filed by the assessee is disposed off.

Pronounced in the open Court on the 14th June, 2022.

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Sd/-
(S.BALAKRISHNAN)

ACCOUNTANT MEMBER Dated : 14.06.2022

Copy of the order forwarded to:-

1. The Assessee – M/s. Siddhartha Academy of General & Technical Education, 1, Siddhartha Nagar, Vijayawada-520010.
2. The Revenue – ACIT, Central Circle, Stalin Corporate Buildings, D.No. 55-17-2 to 4, 4th Floor, Near CGO Complex, Industrial Estate, Autonagar, Vijayawada-520007, Andhra Pradesh – 520007.

3. The Principal Commissioner of Income Tax (Central),
Visakhapatnam.
4. The Commissioner of IncomeTax(Appeals)-
3,Visakhapatnam.
5. DR, ITAT, Visakhapatnam
6. Guard file

BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam