

आयकर अपील अाधकरण, "बी" ढायपीठ, चेनई
IN THE INCOME-TAX APPELLATE TRIBUNAL 'B' BENCH, CHENNAI

श्री अाहम पी. जॉजलेखा सदय एवं श्री धुवु आर.एल रेडी, ढायक सदय के सम

Before Shri Abraham P. George, Accountant Member &
Shri Duvvuru RL Reddy, Judicial Member

आयकर अपील सं./I.T.A.No.2376/Mds/2017

ढथाण वष/Assessment Year:2013-14

Ms. Shilpa A Patel,
New No. 9, Old No. 6,
Dhanammal Street, Chetpet,
Chennai 600 031.

The Income Tax Officer,
Vs. Non Corporate Ward 3(2),
Chennai.

[PAN: AALLP6625M]

(अपीलाथ /Appellant)

(ढयथ/Respondent)

अपीलाथ क ओर से / Appellant by : Ms. T.C.A. Sangeetha, Advocate

ढयथ क ओर से/Respondent by : Shri B. Sagadevan, JCIT

सुनवाई क तारख / Date of hearing : 10.04.2018

घोषणा क तारख /Date of Pronouncement : 27.04.2018

आदेश /O R D E R

PER DUVVURU RL REDDY, JUDICIAL MEMBER:

This appeal filed by the assessee is directed against the order of the Id. Commissioner of Income Tax (Appeals) 4, Chennai, dated 21.07.2017 relevant to the assessment year 2013-14. The only effective ground raised in the appeal of the assessee is that the Id. CIT(A) has erred in confirming the disallowance of donations made under section 35(1)(ii) of the Income Tax Act, 1961 [Act+in short].

2. Brief facts of the case are that the assessee is a professional designer and partner in partnership firm and filed her return admitting income of .18,03,686/-. The return of income filed by the assessee was processed under section 143(1) of the Act . Subsequently, the case of the assessee was selected for scrutiny. Against statutory notices, the assessee filed all the details as required for the assessment.

3. The assessee has donated a sum of .5,00,000/- to the trust M/s. School of Human Genetics and Population Health, Kolkata under section 35(1)(ii) of the Act and claimed 175% deduction amounting to .8,75,000/-. Before the Assessing Officer, the assessee filed copy of the donation receipt and copy of notification issued by the Ministry of Finance to the Trust, M/s. School of Human Genetics and Population Health and copy of Notification published in the Official Gazettee of India. The Id. PCIT forwarded the report, wherein, the donors merely took accommodation entries and the alleged donations were routed back to them after deduction of commission by the entry provider at various stages along with list of donors in which assessee's name also appeared. Thus, the donation cannot be held as genuine and the incidence of taxation has artificially been reduced resulting in undue loss to the Government. The Assessing Officer further observed that the firm %Megatrends Inc+in which the assessee is a partner has also donated to the tainted organisation %School of Human Genetics and Population Health+; the

firm had donated in the previous years also to some other bogus tainted organisations such as %Bharosa+ society for welfare of the handicapped persons and Herbicare Healthcare Bio Herbal Research Foundation. Another family member of the assessee, who was assessed in this was also habitual donor in the previous years to the above said society and were disallowed in their assessments. Accordingly, the assessee was issued a show cause letter to prove the genuineness of the donation. Since the assessee has not produced any corroborative evidence or additional evidence to prove the genuineness of the trust, the donation claimed as deduction under section 35(1)(ii) of the Act was disallowed and brought to tax. On appeal, the Id. CIT(A) confirmed the disallowance.

4. On being aggrieved, the assessee is in appeal before the Tribunal. The Id. Counsel for the assessee has submitted that the assessee made donation to an organization; as on the date of donation, the organisation was approved by the Government of India vide Notification No. 4/2010 dated 28.01.2010. Further it was argued that the assessee was not given any copy of report of investigations carried out by the Department as claimed by the Assessing Officer. Without verifying the genuineness of the donation given by the assessee, the Id. CIT(A) simply accepted the statement of the Assessing Officer that the assessee was a habitual offender. The observation of the Id. CIT(A) that the assessee was party to the illegal

activity of seeking accommodation entry from M/s. School of Human Genetics and Population Health is not correct since there was no reference in any of the reports of the Department or any investigation agency to the name of the assessee. Thus, the Id. Counsel prayed for allowance of deduction under section 35(1)(ii) of the Act.

5. Per contra, the Id. DR submitted that the donation was given without verification of the credentials and the parties to whom the donation was given has been evaded the payment of tax and for obtaining the benefit of accommodation entries.

6. We have heard both parties, perused the materials available on record and gone through the orders of authorities below. In connection with the claim of weighted deduction under section 35(1)(ii) of the Act, the Assessing Officer disbelieved the donations on the basis of the report of the Id. PCIT, wherein, in the assessee is also one of the donors in the list. Accordingly, the Assessing Officer disallowed the deduction claimed by the assessee, which was confirmed by the Id. CIT(A). However, we find that the said report of the Id. PCIT was not put to the assessee for rebuttal. Further, we find that the onus lies on the assessee to prove the donation given by the assessee is a donation and not accommodation entries and therefore, the assessee is required to produce the recipients of the donation for examination before the Assessing Officer. If the Assessing Officer has any evidence to show that

the claim of donation is not a donation but, it is only accommodation entries, then, that also required to be put to the assessee for her rebuttal. Further, we are of the considered opinion that the internal communications of the Department are evidences for drawing an opinion on possible wrong claims, but, those materials cannot be held as final evidence. Thus, we remit the matter back to the file of Assessing Officer for re-adjudication after affording sufficient opportunities of being heard to the assessee.

7. In the result, the appeal filed by the assessee is allowed for statistical purposes.

Order pronounced on the 27th April, 2018 at Chennai.

Sd/-
(ABRAHAM P. GEORGE)
ACCOUNTANT MEMBER

Sd/-
(DUVVURU RL REDDY)
JUDICIAL MEMBER

Chennai, Dated, the 27.04.2018

Vm/-

आदेश क० प्रतिलिपि अपेक्षित/Copy to: 1. अपीलार्थी/Appellant, 2. प्रत्यर्थी/Respondent, 3. आयकर आयुक्त (अपील)/CIT(A), 4. आयकर आयुक्त/CIT, 5. प्रभागीय प्रतिलिपि/DR & 6. गाडफाईल/GF.