आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ 'A' अहमदाबाद।
IN THE INCOME TAX APPELLATE TRIBUNAL
"A" BENCH, AHMEDABAD

BEFORE SMT.ANNAPURNA GUPTA, ACCOUNTANT MEMBER
AND
SHRI T.R. SENTHIL KUMAR, JUDICIAL MEMBER

ITA No.137/Ahd/2014
Assessment Year :2010-11

DCIT, Gandhinagar Cir., Gandhinagar.		Shree Saraswati Education Sansthan At-Rajpur, Taluka-Kadi Dist : Mehsana. PAN : AAITS 3179 G

(Applicant)		**(Responent)**

Assessee by :	Shri S.N. Soparkar, Sr.Advocate Shri Parin Shah, AR
Revenue by :	Shri Vijaykumar Jaiswal, CIT-DR

सुनवाई की तारीख/**Date of Hearing : 19/06/2023**
घोषणा की तारीख /**Date of Pronouncement: 18/09/2023**

आदेश/O R D E R

PER ANNAPURNA GUPTA, ACCOUNTANT MEMBER

Present appeal has been filed by the Revenue against order passed by the ld.Commissioner of Income-Tax (Appeals), Gandhinagar, Ahmedabad [hereinafter referred to as "CIT(A)"] dated 30.10.2013pertaining to the Asst.Year 2010-11.

2. Brief facts leading to the present appeal before us is that the assessee is a trust engaged in educational activities. The return of income for the impugned year had been filed by the assessee showing NIL income. During assessment proceedings, the AO noted that the assessee had not been granted registration as Charitable

Trust under section 12 of the Income Tax Act, 1961 ("the Act" for short) and was therefore not eligible to claim its income as exempt as per the provisions of section 11 of the Act. He therefore proceeded to compute the income of the assessee as per the normal provisions of the Act, and accordingly, he picked up total profit from income &expenditure account of the assessee amounting to Rs.3,45,721/- and noting that corpus donations received by the assessee during the year, amounting to Rs.1,93,75,000/-,wasnot included in the same, he added the same to the said profits, holding that exemption of corpus fund/donation was availableonly as per section 11(1)(d) of the Act and since the assesseewas not eligible to exemption u/s 11 of the Act, provisions of section 11(1)(d) would not be applicable. Accordingly, he computed the taxable income of the assessee at Rs.1,67,24,902/- after allowing depreciation as per the rates prescribed under the Income Tax Act. The computation of the taxable income is reproduced at page 5 of the order as under;

	Profit as per Profit & Loss account	Rs.1,97,20,721/-
Add:	Depreciation	Rs. 91,34,873/-
		Rs.2,88,55,594/-
Less:	**Depreciation as per I.T. Act as per submission dated 14/12/2012**	**Rs.1,21,30,692/-** ==========
	Total Income	**Rs.1,67,24,902/-**

3. Alternatively, the AO also noted that entire corpus funds had been received from various persons in cash. The ld.AO noted that this fact indicated that the donations were in fictitious names. He further noted that other than the confirmation along with copies of 7/12 *utaras* filed by the assessee invarious names, no copies of income-tax returns were provided by the assesseeof thevarious donors. He accordingly held that onus was on the assessee to prove

genuineness of the transaction. Thereafter, he asked the assessee to produce five persons for examination before him, who did not appear despite repeated opportunities granted. Ultimately, AO issued summons under section 131 directing the said persons to produce copies of 7/12 *utaras*, bills for purchase of pesticides, seeds, proof of agriculture income earned etc. Out of five, only one it has beennotedby the AO, to have appeared and his statement was recorded. The ld.AO noted from the statement that the said person was not credit-worthy enough to provide donation to the assessee, and further noted the fact that other four did not appear, he held that the entire corpus donations were bogus and were in fact own money of the assessee. The ld.AO on this basis, therefore, invoked provisions of section 115BBC of the Act relating to anonymous donations and levied tax at the rate of 30% of the anonymous donations including both corpus and voluntary donations received by the assessee of Rs.1,93,75,000 and Rs.1,09,50,000/- respectively amounting in all to Rs.3,03,25,000/-. The donation received in excess of 5% of this total donation amounting to Rs.2,88,08,750/- was subjected to tax at the rate of 30% which amounted to Rs.86,42,625/- as per section 115BBC of the Act.

