IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD

INCOME TAX APPEAL NO. 7 OF 2023
WITH
CIVIL APPLICATION NO. 11883 OF 2023

M/s. Everest Education Society,
C/o. Seema Nursing Home,
Roshan Gate, Aurangabad – 431 001 .. Appellant

Versus

Assistant Commissioner of Income Tax,
Exemption Circle, Aurangabad .. Respondent

...
Advocate for the appellant : Mr. S.S. Kazi
Standing Counsel for respondent : Mr. Alok Sharma
...

CORAM : MANGESH S. PATIL &
SHAILESH P. BRAHME, JJ.

RESERVED ON : 20 OCTOBER 2023
PRONOUNCED ON : 05 DECEMBER 2023

ORDER (MANGESH S. PATIL, J.) :

This is an assessee's appeal under section 260A of the Income Tax Act, 1961 (**Act**).

2. The appellant which is a trust primarily engaged in running educational institutions, is impugning the order of the Income Tax Appellate Tribunal (ITAT) passed in the appeal preferred by the Revenue under section 253 of the Act.

3. We have heard the learned advocate Mr. Kazi for the appellant and Mr. Sharma for the revenue.

4. Needless to state at the outset that this being an appeal under section 260-A of the Act, the appellant has to demonstrate that the matter involves some substantial question of law. Bearing in mind this limitation, we shall now advert to the arguments.

5. The appellant having failed to file the returns, was served with a notice under section 142(1) of the Act. In response, it filed a return disclosing 7145 individual donors from whom it had received cash donation in aggregate to the tune of Rs.2,89,20,955/-. After conducting hearing, the assessment officer by the order dated 27-03-2014 concluded that these cash donations were anonymous as contemplated under section 115 BBC. The appellant challenged the order before the first appellate authority. By referring to the orders passed by different income tax appellant tribunals, it was concluded by the first appellate authority that these were not the anonymous donations and held that only the donations to the tune of Rs.82,600/- were anonymous.

6. The revenue challenged the order of the first appellate authority before the ITAT. The appellant also preferred a cross-appeal, however, beyond the period of limitation. By the common order which is under challenge in this appeal, the ITAT has allowed the revenue's

appeal and refused to consider the appellant's appeal on merits being barred by limitation.

7. Going by the prayer clause in this appeal, the appellant is merely putting up a challenge to the impugned order to the extent it allows revenue's appeal. It has not challenged the order refusing to condone the delay in the appeal preferred by it and refusing to decide it on merits.

8. Mr. Kazi would submit that the assessment is not fair and proper, verification of only some of the donors was undertaken which constituted barely less than 1% of the total donors. The appellant was under an obligation to maintain only a list of the donors containing their names and addresses. It was not under any obligation to further substantiate their identity. Section 115 BBC could not have been invoked. The assessment officer had failed to examine this aspect which error was corrected by the first appellate authority. According to him, following substantial questions of law would arise :

> *(1) Whether the notice u/sec. 143(2) of the I.T.A. 1961 dt. 3.2.2014 issued by the A.O. is bad in law?*
>
> *(2) Whether the notice u/sect. 143(2) issued by the A.O. is in violation of the instruction no. 10 and 13 of 2013 issued by the CBDT ?*
>
> *(3) Whether the enquiries conducted by the A.O. before 3.3.2014 (date on which notice was issued under sec. 143(2) of the I.T.A. is bad in law as the same was conducted without any jurisdiction / Authority ?*

(4) *Whether the A.O. was justified in holding that, the Assessee / appellant had received anonymous donation as define under u/ssec. 115 BBC of the I.T. Act 1961 ?*

(5) *Whether as per the provisions of sec. 115 BBC (3) the receiver only has the obligation to mantain the identity indicating the name and address of the donor's only ?*

(6) *When the assessee / appellant has properly maintained the name and address of the donor's then can the donations be termed as anonymous donation u/sec. 115 BBC of the Act ?*

(7) *Whether, the Ld. Income Tax Appellate Tribunal, Pune is justified in confirming the addition to the extent of Rs.2,87,88,955/- U/Section 115 BBC of the Income Tax Act ?*

(8) *Whether, the Ld. Tribunal failed to interpret Section 115 BBC of the Act in proper perspective ?*

