

**IN THE INCOME TAX APPELLATE TRIBUNAL
KOLKATA 'SMC' BENCH, KOLKATA**

(Before Sri J. Sudhakar Reddy, Accountant Member)

ITA No. 718/Kol/2018
Assessment Year: 2014-15

Zenith Credit Corporation.....Appellant
19, R.N. Mukherjee Road
Kolkata - 700 017
[PAN : AAAFZ 1337 P]

Income Tax Officer, Ward-36(4), Kolkata.....Respondent

Appearances by:

Shri Miraj D. Shah and N.M. Bhansali, Advocate, appeared on behalf of the assessee.
Shri S.M. Das, Addl. CIT, D/R. appearing on behalf of the Revenue.

Date of concluding the hearing : July 05th, 2018

Date of pronouncing the order : July 20th, 2018

ORDER

Per J. Sudhakar Reddy, AM :-

This is an appeal filed by the assessee directed against the order of the Commissioner of Income Tax (Appeals)-10, Kolkata, (hereinafter the 'Ld. CIT(A)'), dt. 23/02/2017, passed u/s 250 of the Income Tax Act, 1961 (hereinafter the 'Act'), relating to Assessment Year 2014-15, on the following grounds:-

"1. For that the Ld. CIT(Appeals) was wrong and unjustified in confirming the disallowance of deduction u/s 35(1)(ii) of Rs.3,50,000/- on the donation of Rs.2,00,000/- made to School of Human Genetics & Pollution Health without properly appreciating the submission of the appellant. The court decisions cited by the Ld. CIT(Appeals) are not applicable in the facts of the appellant's case.

2. For that the appellant craves leave to alter, amend, modify any of the grounds and/or take additional ground before or at the time of hearing of this appeal."

2. Heard both the parties.

The ld. Counsel for the assessee submits that from the statement recorded and relied upon by the Assessing Officer of Shri Avijit Sinha Roy, it is clear that he stated that after February, 2011, he left this activity of providing bogus donations for commission. He drew the attention of the Bench to page 3 para 6.6. of the assessment order and submitted that the donation in question was made on 03/06/2014. Thus, he submits

that reliance placed on this statement of Shri Avijit Sinhar Roy, for making this addition, is wrong. He further submits that no opportunity was provided to the assessee for cross-examination of the persons on whose statements the revenue relied upon to make this addition. He submitted that under similar circumstances the Kolkata 'SMC' Bench of the Tribunal in the case of *Tushar Chawda vs ITO in ITA No. 2362/Kol/2017, order dt. 21/03/2018*, and the Kolkata 'B' Bench of the Tribunal in the case of *DCIT vs. M/s. Maco Corporation India (P) Ltd. in ITA No. 378/Kol/2017, order dt.13/04/2018*, adjudicated the issue in favour of the assessee.

2.1. The ld. D/R, on the other hand submitted that statements were recorded from key persons of the Trust and in these statements, these persons have admitted that such accommodation entries were provided for donations. He specifically referred to question no. 12 at page 7 of the assessment order, wherein, Smt. Samadrita Mukherjee Sardar, secretary of the School of Human Genetics and Population Health, had admitted to such bogus entries. He further referred to pages 11 of the assessment order and submitted that Shri Avijit Sinha Roy had specifically stated that this amount of Rs.2 Lakhs from M/s. Zenith Credit Corporation was a bogus transaction. In his rejoinder, the ld. Counsel for the assessee submitted that, when Shri Avijit Sinha Roy has in his sworn statement stated that he has left his work of providing bogus donations far back in the year 2011 and hence, the question of his arranging these donations in the year 2014, does not arise. He further pointed out from the statement at page 11 of the assessment order, it is clear that the list was prepared by the revenue authorities and that Shri Avijit Sinha Roy has simply signed the list by noting that he has seen the list. He submitted that the list cannot be taken as evidence. He submitted that opportunity of cross-examination has not been provided in this case and hence no reliance can be placed on the statements, based on which the revenue authorities to make this addition.

