

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "C": NEW DELHI
BEFORE Shri C.M. Garg, Judicial Member AND
Shri M. Balaganesh, Accountant Member

ITA No. 3801/Del/2016
(Assessment Year: 2012-13)

M/s. Gian Sagar Educational Vs. DCIT,
and Charitable Trust, Central Circle-29, SCO 10-110, Sector 43B, New
Delhi
Chandigarh
(Appellant) (Respondent)
PAN:AAATG5827B

Assessee by : Shri Ravi Pratap Mall, Adv
Revenue by: Md. Gayasuddin Ansari, CIT DR

Date of final Hearing 23/08/2023
Date of pronouncement 19/10/2023

ORDER

PER C. M. GARG, J. M.:

1. This appeal has been filed by the assessee against the order of the Id CIT(A)-30, New Delhi dated 28.03.2016 for AY 2012-13.
2. The assessee has raised the following grounds of appeal:-
 - "1. That the Commissioner of Income-tax (Appeals) erred on facts and in law in affirming the action of the assessing officer in treating voluntary donations to the extent of Rs.11,60,77,000as 'anonymous donation' under section 115-BBC of the Income Tax Act, 1961("the Act").
 2. That the Commissioner of Income-tax (Appeals) erred on facts and in law in not appreciating that the appellant had maintained complete records of the identity of the donor's in compliance with provisions of section 115-BBC of the Act.
 3. That the Commissioner of Income-tax (Appeals) erred on facts and in law in disregarding the confirmation(s) furnished by the appellant during the course of assessment/appellate proceedings.
 4. That the Commissioner of Income-tax (Appeals) failed to appreciate that there was no requirement under the provisions of section 115-BBC of the Act to prove the 'genuineness' of voluntary contributions received by the appellant-trust.
 5. That the Commissioner of Income-tax (Appeals) failed to appreciate that mere non-receipt of response to notice issued under section 133(6) of the Act would not ipso-facto mean that the voluntary contributions received were non-genuine.

6. That the Commissioner of Income-tax (Appeals) erred on facts and in law in not following the binding decision of the CIT(A) in the appellant's own case for the earlier assessment year 2011-12, in gross violation of principles of judicial discipline.
 7. That the Commissioner of Income Tax (Appeals) erred in confirming levy of interest under sections 234B of the Act.”
3. The Id counsel of the assessee submitted that the Id CIT(A) has erred in affirming the action of the Assessing Officer in treating the voluntary donations to the extent of RS. 11,60,77,000/- as anonymous donation u/s 115BBC of the Income Tax Act, 1961 (for short the Act). He further submitted that the Id first appellate authority has grossly erred on facts and in law in not appreciating that the appellant had maintained complete records of the identity of the donor's in compliance with provision of section 115BBC of the Act and disregarding the confirmation furnished by the appellant during the course of assessment as well as appellate proceedings. The Id counsel vehemently pointed out that the Id CIT(A) failed to appreciate that there was no requirement under provision of section 115BBC of the Act to prove the genuineness of voluntary contributions received by the appellant trust and merely non receipt of response to notice issued u/s 133(6) of the Act would not ipsofacto mean that the voluntary contributions received were nongenuine. The Id counsel again drew our attention towards orders of authorities below and submitted that the Id CIT(A) is not following the binding decision of the Id CIT(A) in assessee's own case for the earlier assessment year 2008-09, which was upheld by the Tribunal order 21.10.2022, which is gross violation of the principles of judicial discipline therefore, impugned orders of authorities below may kindly be set aside in deleting the addition made by the AO u/s 115BBC of the Act. He vehemently, pointed out that since the identical issue under similar circumstances has been decided by the Tribunal in favour of the assessee dismissing the appeal of Revenue, therefore, the issue is squarely covered in favour of assessee by the order of the Tribunal (supra) is assessee's own case.

3.1 The Id counsel further placing vehement reliance on the order of ITAT Delhi Bench dated 21.10.2022 in the cross appeal in assessee's own case of AY 2008-09 rendered in ITA No. 4775/Del/2015 (departmental appeal) and submitted that identical issue was decided in favour of the assessee by Id CIT(A) and the appeal of the revenue has been

dismissed by the Tribunal by passing the said order and upholding the conclusion drawn by the Id CIT(A) in favour of the assessee, on the identical issue under similar facts and circumstances. The Id counsel of the assessee thus submitted that the issue is covered in favour of the assessee by the order of the coordinate bench of Tribunal for AY 2008-09 dated 21.10.2022 (supra).

4. The Id counsel also briefly reiterated the assessee's written submissions and submitted that it is settled law that wherein, assessee who was entitled to exemption u/s 115BBC of the Act and can claim benefit thereof for the purpose of income deem to chargeable to tax u/s 68 of the Act as per judgment of Hon'ble jurisdictional High Court in the case of DIT Vs. Hans Raj Samarak Society (2013) 35 taxmann.com 642 (Delhi). Further, placing reliance on the judgment of DCIT(E) Vs. Raunaq Educational Foundation 294 ITR 76 HC (Delhi), the Id counsel submitted that it is now well settled principle of law that although the exemption provisions are to be construed strictly as regards to applicability to the case of the assessee once it is found that the same is taxable, the same are required to be interpreted liberally. Ld counsel of assessee also placed reliance on the judgment of Hon'ble Supreme Court in the case of DCIT vs. Maharaja Agrasen Technical Education Society in ITA No. 5245/D/2015 for Assessment Year 2011-12 S.RM.M.CT.M. Tiruppani Trust v. Commissioner of Income-tax [1998], 230 ITR 636 (SC) Commissioner of Income Tax v. M/s Muslim Educational Society ITA. No. 1711 of 2009 HC (Kerala).
5. Lastly, the Id counsel submitted that donations received by the appellant are not anonymous donations u/s 115BBC of the Act as the appellant has maintained complete particulars of the donors. Further, since the assessee has applied all its receipts towards its objects, as such, addition upheld by the learned CIT(A) is unsustainable under the facts and in law.
6. Replying to the above contentions of assessee the Id. CIT(DR) drawing our attention towards relevant paras of assessment order submitted that postal remarks mentioned in the undelivered notices were also communicated to the assessee and

the assessee again asked to submit requisite documents to prove the identity of persons, genuineness of the transaction and credibility of the donors. But in response to the same, the assessee submitted confirmation from some of the donors regarding donations made by them to the assessee. The Id CIT DR submitted merely because donations have been received through banking channels all the donor are having PAN, the donations shown by the assessee cannot be held as inconformity with the provisions of section 115BBC and other provisions of the Act and therefore, the AO rightly made adverse inference against the assessee.

7. The Id CIT(DR) further drawing our attention towards relevant operative para 5.7 of first appellate order submitted that the Id first appellate authority has granted part relief to the assessee by allowing donation from five donors amounting to Rs. 4 crores as genuine and rightly held that the donations in the name of remaining 32 alleged donors amounting to Rs. 11,60,77,000/- are anonymous as per amended of section 115BBC of the Act and therefore, no interference in favour of assessee was called for in the first appellate order on this issue.
8. The Id CIT DR also placed vehement reliance on the judgment of ITAT Agra Bench order, in the case of Shri Girraj Educational and Welfare Society Vs. ITO and submitted that the failure of the assessee society to maintain proper records including names and other details of voluntary contribution received by it then the same were rightly brought to tax as anonymous donation within the meaning of section 115BBC of the Act. Further, placing reliance on the order of ITAT Jaipur Bench order dated 07.02.2020 in the case of Rama Devi Memorial Charitable Trust, the Id DR submitted that when the assessee trust has failed to substantiate that the voluntary donation was received by obtaining credible and verifiable evidence in terms of complete names and addresses of the donors and purpose of donations then the AO is right in invoking provision of section 13(7) read with section 115BBC of the Act and the Id CIT(A) is also quite correct and justified in upholding the part addition made by the AO by taking balanced appropriate judicial approach. Finally, the Id DR submitted that the appeal of the assessee may kindly be dismissed being devoid of merits.

9. On careful consideration of the above rival submissions from the assessment order we note that the AO invoked provision of section 115BBC of the Act with following observations are and findings:-

"8. Before proceedings further, some provisions of the Income Tax Act, 1961 regarding receipts of donations and credits in the books are discussed as under:-

(a) As per the provisions of section 11(1)(d) of the Income Tax Act, which reads as under:-

"Subjeet to the provisions of section 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-

(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,"

(b) The provision of section 12(1) of the Income Tax Act states as under-

"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."

(c) According to section 68 of the Act, if there is any credit entry in the books of the assessee then there are the followign three ingredients to be proved by the assessee:-

- (i) Identity of the creditor
- (ii) Genuineness of the transactions.
- (iii) Source and the creditworthiness of the creditor.

(d) The provisions of section 115BBC of Income Tax provides that anonemus donation received by trust, educational institutional or hospital shall be charged @ 30% on the aaggregate of anonemus donation received in excess of 5% of donation received by the assessee or Rs. 1,00,000/-

9. Therefore the assessee was given the list of persons/ concerns where notices u/s 133(6) were returned unserved or no reply have been received. The postal remarks mentioned in the undelivered notices were also communicated to him. He was asked to submit the the requisite documents to prove the identity of persons, genuineness of transactions and credit worthiness of persons.

10. In response to same the assessee submitted the confirmations from some of the persons regarding the donations made by them to assessee trust. It is submitted by the assessee that the donations have been received through banking channels. All the donors

are are having PAN. Therefore the donation shown by it are proper in conformity of law and no adverse inference should be draw.

11. The submission of assessee is carefully considered. As per the provision of section 11(1)(d) and 12(1) of the Income Tax Act, the donation received by trust/institution shall be exempt or cover u/s 11 only if the donation are voluntarily. If the donation is voluntarily then only it can consider income derived from the trust property. In absence of the confirmations as well as other evidence of identity and genuineness of transaction, it cannot be established that the donation are voluntary. Therefore, the receipts of donation by the assessee are to be examined as per the criteria of section 68 of the Income Tax Act.

12. The assessee provided only confirmation letters of donors in some cases. The confirmation letter inspire no confidence on the claim of assessee that the donation are genuine and voluntarily but casts serious doubts about the genuineness there of.. Most of the confirmation letter submitted by assessee are made on computer with change of font or colours. Majority of letter head do not contain any phone number of the donors mentioned therein. Merely providing a name, address and PAN numbers of the donor, the assessee could not escape from its obligation which has been caste by law on it. The assessee has failed to furnish by way of evidence the ITR returns, financial statements including balance sheet, copies of bank statements, memorandum and articles of association of the donor companies. Further, in many cases letters u/s 133(6) of the Act so called donors / contributors has been received back undelivered or no reply has been received. The assessee failed to give the reason of non delivery of the letters which were issued to the addresses provided by him. He also did not submit the current address in case of any change, so that notices may be issued at the new address for getting information.

13. Under these circumstances, the genuineness and creditworthiness of the said donations and corpus fund contributions remaining unsubstantiated and the assessee having been unable to discharge his onus in this regard, despite sufficient opportunity having been given for the same, the said donations and corpus fund contribution are held to be non-genuine and actually the assessee used it as a device to introduce his undisclosed income.

14. As the above referred donations are not found genuine, therefore, it cannot be deemed to be income derived from the property held under the trust. Hence, no exemption u/s 11 of the Act is allowable out of the said amount. 15. Therefore, in view of the above fact, it is held that the assessee trust introduced amount of Rs. 15,60,77,000/- on account of donations by taking entries only. The assessee failed to give satisfactorily evidences regarding genuineness and creditworthiness of such persons. Therefore, amount of Rs. 15,60,77,000/- is treated as income of assessee as per the provisions of section 68 read with section 115BBC of the Income Tax Act. The deductions u/s 11 are therefore not allowable on the same. Therefore, the said amount of Rs. 15,60,77,000/- is treated as income of assessee from undisclosed source and added u/s 68/115BBC of the Income Tax Act.

(Addition Rs. 15,60,77,000/-)''

10. Further, from the relevant part of first appellate order we note that the Id CIT(A) granted part relief to the assessee and confirmation remaining part of addition amounting

to Rs. 11,60,77,000/- with following observations and findings in para 5.7 of first appellate order which as follows:-

“5.7 I have carefully considered assessment order, written submissions, case laws relied upon and oral arguments of Ld. AR.

The objections/arguments of the appellant are discussed as under:-

(i) During the appellate proceedings, it has been submitted by the appellant that all the details of the donors were filed before the A.O. giving name, address, date of payment, amount and PAN. During the assessment proceedings, the A.O. issued notices u/s 133(6) of the Act, where notices were not complied in 37 cases, as against the total notices issued in 49 and the A.O. has stated as under:

- No reply received in 22 cases,
- In 11 cases, postal authority gave remark as "Not Known", and
- In 4 cases, postal authority gave remark as "Left".

However, the appellant has submitted that the A.O. has wrongly considered the donations in 37 cases as non-genuine and further, the A.O. has not given the benefit of set off of application of income against the receipt of the assessee trust.

(ii) The appellant has submitted that in A.Y. 2008-09, the A.O. has made the addition of Rs. 22,53,53,785/-, in the assessment order u/s 143(3) dated 30.12.2010. by holding anonymous donations and as such there is no applicability of section 115BBC/13(7) of the Act and the total income was determined at Rs. 16,30,38,330/- This assessment order u/s 143(3) was rectified vide order u/s 154 dated 27.5.2011, allowing the set off assets purchased during previous year minus depreciation claimed, which is amounting to Rs. 61,91,04,926/- and determined the taxable income at NIL (net loss of Rs. 45,60,66,470/-).

Against the above addition of Rs. 22,53,53,785/-, the appellant filed an appeal before the CIT(A)-30 on 30.12.2013. Ld.CIT(A), disposed off the ground vide order dated 24.3.2015 in appeal no. 400/13-14/1551 for A.Y. 2008-09, by observing as under:-

A perusal of the above definition reveals that if the person receiving such donation maintains the record of identity and address of donors then such donation cannot be called anonymous have been notified as per the requirement of this section,

In view of the above facts. I agree with the arguments of Ld. AR that the requirement of section 115 BBC is not at par with onus on the assessee casted us 68 of I.T. Act. i.e. to prove creditworthiness of the donors. Emphasis in section 115 BBC is to maintain & declare correct identity of the donors. The Ld. AR argued that the appellant have maintained & disclosed such name & address of donors during the assessment proceeding as accepted by the assessing officer in the original assessment order therefore section 115 BBC is not applicable to the facts of the case

I have examined these arguments on the facts of the case & perused original assessment order. As per para (5) of the original assessment order. the appellant has maintained the name & address of all the donors, which has been reproduced in the assessment order Unless these details are proved to be wrong that these persons have not donated to the

appellant, in my view the donation received cannot be said as anonymous donation by virtue of sub section (3) of section 115 BBC.

I have perused the status of enquiry contained in para 6.1 & 6.2 of the original assessment order. In one donor namely M/s. Adivasi Mahila Vikas Samiti, it has been categorically stated that it has not made any donation to the appellant. The relevant portion of finding is contained in para 6.1 of the original assessment order & reproduced as under:-

6.1 Here, it is pertinent to stress upon the reply received in this office in the case of Adivasi Mahila Vikas Samiti. Fuldungri, P.O. Ghatsila, Distt. Singhbhum. Jharkhand 832303 from whom, donation @ Rs. 1.46 Cr is stated to have been received. The counsel of Adivasi Mahila Samiti has in response to letter ws 133(6) stated that during the relevant period Adivasi Mahila Vikas Samiti did not make any transaction with the said M/s Gian Sagar Educational and Charitable Trust and made no payment to them on any account.

As the alleged donor M/s Adivasi Mahila Vikas Samiti, has not confirmed the donation to the appellant, to this extent the name or address of the donor is incorrectly maintained by the appellant & therefore, onus on the appellant to the extent of this donation to maintain identity of donor is not fulfilled. As the meaning of maintaining identity of donors means name & address should be correct. If the name of the person with address maintained by assessee denies to have paid donation, it means such details are not correctly maintained & therefore, not maintained. Neither during the present impugned assessment proceeding nor during the present appellate proceedings, the appellant has produced or contradicted this findings. Considering these above Rs. 1.46 Crores allegedly received from M/s Adivasi Mahila Vikas Samiti is treated as anonymous donation and is taxable as 115 BBC of LT. Act & no deduction is allowable on account of application of income under subsection (7) of section 13 of IT Act, 1961.

As far as the balance donations are concerned, the enquiry conducted during the original assessment proceedings revealed that the enquiry letters were either not replied or not served. This does not prove that the appellant has not maintained the requisite details to establish the identity of donors specially under the circumstances where all the alleged donation are through banking channels and letters of donors were produced during the assessment proceedings.

The appellant has filed complete details of donation during the present impugned assessment proceedings, containing name, address & PAN

Therefore, these are the cases at the most of not discharging onus u/s 65 of 11 Act. In any case all the donation except corpus donation is credited as income of the assessee. In my view these donation cannot be called anonymous donation therefore section 115 BBC read with section 13(7) are not applicable.

In view of the above facts I agree with the arguments of Ld. AR that even in case of unexplained cash credit as per the income have to be computed in accordance with the provision of section 11 to 13 of 1961 Act.

I have perused the judicial pronouncements relied by the Ld. AR on this issue. Since registration u/s 12AA is continuing in the case of the applicants, therefore, the appellant's income has to be computed in accordance with the provision of section 11 & deduction on account of application has to be allowed. I rely on the following judicial pronouncements on this issues cited by Ld. AR.

