

आयकर अपीलीय अधिकरण, 'बी' न्यायपीठ, चेन्नई

IN THE INCOME TAX APPELLATE TRIBUNAL

'B' BENCH, CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं

श्री चंद्र पूजारी, लेखा सदस्य केसमक्ष

BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND
SHRI CHANDRA POOJARI, ACCOUNTANT MEMBER

आयकर अपील सं./ITA No.2244/Mds/2015

निर्धारण वर्ष / Assessment Year : 2011-12

Mrs. Rekha Goenka,
11, Kondi Chetty street, Parrys,
Chennai - 600 001.

v. The Income Tax Officer,
Non Corporate Ward 3(2),
Chennai - 600 034.

PAN : AACPG 1362 M

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/Appellant by : Shri F.C. Jain, CA

प्रत्यर्थी की ओर से/Respondent by : Shri Murali Mohan, JCIT

सुनवाई की तारीख/Date of Hearing : 27.04.2016

घोषणा की तारीख/Date of Pronouncement : 01.06.2016

आदेश /ORDER

PER N.R.S. GANESAN, JUDICIAL MEMBER:

This appeal of the assessee is directed against the order of the Commissioner of Income Tax (Appeals)-4, Chennai, dated 14.10.2015 and pertains to assessment year 2011-12.

2. Shri F.C. Jain, the Ld. representative for the assessee, submitted that the assessee donated an amount of ₹20,00,000/-,

during the year under consideration, to a charitable institution known as "Society For Welfare Of The Handicapped Persons" at Durgapur. The donation was, in fact, transferred by RTGS mode on 30.03.2011 through a bank account maintained with Indian Bank, Harbour Branch, Chennai. The Assessing Officer by placing reliance on the letter dated 24.03.2014, said to be received from the Society For Welfare Of The Handicapped Persons, Durgapur, Kolkata, disallowed the claim of the assessee. The recipient-society denied the receipt of ₹20,00,000/- by letter dated 03.02.2014 and the donation has not reached the beneficiary society. The Assessing Officer has also observed that the Society denied having a bank account with Axis Bank, Kolkata. The Assessing Officer without giving a copy of the so-called letter said to be received from the Society on 24.03.2014, passed the assessment order on the very same day, i.e. on 24.03.2014. The Ld. representative further submitted that the Assessing Officer reproduced copy of the letter at page 4 of the assessment order. After receiving the assessment order only, the assessee came to know that there was a letter from the Society claiming that a bank account was opened in the Axis Bank with the help of some miscreants.

3. The Ld. representative for the assessee further submitted that the assessee was able to obtain the bank statement from Axis Bank in respect of the account to which the money was transferred. The assessee has filed a copy of the bank statement from the Axis Bank. According to the Ld. representative, the recipient-society in fact received funds from the very same account and funds were also transferred to the recipient-society's account from this account. Therefore, there was a transaction between the recipient-society from and out of the bank account to which the assessee has transferred the funds. Therefore, the letter dated 24.03.2014 claiming that there was no such bank account for the recipient-society is not correct. Since the assessee has paid the money to an approved institution engaged itself in charitable activity, the same is eligible for deduction while computing the taxable income.

4. On the contrary, Shri Murali Mohan, the Ld. Departmental Representative, submitted that the Assessing Officer made elaborate enquiry. The assessee claimed before the Assessing Officer that the recipient-society, namely, Society For Welfare Of The Handicapped Persons, Durgapur, Kolkata, was an approved society for the projects under Section 35(1)(ii) of the Act. The recipient-society by letter dated 24.03.2014, clarified that they do

not have any account in Axis Bank. The Axis Bank account was opened with the help of some miscreants, including the bank officials. The recipient-society has also informed the Assessing Officer that they have already lodged complaint with the police and the matter was being investigated by Criminal Investigation Department of the West Bengal Police. The recipient-society has also informed the Assessing Officer that the matter was also informed to the Reserve Bank of India. Therefore, it was obvious that the bank account was opened in a fraudulent manner with Axis Bank and the Society For Welfare Of The Handicapped Persons, Durgapur, which obtained the approval under Section 35 of the Act was not the real beneficiary of the bank account to which the money was transferred by the assessee. On a query from the Bench when the letter of the recipient-society is dated 24.03.2014, how the Assessing Officer was able to incorporate the same as part of the assessment order? The Ld. representative clarified that the Assessing Officer might have received the same by FAX or e-mail. The Ld. representative further clarified that since the recipient-society by letter dated 03.02.2014, clarified that they have not received any donation from the assessee by giving a copy of letter dated 24.03.2014, the assessee may not be able to improve the

case any further. Therefore, even assuming for argument sake that a copy of the letter dated 24.03.2014 was not furnished to the assessee, the same may not vitiate the assessment proceeding.