3. After hearing rival contentions, perusing the papers on record, orders of the authorities below as well as case-law cited, I hold as follows:-

I find that in the statement recorded from Shri Avijit Sinha Roy u/s 131 of the Act, on 13/04/2015 he states that after the month of February, 2011, he left this bogus donation work. On the other hand, he has signed a declaration on 30/07.2015. The list prepared by the revenue was signed with a remark that he has seen the list. There is a contradiction in these two. In such circumstances, it has to be seen as to which is correct. No opportunity of cross-examining Shri Avijit Sinha Roy has been provided to the assessee. Hence the declaration as well as the statement cannot be the basis of addition. Similarly, the statement of the key persons of the trust cannot be the basis of addition as no cross-examination of witness was provided. No proof of money being returned is available with the revenue.

This Bench of the Tribunal in the case of *Tushar Chawda vs. ITO (supra)*, held as follows:-

"6. The Tribunal in the case of Rajda Polymers vide ITA No.333/Kol/2017 order dated 08.11.2017 at page 7 has held as follows :-

"5.6. We find that the ld CITA had made an observation which has been heavily relied upon by the ld DR that the assessee's line of business has got nothing to do even remotely with the healthcare or herbal healthcare industry much less in the area of research thereon and accordingly there was no need for the assessee to give donation of Rs 14,00,000/- to HHBRF . We find that this aspect has been duly addressed by the assessee by stating that one Cardiologist Doctor had introduced the assessee to HHBRF and donations were given after due satisfaction of the assessee based on personal visits to the two research centres of HHBRF and activities carried on by them. Moreover, it is well settled that it is always the prerogative of the assessee to give or not to give any donation to a particular institution, which wisdom cannot be questioned by the revenue. The question of business expediency of an expenditure had to be viewed from the point of view of the businessman and not from the view point of the revenue. The businessman knows his interest best. However, it cannot be denied that this donation paid to HHBRF is free from any suspicion. It definitely leads to further probe by the revenue, which has been carried out by the revenue by summoning the Director of HHBRF . The said Director Shri Swapan Ranjan Dasgupta, though could not appear in person before the ld AO for cross-examination (which was sought by the assessee) but had confirmed in writing that the donations given by the assessee to HHBRF were genuine in nature and had further confirmed that HHBRF had not paid any cash back to assessee in lieu of cheque donations paid to them. The revenue had left the matter at this stage itself and did not further probe into it to check the veracity of the confirmation made by Shri Swapan Ranjan Dasgupta. Therefore, the ld AO proceeded to make the addition only based on the statement recorded from Swapan Ranjan Dasgupta at the time of survey. It may be true that in the said statement, Swapan Ranjan Dasgupta may have deposed to the fact that HHBRF were in receipt of various donations from various persons in cheques and the same were routed back to the donors in cash after retaining certain portion as their commission and intermediaries' commission. This is only a general statement given by Swapan Ranjan Dasgupta about the modus operandi carried out by HHBRF. But nowhere in the said statement or in the subsequent enquires / investigation , it came to light that the assessee

herein had indeed received back the cash in lieu of cheque donations given to HHBRF. This serves as a clinching missing evidence in the entire gamut of this case.

7. Respectfully applying the proposition of law laid down in this case law to the facts of case on hand and as the donation to " School of Human Genetics and Population Health" was made while it was holding the approval in question, we direct the AO to grant the said deduction as claimed. In the result this issue is decided in favour of the assessee."

4. Consistent with the view taken by the Jurisdictional Tribunal in the above cited orders, we delete this addition and allow this appeal of the assessee.
5. In the result, appeal of the assessee is allowed.

Kolkata, the 20th day of July, 2018.

Sd/-
[J. Sudhakar Reddy]
 Accountant Member

Dated : 20.07.2018
 {SC SPS}

Copy of the order forwarded to:

1. ***Shashi Cables Limited***
7, Chittaranjan Avenue
2nd Floor
Laha Paint House
Kolkata - 700 072
2. ***Deputy Commissioner of Income Tax, Circle-1(2), Kolkata***
3. CIT(A)-
4. CIT- ,
5. CIT(DR), Kolkata Benches, Kolkata.

True copy
 By order

Senior Private Secretary
 Head of Office/ D.D.O. ITAT, Kolkata Benches

