

**IN THE INCOME TAX APPELLATE TRIBUNAL “A” BENCH: KOLKATA**  
[Before Shri A. T. Varkey, JM & Shri A.L.Saini, AM]

<b>I.TA No. 1813/Kol/2017</b> <b>Assessment Year: 2014-15</b>		
Vikas Jagwayan  (PAN: ACPPJ 8901 L)	Vs.	Pr. CIT, Kolkata
Appellant		Respondent

Date of Hearing	09.04.2018
Date of Pronouncement	27.06.2018

For the Appellant	Shri A. K. Tibrewal, FCA
For the Respondent	Shri P.K. Srihari, CIT

**ORDER**

**PER SHRI A.T. VARKEY, JM**

This is an appeal preferred by the Assessee, an individual against the order of the Principal Commissioner of Income Tax-15, Kolkata dated 07.06.2017 passed u/s 263 of the Income Tax Act, 1961 (hereinafter referred to as the ‘Act’) for Assessment Year 2014-2015.

2. The brief facts of the case is that the assessee had made a donation of Rs.20,00,000/- to M/s. School of Human Genetics and Population Health (hereinafter referred to as ‘M/s. SHGPH’) and claimed weighted deduction of Rs.35,00,000/- as deduction u/s 35(1)(ii) of the Act @175% of the amount paid to the said M/s. SHGPH. The A.O. after taking note of the Gazette Notification dated 28.01.2010 issued by CBDT under Govt. of India which recognized M/s. SHGPH as an institution which is entitled for weighted deduction u/s 35(1)(ii) of the Act, allowed the weighted deduction @175% for the donation given by the assessee by assessment order dated 29.06.2016. Later, Pr. CIT came across a communiqué dated 15.09.2016 of CBDT which conveyed the information

that the Central Govt. has rescinded the relevant notification No.4/2010 dated 28.01.2010 to the effect that the said notification would be deemed as not issued for any tax benefits under the Act to the said research institute. Taking note of this development, the Id. Pr. CIT issued a notice to the assessee by which he conveyed his intention to interfere in the assessment order passed by the A.O on 29.06.2016, by exercising his revisional jurisdiction under section 263 of the Act, which according to him was erroneous and prejudicial to the interest of the Revenue. Later, the AR of the assessee entered appearance before the Pr. CIT and after taking note of the submissions of the Id. AR of the assessee, the Pr. CIT was pleased to cancel the assessment order, since according to him the A.O has passed an order which is erroneous and prejudicial to the interest of Revenue by allowing weighted deduction @175% of donation to M/s. SHGPH u/s 35(1)(ii) of the Act and directed the Assessing Officer to frame fresh assessment. Aggrieved, the assessee is before us.

3. We have heard both the parties and perused the records. We note that M/s. SHGPH was recognized vide Gazette Notification dated 28.01.2010 issued by the Central Board of Direct Taxes (CBDT in short), Ministry of Finance, Department of Revenue, Govt. of India u/s 35(1)(ii) of the Act. We note that M/s. SHGPH was also recognized as a scientific industrial research organization (SIRO) by Ministry of Science & Technology, Govt. of India. The renewal of recognition as SIRO by the Department of Scientific and Industrial Research under the Scheme on Recognition of Scientific and Industrial Research Organization, 1988 was made for the period from 01.04.2010 to 31.03.2013 vide communication in F.No.14/473/2007-TU-V dated 17.06.2010. We note that the assessment order was passed on 29.06.2016 allowing the assessee weighted deduction @175% of the amount paid to M/s. SHGPH u/s 35(1)(ii) for an amount of Rs.20,00,000/- given as donation to M/s. SHGPH. The assessee has challenged in the first place, the very usurpation of jurisdiction by Id. Principal CIT to invoke his revisional powers enjoyed u/s 263 of the Act. Therefore, first we have to see whether the requisite jurisdiction necessary to assume revisional jurisdiction is there existing before the Pr. CIT to exercise his power.