- i) Commissioner of Income Tax vs. Uttaranchal Welfare Society (2013) 86 CCH 333 All HC. (2014) 364 ITR 398 (All)
- ii) Director of Income Tax (Exemptions) & Anr. vs. Sri Belimatha Mahasamsthana Socio Cultural & Educational Trust 336 ITR 694 High Court of Karnataka
- iii) Director of Income Tax (Exemption) vs. Bharat Kalyan Pratishthan (2002) 257 ITR 609 (Del) High Court of Delhi
- iv) Assistant Commissioner of Income Tax vs. Geetanjali Education Society (2008) 114 TTJ (Jd) 697 ITAT, Jodhpur
- v) Director of Income Tax vs. Raunaq Education Foundation 294 ITR 76 (Del) High Court of Delhi
- vi) Director of Income Tax (Exemption) vs. Keshav Social & Charitable Foundation (2005) 278 ITR 152 (Del) High Court of Delhi

In view of the above judicial pronouncements, application of income is to be allowed as the registration u/s 12AA is continuing & therefore, the activities of the trust are in accordance with its

Memorandum of Association

Considering the entire facts & circumstances of the case, I hereby confirm anonymous donation to the extent of Rs. 1.46 Crores u/s 115 BBC and balance donation is not treated as anonymous donation within the provision of section 115 BBC and application of income of income is allowed for balance addition, Accordingly these grounds of appeal are partly allowed. "

(iii) During the appellate proceedings, the donation in the name of 5 persons were also verified by the A.O. and in the remand report, same has been found in order, as reply has been received. The details of these 5 donors, are as under-

S.No.	Name	Amount(in Rs.)
1.	M/s. Hicon Gensets Pvt. Ltd.	2,000,000
2.	M/s. Blue View Tic Up Project	10,000,000
3.	M/s. Janhit Seva Trust	20,000,000
4.	M/s. BSL Engineering Services Ltd.	2,000,000
5.	M/s. BSL. Scaffolding Ltd.	6,000,000
	Total	40,000,000

(iv) In the rejoinder submitted by the appellant vide letter date 23.3.2016. has raised the objections that the A.O. in the remand proceedings, has not given opportunity to the parties/donors, who have not given the information or from whom no reply has been received. During the assessment proceedings, the assessee was required to prove the genuineness of the transactions relating to various donors and when the appellant failed to furnish the latest addresses of alleged donors, then only A.O. issued notices u/s 133(6) of the Act. Therefore, onus was always on the assessee to prove the genuineness of the

transactions. In the appellate proceedings also, one more opportunity was allowed to prove the genuineness of the transactions before the AO. in remand proceedings,

(v) In the remand proceedings, the A.O. has issued the notices u/s 133(6) of the Act, in 37 parties/donors, which were considered by the A.O. as non- genuine in the assessment proceedings. However, only in 5 above cases, genuineness is proved, having total donations of Rs.4.00.00.000. In view of these facts, the objection of the appellant is not acceptable. since A.O. has issued notices u/s 133(6) of the Act on the latest address provided in the appellate proceedings. It is surprising to note that now also, in 14 cases. notices have been returned back with the postal remarks "no such premises, therefore, it is clear that appellant failed to provide the correct address, if they are genuine.

In 18 cases, though notices were served, but no reply has been received in the given time by the A.O. in remand proceedings. Therefore, again genuineness is not proved. in absence of any reply/confirmations from the alleged donors.

In view of the above, the genuineness of the donations to the extent of Rs. 4,00,00,000/-, stands explained. However, the balance of alleged donation of Rs. 11,60,77,000/-(Rs. 15,60.77,000 - Rs.4.00.00.000) in the name of alleged 32 donors, still remain unverifiable and therefore, genuineness of the transactions to this extent is not proved and therefore, I do not find any infirmity in the findings of the A.O. in the assessment order.

In view of the above, I hold that the donations in the name of 32 alleged donors of Rs. 11,60.77,000/-, are anonymous u/s 115BBC and the remaining donations in the name of 5 donors of Rs. 4,00,00,000/-, are not anonymous. Accordingly, additions to the extent of Rs. 4,00,00,000/-, are deleted and the balance alleged donations to the extent of Rs. 11,60.77,000/-, are hereby confirmed.

(vi) During the appellate proceedings, it has been submitted by the appellant that even if the donations are considered as anonymous, then the application of income u/s 13(7), is to be allowed on full amount of addition of Rs. 15,60.77,000/-. From the above, it is clear that donations to the extent of Rs. 4.00,00,000/-, are not considered as anonymous and remaining amount of donation of Rs. 11,60,77,000/-, is considered as anonymous. Accordingly, the A.O. is directed to allow the application of income to the extent of Rs. 4,00,00,000/- only.

Accordingly, ground no. 2, is hereby partly allowed.”

11. On careful consideration of the above noted rival submissions and perusal of the paper book filed by the assessee spread over 150 pages at the outset we note that in addition to the said paper book the assessee has also filed copy of order of Tribunal for AY 2008-09 in assessee's own case dated 21.10.2022 in ITA No. 4775/Del./2015 wherein the appeal of the Revenue have been dismissed upholding the order of Id. CIT(A) by which the claim of assessee regarding voluntary donation has been approved by the Tribunal. We also note that at pages 22-24EE of paper book the assessee has filed copy of order of Id. CIT(A) for AY 2008-09 in assessee's own first appeal wherein relief has been granted by the Id. First Appellate Authority to the assessee on the identical ground under similar facts and circumstances. In the remaining pages from 25 to 150 the assessee has submitted copies

of 10 orders of coordinate bench of the tribunal including judgment of Hon'ble Delhi High Court in the case of DIT Vs. Keshav Social & Charitable Foundation reported in 146 taxmann 569 (Delhi).

12. To support claim of assessee the appellant has vehemently relied on the order of Id CIT(A) for AY 2008-09 in assessee's own case, wherein, the Id first appellate authority granted relief to the assessee by holding that the assessee has maintained complete particulars of donors and the copies notices issued u/s 133(6) of the Act by the AO were either remained unserved or not complied and no reply was received but the Id CIT(A) deleted the addition by holding that the assessee has maintained particulars of owner of donation received cannot be called anonymous donation. Based on said order, it is also a contention of Id counsel of assessee that the said order of Id CIT(A) for 2008-09 has been upheld by the Tribunal by order dated 21.10.2022 (supra) therefore, identical claim of assessee for AY 2012-13 should also be allowed and addition made by the AO may kindly be dismissed.

