

आयकर अपीलीय अधिकरण, 'डी' न्यायपीठ, चेन्नई।
**IN THE INCOME TAX APPELLATE TRIBUNAL
'D' BENCH: CHENNAI**

श्री जॉर्ज माथन, न्यायिक सदस्य एवं
श्री एस जयरामन, लेखा सदस्य के समक्ष
**BEFORE SHRI GEORGE MATHAN, JUDICIAL MEMBER AND
SHRI S. JAYARAMAN, ACCOUNTANT MEMBER**

आयकर अपील सं./ITA No.2640/Chny/2017
निर्धारण वर्ष /Assessment Year: 2013-14

Shri Kaushik Kirit Davey,
No.14, Kesava Iyer Street,
Park Town,
Chennai-600 003.

Vs. The Asst. Commissioner –
of Income Tax,
Non-Corporate Circle-4(1),
Chennai-34.

[PAN: AAFPD 3982 K]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.2641/Chny/2017
निर्धारण वर्ष /Assessment Year: 2014-15

Shri Hiren Girish Davey,
No.14, Kesava Iyer Street,
Park Town,
Chennai-600 003.

Vs. The Asst. Commissioner –
of Income Tax,
Non-Corporate Circle-4(1),
Chennai-34.

[PAN: AAFPD 3984 R]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA No.2642/Chny/2017
निर्धारण वर्ष /Assessment Year: 2014-15

Shri Hemant Kirit Davey,
No.14, Kesava Iyer Street,
Park Town,
Chennai-600 003.

Vs. The Asst. Commissioner –
of Income Tax,
Non-Corporate Circle-4(1),
Chennai-34.

[PAN: AAAPD 6721 D]
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.2643 & 2644/Chny/2017

निर्धारण वर्ष /Assessment Years: 2013-14 & 2014-15

M/s.Hemant Surgical Co.,
62, Old 33, Nyniappa Naicken,
Park Town,
Chennai-600 003.

Vs. The Asst. Commissioner –
of Income Tax,
Non-Corporate Circle-4(1),
Chennai-34.

[PAN: AAAFH 0397 K]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.2645 & 2646/Chny/2017

निर्धारण वर्ष /Assessment Years: 2013-14 & 2014-15

Shri Girish Amrutlal Davey,
No.14, Kesava Iyer Street,
Park Town,
Chennai-600 003.

Vs. The Asst. Commissioner –
of Income Tax,
Non-Corporate Circle-4(1),
Chennai-34.

[PAN: AAAPD 6723 B]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.2647 & 2648/Chny/2017

निर्धारण वर्ष /Assessment Years: 2013-14 & 2014-15

Shri Chandrakant Amrutlal Davey,
No.14, Kesava Iyer Street,
Park Town,
Chennai-600 003.

Vs. The Asst. Commissioner –
of Income Tax,
Non-Corporate Circle-4(1),
Chennai-34.

[PAN: AAAPD 6727 F]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

आयकर अपील सं./ITA Nos.2649 & 2650/Chny/2017

निर्धारण वर्ष /Assessment Years: 2013-14 & 2014-15

Shri Bhupendra Amrutlal Davey,
No.14, Kesava Iyer Street,
Park Town,
Chennai-600 003.

Vs. The Asst. Commissioner –
of Income Tax,
Non-Corporate Circle-4(1),
Chennai-34.

[PAN: AAAPD 6724 G]

(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Mr.A.S.Sriraman, Adv.
प्रत्यर्थी की ओर से /Respondent by : Mr.Awijit Rakshit, Sr.AR
सुनवाई की तारीख/Date of Hearing : 28.05.2018
घोषणा की तारीख /
Date of Pronouncement : 28.05.2018

आदेश / ORDER

PER BENCH:

The above assessees filed these appeals against the orders of the Commissioner of Income Tax (Appeals)-5, Chennai, in ITA Nos.123, 103, 112, 115, 114, 109, 108, 111, 110, 102 & 101/CIT(A)-5/2016-17 dated 12.09.2017, respectively, for the AYs 2013-14 & 2014-15. Since the issue involved in these appeals are common, they are clubbed together and are being disposed off together for the sake of convenience.