5. We have considered the rival submissions on either side and perused the relevant material available on record. The Assessing Officer incorporated the copy of the letters said to be written by the Society For Welfare Of The Handicapped Persons, Durgapur, Kolkata dated 03.02.2014 and 24.03.2014 as part of the assessment order. The assessee claims that the letter dated 24.03.2014 was not furnished to her. Admittedly, the letter was dated 24.03.2014 and the assessment order was also passed on 24.03.2014. Therefore, the Assessing Officer might not have given the copy of the letter dated 24.03.2014 to the assessee. Even assuming for argument sake that a copy of the letter was furnished to the assessee on 24.03.2014, the assessee would not have had time to respond to the letter since the assessment order was passed on 24.03.2014 itself.

6. The Ld. Departmental Representative contends before this Tribunal that non-furnishing of letter dated 24.03.2014 may not prejudice the interest of the assessee. We have carefully gone

through the letter of the Society dated 24.03.2014, which was incorporated by the Assessing Officer in the impugned assessment order. This letter clarifies that the recipient-society does not have any bank account in Axis Bank and the account in the Axis Bank was opened with the help of some miscreants, including the bank officials. This letter further discloses the pendency of the criminal case. It is further clarified that the recipient-society maintained one account with State Bank of India in Durgapur, Kolkata. However, the assessee claims that the funds were transferred from the so-called Axis Bank account to the account of the society with State Bank of India. This claim of the assessee apparently was not examined by the lower authorities. This Tribunal is of the considered opinion that when the society claims that they have no account in Axis Bank, how the funds were transferred from that account to State Bank of India account needs to be examined. Moreover, when the Assessing Officer received a letter dated 24.03.2014 from the society, the copy of the same shall be furnished to the assessee. Since the copy of the letter was not furnished, this Tribunal is of the considered opinion that there was violation of principles of natural justice. When the Assessing Officer received a letter from the recipient-society claiming that they have

no bank account in Axis Bank and the only one bank account is maintained with State Bank of India, this Tribunal is of the considered opinion that the Assessing Officer ought to have given an opportunity to the assessee to respond to the above claim of recipient-society. Since such an opportunity was not given to the assessee, this Tribunal is of the considered opinion that the matter needs to be reconsidered by the Assessing Officer after furnishing a copy of the letter dated 24.03.2014 to the assessee. Accordingly, the orders of the lower authorities are set aside and the Assessing Officer is directed to furnish a copy of the letter dated 24.03.2014 said to be received from the Society For Welfare Of The Handicapped Persons, Durgapur, Kolkata and thereafter decide the issue after giving reasonable opportunity to the assessee. It is made clear that this Tribunal is not commenting upon the merit of the addition made by the Assessing Officer and it is for the Assessing Officer to decide the same in accordance with law without being influenced by any of the observation made by the CIT(Appeals) and made by this Tribunal in this order.

7. With the above observation, the appeal of the assessee is allowed for statistical purposes.

Order pronounced on 1st June, 2016 at Chennai.

sd/-

(चंद्र पूजारी)

(Chandra Poojari)

लेखा सदस्य/Accountant Member

sd/-

(एन.आर.एस. गणेशन)

(N.R.S. Ganesan)

न्यायिक सदस्य/Judicial Member

चेन्नई/Chennai,

दिनांक/Dated, the 1st June, 2016.

Kri.

आदेश की प्रतिलिपि अग्रेषित/Copy to:

1. अपीलार्थी/Appellant
2. प्रत्यर्थी/Respondent
3. आयकर आयुक्त (अपील)/CIT(A)-4, Chennai-34
4. Principal CIT-5, Chennai
5. विभागीय प्रतिनिधि/DR
6. गार्ड फाईल/GF.