13. On the other hand, the Id. CIT(DR) has placed reliance on the order of ITAT Agra Bench in the case of Shri Girraj Educational & Welfare Society vs. ITO (supra) and order of ITAT Jaipur Bench in the case of Ramadevi Memorial Charitable Trust (supra) wherein the action of the Assessing Officer was approved because in the said case the assessee society failed to maintain proper records indicating name and addresses of donor voluntarily contributions but in the present case we are in agreement with the contentions of the Id. counsel of assessee that in the present case, the Assessing Officer has noted a table at pages 2 to 9 of assessment order wherein the names, addresses, PAN card nos., cheque number, date & amount pertaining to all donations have been mentioned therefore benefit of said orders of Tribunal is not available for the Revenue in the case in hand.

14. The Id. counsel has relied on the various judgments and orders including judgment of Hon'ble High Court of Delhi in the case of DIT vs. Keshav Social & Charitable Foundation reported as 146 Taxmann 569 (Del.) wherein it was held that where the complete list of donors were not file or that donors were not produce, did not necessarily lead to an inference that assessee was trying to introduce unaccounted money by way of donation receipts.

15. On careful consideration of the above rival submissions, first of all we note that on being asked by the bench the Id CIT(DR) did not dispute the factual position that the facts and circumstances pertaining to the present appeal for AY 2012-13 are identical to the facts and circumstance of earlier AYs 2008-09 wherein, the Id First Appellate Authority on the identical issue granted relief to the assessee with following observations and findings:-

I have considered the impugned assessment order, written submission alongwith paper books and oral arguments of Ld. AR. The Ld. AR has enclosed original assessment order framed u/s 143(3), rectification order passed u/s 154 and revision order passed by CIT(Central)-III, New Delhi.

Facts in brief is that in original assessment order the assessing officer has made addition u/s 115 BBC read with section 68 for Rs. 12,50,83,785/- and Rs. 10,02,70,000/- u/s 68 of I.T. Act totaling to Rs. 22,53,53,785/- on account of non genuineness and creditworthiness of donors and did not allow any deduction on account of application of Income as per the provision of Section 11 while computing taxable income, however allowed set off of loss as per I&E A/c. Order u/s 154 was passed on 27.05.2011 allowing application of income to the extent of Rs. 61,91,04,926/- u/s 11 & 12 therefore, taxable income was computed at NIL as application of Income far exceeded the income even after addition of unexplained donation.

Ld. CIT (Central)-III, New Delhi passed order u/s 263 holding that order u/s 154 and original assessment passed u/s 143(3) are erroneous & prejudicial to the interest of revenue & therefore, these orders were cancelled and the assessing officer was directed to make de-novo assessment after considering the facts & circumstances of the case and after considering the statutory provisions of subsection (7) of section 13 & provision of section 115 BBC. In the present impugned assessment order, no deduction was allowed u/s 11 on application of income and entire addition was taxed u/s 115 BBC of I.T. Act, 1961.

In view of the above facts the basic issue which has to be adjudicated whether application of income is to be allowed on such addition made on account of such alleged donation which remained unverified or creditworthiness of donors were doubtful.

In the impugned assessment order, the bifurcation of total addition is not mentioned, only the reference of original assessment is made. I have perused the original assessment made u/s 143(3). The broad bifurcation of addition on the basic of finding and enquiry made during the assessment proceedings & survey proceedings are as under:-

	Amount in (Rs.)
1.Total amount of donation in respect of which notices u/s 133(6) have not been served or no reply received [Ref: Para 6.2 of the order (total 11 cases)]	Rs. 1,91,00,000/-
2.Total amount of Corpus donation where notices u/s 133(6) not served or no reply received [Ref: para 6.2 of the order (total 73 cases)]	Rs. 10,59,83,755/-
3.Total amount of Corpus donation where Creditworthiness of the donors were not proved On the basis of balance sheet Financial result	Rs. 10,02,70,000/-
	<u>Rs. 22,53,53,785/-</u>

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In the present impugned assessment proceedings, Ld. assessing officer has not done any further enquiry or investigation in respect of these donors on the pretext that the assessing officer has no power of reviewing an order passed previously & his power are only restricted to the extent of rectifying mistakes which is apparent on the face of record. I do not agree with this finding of the assessing officer. Ld. CIT(Central) III, New Delhi has passed order u/s 263 directing the assessing officer to make de-novo assessment after considering the facts & circumstances of the case & considering the legal provision specially section 13(7) read with section 115 BBC of the Act, 1961.

I have considered the provisions of section 115 BBC read with subsection (7) of section 13 of I.T. Act. As per the provision of section 115 BBC, any anonymous donation is taxable at the flat rate of 30% of such donation. Therefore, section 115 BBC is a charging section itself. The provisions of subsection (1) of section 115 BBC is reproduced as under:-

(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:-*

(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.*

Anonymous donation has been defined in subsection (3) of I.T. Act, 1961 reproduced as under:-

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.

A perusal of the above definition reveals that if the person receiving such donation maintains the record of identity and address of donors then such donation cannot be called anonymous have been notified as per the requirement of this section.

In view of the above facts, I agree with the arguments of Ld. AR that the requirement of section 115 BBC is not at par with onus on the assessee casted u/s 68 of I.T. Act, i.e. to prove creditworthiness of the donors. Emphasis in section 115 BBC is to maintain & declare correct identity of the donors. The Ld. AR argued that the appellant have maintained & disclosed such name & address of donors during the assessment proceeding as accepted by the assessing officer in the original assessment order, therefore section 115 BBC is not applicable to the facts of the case.

I have examined these arguments on the facts of the case & perused original assessment order. As per para (5) of the original assessment order, the appellant has maintained the name & address of all the donors, which has been reproduced in the assessment order. Unless these details are proved to be wrong that these persons have not donated to the appellant, in my view the donation received cannot be said as anonymous donation by virtue of sub section (3) of section 115 BBC.

I have perused the status of enquiry contained in para 6.1 & 6.2 of the original assessment order. In one donor namely M/s. Adivasi Mahila Vikas Samiti, it has been categorically stated that it has not made any donation to the appellant. The relevant portion of finding is contained in para 6.1 of the original assessment order & reproduced as under:-

6.1 Here, it is pertinent to stress upon the reply received in this office in the case of Adivasi Mahila Vikas Samiti, Fuldungri, P.O. Ghatsila, Distt. Singhbhum, Jharkhand – 832303 from whom, donation @ Rs. 1.46 Cr is stated to have been received. The counsel of Adivasi Mahila Samiti has in response to letter u/s 133(6) stated that during the relevant period Adivasi Mahila Vikas Samiti did not make any transaction with the said M/s Gian Sagar Educational and Charitable Trust and made no payment to them on any account.