Thus, to put it briefly, the AO first assessed taxable income of the assessee at Rs.1,67,24,902/- as per the normal provisions of the Act, and alternately, he invoked section 115BBC of the Act on the donations received by the assessee, treating them as anonymous donations , levied tax @ 30% on the anonymous donations so received in excess of 5% of total of such donations being Rs.2,88,08,750/-. Further noting that the tax as per the normal provision determined was less thanthat determined under section

115BBC of the Act,he proceeded to levy taxes as per the provisions of section 115BC of the Act.

4. The assessee carried the matter in appeal before the ld.CIT(A) where he contended that both voluntary donations and corpus donations could not be treated as its income, pleading that the voluntary donations were in the nature of gift and corpus donations were capital receipts. He further challenged the invocation of section 115BBC of the Act contending that it could be invoked only in the case of those trusts which were registered under section 12A of the Act. He further pleaded that genuineness of the donors having beenduly established by him and out of five donors, who were called by the AO for examination, one had confirmed the fact of giving donations and other four who were also present and waiting to be examined by the AO, were not examined by him at all. Affidavits to this effect of other two donorswas placed before the ld.CIT(A). The ld.CIT(A) found merit in the contentions of the assessee and allowed all the grounds raised by the assessee.

5. Aggrieved by the same, Revenue has come up in appeal before the Tribunal raising the following grounds:

> *"1. The learned Id. CIT(Appeals) has erred in law and on facts in deleting the cash donations of Rs.30325000/- from the income of the assessee.*
>
> *2. The learned Id. CIT(Appeals) has erred in ignoring the binding decision of the Hon'ble Apex Court in the case of Emil Webber vs. CIT, 200 ITR 483 that income is an inclusive definition and all receipts are taxable unless specifically exempt.*
>
> *3. The learned Id. CIT(Appeals) has erred in relying on sworn affidavit of alleged donors without giving any opportunity to the AO who has given clear finding that such persons had not attended before him.*

4. The learned Id. Ld.CIT(Appeals) has erred in accepting the contention of the assessee that the sum of Rs.1,93,75,000/- credited in balance sheet is capital receipt, without examining the real nature of such receipts.

5. The learned ld.CIT(Appeals) has erred in holding that Section 115BBC provisions are not applicable to the assessee.

6. On the facts and circumstances of the case the Ld.CIT(A) ought to have upheld the order of the Assessing Officer.

It is therefore prayed that the order of the learned CIT(Appeals) may be set aside and that of the A.O. be restored to the above extent."

6. The ld.DR argued at length before us challenging all actions of the ld.CIT(A) which in turn were countered by the ld.counsel for the assessee before us. We have heard both the parties at length.

7. To proceed further, it is necessary to break down the case into its significant aspects in a logical manner to expedite adjudication of the issue.

8. The AO made addition to the assesses income on two counts alternately,which give rise to the following issues on both the counts as under:

Computation of income under the normal provisions of the Act denying exemption of its income u/s 11 of the Act in the absence of registration as a charitable entity in terms of section 12 of the Act by :

a) whether voluntary donations of Rs.1,09,50,000/- received by the assessee are to be taxed as revenue receipts as done by the AO as opposed to same being contended by the assessee as being in the nature of gifts and hence not taxable;

b) whether corpus donations of Rs.1,93,75,000/- are income of the assessee, as opposed to the same being contended to be capital receipts by the assessee and hence not taxable.

- **Treating entire donations received, both normal and corpus donations ,as anonymous donations and taxing it at the rate of 30% invoking the provisions of Section 115BBC of the Act**
  a) Whether the provisions of section 115BBC of the Act are applicable in the facts of the present case;
  b) Whether genuineness of corpus donors was established or not so as to treat them as anonymous donations for the purpose of section 115BBC of the Act;

9. Having said so, on the first set of issues regarding computation of income of the assessee as per the normal provisions of the Act, it was not disputed that the assessee-trust was not registered under section 12A of the Act and computation of its income therefore- had to be made as per the normal provisions of Act.

