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

Date of Decision: 22 December, 2020

\+ **ITA No. 154/2020 & C.M. Nos. 7857/2020**

BRIJBASI EDUCATION AND WELFARE SOCIETY ... Appellant
Through: Mr. Bharat Rai Chandani, Mr. Santosh Kumar Sahu, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL III, NEW DELHI .....Respondents
Through: Mr. Ajit Sharma, Advocate for Respondent-Revenue.

\+ **ITA No. 164/2020 & C.M. Nos. 8020/2020**

BRIJBASI EDUCATION AND WELFARE SOCIETY ... Appellant
Through: Mr. Bharat Rai Chandani, Mr. Santosh Kumar Sahu, Advocates.

versus

PRINCIPAL COMMISSIONER OF INCOME TAX, CENTRAL III, NEW DELHI .....Respondents
Through: Mr. Ajit Sharma, Advocate for Respondent-Revenue.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER
(ORAL)

SANJEEV NARULA, J.

C.M. Nos. 7858/2020 & 8021/2020 (Exemptions)

1. Allowed, subject to all just exceptions.

ITA No. 154/2020 & C.M. Nos. 7857/2020

ITA No. 164/2020 & C.M. Nos. 8020/2020

2. This common order will dispose of the present appeals preferred under Section 260A of the Income Tax Act, 1961 [*hereinafter referred to as* '***the Act***'] to assail the common order dated 18th September, 2019 [*hereinafter referred to as* '***Impugned Order***'] passed by the Income Tax Appellate Tribunal [*hereinafter referred to as* '***ITAT***'] in Income Tax Appeal No. ITA 4572-73/Del/2017 in respect of Assessment Years 2006-07 and 2007-08 respectively.

3. The factual background leading to the filing of the present appeals is summarized as follows:

A. ITA No. 164/2020 [AY 2006-07]

4. The Appellant is an educational trust, duly registered under the provisions of Section 12AA of the Act and is enjoying exemption under Section 80G thereof. The Appellant filed its return of income on 14th September, 2006 declaring nil income. The case was selected for scrutiny, and pursuant thereto, an Assessment Order under section 143(3) was passed on 15th December 2008. The Assessee preferred an appeal before Commissioner of Income Tax Appeals [*hereinafter referred to as* '***CIT(A)***'] who confirmed the same vide order dated 29th July 2009. The Assessee then preferred further appeal before

the ITAT, whereupon, vide order dated 29th January, 2010 the assessment order was set aside and the Assessing Officer [*hereinafter referred to as* '***AO***'] was directed to decide the case afresh, after taking into account all the documentary evidence and affording the Appellant an opportunity of hearing. In accordance with the direction of the Tribunal, statutory notices were served upon the Appellant and a fresh assessment order dated 9th June, 2011 under Section 254/143(3) of the Act was framed by assessing the total taxable income as nil.

5. Subsequently, on 28th March, 2013 the Additional Commissioner of Income Tax, Range 1, Ghaziabad issued a notice under Section 148, for reopening of assessment, followed by notices under Section 143(2) of the Act. The reason to believe that the income of the Appellant chargeable to tax has escaped assessment, emanated from the information received from the Deputy Director of Income Tax (Inv.) – II , vide letters dated 22nd June 2012 and 21st January 2013, which in turn stemmed from a report of Central Bureau of Investigation (CBI). The Joint Director of Income tax (Investigation) informed that a Regular Case (RC) has been registered against one Shri Manoj Kumar Aggarwal. In the CBI report it was disclosed that Shri S. K. Sharma, Chairman of the Appellant Trust, along with other entities, had fraudulently and with the intent to evade tax, made huge cash deposits in the accounts of the Appellant. It was further divulged that Shri S.K. Sharma gave Rs. 35 lacs (belonging to Shri Manoj Kumar Aggarwal against whom the CBI inquiry was instituted) to one Shri Mahesh Garg, who deposited the said amount in different accounts, and issued cheques favouring Brijbasi Education & Welfare Society, amounting to Rs. 35 lacs, thereby creating

bogus donors and donations. It was also revealed that 22 witnesses were examined by the CBI, all of whom denied giving any donations to the Appellant Trust.