As the alleged donor M/s Adivasi Mahila Vikas Samiti, has not confirmed the donation to the appellant, to this extent the name or address of the donor is incorrectly maintained by the appellant & therefore, onus on the appellant to the extent of this donation to maintain identity of donor is not fulfilled. As the meaning of maintaining identity of donors means name & address should be correct. If the name of the person with address maintained by assessee denies to have paid donation, it means such details are not correctly maintained & therefore, not maintained. Neither during the present impugned assessment proceeding nor during the present appellate proceedings, the appellant has produced or contradicted this findings. Considering these above Rs. 1.46 Crores allegedly received from M/s. Adivasi Mahila Vikas Samiti is treated as anonymous donation and is taxable u/s 115 BBC of I.T. Act & no deduction is allowable on account of application of income under subsection (7) of section 13 of I.T. Act, 1961.

As far as the balance donations are concerned, the enquiry conducted during the original assessment proceedings revealed that the enquiry letters were either not replied or not served. This does not prove that the appellant has not maintained the requisite details to establish the identity of donors specially under the circumstances where all the alleged donation are through banking channels and letters of donors were produced during the assessment proceedings. The appellant has filed complete details of donation during the present impugned assessment proceedings, containing name, address & PAN.

Therefore, these are the cases at the most of not discharging onus u/s 68 of I.T. Act. In any case all the donation except corpus donation is credited as income of the assessee. In my view these donation cannot be called anonymous donation therefore section 115 BBC read with section 13(7) are not applicable.

In view of the above facts I agree with the arguments of Ld. AR that even in case of unexplained cash credit u/s 68 the income have to computed in accordance with the provision of section 11 to 13 of I.T. Act.

I have perused the judicial pronouncements relied by the Ld. AR on this issue. Since, registration u/s 12AA is continuing in the case of the applicants, therefore, the appellant's income has to be computed in accordance with the provision of section 11 & deduction on account of application has to be allowed. I rely on the following judicial pronouncements on this issues cited by Ld. AR.

- i) Commissioner of Income Tax vs. Uttaranchal Welfare Society (2013) 86 CCH 333 All HC, (2014) 364 ITR 398 (All)

- ii) Director of Income Tax (Exemptions) & Anr. vs. Sri Belimatha Mahasamsthana Socio Cultural & Educational Trust 336 ITR 694 High Court of Karnataka
- iii) Director of Income Tax (Exemption) vs. Bharat Kalyan Pratishtan (2002) 257 ITR 609 (Del) High Court of Delhi
- iv) Assistant Commissioner of Income Tax vs. Geetanjali Education Society* (2008) 114 TTJ (Jd) 697 ITAT, Jodhpur
- v) Director of Income Tax vs. Raunaq Education Foundation 294 ITR 76 (Del) High Court of Delhi
- vi) Director of Income Tax (Exemption) vs. Keshav Social & Charitable Foundation (2005) 278 ITR 152 (Del) High Court of Delhi

In view of the above judicial pronouncements, application of income is to be allowed as the registration u/s 12AA is continuing & therefore, the activities of the trust are in accordance with its Memorandum of Association.

Considering the entire facts & circumstances of the case, I hereby confirm anonymous donation to the extent of Rs. 1.46 Crores u/s 115 BBC and balance donation is not treated as anonymous donation within the provision of section 115 BBC and application of income of income is allowed for balance addition. Accordingly, these grounds of appeal are partly allowed.

6. As a result, the appeal is partly allowed.

16. Furthermore, it is also relevant to note that the order of the Id CIT(A) for AY 2008-09 (supra) has been upheld by the coordinate bench of Tribunal vide order dated 21.10.2022 in ITA No. 4775/Del/2015 (supra). We find necessary and proper to reproduce the relevant part of the said order of the coordinate bench of Tribunal for AY 2008-09 (supra) wherein, identical issue has been decided in favour of the assessee demising the ground of revenue with following observations and findings:-

“5. First we proceed to decide the Revenue’s appeal as under.

5.1. The brief facts emanating to the grounds raised by the Revenue in it’s appeal are that in the original assessment order dated

30.12.2010 passed under section 143(3) of the I.T. Act, 1961, the A.O. made an addition under section 115BBC read with Section 68 of the I.T. Act, 1961 at Rs.12,50,83,785/- and Rs.10,02,70,000/- [totaling to Rs.22,53,53,785/-] on account of non-genuineness and

creditworthiness of the of the donors. The reason for such disallowance and its break-up are as under :

5.1.1. The A.O. did not allow any deduction on account of application of income as per the provisions of Section 11 of the I.T. Act, 1961 while computing the

	Amount in (Rs.)
1.Total amount of donation in respect of which notices u/s 133(6) have not been served or no reply received [Ref: Para 6.2 of the order (total 11 cases)]	Rs. 1,91,00,000/-
2.Total amount of Corpus donation where notices u/s 133(6) not served or no reply received [Ref: para 6.2 of the order (total 73 cases)]	Rs. 10,59,83,755/-
3.Total amount of Corpus donation where Creditworthiness of the donors were not proved On the basis of balance sheet Financial result	Rs. 10,02,70,000/-
	Rs. 22,53,53,785/-

taxable income, but, however, allowed set-off of losses as per Income and Expenditure A/c. Thereafter, in the rectification order dated 27.05.2011 passed under section 154 of the I.T. Act, 1961, the A.O. allowed the application of income to the extent of Rs.22,53,53,785/- under sections 11 and 12 of the I.T. Act, 1961 and, therefore, the total taxable income was computed at Rs.NIL as the application of income exceeded the income even after the addition of unexplained donation. The Ld. CIT(A) decided the issue by observing as under :

5.3 Decision:-

I have considered the impugned assessment order, written submission alongwith paper books and oral arguments of Ld. AR. The Ld. AR has enclosed original assessment order framed u/s 143(3), rectification order passed u/s 154 and revision order passed by CIT(Central)-III, New Delhi.