10. Vis-à-vis voluntary contributions of Rs.1,09,50,000/- being treated as gifts, the ld.DR referred to provisions of section 2(24)(iia) of the Act which is the definition of "income" pointing out that it specifically including voluntary contributions received by trusts created for charitable and religious purpose to be treated as income. The ld.DR argued that definition of income being so clear, the voluntary donations were wrongly excluded by the ld.CIT(A) from being treated as income by holding that they were in the nature of gifts. The ld.DRemphasized that there is no great difference between contribution and donations. He contended therefore that there was

no scope for the treating the voluntary donations as gifts, and thus excluding them from being treated as income of the assessee.

11. The ld.AR, per contra, contended that he was refraining from making any arguments on this issue since even if voluntary contributions were subjected to tax it would not result in any taxable income of the assessee. He pointed out from the assessment order that taxable income computed by the AO under the normal provisions of Act had resulted only on account of corpus donations added to the income of the assessee. The income computed by the AO as per normal provisions of the Act,at page 5 of the assessment order is as under:

	Profit as per Profit & Loss account	Rs.1,97,20,721/-
Add:	Depreciation	Rs. 91,34,873/-
		Rs.2,88,55,594/-
Less:	**Depreciation as per I.T. Act as per submission dated 14/12/2012**	**Rs.1,21,30,692/-** ==========
	Total Income	**Rs.1,67,24,902/-**

12. Ld.Counsel for the assessee pointed out from the above that the corpus donations are to the tune of Rs.1.93 Crs while the income of the assessee as per the normal provisions of the Act has been assessed at Rs.1.67 Crs, which clearly shows that it comprises completely of corpus donations alone. He therefore contended that since the taxable income comprised only of corpus donation, the debate over taxability of voluntary donation was only an academic exercise. The Ld DR fairly agreed with the same.

In view of the above,concession of the Ld.AR and even on merits we hold that the voluntary contributions received by the assessee to the tune of Rs.1,09,50,000/- are taxable. Even

otherwise,we agree with the Ld.DR that the definition of income in section 2(24)(iia) of the Act categorically includes voluntary contributions received by trusts created for charitable purposes.Section 2(24)(iia)of the Act is reproduced hereunder for clarity:

> *(iia) voluntary contributions received by a trust created wholly or partly for charitable or religious purposes or by an institution established wholly or partly for such purposes or by an association or institution referred to in clause (21) or clause (23), or by a fund or trust or institution referred to in sub-clause (iv) or sub-clause (v) or by any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or by any hospital or other institution referred to in sub-clause (iiiae) or sub-clause (via) of clause (23C) of section 10 or by an electoral trust.*

As per the above the definition of income being clear enough to include all voluntary contributions received by trusts for charitable and religious purposes there remains no scope therefore for excluding them from being treated as income,treating them as gifts.

13. As for the corpus donations, the contention of the ld.DR was that definition of income under section 2(24)(iia) of the Act treating the voluntary contribution received by the trust was inclusive definition, covering both voluntary and also corpus donations. The ld.DR pointed out that even corpus donations were voluntary donations and corpus donations were only a subset of voluntary donations; that as per section 2(24)(iia) they were therefore in the nature of income only. The ld.DR contended that it was only by virtue of section 11(1)(d) of the Act that corpus donations were specifically excluded from being treated as income in the case of trusts claiming exemption under section 11 of the Act . He contended therefore that trusts which were not so claiming exemption, the corpus donation had to be treated as their income.

Theld.DR contended that, but for section 12A of the Act, which entitles exemption to charitable trusts on being granted registration under the said section, all voluntary contributions both gifts and corpus would have been subjected to tax. He clarified stating that for the purpose of claiming exemption of income under section 11 of the Act, section 12A makes it mandatory foran eligible trust/society to be registered as charitable trust under the said section and it is only when such registration is granted, the eligibility of claiming exemption came into force. He further pointed out that section 11 which deals with exemption of income of such registered trusts specifically provided in sub-clause (d) of sub-section (1) thereto that voluntary contribution, made with specific direction, that it shall form part of the corpus trust, shall be exempted from tax. He contended therefore that it is evident fromthe above that even corpus donations are in the nature of voluntary contributions and are excluded or exempted from taxation only on account of specific exemption provided underthe Act, which is applicable to trusts which are registered under section 12A. The voluntary contributions even in the corpus donations are to be subjected to tax. On this proposition that corpus donations are also treated as income of the trusts which are not eligible to exemption under section 11 of the Act, he placed heavy reliance on the decision of ITAT, Chennai Bench in the case of Veeravel Trusts Vs. ITO, 129 taxmann.com 358 (Chennai-Trib). The ld.DR pointed out that the ld.CIT(A) has relied upon various decisions of the ITAT to hold that corpus donations are capital in nature, but he contended that the above decision of the Chennai Bench of the Trust being latest decision would apply. He further pointed out that Tribunal had distinguished other decisions rendered by the other Benches of the Tribunal by pointing out that other decisions had not considered the ratio laid down by Hon'ble