For that, we have to examine as to whether in the first place the order of the Assessing Officer found fault by the Principal CIT is erroneous as well as prejudicial to the interest of the Revenue. For that, let us take the guidance of judicial precedence laid down by the Hon'ble Apex Court in *Malabar Industries Ltd. vs. CIT* [2000] 243 ITR 83(SC) wherein their Lordship have held that *twin* conditions needs to be satisfied before exercising revisional jurisdiction u/s 263 of the Act by the CIT. The twin conditions are that the order of the Assessing Officer must be erroneous and so far as prejudicial to the interest of the Revenue. In the following circumstances, the order of the AO can be held to be erroneous order, that is (i) if the Assessing Officer's order was passed on incorrect assumption of fact; or (ii) incorrect application of law; or (iii) Assessing Officer's order is in violation of the principle of natural justice; or (iv) if the order is passed by the Assessing Officer without application of mind; (v) if the AO has not investigated the issue before him; then the order passed by the Assessing Officer can be termed as erroneous order. Coming next to the second limb, which is required to be examined as to whether the actions of the AO can be termed as prejudicial to the interest of Revenue. When this aspect is examined one has to understand what is prejudicial to the interest of the revenue. The Hon'ble Supreme Court in the case of *Malabar Industries (supra)* held that this phrase i.e. "*prejudicial to the interest of the revenue*" has to be read in conjunction with an *erroneous order* passed by the Assessing Officer. Their Lordship held that it has to be remembered that every loss of revenue as a consequence of an order of Assessing Officer cannot be treated as prejudicial to the interest of the revenue. When the Assessing Officer adopted one of the courses permissible in law and it has resulted in loss to the revenue, or where two views are possible and the Assessing Officer has taken one view with which the CIT does not agree, it cannot be treated as an erroneous order prejudicial to the interest of the revenue **"unless the view taken by the Assessing Officer is unsustainable in law"**.

4. Taking note of the aforesaid dictum of law laid down by the Hon'ble Apex Court, let us examine whether the Assessing Officer passed order u/s 143(3) dated 29.06.2016 is

erroneous as well as prejudicial to the interest of the revenue. The assessee had given donation of Rs.20,00,000/- to M/s. SHGPH and had claimed weighted deduction u/s 35(1)(ii) of the Act, which has to be allowed provided the assessee gives donation to any undertaking which has its objects of scientific research and such undertaking is approved for the purpose of this clause by the prescribed authority. During the assessment proceedings, the Assessing Officer has examined this fact and has clearly made a finding of fact that M/s. SHGPH is an approved undertaking u/s 35(1)(ii) of the Act after perusal of "Gazette of India". In such a scenario, the action of the A.O cannot be held to be erroneous because the claim made by the assessee was valid. It has to be kept in mind that when the donation was given by assessee to M/s. SHGPH, the undertaking was enjoying approval as per law. The subsequent cancellation of the approval u/s 35(1)(ii) by Central Govt. cannot in any way undermine the claim of the assessee for the donation given by him because Parliament in its wisdom has envisaged such an eventuality and inserted by Taxation Laws (Amendment) Act, 2006 with retrospective effect from 01.04.2006 an Explanation in Section 35 of the Act which reads as under an Explanation to section 35(1)(ii) which reads as under:

Section 35(1)(ii) – Explanation

*The deduction, to which the assessee is entitled in respect of any sum paid to a research association, university, college or other institution to which clause (ii) or clause (iii) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) has been withdrawn.*

From the reading of the aforesaid provision, it is very clear that the payer (the assessee herein) would not get affected if the recognition granted to the payee had been withdrawn subsequent to the date of contribution by the assessee. Hence, no disallowance u/s 35(1)(ii) of the Act could be made in the instant case even if the approval has been rescinded later as it happened in this case. It is not the case of the Id. Pr. CIT that when the contribution of Rs.20,00,000/- was made by the assessee to M/s. SHGPH, it was not recognized u/s 35(1)(ii) of the Act, so legally the AO's action to allow weighted deduction u/s 35(1)(ii) of

the Act cannot be held to be erroneous. Therefore, the A.O's order dated 29.06.2016 cannot be termed as erroneous and therefore, the assumption of revisional jurisdiction of the Id. Pr. CIT itself does not satisfy condition precedent to invoke the jurisdiction u/s 263 of the Act fails. The subsequent developments i.e. CBDT Notification rescinding the recognition for M/s. SHGPH on 15.09.2016 cannot be a ground to hold that A.O's order on 29.06.2016 is erroneous in the light of the Explanation in section 35(1)(ii) of the Act (supra). Therefore, in any case the assumption of revisional jurisdiction of the Id. Pr. CIT itself does not satisfy condition precedent to invoke the jurisdiction u/s 263 of the Act and, therefore, the order impugned is quaram-non judice and, therefore, the order is 'null' in the eyes of law and so we are inclined to cancel the impugned order of Id. Pr. CIT.

6. In the result, the appeal of the assessee is allowed.

Order pronounced in the Court on 27.06.2018.

Sd/-

[A. L. Saini]

Accountant Member

Dated : 27.06.2018

[RS, Sr. PS]

Copy of the order forwarded to:

1. Appellant/Assessee – Vikas Jagwayan,46, Kali Krishna Tagore Street, Kolkata – 700 007.
2. Revenue/Respondent- The Pr. CIT, 3, Govt. Place (West)
3. CIT(A)- 15, Kolkata
4. CIT – , Kolkata
5. CIT(DR), Kolkata Benches, Kolkata

Sd/-

[A. T. Varkey]

Judicial Member

True copy

By Order

Senior Private Secretary  
Head of Office, DDO, Kolkata Benches, Kolkata.

