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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% **Date of Decision** : 6th March, 2012.

\+ ITA 17/2010

COMMISSIONER OF INCOME TAX ..... Appellant
Through Mr. Abhishek Maratha, sr. standing counsel with Ms. Anshul Sharma, Adv.

versus

SHRI VISHWA VIGYAN TELUGU LINGUISTIC MINORITY EDUCATION SOCIETY ..... Respondent
Through Mr. V K Rao, Sr. Adv. with Mr. Manoj V. George, Adv.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE R.V. EASWAR

SANJIV KHANNA,J: (ORAL)

The present appeal filed by the Revenue under Section 260A of the Income Tax Act, 1961('Act', for short) pertains to the assessment year 2003-04 in the case of Shri Vishwa Vigyan Telugu Linguistic

Minority Educational Society. By the impugned order dated 13.4.2009, the Income Tax Appellate Tribunal ('Tribunal', for short) had deleted the addition of ₹88,32,845/- made by the Assessing Officer holding, *inter alia*, that the aforesaid amount by virtue of Section 2(24)(iia) was already included in the income of the assessee and therefore, addition as income from undisclosed sources is not justified.

2. Having heard counsel for the parties we frame the following substantial question of law: -

> "Whether Income Tax Appellate Tribunal was right in deleting the addition of ₹88,32,845/- made by the Assessing Officer and holding that Section 68 is not applicable?"

3. As we heard counsel for the parties we will proceed to pronounce our decision on the aforesaid question of law.

4. The respondent-assessee claiming itself to be a charitable society filed its return of income for the assessment year 2003-04 on 5.9.2003 declaring Nil income. The Assessing Officer vide

assessment order dated 20.3.2006 made addition of ₹88,32,845/- under Section 68 of the Act after noticing that the assessee had allegedly received donation of ₹49,00,000/- from CGS Maini Charitable Trust and another amount of ₹7,17,145/- from Mrs. Larissa Mani, a Non Resident Indian.

5. The aforesaid addition was affirmed by CIT(Appeals), but has been deleted by the tribunal. To consider the contentions raised, we reproduce the factual findings, recorded by the Assessing Officer, which read: -

> "*During the year under consideration, the assessee claimed to have received corpus donation of Rs.39,27,845/- as per the copy of the balance sheet as on 31-3-2003. The audited balance sheet of the earlier Assessment Year (2002-03) available in the record was also examined. The same is reproduced here under: -*

Balance sheet as on 30-3-2002

Liabilities	Amount	Assets	Amount
Corpus Fund	5000000	Cheques in hand	
Opening Balance	0		
Add: Addition	5005000	Balance with Andhra Bank	4690
	5005000	General Fund	

	Excess of Expenditure Over income	310
5005000		5005000

In the balance sheet as on 31-3-2003 the assessee has shown the opening balance of corpus fund at Rs.49,05,000/-. Bank statement of the assessee obtained from the Andhra Bank reflects no such credits of cheques amounting to Rs.50,00,000/- as shown by the assessee in the earlier years balance sheet. When asked about the discrepancy, the assessee vide its letter stated that the previous year cheques in hand of Rs.50 lacs has been returned back to the party in this year. It means the assessee has received corpus donation of Rs.88,32,845/-. (sic.) during this year only. The assessee was asked to furnish the details of corpus donation with supporting evidence vide note sheet entry dt.22.12.2005. Shri Sharat Chandra, trustee alongwith the counsel appeared but the information called for was not furnished. The assessee was once again reminded to furnish the information vide note sheet entry dated 18-1-2006. The assessee appeared on 27-1-2006 furnished copy of Bank statement copy of instrument through which the property was acquired, but no information/confirmation/details furnished in respect of addition of Rs.88,32,845/- in the corpus fund. The assessee was again asked to furnish the details of corpus donation with evidence and the case was adjourned for 13-2-2006. None appeared on that date, nor any application was moved for adjournment. Notices u/s 143(2) & 142(1) were issued asking the assessee to furnish the following information :-

1. Details of addition to corpus fund during the year, giving the Name, complete address, amount, mode of payment of receipt etc.
2. Confirmation giving PAN, Ward No.etc. in respect of the above at (1).
3. Copy of cash book for the relevant period."

5. Thereafter, the Assessing Officer held that the assessee did not choose to produce its the books of accounts for verification and accordingly, the assessment was completed on the basis of the available record. Bank statement obtained from Andhra Bank was referred to. He recorded that the total amount credited from the opening till 31.3.2003 was ₹61,52,545/- including ₹4,00,000/- deposited in cash. He further observed that the credit amount of ₹61,52,545/- did not explain the corpus donation of ₹88,32,845/- and also did not explain the source of payment for the purchase of land and the expenses incurred towards professional payment. The Assessing Officer recorded that the bank statement of M/s CGS Mani Charitable Trust had been obtained. He observed that they did not have sufficient funds and an amount of ₹49,39,926/- was received by

way of pay order dated 2.7.2002 and an amount of ₹49,00,000/- was allegedly paid as donation to the respondent-assessee on the same date. Summons under Section 131 was issued to M/s CGS Mani Charitable Trust for verification but no one appeared nor any information was furnished. The source, therefore, remained unverified.

6. The Tribunal in the impugned order has recorded as under: -

> "*1. We have heard the parties and considered the rival submissions. The entire sum of Rs.88,32,845 which has been the corpus fund of the trust was offered as income as is evident form (sic.) the income and expenditure account of the trust. It was by virtue of section 2(24)(iia) of the Act and, therefore, adding the same amount again as income from undisclosed sources is not justified and that too stating that the assessee had not explained the sources for the acquisition of property. The source of the acquisition of the property is the corpus donation which has been offered by the assessee as income u/s 2(24)(iia) of the Act and which has also been assessed to tax. In these circumstances, in our opinion, section 68 has no application and the addition is to be deleted. The case of the assessee also seems to be covered by the decision of the Hon'ble Delhi High Court in the case of* ***DIT(E) vs. Keshav Social & Charitable Foundation*** *cited in 278 ITR 152 (Del.) in which it was held as under:*

> *"To obtain the benefit of the exemption u/s 11, the assessee is required to show that the donations were voluntary. In the present case, the assessee had not only disclosed its donations, but had also submitted a list of donors. The fact that the complete list of donors was not filed or that the donors were not produced, does ITA No.3950/Del./2007 (A.Y.2003-04) not necessarily lead to the inference that the assessee was trying to introduce unaccounted money by way of donation receipts. This is more particularly so in the facts of the case where admittedly more than 75 per cent of the donations were applied for charitable purposes. Section 68 has no application to the facts of the case because the assessee had in fact disclosed the donations of Rs.18,24,200 as its income and it cannot be disputed that all receipts, other than corpus donations, would be income in the hands of the assessee. There was, therefore, full disclosure income by the assessee and also application of the donations for charitable purposes. It is not in dispute that the objects and activities of the assessee were charitable in nature, since it was duly registered under the provisions of s. 12A. For these reasons, there is no merit in the appeal. No substantial question of law arises.*"

7. The judgment in the case of Keshav Social & Charitable Foundation (supra) is only one aspect which the Tribunal has to keep in mind. Several other aspects, which have been referred to by the Assessing Officer, have not been examined by the Tribunal. We

may also record that the Revenue has filed before us copy of the income-expenditure account as on 31.3.2003, which read as under: -

"Expenditure	Amount	Income	Amount
To Bank Charges	650	By Income	0
		By Excess of Expenditure Over Income	650
	650		650

"

The balance sheet of the respondent as on 31.3.2003 filed before the Assessing Officer was as under: -

"Liabilities		Amount	Assets		Amount
Corpus Fund			Fixed Assets		
Opening Balance	4905000		Land A/c.		8080300
Add: Addition	3927845	8832845	Professional Payment for Construction		145000
			Cash & Bank Balances		
			Andhra Bank		606585
			General Fund		
			Opening Balance	310	
			Add: Excess of Expenditure Over income	650	960
		8832845			8832845

"

8. The findings recorded by the Tribunal in the impugned order, which has been quoted above are therefore, partly factually incorrect and cannot be sustained. As noticed above the order of the tribunal is bereft of reasoning, consideration and is cryptic. In view of the above position we allow the present appeal and answer the aforesaid question in negative i.e. in favour of the appellant-Revenue and against the respondent-assessee. We accordingly pass an order of remit to the Tribunal to pass a fresh decision. We clarify that we have not expressed any view on merits. It will be open to the parties to move an appropriate application in case they want to file documents/additional documents. The parties shall appear before Assistant Registrar of the Tribunal on 16th April, 2012 when a date of hearing will be fixed. No costs.

SANJIV KHANNA, J.

R.V.EASWAR, J.

March 06, 2012/vld