2. All these assessees are dealers of pharmaceuticals and surgical equipments. While making the assessments/re-assessments for the AYs 2013-14 & 2014-15, as the case may be, the AO disallowed the assessee's claim of deduction u/s.35(1)(ii), being 175% of donation claimed to have been made to M/s.Herbicure Healthcare Bi-Herbal Research Foundation, Kolkatta, in the respective Assessment Years, based on the statement given by the donee, consequent to the survey action conducted by the Investigation Wing, Kolkatta that the donation was merely accommodation entries and the alleged donations were routed back to them after deduction of commission by the entries provided etc. Aggrieved, each of the above assessees filed appeal

before the CIT(A). The CIT(A) held that the assessee did not file any confirmation letter from the donee to establish the genuineness of the donation and failed to disprove the findings of the department that donation was merely accommodation entries, the alleged donations were routed back to the assessee after deduction of commission by the entries provided etc. Aggrieved, these assessee filed the above appeals challenging each of the order of the CIT(A), supra.

3. We heard the rival submissions. Similar issue came up before this Tribunal in the case of M/s.Megatrends Inc., vs ACIT in ITA No.417 & 740/Chny/2017 for assessment years 2012-13 & 2013-14 dated 05.03.2018.

The relevant portion is extracted as under:

“11. Coming to the issue of the donations in respect of which, the assessee has claimed weighted deduction u/s.35(1)(ii) of the Act, it is noticed that the AO has disbelieved the donations on the basis of statement recorded from one Mr.Swapan Ranjan Das Gupta, one of the major shareholders of HNBHRF and on account of a letter from CROSS and in respect of M/s.SHGPH on the basis of Survey Report. It is noticed that the onus of proving the genuineness of the donation rests on the assessee. However, the AC has taken up himself the onus to disprove the genuineness of the donation much before the assessee has proved the genuineness of the donation. When an assessee steps forward to give donations of Rs.1.25 Crs, Rs.25.00 lakhs, Rs.1.45 Crs. respectively, the assessee would have adequate reasons to give such donations. Here, it is noticed that the assessee has not been given any opportunity to prove the genuineness but the assessment has been made based on the evidences collected by the Revenue in the course of the survey conducted on the respective organizations. This is not permissible. This being so, in the interest of natural justice, the issue of the genuineness of the donations are restored to the file of the AC for re-adjudication. The AC must keep in mind that the onus of proving the donations are actually donations and not accommodation entries and that the said organizations were eligible for claiming deduction u/s.35(1)(ii) of the Act rests on the assessee. If the AC does have any evidence to the contrary, it is to be put to the assessee for his rebuttal. The assessee shall produce the recipients of the donation for examination along with the evidences to prove the receipt of the donation. The internal communications of the Revenue are evidences for drawing an opinion on possible wrong claims but they are not the final evidence. This being so, the issue of the donation in these appeals are restored to the file of the AC for re-adjudication after granting the assessee adequate opportunity to prove the genuineness of the donation.”

4. Following the above order, the issue of donation in these appeals are restored back to the file of the AO for re-adjudication on the lines indicated

above. Since, the right to exemption must be established by those who seek it, the onus therefore, lies on them. In order to claim the exemption from payment of income tax, the assessee had to put before the Income Tax authorities proper materials which would enable them to come to a conclusion. (35 ITR 312 (SC)). Hence, the AO shall require each of the above assessee; to establish who, with whom, how and in what circumstances the impugned sums were donated etc., to prove that the impugned donations are actual donations and not accommodation entries, the Healthcare Bio-Herbal Research Foundation is eligible for claiming deduction u/s. 35 etc. Each of the above assessee shall comply to the AO's requirements as per law. On appreciation of all the above aspects, the AO would decide the matter in accordance with law. The AO is also free to conduct appropriate enquiry as deemed fit, but shall furnish adequate opportunity to the assessee on the material etc to be used against it and decide the matter in accordance with law.

5. In the result, each of the above assessee's appeal(s) is/(are) partly allowed for statistical purposes.

Orders pronounced in the Open Court on May 28, 2018, in Chennai.

Sd/-

(जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

Sd/-

(एस. जयरामन)

(S. JAYARAMAN)

लेखा सदस्य/ACCOUNTANT MEMBER

चेन्नई/Chennai,

दिनांक/Dated: May 28, 2018.

TLN

आदेश की प्रतिलिपि अग्रेषित/**Copy to:**

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