IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Neutral Citation No. 2023:PHHC:148915 -DB

121 **ITA-151-2023**
Decided on : 15.11.2023

Mayor Foundation C/o Mayor World School through Mr.Rajesh Mayor, Urban Estate-1, Jalandhar, Punjab

....Appellant(s)

Versus

Commissioner of Income Tax, Aayakar Bhawan, Jalandhar, Punjab

.... Respondent(s)

CORAM : HON'BLE MR.JUSTICE G.S. SANDHAWALIA
HON'BLE MRS.JUSTICE SUDEEPTI SHARMA

Present: Mr.Sunil Kumar Mukhi, Advocate, for the appellant.

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G.S. Sandhawalia, J. :-

1. The present appeal filed under Section 260A of the Income Tax Act, 1961 (for short the 'Act') is directed against the order dated 20.12.2022 (Annexure A-5) passed by the Income Tax Appellate Tribunal, Amritsar Bench for the assessment year 2014-15.

2. The Tribunal has upheld the addition of Rs. 8 lakhs under Section 68 of the Act which is sought to be agitated as substantial questions of law. The said questions read as under:

> "A. Whether the Income Tax Appellate Tribunal, is justified in concurring with the findings of CIT (A) and in confirming the impugned income of Rs.8,00,000/- under the provisions of 115BBC, section 68 read with section 115BBE of the Income Tax Act, 1961 being perverse and against the statutory provisions and as upheld in catena of judgments?

B. Whether the orders of the authorities below are illegal, erroneous, without jurisdiction and thus perverse?"

3. The reasoning which prevailed with the Tribunal was that the corpus donation had been received by the petitioner-Company and the said entities had been struck off the record of the registered companies and therefore, they had to be treated as shell companies. Having been struck off the registration of companies under Section 248 of the Companies Act, 2013, the identity of the party was stated to be in question and the existence of the corporate body having been duly rejected by the Registrar of Companies, weighed with the Tribunal. Keeping in view the fact that the existence of the donors itself was questioned and the assessee was unable to produce any document in support of their action to restore the Company before a Judicial authority, the order of the Commissioner of Income Tax dated 11.01.2018 (Annexure A-3) had been upheld.

4. Mr.Mukhi has tried to convince us that there was sufficient material produced on record to show that the three companies existed and had been filing returns at the time of making the corpus donation. He has relied upon the documents appended in support of the communication that the amounts had been received by way of cheque. It is submitted that the companies were incorporated in the year 1992 and even if they were no longer registered at the time when the matter was inquired, there was no such reason why addition should have been made. He, accordingly, submits that requisite communication had been made by the said companies with the Revenue and the details of the ledger copy of the accounts and the Income Tax Returns for the year 2014-15 and the bank statements had been sent in November, 2016. Vide separate communications dated 25.11.2016 and 28.11.2016, Burlington Mercantile

(P) Ltd. and BKN Consultancy Services (P) Ltd., both situated in West-Bengal and dated 26.11.2016 by Pentium Capital Management (P) Ltd. based in Mumbai, the amounts received from the said three companies are Rs.2 lakhs, Rs.3 lakhs and Rs.3 lakhs, respectively which fact had been acknowledged.

5. A perusal of the paperbook would go on to show that the return had been filed by the appellant-assessee on 30.09.2014 by showing nil income. The case having been picked up for scrutiny under CASS, notice had been issued on 31.08.2015 and a questionnaire had been issued. The details of documents having been checked along with the Books of Accounts and vouchers-sheet that corpus donation of Rs.1,43,40,039/- had been shown and the assessee was a public charitable trust registered under Section 12A of the Act and under Section 80G of the Act. It was running only one educational institution under the name and style of M/s Mayor World School, Urban Estate Phase-I, Jalandhar City. The list of names and addresses of the donors were sought to be verified and random notices had been issued under Section 133(6) of the Act. Resultantly, 14 persons could be verified and 7 persons were found not genuine and their identities were in doubt. Resultantly, a sum of Rs.53 lakhs was the amount which was found not to be genuine transactions and the donors' identity was doubtful and the provisions of Section 115BBC of the Act were invoked vide notice dated 23.11.2016.