6. Pursuant to the notice for reassessment, the Additional Commissioner of Income Tax, Range 1, Ghaziabad called upon the Appellant to provide the clarification of the source of Rs. 40 lacs received by the Appellant as donations. In response thereto the Appellant appeared and submitted a reply dated 19th February, 2014. Thereafter, on 28th February, 2014, the assessment was completed under Section 147/143(3) of the Act, determining the total income of the Assessee at Rs. 75,00,000/- (Rs. 40,00,000/- added under Section 68 of the Act + Rs. 35,00,000/- as unexplained receipts). Aggrieved with the aforesaid order, the Assessee preferred an appeal before the CIT(A) on the issue of reopening of assessment as well as on the merits of the addition of Rs. 75 lacs. The CIT(A) vide order dated 16th March 2017 upheld the reopening of the assessment and also the action of the AO making addition of Rs. 40 lacs under Section 68 of the Act. As regards addition of Rs. 35 lacs on account of unexplained receipts, the Appeal was allowed and addition was deleted on the ground that the aforesaid amount received from Sh. Mahesh Garg, during the Financial Year 2006-07 was assessable in AY 2007-08 and therefore, the addition cannot be made in AY 2006-07. It was further noticed that the appeal of the Assessee for AY 2007-08 had been disposed of enhancing the taxable income by Rs. 35 lacs. The Assessee then preferred an appeal before the ITAT impugning the order of CIT(A).

B. ITA No. 154/2020 [AY 2007-08]

7. For AY 2007-08, the Appellant filed its return of income on 24th August 2008 declaring nil income. Assessment was completed u/s 143(3) on 29th December, 2009 and total income was assessed as NIL. Subsequently, on 23rd March, 2014, the Additional Commissioner (Appeals) issued a notice under Section 148 for reopening the assessment. This action also originated from the information received from the Joint Director of Income Tax vide letter dated 21st January, 2013, which, in turn was based on the above noted CBI report.

8. Re-assessment was completed on 20th March 2015, under Section 147 r/w 143(3) of the Act. It was held that the Appellant had failed to explain the donation of Rs. 95,00,000/- in terms of Section 68 of the Act. Accordingly, addition of Rs. 60,00,000/- was made on account of unexplained cash credit, thereby determining the total taxable income as Rs. 60 Lakhs. Aggrieved with the aforesaid order, the Assessee preferred an appeal before the CIT(A) on the issue of reopening of assessment as well as on the merits of the addition of Rs.60 lacs on account of unexplained cash credit. The CIT(A), vide order dated 16th March 2017, upheld the reopening of the assessment. It was observed that while the Appellant has received Rs. 95,00,000/- as donations during the year (including Rs. 35,00,000/- received through Sh. Mahesh Garg), the amount of Rs. 35,00,000/- added by the AO for AY 2006-07 had been deleted and held to be chargeable in AY 2007-08. Hence, as a matter of fact, the Appellant had received total donation of Rs. 95,00,000/- but AO had made an addition only of Rs. 60,00,000/- for AY 2006-07. Accordingly, the income of the Appellant was enhanced to Rs. 95,00,000/- u/s 68 of the Act. The Assessee then preferred an appeal before the ITAT.

9. The Tribunal, vide the Impugned Order dismissed the appeals of the Appellant for both the AYs through a common order, and upheld the orders of the CIT(A). The Appellant has now preferred the present appeals, assailing the aforesaid impugned order.

C. Arguments by the Parties

10. Mr. Bharat Rai Chandani, learned counsel appearing for the Appellant, submitted that the impugned order is unsustainable in law and is wholly erroneous and perverse. He submitted that the Tribunal has failed to appreciate the evidences in the nature of confirmation of the donations along with relevant bank statements reflecting bank transactions and other details which prove the genuineness, creditworthiness and identity of the donors. Therefore, the additions under Section 68 of the Act were unwarranted and unsubstantiated. He further argued that the reason for reopening the assessment under Section 147 of the Act was totally unsustainable in law, particularly in light of the fact that the AO did not make any independent enquiry before the issuance of the purported notice for reassessment under Section 148 of the Act. The Appellant had successfully proved the genuineness of the donations of Rs. 40 lacs and established proper identification and creditworthiness of the donor. In support of his submission, Mr. Chandani submitted that the Tribunal in its earlier order dated 29th January, 2010 had correctly observed that the donations received by the Appellant from the donors were true, proper and in conformity with law. The Appellant had successfully proved the source of donations, furnishing the

donation confirmation as well as the Income Tax returns, bank accounts and cash flow statement of some of the donors. It was further argued that the Tribunal has erred in not considering the judgment rendered on the same set of facts of its coordinate bench for AY 2006-07 in the Appellant's own case wherein the Tribunal had categorically observed that the Appellant had furnished evidences that the donations were not bogus. The CBI report had no nexus or connectivity with the case of the Appellant and the AO has thoughtlessly followed the CBI report which was baseless and devoid of any merit. It was also argued that the Tribunal, as a last fact-finding authority, was required under law to verify the authenticity of the CBI report, based on which the entire purported action of reopening an assessment, and consequent reassessment, was undertaken. He alleged that the Tribunal confirmed the order of the CIT(A) in a cyclostyle manner, endorsing the findings of the Tribunal, without any independent application of mind. The Tribunal failed to appreciate that the reopening of the assessment for AY 2006-07 was illegal and erroneous, in light of the fact that the AO issued the notice under Section 148 without any basis, on mere information, without making any independent enquiry.

D. Questions proposed before the Court

11. We have duly considered the submissions advanced by Mr. Chandani. The Appellant proposes nearly identical, substantial questions of law in both the appeals, except for the changes in the figures in the question number (iii). For the sake of convenience, the questions of law in ITA No. 164/2020 are reproduced hereinbelow:

(i) "*Whether the conditions as contemplated under Section 147 of the Act for re-opening of an assessment have been rightly followed and undertaken, particularly whether the provisions of Section 151 of the Act have been complied with in the instant case?*

(ii) *Whether the Assessing Officer had 'a reason to believe' before issuance of a notice for re-opening the assessment under Section 148 and had acted on a mere information without making an independent and proper enquiry without particularly in the light of the fact the re-opening of the assessment was made on the same issue which had been itself settled by the Assessing Officer by its earlier assessment order?*

(iii) *Whether and in any event, the donation of Rs. 40,00,000/- can be added to the income of the Appellant under Section 68 of the Act particularly in the light of the fact that the Appellant had proved the identification, genuineness and credit worthiness of all the donors and such a fact had been correctly accepted by a co-ordinate bench of the Tribunal in its earlier order dated January 29, 2010?*"

E. Reasoning

12. The first two questions put forward by the Appellant deal with the assumption of jurisdiction by the AO for reopening the assessment under Section 148 of the Act. The third question deals with the addition of income under Section 68 of the Act. With respect to the aforesaid questions, the ITAT in the impugned order has giving the following findings:

> *"11. We have carefully perused the rival contention and perused the orders of the lower authorities. No doubt, the reasons were recorded on 28/03/2013, i.e. after the expiry of 4*

years from the (relevant) assessment year. However, the reasons recorded clearly shows that that information was received from the Deputy Director of Income Tax on 21/1/2013 about the assessee that a huge amount of cash was deposited in the bank accounts of the society by Sri SK Sharma and other entities. This information was based on the investigation by the central bureau of investigation (CBI) which clearly shows that a huge amount of Rs. 2,97,00,000 were received by it till 31/7/2006 and assessee received the same through 38 credit entries ranging from INR 500,000 to Rs. 25,00,000 from various persons. Such persons were repaid after borrowing by the assessee. Further, the amount of INR 3,500,000 received from accommodation entry provider Shri Mahesh Garg was also noted. Further, all the 22 witnesses examined by the central bureau of investigation have clearly stated that they have not given any donation to the Appellant. Further, the chartered accountant of Sri SK Sharma clearly confessed before the CBI that all these 22 persons obtained permanent account number through him and these evidences were used for giving an accommodation entry by depositing the huge amount in the account of Appellant. ***Though assessee has initially submitted the confirmation of the donors, at the time of original assessment, however during the investigation by the central bureau of investigation, in interrogation all the donors have confessed that they have not given any such donation. Therefore, the donation details submitted by the assessee in the original assessment proceedings were false. Thus, assessee has failed to disclose fully and truly material facts of the income of the assessee.*** *The learned CIT - A has categorically held in para number 7.1 of his order that the AO received information from Central bureau of investigation as per letter dated 5/2/2013 and AO made enquiry from CBI calling for requisite information which was received on 10/2/2014 wherein copies of the statement of the donors, copies of statement of Mahesh Garg recorded u/s 161 of the criminal procedure code was also enclosed.* ***These documents categorically revealed that alleged donors have not donated to the Appellant and Shri Mahesh Garg was allegedly involved in providing accommodation entries through the bank account of his***

brother. It was further found that in the month of June 2006 Appellant received a sum of INR 3,500,000 from Shri Mahesh Garg. Thus, it was apparent that the information disclosed originally by the assessee during the course of assessment proceedings was false. Therefore, we do not find any infirmity in the order of the learned Commissioner of Income Tax Appeals in upholding the reopening of the proceedings under Section 148 of the income tax act.

xx … xx … xx

20. (…) During the year the assessee has received from 38 persons amount ranging between Rs. 1,00,000 - 1,50,000 amounting in all to INR 4,000,000. In the list of donor, assessee has given the address of those donors as well as the date of donation. The above amount has not been credited to the income and expenditure account of the trust but is shown as a general fund account in the balance sheet. Therefore, the above amount was not shown as income in the income and expenditure account but was carried to the balance sheet as a general fund. Concurrent lower authorities have held that assessee has failed to show the genuineness of the transaction. The assessing officer has made addition u/s. 68 of the Income Tax Act which has been confirmed by the learned CIT-A. No further evidences were produced before us. … if the donation is not credited to the income and expenditure account on provisions of Section 68 are rightly applied by the lower authorities.

21. In view of the above facts, we confirm the actions of lower authorities in taxing the sum of INR 4,000,000 as unexplained income being bogus donation credited to the general fund in the balance sheet. In the result ground number 2 of the appeal is dismissed.

xx … xx … xx

33. We have carefully considered the rival contentions and perused the orders of the lower authorities. During the year, the assessee has received a donation from 122 persons amounting

to INR 9,500,000. The assessee has given the name, address, permanent account number of those persons as per 7 pages list placed on the paper book at page number 12 - 18. This year also the assessee has credited the same amount to general fund. The opening balance of general fund at the beginning of the year on 01 /04/2006 was Rs. 40,00,000 and at the end of the year on 31/03/2007 is INR 13,500,000. The above donation of INR 9,500,000 also was not credited to the income and expenditure account but directly carried to the balance sheet. Thus, the above amount was not shown as income in the income and expenditure account. Except placing the list on record, the assessee could not furnish any other information with respect to the genuineness of the donation. The learned assessing officer made the addition u/s 68 of the income tax act and the learned CIT- A confirms the above addition as per para number 5.2 of his order. The main reason for the confirmation of the addition is that examination of the fact revealed that during the assessment proceedings the Appellant failed to substantiate genuineness, creditworthiness of the donors. The above donors were found to be bogus even during enquiry by the CBL. ***Further as per the reasons recorded by the learned AO it was noted that during the investigation the CBI having interrogated the above donors and observed that these are not genuine persons and established that it is a bogus donation***. *Further, it was also found that Shri SK Sharma deposited huge amount in the account of the assessee showing is donation, which was corroborated by the conversation in the CD with investigating authorities. Further, the amount of INR 3,500,000 was found to be an accommodation entry from Shri Mahesh Garg who confirmed having given the above sum in exchange of cash from Sri SK Sharma. The above sum is correctly directed by the learned CIT - A to be taxed in assessment year 2007- 08 instead of assessment year 2006- 07 as the amount was credited in the books of account in assessment year 2007-08. The Ld. AR did not controvert the above facts. Therefore, we do not find any infirmity in the order of the learned CIT- A, the assessing officer to tax the income in the correct assessment years.* ***The learned authorised representative could not show us any evidence or could not controvert the evidences collected by the assessing***

> ***officer from CBI with respect to the bogus donation credited to the general fund.*** *In view of this, we do not find any infirmity in the order of the Learned AO as well as the learned CIT-A in confirming the addition of INR 9,500,000 in the hands of the assessee."*
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> *(Emphasis supplied)*

13. The perusal of the aforesaid extracted portion of the impugned order reveals that the assumption of jurisdiction by the AO has credible basis, being the letter dated 22nd June 2012, issued by the Joint Director of Income Tax (Investigation) informing that a Regular Case (RC) was registered against one Shri Manoj Kumar Aggarwal. This case disclosed the nexus between the suspect and the Appellant and brought to light the startling facts that contradicted the earlier findings arrived at in the scrutiny assessment. The credibility of witnesses was brought into the open during the CBI investigation. One of the witness, Sh. Mahesh Garg, stated that the money was paid in cash for arranging donation in favour of the Appellant. The other witnesses stated that they had not given any donation to the Appellant. This revelation controverted the factual foundation set up by the Appellant, and falsified the information disclosed by the Appellant during the course of the prior assessment. The AO thus had specific information about cash deposits, supported by statement of witnesses which confirmed that the donors were bogus. These facts disclose a vital link and nexus between the information received by the AO and the reason to believe for reopening the assessment, which fulfilled the threshold required for assuming jurisdiction by the AO in order to reopen the assessment. There was, thus, some tangible material with the AO to form a *prima facie* opinion that the income of the Appellant had indeed escaped assessment, thereby justifying the action under Section 147. There is no perversity in the reasoning given by the Tribunal, based on

findings of fact which would give rise to the questions of law numbered (i) and (ii), as noted in para 11 above.

14. In fact, during the course of arguments, Mr. Chandani to some extent relented that the information with AO justified initiation of the action u/s 147 of the Act, but he argued there was then no reason for the tax authorities to uphold the addition. He dwelled considerably on the third proposed question of law, and argued strenuously that the Appellant had proved the identification, genuineness and credit worthiness of all the donors, and that the same had been correctly accepted by a co-ordinate bench of the Tribunal in its earlier order dated 29th January, 2010.

15. The law regarding reopening of assessment is well-settled. The reliance placed upon the findings of the earlier assessment proceedings is misplaced. If the assumption of jurisdiction is held to be valid, the Appellant cannot place undue credence on the earlier assessment proceedings. Once an assessment is reopened, the initial order for assessment ceases to be operative and the proceedings start afresh. The Appellant's contention that since the AO had originally accepted the donations to be genuine, he is precluded from treating them to be bogus and making additions, is untenable. The Tribunal has noted that though the Assessee had initially submitted the confirmation of donation at the time of original assessment, however during investigation by the CBI, some of the donors have confessed that they have not given any such donation. Under interrogation of the donors it was unearthed that the donation detail submitted by the Assessee in the original assessment proceedings was false. Thus, the genuineness of the donors could not be established. This case invited

deeper scrutiny owing to the discovery of facts during CBI investigation tht adversely impinged the findings determined in the earlier round of assessment. However, the Appellant failed to discharge the onus of proof cast upon it. No attempt was made to produce credible material to corroborate the transactions or to explain the contradictory evidence that it was confronted with. Appellant also never took any steps to examine the witnesses and as a result, on the basis of the material on record, the tax authorities concluded that the genuineness, creditworthiness remained unsubstantiated. In wake of this factual position, the donations were treated as bogus, justifying the additions. Therefore, the third question of law, premised on findings that are purely based on fact calls for no interference.

16. In our opinion, no question of law, much less any substantial question of law arises for our consideration. Accordingly, the appeals and the applications are dismissed.

SANJEEV NARULA, J.

MANMOHAN, J.

DECEMBER 22, 2020
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