(9) *The Ld. Appellate Court after considering the remand report and the evidence available on record had come to the conclusion that, the entire donation cannot be treated as anonymous donation as the assessee had fully complied with the requirement of law. In such circumstances discarding such findings of the appellate authority by the Ld. Tribunal that too without there being having any contrary evidence on record is perverse ?*

(10) *Whether the ITAT and the A.O. were justified in holding that, the trust received anonymous donation, when the society is a registered society under the Provisions of Section 12 AA of the Act, it enjoyed the exemption as provided U/sec. 11 of the Act. The registration of society has not been withdrawn even on account of the finding the donor's are not genuine ?*

(11) *When the assessee had discharged his burden by leading evidence then, in such circumstances, whether the finding recorded by the Ld. Tribunal regarding rebuttal is perverse?*

(12) *Whether the ITAT could go beyond the remand report submitted by the A.O.?*

(13) *Whetehr the tribunal was justified in confirming the assessment order only on the basis of letter issued to 70 donors out of 7145 donors i.e. 98% ?*

9. Per contra, Mr. Sharma for the revenue submitted that the instructions no. 10 and 13 are not applicable to the facts and circumstances of the case. Besides, these are merely administrative instructions and will not go to the root of the jurisdiction of the assessment officer particularly when the appellant had failed to file any return at the first instance.

10. Mr. Sharma would then submit that by virtue of section 68 read with rule 46A, the burden was on the appellant to substantiate genuineness of these donations which were enormous. Only a sample check was undertaken by the assessment officer. The appellant ought to have led sufficient and cogent evidence disclosing genuineness of these donations, for failure of which no fault can be found with the observations and conclusions of the assessment officer as also the ITAT, in treating these donations as anonymous donations. He would submit that to the extent possible, wherever some confirmation could be had from the donors, the assessment has been reduced to that extent. All these factors were taken into consideration by ITAT. He would submit that no substantial question of law arises and the appeal be dismissed.

11. We have carefully considered the rival submissions and perused the papers.

12. Bearing in mind the inherent limitations in the light of the provisions of section 260A of the Act, it is to be noted at the outset that the issue regarding the exemption being claimed under section 11 cannot be said to be pure question of law which could be agitated in an appeal under section 260A.

13. As regards the factual dispute is concerned, we find no hesitation in concurring with the observations in the impugned judgment and order of the ITAT and the submissions of Mr. Sharma that by virtue of section 68 read with rule 46A, the onus is on the assessee to substantiate that the donations received by it are not anonymous donations.

14. Once having borne in mind this aspect, it is quite apparent that at no point of time, the appellant was able to discharge this onus. Apart from the fact that it had even failed to file the returns, it had made some attempt to furnish some record and revenue had volunteered to verify genuineness by a sample check. Barring few instances, identity of the donors could not be confirmed in view of section 133(6). Pertinently, after the appeal was preferred before the first appellate authority a new set of donors' list was furnished stating that the first list was submitted erroneously and still the enquiry did not result in identification of the donors.

15. The appellant had pointed out about having received cash donations to the tune of Rs.2,89,20,955/- from 7145 donors. The result of the verification undertaken by the assessment officer to verify from some of the donors seeking confirmation did not yield results. Consequently the appellant had miserably failed to discharge the onus.

16. Pertinently, during verification, 8 donors who were contacted denied to have paid any donation to the appellant.

17. In the backdrop of the afore-mentioned circumstances, the ITAT has observed that all these donations were received in cash from 7145 persons. Those were not found to have been deposited in the bank account. The letters issued under section 133(6) were returned unserved with the remarks “address not found”, “insufficient address”, “addressee left”. The inspection report mentioned about donors having not found on the given address. There were incomplete and vague addresses. It has drawn adverse inference against the appellant and has concluded that the decision of the assessment officer holding the donations to be anonymous under section 115 BBC of the Act was justified on facts and in law. In our considered view, there is no error or irregularity much less giving rise to any substantial question of law.

18. The appeal is dismissed.

19. Pending civil application is disposed of.

[SHAILESH P. BRAHME]
JUDGE

[MANGESH S. PATIL]
JUDGE

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