Facts in brief is that in original assessment order the assessing officer has made addition u/s 115 BBC read with section 68 for Rs. 12,50,83,785/- and Rs. 10,02,70,000/- u/s 68 of I.T. Act totaling to Rs. 22,53,53,785/- on account of non genuineness and creditworthiness of donors and did not allow any deduction on account of application of Income as per the provision of Section 11 while computing taxable income, however allowed set off of loss as per I&E A/c. Order u/s 154 was passed on 27.05.2011 allowing application of income to the extent of Rs. 61,91,04,926/- u/s 11 & 12 therefore, taxable income was computed at NIL as application of Income far exceeded the income even after addition of unexplained donation.

Ld. CIT (Central)-III, New Delhi passed order u/s 263 holding that order u/s 154 and original assessment passed u/s 143(3) are erroneous & prejudicial to the interest of revenue & therefore, these orders were cancelled and the assessing officer was directed to make de-novo assessment after considering the facts & circumstances of the case and after considering the statutory provisions of subsection (7) of section 13 & provision of section 115 BBC. In the present impugned assessment order, no deduction was allowed u/s 11 on application of income and entire addition was taxed u/s 115 BBC of I.T. Act, 1961.

In view of the above facts the basic issue which has to be adjudicated whether application of income is to be allowed on such addition made on account of such alleged donation which remained unverified or creditworthiness of donors were doubtful.

In the impugned assessment order, the bifurcation of total addition is not mentioned, only the reference of original assessment is made. I have perused the original assessment made u/s 143(3). The broad bifurcation of addition on the basis of finding and enquiry made during the assessment proceedings & survey proceedings are as under:-

	Amount in (Rs.)
1.Total amount of donation in respect of which notices u/s 133(6) have not been served or no reply received [Ref: Para 6.2 of the order (total 11 cases)]	Rs. 1,91,00,000/- ✓
2.Total amount of Corpus donation where notices u/s 133(6) not served or no reply received [Ref: para 6.2 of the order (total 73 cases)]	Rs. 10,59,83,755/-
3.Total amount of Corpus donation where Creditworthiness of the donors were not proved On the basis of balance sheet Financial result	Rs. 10,02,70,000/- <u>Rs. 22,53,53,785/-</u>

In the present impugned assessment proceedings, Ld. assessing officer has not done any further enquiry or investigation in respect of these donors on the pretext that the assessing officer has no power of reviewing an order passed previously & his power are only restricted to the extent of rectifying mistakes which is apparent on the face of record. I do not agree with this finding of the assessing officer. Ld. CIT(Central) III, New Delhi has passed order u/s 263 directing the assessing officer to make de-novo assessment after considering the facts & circumstances of the case & considering the legal provision specially section 13(7) read with section 115 BBC of the Act, 1961.

I have considered the provisions of section 115 BBC read with subsection (7) of section 13 of I.T. Act. As per the provision of section 115 BBC, any anonymous donation is taxable at the flat rate of 30% of such donation. Therefore, section 115 BBC is a charging section itself. The provisions of subsection (1) of section 115 BBC is reproduced as under:-

(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 (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 nay 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-

6.1 Here, it is pertinent to stress upon the reply received in this office in the case of Adivasi Mahila Vikas Samiti, Fuldungri, P.O. Ghatsila, Distt. Singhbhum, Jharkhand - 832303 from whom, donation @ Rs. 1.46 Cr is stated to have been received. The counsel of Adivasi Mahila Samiti has in response to letter u/s 133(6) stated that during the relevant period Adivasi Mahila Vikas Samiti did not make any transaction with the said M/s Gian Sagar Educational and Charitable Trust and made no payment to them on any account.

As the alleged donor M/s Adivasi Mahila Vikas Samiti, has not confirmed the donation to the appellant, to this extent the name or address of the donor is incorrectly maintained by the appellant & therefore, onus on the appellant to the extent of this donation to maintain identity of donor is not fulfilled. As the meaning of maintaining identity of donors means name & address should be correct. If the name of the person with address maintained by assessee denies to have paid donation, it means such details are not correctly maintained & therefore, not maintained. Neither during the present impugned assessment proceeding nor during the present appellate proceedings, the appellant has produced or contradicted this findings. Considering these above Rs. 1.46 Crores allegedly received from M/s. Adivasi Mahila Vikas Samiti is treated as anonymous donation and is taxable u/s 115 BBC of I.T. Act & no deduction is allowable on account of application of income under subsection (7) of section 13 of I.T. Act, 1961.

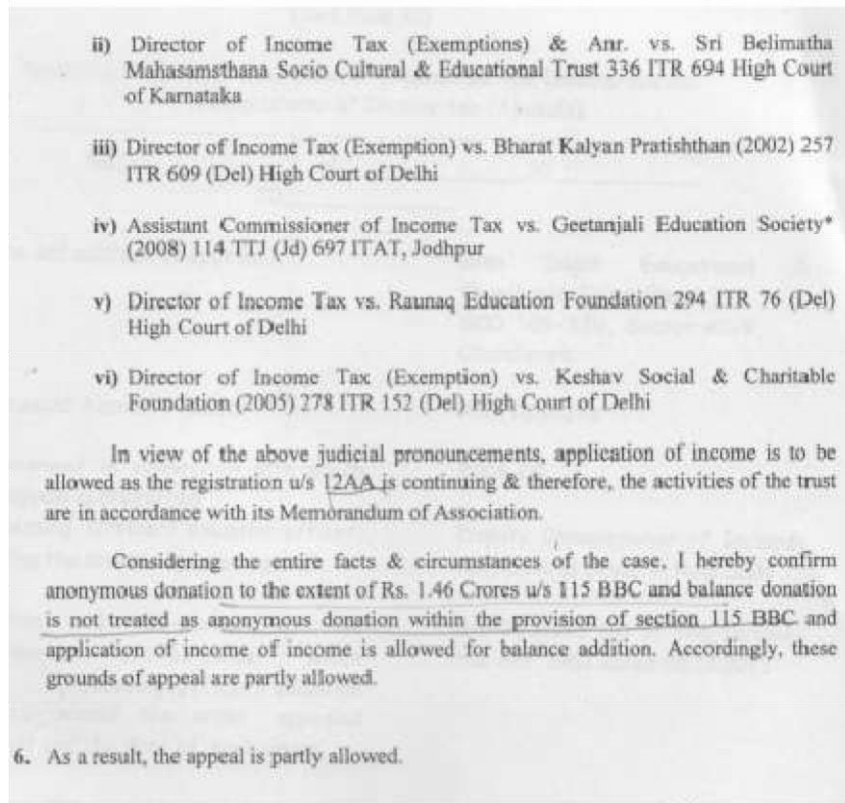
As far as the balance donations are concerned, the enquiry conducted during the original assessment proceedings revealed that the enquiry letters were either not replied or not served. This does not prove that the appellant has not maintained the requisite details to establish the identity of donors specially under the circumstances where all the alleged donation are through banking channels and letters of donors were produced during the assessment proceedings. The appellant has filed complete details of donation during the present impugned assessment proceedings, containing name, address & PAN.