Apex Court in the case of U.P. Forest Corporation Vs. DCIT, (2007) 165 taxman 533.

14. Per contra the Ld.Counsel for the assessee contended that the ld.CIT(A) had relied on various decisions of ITAT by treating the same as capital in nature. He drew our attention to one such decision relied upon by the CIT(A) in the case of ITO Vs. Gaudiya Granth Ayurvedi Trust, 48 taxmann.com 348 (Agra-Trib), pointing therefrom that in the said case also issue was identical, whether corpus donation could be treated as income in view of definition given in section 2(24)(iia) of the Act read with section 12A and 11(1)(d) of the Act as pleaded by the ld.DR before us above. The ld.counsel pointed out that the ITAT relied upon numerous decisions of other Benches of the ITAT as mentioned at para-3 of the order and specifically pointed out that various Tribunals had held corpus donations to be capital in nature, applied the said decisions to the case. The ld.counsel for the assessee pointed out that in the said order, decision of Hon'ble Delhi High Court was also taken note of in the case of ITO Vs. Smt.Basanti Devi and Shri Chakhan Lal Garg Education Trust, in IT Appeal No.5082 (Delhi) of 2010 dated 30.1.2009 had been upheld by the Hon'ble High Court in the Revenue's appeal filed to it, and the Revenue's further appeal to the Hon'ble Apex Court had been dismissed for non-prosecution vide judgment in Civil Appeal No.7036 of 2011. The ld.counsel therefore pointed out that there are numerous decisions of the ITAT to the effect that corpus donations are to be treated as capital in nature, there was no question of applying decision of Chennai Bench as stated by the ld.DR. He contended that any order of the ITAT, latest in time, does not make it better to be followed and ideally the Chennai Bench of the Tribunal ought to have referred the matter to

the Special Bench before making any contrary view against the consistent view taken by the ITAT in various other decisions. He further pointed out that ITAT, Delhi Bench in the case of R.D. Foundation Vs. ITO, in ITA No.7877/Del/2018 had taken note of the decision of Hon'ble Apex Court in the case of U.P. Forest Corporation (supra) which was relied upon by the ITAT, Chennai Bench while taking a contrary view on the issue. He therefore contended that having regard to the consistent view of the Tribunal, holding corpus donation in capital nature stand, which was confirmed by the Hon'ble Delhi High Court also act of the ld.CIT(A) in treating the corpus donation as capital in nature is in accordance with law.

15. The issue to be considered, on the aspect of computation of income as per normal provision is, whether corpus donations are to be treated as capital or revenue and accordingly its treatment as income in the hands of the assessee. Corpus donations by their very nature are towards the corpus of the trust. They are not freely available for utilization by the trust. There is plethora of decisions of the ITAT, and even Hon'ble Delhi High Court holding corpus donations to be capital in nature; some of which decisions cited before us are as under:

i) ITO Vs. Gaudiya Granth Anuved Trust, 48 taxmann.com 348 (Agra-Trib.)

ii) ACIT Vs. Geetanjali Education Society, 22 SOT 15 (Jodh) (URO);

iii) Pentafour Software Software Employees Welfare Foundation Vs. ACIT, IT Appeal Nos.751 & 752/Mad/2007;

iv) ITO (Exemption) Vs. Smt. Basanti Devi & Shri Chakhan Lal Garg Education Trust, IT Appeal No.5082(Delhi) of 2010 dated 30.1.2009;

v) Shri Shankar Bhagwan Estate Vs. ITO, 61 ITD 196 (Cal.);

vi) Society for Integrated Development in Urban & Rural Areas (Sidur) Vs. DCIT, 90 ITD 493 (Hyd);

vii) Sri Dwarkadheesh Charitable Trust Vs. IT, 98 ITR 557 (All.)

viii) DCIT Vs. Nasik Gymkhana, 77 ITD 500 (Pune)

16. Further, we have noted that decision of Delhi Bench of the Tribunal in the case of Smt.Basanti Devi & Shri Chakhan Lal Garg Education Trust (supra) was confirmed by the Delhi High Court.

