

आयकर अपीलिय अधिकरण, मुंबई "जी" खंडपीठ
Income-tax Appellate Tribunal -"G" Bench Mumbai
सर्वश्री राजेन्द्र,लेखा सदस्य एवं, राम लाल नेगी, न्यायिक सदस्य
Before S/Shri Rajendra,Accountant Member and Ram Lal Negi,Judicial Member
आयकर अपील सं./ITA/6254/Mum/2014,निर्धारण वर्ष /Assessment Years: 2011-12

Income tax Officer-1(1)-4 Room No.531 A/579 Aayakar Bhavan Mumbai-20.	vs.	M/s. Golconde Properties Pvt. Ltd. 2 nd Floor, 5, Roshera Building, Dinshaw Vaccha Road, Churchgate Mumbai-400 020. PAN:AACCG 4199 B
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(अपीलार्थी /Appellant)

(प्रत्यर्थी / Respondent)

प्रत्याक्षेप/CO/103/Mum/2016

Arising out of 6254/Mum/14, निर्धारण वर्ष /Assessment Years: 2011-12

M/s. Golconde Properties Pvt. Ltd. Mumbai-20.	vs.	Income tax Officer-1(1)-4 Mumbai-20.
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(Cross objector/ प्रत्याक्षेपक)

(प्रत्यर्थी / Respondent)

Revenue by: Shri Vivek Perampurna-DR
Assessee by: Shri Nishith Khatri

सुनवाई की तारीख / **Date of Hearing: 04.08.2016**

घोषणा की तारीख / **Date of Pronouncement: 04.08.2016**

आयकर अधिनियम,1961 की धारा 254(1)के अन्तर्गत आदेश
Order u/s.254(1)of the Income-tax Act,1961(Act)

लेखा सदस्य राजेन्द्र के अनुसार PER RAJENDRA, AM-

Challenging the order dt.30.07.2014 of CIT(A)-1,Mumbai,the Assessing Officer (A.O.) and the assessee have filed appeal/cross objections for the year under consideration.Assessee-Company,filed its return of Income on 14.02.2013 declaring total at Rs.nil.The AO completed assessment,on 13.12.113,u/s.143(3) of the Act,determining income of the assessee at Rs.35.34 lakhs.

ITA/6254/Mum/2014

2.Effective Ground of appeal is about allowing the claim made by the assessee u/s.80GGA of the Act.During the assessment proceedings,the AO found that the assessee had made a donation of Rs.35.30 lakhs, that it had shown rental income of Rs.49.70 lakhs, that while working out the income from business it had reduced the donation by an amount of Rs.30,000/-, only that it had debited donation of Rs.35.30 lakhs. He directed the assessee to explain as to why it had not reduced the full amount of donation while computing the income, as it was not wholly and exclusively for the purpose of business. The assessee replied that the amount of Rs.35 lakhs was donated to Aurobindo Ashram Trust Pondicherry, that it had been claimed as deduction u/s. 35(1)(ii) of the Act. Vide its order sheet entry noting 22.11.2013, he asked the assessee to furnish submissions with regard to allowability of deduction u/s.35(1)(ii),as it had offered rental income under the head income from house property. In its reply

,dtd.28.11.2013,the assessee argued that the deduction for donation was allowable at 100% , that same was taken as business loss,that as per the provisions of section 71 of the Act, business loss could be set off against the income from other heads. The assessee made submission about the claim.However, the AO relying upon the case of Goetze(India) Ltd. (284ITR323)held that the AO could not decide the issue of a new claim or an additional claim.Finally,he made a disallowance of Rs.35.30 lakhs.

3.Aggrieved by the order of AO, the assessee preferred an appeal before the First Appellate Authority (FAA).Before him,it was argued that it had originally claimed the said donation u/s.35(1)of the Act,that during the course of assessment proceeding a revised claim was made for considering the said donation as exempt u/s.80GGA, that the AO had taken a contrary view,that it had in its return of income claimed that donation of Rs.35.00 lakhs was made to Sri Aurobindo Ashram Trust as expenditure by debiting the P&L Account, that the AO applied the ratio of Goetze (I) Ltd.(supra), that the case was covered by the judgment of Pruthvi Brokers and Sahreholders Pvt. Ltd. (349/336) of the Hon'ble Bombay High Court. After considering the submission of the assessee and the assessment order, the FAA held that it was on record that donation of Rs.35.30 lakhs was made to Sri Aurobindo Ashram Trust, that donation was debited to P&L account for deduction u/s.35(1) of the Act, that the assessee made a revised claim for allowing said amount u/s. 80GGA. Referring to judgment of Pruthvi Brokers and Sahreholders Pvt. Ltd.(supra), the FAA held that facts and circumstances of both the cases were similar.He allowed the appeal filed by the assessee holding that deduction of donation of Rs.35.30 lakhs was liable to be allowed u/s. 80GGA.

4.During the course of hearing before us the Departmental Representative (DR) supported the order of the AO.The Authorised Representative (AR) relied upon the case of Pruthvi Brokers and Sahreholders Pvt. Ltd. (supra), and referred to pg.No.7 of the Paper book.

7.We have heard the rival submissions and perused the material on record. We find that there is no doubt about the genuineness of the donation to the Ashram,that the assessee had claimed the deduction u/s.35(1) of the Act,that during assessment proceeding a fresh claim u/s. 80GGA was made,that the AO did not admit the claim,that the FAA following the judgment of Pruthvi Brokers and Sahreholders Pvt. Ltd.(supra) admitted the claim made by the assessee.In our opinion after judgment of Pruthvi Brokers and Sahreholders Pvt. Ltd.(supra),the appellate authority can admit new claim if it is supported by requisite

documents. The FAA, exercising his powers, has held that the amount in question should be treated for exemption u/s. 80GGA. In our opinion, there is no legal infirmity in his order, so, confirming the same, we are deciding the effective Ground of appeal against the AO.

CO/103/Mum/2016

8. The CO was filed late by 4 months and 11 days. In the affidavit filed by the Director of the Company, it is stated that initially the matter was handled by a firm of CA.s, later on another firm advised it to file the CO. In our opinion, the reason given by the assessee for filing the CO belatedly is not reasonable. Hence, the CO filed by the assessee is being dismissed. Secondly, we have already dismissed the appeal of AO and have decided the issue in favour of the assessee on merits.

As a result, appeal of the AO and the CO filed by the assessee stand dismissed.
फलतः निर्धारिती अधिकारी द्वारा दाखिल की गई अपील और निर्धारिती के प्रत्याक्षेप को नामंजूर किया जाता है.

Order pronounced in the open court on 4th August, 2016.
आदेश की घोषणा खुले न्यायालय में दिनांक 4 अगस्त, 2016 को की गई।

Sd/-

(राम लाल नेगी / **R.L.Negi**)

न्यायिक सदस्य / **JUDICIAL MEMBER**

मुंबई Mumbai; दिनांक Dated : 04 .08.2016.

Jv.Sr.PS.

Sd/-

(राजेन्द्र / **Rajendra**)

लेखा सदस्य / **ACCOUNTANT MEMBER**

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1.Appellant /अपीलार्थी

2. Respondent /प्रत्यर्थी

3.The concerned CIT(A)/संबद्ध अपीलीय आयकर आयुक्त, 4.The concerned CIT /संबद्ध आयकर आयुक्त

5.DR “ ” Bench, ITAT, Mumbai /विभागीय प्रतिनिधि, खंडपीठ, आ.अ.न्याया.मुंबई

6.Guard File/गार्ड फाईल

सत्यापित प्रति //True Copy//

आदेशानुसार/ **BY ORDER,**

उप/सहायक पंजीकार **Dy./Asst. Registrar**

आयकर अपीलीय अधिकरण, मुंबई /ITAT, Mumbai.