Therefore, these are the cases at the most of not discharging onus u/s 68 of I.T. Act. In any case all the donation except corpus donation is credited as income of the assessee. In my view these donation cannot be called anonymous donation therefore section 115 BBC read with section 13(7) are not applicable.

In view of the above facts I agree with the arguments of Ld. AR that even in case of unexplained cash credit u/s 68 the income have to computed in accordance with the provision of section 11 to 13 of I.T. Act.

I have perused the judicial pronouncements relied by the Ld. AR on this issue. Since, registration u/s 12AA is continuing in the case of the applicants, therefore, the appellant's income has to be computed in accordance with the provision of section 11 & deduction on account of application has to be allowed. I rely on the following judicial pronouncements on this issues cited by Ld. AR.

- i) Commissioner of Income Tax vs. Uttaranchal Welfare Society (2013) 86 CCH 333 All HC, (2014) 364 ITR 398 (All)



6. Aggrieved by the order of the Ld. CIT(A), the Revenue is now in appeal before the Tribunal.
7. Before us, the Ld. D.R. supported the order of A.O.
8. The Learned Counsel for the Assessee, on the other hand, reiterated the submissions made before the lower authorities and supported the order of the Ld. CIT(A).
9. We have heard the Learned Representatives of both the parties and perused the material on record. We find that the Ld. CIT(A) while deleting the addition noted that despite the direction of Ld. CIT in the order passed under section 263 of the I.T. Act, 1961 wherein the A.O. was directed to make denovo assessment after considering the facts and circumstances of the case, the A.O. did not make any further enquiry or investigation in respect of the donations on the pretext that A.O. had no power of reviewing the order passed previously and his power was only restricted to the extent of rectifying the mistakes which are apparent on the face of the record. This finding of the A.O. did not find favour with the Ld. CIT(A). The Ld. CIT(A) while deleting the addition has noted that if a person receives donation and maintains the record of identity and address of the donors and then such donation cannot be considered to be anonymous donation as defined in sub-section (3) of Section 115BBC of the I.T. Act, 1961. He further held that requirement of Section 115BBC is not at with onus on the assessee-trust casted under section 68 of the I.T. Act, 1961 i.e., to prove creditworthiness of the donors. He has given a finding that since the assessee-trust has maintained and disclosed name and address of the donors during the assessment proceedings and which

were accepted by the A.O. in the original assessment order, therefore, the provisions of Section 115BBC would not be applicable to the facts of the case. He has further noted that details of the names and addresses of the donors has not been proved to be wrong or those persons have not donated to the assessee-trust. He, therefore, held that for these reasons also the donation received by the assessee-trust cannot be considered to be anonymous donation by virtue of sub-section (3) of Section 115BBC of the I.T. Act, 1961. Before us, no fallacy in the findings of the Ld. CIT(A) has been pointed out by the Revenue. In such a situation, we find no reason to interfere with the order of the Ld. CIT(A) and thus, the grounds raised by the Revenue are dismissed.

10. In the result, appeal of the Revenue is dismissed.”
17. On careful and thoughtful consideration of above noted rival submissions, basis taken by the AO for making addition and observations of the Id CIT(A) while upholding the action of the AO are considered and evaluated in the light of findings and conclusion recorded by the Id. CIT(A) and coordinate bench of ITAT Delhi in assessee’s own case for AY 2008-09 then we find that the first appellate authority has granted relief to the assessee on the identical issue having similar facts and circumstances with present AY 201213. From the order of the coordinate bench of the Tribunal for AY 2008-09 (supra), wherein the appeal of Revenue has been dismissed approving conclusion of Id. CIT(A) deleting the addition, we note that the Tribunal upheld the order of Id CIT(A) by observing that the provisions of Section 115BBC of the Act would not be applicable to the facts of the case. The Tribunal further noted that details of the names, addresses, their PAN card nos., cheque nos., dates and amounts of donation of the donors has not been proved to be wrong. He, therefore, held that for these reasons also the donation received by the assessee-trust cannot be considered to be anonymous donation by virtue of sub-section (3) of Section 115BBC of the I.T. Act, 1961. Before us, no fallacy in the findings of the Ld. CIT(A) has been pointed out by the Revenue. With these observations the Tribunal dismissed the appeal of Revenue for A.Y. 2008-09 on identical issue, upholding the conclusion of Ld. CIT(A) i.e., deletion of addition made by the A.O. on the allegation of anonymous donation. The Id. CIT(DR) could not show us any contrary factual position or order or judgment which may lead us to take a contrary or different view as taken by the Tribunal for AY 2008-09. Accordingly, since the issue before us is squarely covered in favour of the assessee by the order of the Tribunal for AY 2008-09. Accordingly, respectfully following

the same sole grievance of assessee, raised in the grounds noted above, is allowed and hence, the Assessing Officer is directed to delete the addition.

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

Order pronounced in the open court on 19/10/2023.

Sd/-
(M. Balaganesh)
ACCOUNTANT MEMBER

Sd/-
(C. M. GARG)
JUDICIAL MEMBER

Dated: 19/10/2023 A K
Keot/NV

Copy forwarded to

1. Applicant
2. Respondent
3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi