

**IN THE INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH: 'F' NEW DELHI**

**BEFORE SHRI N. K. BILLAIYA, ACCOUNTANT MEMBER
AND
MS SUCHITRA KAMBLE, JUDICIAL MEMBER
I.T.A NO. 2284/Del/2017 (A.Y 2013-14)**

DCIT (Exemption), Circle – Gaziabad. (APPELLANT)	Vs	M/s. Ram Nath Memorial Trust Society, Ram Bagh Colony, Shastri Nagar, Sec-4, Meerut. (PAN : AAATT 6054 B) (RESPONDENT)
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Appellant by	Shri Surendra Pal, Sr. D.R
Respondent by	Shri Rohit Agarwal, C.A.

Date of Hearing	07.11.2019
Date of Pronouncement	18.11.2019

ORDER

PER SUCHITRA KAMBLE, JM

This appeal is filed by the Revenue against the order dated 20/01/2017 passed by CIT(A)-Meerut for Assessment Year 2013-14.

2. The grounds of appeal are as under:-

1. *“The Ld. Commissioner of Income Tax (Appeal) has erred in law and on facts in allowing the appeal of the assessee after allowing inter organization donation of Rs. 3,20,00,000/-.*
2. *The Ld. Commissioner of Income Tax(A) has erred in law on facts allowing the appeal of the assessee after deleting the addition of Rs.3,20,00,000/- ignoring the facts.*
3. *The Ld. Commissioner of Income Tax(A) has erred in law and on facts allowing the Depreciation of Rs. 2,30,33,137/-.*
4. *Appellant craves leave to modify/amend or add any one or more grounds of appeal.*
5. *The order of Ld. CIT(A) be cancelled and the order of the A.O. Restored.”*

3. The assessee is a society registered under the Societies Act with Registrar of Society U.P. dated 15.11.1999 which was renewed for a period of five years with effect from 15.11.2014. The assessee society was granted registration u/s 12A of the Income Tax Act, 1961. The return showing nil income was filed on 29.09.2013. The case was selected for scrutiny and notice u/s 143(2) dated 22.09.2014 as well as notice u/s 142(1) dated 09.04.2015 were issued and served upon the assessee. In response to the notice and questionnaire FCA of the Assessee attended the assessment proceedings and filed written submission along with books of accounts, bill vouchers etc. The Assessing Officer made observation that the bank accounts of the depositors submitted by the assessee during the assessment proceeding shows that the money was revolving among the parties from whom the assessee had taken loans. The Assessing Officer further observed that the unsecured loans taken mere accommodation interest and since the assessee did not produced the depositors. The assessee has not been able to prove identity and genuineness of the parties from whom it had taken unsecured loans of Rs.3,20,00,000/- and treated the same loans as anonymous donations u/s 115BBC of the Income Tax Act, 1961 and added the same to the income of the assessee by directing charging of tax at maximum marginal rate. The Assessing Officer further disallowed the claim of depreciation of Rs.2,30,33,137/- claimed as application of income holding that the same is not allowable as the capital expenditure on acquiring fixed assets has already been allowed in respective years.

4. Being aggrieved by the assessment order, the assessee filed the appeal before the CIT(A). The CIT(A) allowed the appeal of the assessee.

5. The Ld. DR submitted that the CIT(A) has not given the detailed reasoning as to how money which were treated as loans does not fall under the category of anonymous donations u/s 115BBC. The Ld. DR further submitted that this issue may be remanded back to the file of the CIT(A) for proper

adjudication. As regards ground relating to depreciation, the Ld. DR relied upon the Assessment Order.

6. The Ld. AR submitted that during the course of assessment proceedings, the assessee submitted the relevant documents in respect of loans taken from various parties. The CIT(A) has taken cognizance of all these relevant materials and held that the addition is not proper on part of Assessing Officer. The Ld. AR also relied upon the decision of the Hon'ble Supreme Court in case of PCIT vs. NRA Iron & Steel Pvt. Ltd. 412 ITR 0161 (SC).

7. We have heard both the parties and perused all the materials available on records. The CIT(A) held as under:

“Respectfully following the above cited judgments, I hold that the action of the A.O. to make addition in the hands of the appellant, without issuing summons or letters to the lenders as requested for by the appellant and without making any further enquiries at her own, is unlawful. The appellant has discharged the primary onus casted upon it to prove the identity of depositors, genuineness of transactions and credit worthiness of the depositors and therefore the unsecured loans accepted by the appellant from 5 persons during the year under appeal are treated as explained and substantiated. Mere non production of the depositors by the appellant has wrongly been made a ground to make addition to make addition u/s 68 of the Act. Further the action of the A.O. to treat the deposits under reference as anonymous donations u/s 115BBC is completely unlawful since all the loan creditors had opening balances and had also filed copies of ITRs, Thus, by no stretch of imagination could the AO treat these loans as anonymous donation u/s 115BBC. Now coming u the failure to produce the depositor for the personal deposition the same cannot be treated as a ground so as to make the addition of the loans accepted from them during the year as anonymous donations u/s 115BBC. I therefore, delete the addition of Rs.3,20,00,000/- and direct the AO accordingly.”

The Hon'ble Apex Court in case of NRA Iron & Steel Pvt. Ltd. (supra) categorically held that the Assessing Officer is duty bound to investigate the credit worthiness of the creditors / subscriber, verify the identity of the subscribers, and ascertain whether the transaction is genuine, or these are bogus entries of name lenders. In the present case, the assessee has given all the details which were required to prove the genuineness, credit worthiness

and identity of the lenders which was totally ignored and has not been taken cognizance by the Assessing Officer. The CIT(A) has taken the cognizance of the evidences and has given a justified reason while deleting the said addition.

9. In the result, appeal of the Revenue is dismissed.

Order pronounced in the Open Court on 18th Nov, 2019.

Sd/-

(N. K. BILLAIYA)
ACCOUNTANT MEMBER

Sd/-

(SUCHITRA KAMBLE)
JUDICIAL MEMBER

Dated: 18/11/2019
*Priti Yadav, Sr. PS **

Copy forwarded to:

1. Appellant
2. Respondent
3. CIT
4. CIT(Appeals)
5. DR: ITAT

ASSISTANT REGISTRAR

ITAT NEW DELHI