17. The ld.DR has solitarily referred to a contrary decision of the ITAT, Chennai Bench in the case of Veeraval Trust (supra). In view of overwhelming view of the ITAT in numerous decisions as above, uniform view on the issue is that corpus donations are capital in nature. We have even noted that decision relied upon by the ITAT, Chennai Bench while taking up contrary view of Hon'ble Supreme Court in the case of U.P. Forest Corporation (supra) has been considered by the ITAT, Delhi Bench in the case of R.D. Foundation (supra) and after considering the same, has still held that corpus donations to be capital in nature. In view of the same, therefore, we have no hesitation in confirming the finding of the ld.CIT(A) that corpus donations were capital in nature and could not be added, therefore, to the income of the assessee while computing the same as per normal provisions of the Act.

18. As for the argument of the ld.DR that since section 11(d) specifically exempts corpus donation , therefore corpus donations are to be treated as income in terms of section 2(24)(iia) of the Act

need not to be dealt with by us, considering the uniform view taken by the ITAT on the issue as above treating it as capital in nature.

19. In conclusion, on the first aspect of the income of the assessee computed by the AO by including voluntary donations, we find, the same to be in accordance with law. Corpus donations however have been rightly held to be capital in nature by the Ld.CIT(A).

The grounds raised by the Revenue in ground no.1 & 2 are partly allowed.

20. Coming to the alternative stand taken by the AO treating the donations as anonymous donations and subjecting them to tax in terms of provisions of section 115BBC of the Act, firstly we hold there cannot be any situation in law of assessing income in different alternate manner. The purpose of any law is to lay down the position of law in all possible conceivable facts and circumstances.Income tax Act accordingly brings out what constitutes income and how it is to be computed and subjected to tax.Law cannot provide alternate treatment for the same nature of income and leave it to the whims and fancies of AO's to apply any such alternate situation.

21. The order of the AO taxing assesses income in two ways alternately only goes to demonstrate that he was not clear, as according to which provision of law, the income of the assessee is liable to tax. Be that so, we find that two situations envisaged by the AO for assessing the income of the assessee are not alternate situation, but a contradictory situation, for the reason that, in the first situation the income of the assessee has been assessed considering the fact that it is not registered as charitable entity in terms of section 12A of the Act, and hence not entitled to exemption

of its income under section 11 of the Act. The alternative position taken by the AO of taxing the assessee's corpus donations received as anomalous donations on flat rate of 30% in terms of section 115BBC of the Act, we find that section 115BBC of the Act is only applicable to trust which are registered under section 12A of the Act, and does not deal with unregistered charitable trust. We shall deal with this aspect in the later part of our order but suffice to say that the alternate position taken by the AO are applicable in contrary facts and situations, and cannot be, by any stretch, stated to be alternate method for taxing the income of the assessee.

22. For the above reason, we agree with the ld.CIT(A) that the AO could not have assessed the income of the assessee alternatively under section 115BBC of the Act.

23. Having held so, we shall also adjudicate the aspect of applicability of section 115BBC in the facts and circumstances of the case. The ld.DR addressing the aspect of application of the said section contended that the ld.CIT(A) had erred in holding that section applied only to trusts claiming exemption under section 11 of the Act. Referring to the provision of section he stated that literal interpretation of the section would reveal that it applied to trusts indulging in charitable activities, whether registered or not, under section 12A of the Act.

24. The ld.counsel per contra contended that the ld.CIT(A) had rightly interpreted applicability of the section only to charitable trusts, which were registered under section 12AA of the Act.

25. On this aspect, we are in complete agree with the ld.CIT(A) that section 115BBC is applicable only on trust which are registered

under section 12A of the Act. A bare reading of section clearly brings out this interpretation. Provisions of section are being reproduced hereinbelow:

> *115BBC. (1) Where the total income of an assessee, being a person in receipt of income on behalf of any university or other educational institution referred to in sub-clause (iiiad) or sub-clause (vi) or any hospital or other institution referred to in sub-clause (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 at the rate of thirty per cent on the aggregate of anonymous donations received in excess of the higher of the following, namely:—*
>
> *(A) five per cent of the total donations received by the assessee; or*
>
> *(B) one lakh rupees, and*
>
> *(ii) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the aggregate of anonymous donations received in excess of the amount referred to in sub-clause (A) or sub-clause (B) of clause (i), as the case may be.*
>
> *(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.*

26. Section 115BBC(1) brings out the scope of applicability of the provision to assesses being trusts referred to in section 11 of the Act. Section 11 of the Act which deals with exemption of income of trusts involved in charitable activities applies only to trusts registered u/s 12A of the Act. There is no dispute vis-a-vis this position of law. Therefore, a bare reading of section 11BBC of the Act reveals that it applies only to trusts enjoying exemption u/s 11 of the Act.

27. The assessee in the present case admittedly not being registered u/s 12A of the Act, we completely agree with the Ld.CIT(A) that section 115BBC of the Act cannot be invoked in the present case.

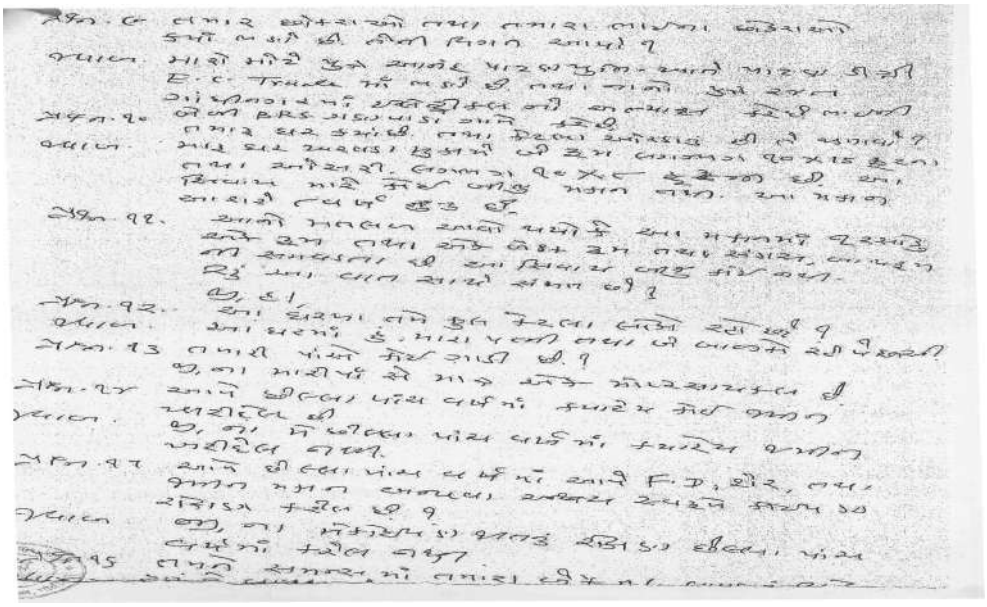
Ground of appeal No.5 of the Revenue is dismissed.