6. The response was given on 07.12.2016 and it was admitted that the institute was trying to contact the said persons to provide them with their due replies and more time was sought to establish contact and obtain due replies. More time was given and the matter was fixed for 16.12.2016 and written submissions had also been filed. The plea taken

was that the donations were received through bank accounts. It was noticed that the two companies at West Bengal had sent replies by post from Mumbai (MS GPO) and there was a doubt about the genuineness of the parties. Written submissions were again filed and an opportunity for producing the persons was also given on 23.12.2016. Apparently no such persons were produced which led to the Assessing Officer coming to the conclusion that the confirmation having been received from the addresses in Mumbai in two cases whereas the offices were situated related to Kolkata based companies, the genuineness was further clouded by noting as under:

M/s Burligton Mercantiles Pvt. Ltd.	51, Muktaram Babu Street, Kolkata-700006, West Bengal	2,00,000/-	Notices issued 06-10-2016, but received back with remarks not known or addressee moved and again notice issued on 09-11-2016 not received back. Reply has received on 15.12.2016 by post. But letter has sent from Mumbai. Present status of company in ROC is strike off. No director and office bearer are working at present. Assessee has also failed to produce the director and shareholders of this company. These facts established that payment from this company is not genuine and identity and creditworthiness are not confirmed.
M/s Pentium Capital Managem-ent Pvt. Ltd.	109, A.S. Dias Building, 268/272, 1st Floor, Dr. C.H. Street, Near Marine Lines, Mumbai-	3,00,000/-	Notices issued 06-10-2016 received back un-served and again notice issued on 09-11-2016, Served. Reply from the same has received on 09.12.2016 by post. Present status of company in ROC is dormant. No director and office bearer are working at present. Assessee has also failed to produce the director and shareholders of this company. These facts established that payment from this company is not genuine and identity and

	40002		creditworthiness are not confirmed.
M/s BKN Consultancy Services Pvt. Ltd.	63, Radha Bazar Street, 3rd Floor, Kolkata, West Bengal-700001	3,00,000/-	Notices issued 06-10-2016 received back unserved and again notice issued on 09-11-2016. Reply received on 19.12.2016 by post from GPO, Mumbai. Present status of company in ROC is strike off. No director and office bearer are working at present. Assessee has also failed to produce the director and shareholders of this company. These facts established that payment from this company is not genuine and identity and creditworthiness are not confirmed.

7. It was in such circumstances, the Assessing Officer came to the conclusion that huge donations had been made to the assessee and the sources of income were not genuine and the companies were not working and the genuineness, identity, sources and creditworthiness of these companies had not been proved. Resultantly, the additions had been made. It is pertinent to notice that apart from the three companies there was additions of Rs.40 lakhs, Rs.8 lakhs and Rs.5 lakhs which had also been made by the Assessing Officer vide the impugned order and a total amount of Rs.53 lakhs had been added and accordingly proceedings had been initiated under Section 271(1)(c) of the Act for furnishing inadequate proof of income.

8. In appeal, the assessee had been successful to the extent that another sum of Rs.45 lakhs from two donees were considered genuine as their copies of the ITRs were produced and creditworthiness were also seen and they were NRIs and the donations had been given in Indian Rupees. The activity of giving the donations by corporate entities located at Kolkata and Mumbai to an institute based at Jalandhar was accordingly

not accepted on account of any relationship between the two. Accordingly their whereabouts not being produced by way of documents or in the appellate proceedings and the companies being defunct the additions was sustained to the tune of Rs.8 lakhs out of the total of Rs.53 lakhs made by the Assessing Officer. Section 68 of the Act provides that if the assessee provides no explanation for the sum credited in his books of account to the nature and source of the amounts having been mentioned and the explanation offered is not satisfactory in the opinion of the Assessing Officer, the amount can be charged as Income Tax.

9. The background as discussed would go on to show that the companies at West Bengal had sought to give the details of the donations from Mumbai and it was in such circumstances the Assessing Officer came to the conclusion that the explanation given was not bona fide. Opportunity was given to produce the Directors which was not done due to which the authorities below have noted that companies are no longer functional and are defunct and struck off by the Registrar of Companies. Nothing was brought on record that they were actually functioning at the time of donations and when they were struck off. In such circumstances, we are of the considered opinion that the genuineness, identity and creditworthiness of these companies was rightly doubted by the Assessing Officer and in such circumstances, the additions had been made. The matter had also been taken before the Appellate Authority and the Commissioner had duly granted the benefit by thoroughly enquiring into the matter qua the other donations that had been received.

10. The question of law thus which is sought to be framed does not arise keeping in view the above facts and circumstances as before the authorities the appellant could not produce sufficient material to dispel the

suspicion which had been raised about the donations received from the companies which were not even based geographically close to the educational institution and the reason to grant the donation was never properly explained.

11. In such circumstances, we are of the considered opinion that there is no merit in the present appeal and the same is liable to be dismissed. Ordered accordingly.

(G.S. SANDHAWALIA)
JUDGE

15.11.2023 **(SUDEEPTI SHARMA)**
sailesh **JUDGE**

Whether speaking/reasoned : Yes
Whether Reportable : Yes