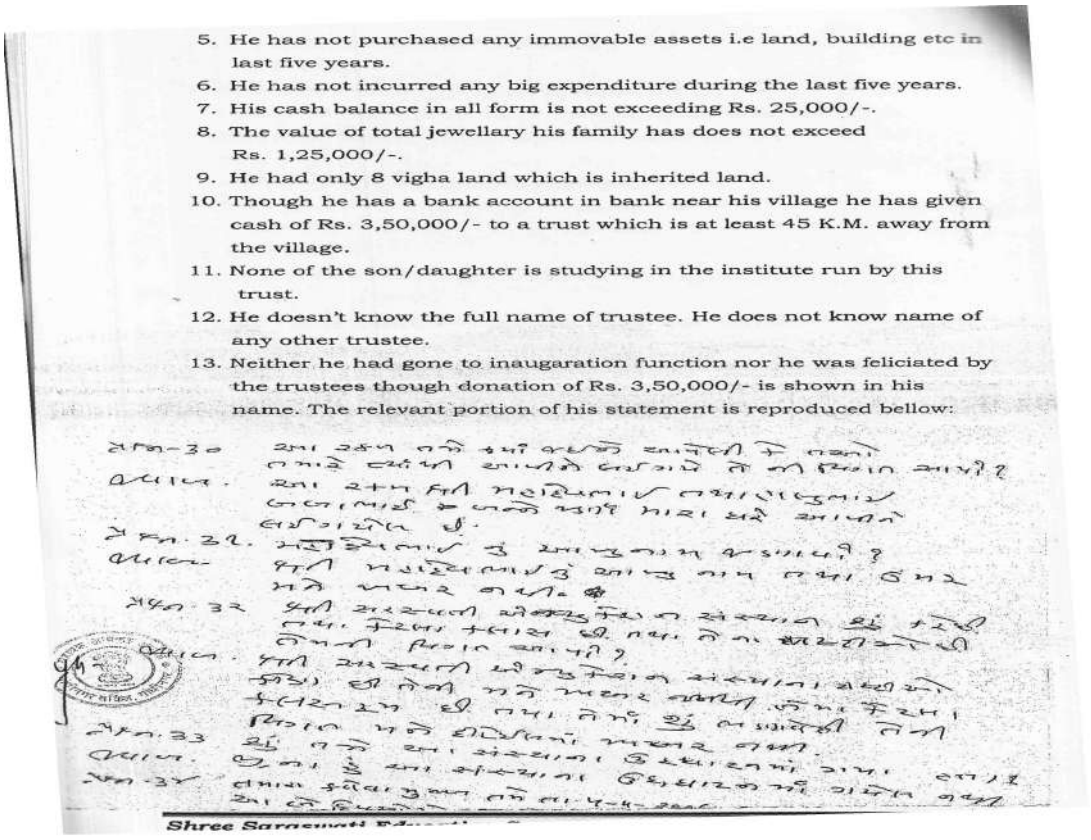
28. Since we have held the donations not being taxable u/s 115BBC of the Act we see no need to deal with the findings of the AO leading to his conclusion that the donations werenot proved to be genuine and hence were anonymous in nature and therefore taxable u/s 115BBC of the Act.

Be that so, even on merits of the issue we do not find any substance in the Revenues plea before us.

29. The ld.DR contended that firstly only one donor had come present before the AO for examination and he only confirmed the fact of having given donations to the assessee. His statement recorded by the AO categorically proved that he was man of no-means and could definitely not afford to have given huge corpus donation of Rs.3.5 lakhs. He drew our attention to the finding of the AO regarding his credit-worthiness to give donation, from the statement recorded at para-12 as under:

> *"12. Only one person Shri PrabhudasPathubhai Chaudhary attended in response to summons issued who has submitted in his statement that-*
>
> *1. He owns only one house having one kitchen and one room.*
> *2. He does not have any car.*
> *3. He does not have any tractor and is doing farming with the help of ill bullock.*
> *4. He has no investment in form of FDR, shares or any other assets. The relevant portion of his statement is reproduced bellow:*





5. He has not purchased any immovable assets i.e land, building etc in last five years.
6. He has not incurred any big expenditure during the last five years.
7. His cash balance in all form is not exceeding Rs. 25,000/-.
8. The value of total jewellary his family has does not exceed Rs. 1,25,000/-.
9. He had only 8 vigha land which is inherited land.
10. Though he has a bank account in bank near his village he has given cash of Rs. 3,50,000/- to a trust which is at least 45 K.M. away from the village.
11. None of the son/daughter is studying in the institute run by this trust.
12. He doesn't know the full name of trustee. He does not know name of any other trustee.
13. Neither he had gone to inaugaration function nor he was feliciated by the trustees though donation of Rs. 3,50,000/- is shown in his name. The relevant portion of his statement is reproduced bellow:

Shree Saraswati Ed...

14. Though he was asked to produce sale bills of agricultural produce, he could produce bills of Rs. 59,150/- only prior to date of donation.

15. Though he had unpaid bank loans which is mentioned in 7/12 Utara of his land. He preferred to give donation of Rs. 3,50,000/- which I sounds irrational. "

30. Thereafter, he stated that other four persons summoned by the AO did not appear before him, and the ld.CIT(A) had erred in

admitting their affidavits to the effect that they had appeared before the AO without confronting the said affidavits to the AO which act was in gross violations of Rule regarding admission of additional evidences as provided under Rule 46A of the Income Tax Rules, 1962. He further vehemently argued that in the line of facts before the ld.CIT(A) where out of five persons four could not be examined by the AO, the ld.CIT(A) having co-terminus power with the AO ought to have exercised his power and got othersalso examined instead of simply adjudicating the issue on the basis of material placed before him, and on the basis of the fact that four donors had not been examined by the AO.

31. The ld.counsel for the assessee on the other hand contended that in the present case, there were 184 donors who had made donations. Complete list had been provided to the AO along with their confirmations and land holding records, and the AO had chosen to examine only 5 persons out of 184 persons and on the basis of his finding regarding these 5 persons, he had applied his finding across the board to 184 corpus donations which was not justifiable. The ld.counsel for the assessee contended that section 68 deals with genuineness of cash credit. That it was imperative for every cash credit to have been examined and found to be non-genuine before making addition under section 68 of the Act or treating them as non-genuine. He further contended that vis-à-vis exercise of co-terminus power of the ld.CIT(A), he contended that what the ld.DR asking for was that when other four co-donors were not examined, they ought to have examined by the ld.CIT(A).That the Ld.CIT(A) surely could not have gone beyond that, and even if they were examined and found to be non-genuine, this finding still could not have been applied to the rest of the 179 co-donors. He

pleaded therefore that the finding of ingenuine donation, if any, could be made only with respect to five donors who were called for examination.

32. The ld.DR on the other hand countered by stating that the AO had rightly applied his finding regarding five donors to the rests of the donors since on his examination of five of them, almost all of them found to be non-genuine for one reasons or other.

33. Having heard both the parties,we have noted that the assessee had filed all documents to prove the genuineness of the donations. This is an admitted fact. The only basis for holding them ingenuine is the examination by the AO of five donors out of 184 donors, four of whom did not appear allegedly in response to summons while one appeared and confirmed giving donation to the assessee but was found to be not creditworthy by the AO.

34. We agree with the Ld.Counsel for the assessee that the finding of non genuine credits has to be specifically arrived at with respect to all such credits. It cannot be based on generalizations and assumptions. After all,the entire donations have been treated as *ingenuine* u/s.68 of the Act and hence anonymous donations for invoking section 115BBC of the Act. Therefore there has to be finding of all donations being ingenuine and it cannot be based on generalizations.

35. Even otherwise, based on the theory of sampling also, quantum of data, based on which the AO has sought to generalize his finding to the rest of the corpus donors is too miniscule and by theory of sampling also generalization cannot be applied from such a small sample data.

36. Pleading of the ld.DR before us that affidavits of other co-donors had been entertained by the CIT(A) without confronting to the AO and the Ld.CIT(A) should have exercised his coterminous powers of the AO, in effect is asking for examination of these four donors. Which,as we have held above, is of no consequence to the rest of the donors.

At the most, therefore, the CIT(A) in exercising of his co-terminus power would also be accepted to examine these five donors only. Therefore we hold that there is no case for holding the entire donations received by the assessee as non genuine u/s 68 of the Act.

Ground of appeal No.3 & 4 are therefore dismissed.

37. In conclusion, we agree with the Revenue and uphold the order of the AO treating the voluntary donations of Rs.1,09,50,000/-as income of the assessee for computing its income as per the normal provisions of the Act. The corpus donations of Rs.1,93,75,000/-are, we hold capital in nature and not to be treated as income of the assessee. Also we set aside the order of the AO alternately treating both the donations as ingenuine and hence anonymous and taxing them u/s 115BBC of the Act.

38. In the result, appeal of the Revenue is partly allowed.

Order pronounced in the Court on 18th September, 2023 at Ahmedabad.

Sd/-	**Sd/-**
(T.R. SENTHIL KUMAR)	**(ANNAPURNA GUPTA)**
JUDICIAL MEMBER	**ACCOUNTANT MEMBER**

Ahmedabad, dated 18/09/2022

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