

आयकर अपीलीय अधिकरण, 'सी' न्यायपीठ, चेन्नई  
IN THE INCOME TAX APPELLATE TRIBUNAL  
'C' BENCH : CHENNAI

श्री एन.आर.एस. गणेशन, न्यायिक सदस्य एवं  
श्री अब्राहम पी. जॉर्ज, लेखा सदस्य के समक्ष।  
[BEFORE SHRI N.R.S. GANESAN, JUDICIAL MEMBER AND  
SHRI ABRAHAM P. GEORGE, ACCOUNTANT MEMBER]

आयकर अपील सं./I.T.A. No.681/CHNY/2018  
निर्धारण वर्ष /Assessment year : 2014-2015.

Lakshman Bhandari,  
73, M.G. Road,  
Nungambakkam,  
Chennai 600 034.

**Vs.** The Deputy Commissioner of  
Income Tax,  
Corporate Circle 5(2)  
Chennai 600 034.

[**PAN AAJPB 1222A**]  
(अपीलार्थी/Appellant)

(प्रत्यर्थी/Respondent)

अपीलार्थी की ओर से/ Appellant by : Shri. M. Karunakaran, Advocate  
प्रत्यर्थी की ओर से /Respondent by : Shri. Clement Ramesh Kumar, JCIT.

सुनवाई की तारीख/Date of Hearing : 26-07-2018  
घोषणा की तारीख /Date of Pronouncement : 01-08-2018

**आदेश / O R D E R**

**PER ABRAHAM P. GEORGE, ACCOUNTANT MEMBER**

In this appeal filed by the assessee, which is directed against an order dated 13.12.2017 of Commissioner of Income-tax (Appeals)-4, Chennai, it has altogether raised ten grounds, of which grounds 1 to 3 assail reopening of assessment done for the impugned assessment year, whereas grounds 4 to 10 assail an addition made on a commission of ₹7,50,000/- alleged to have been paid for a donation of ₹75,00,000/- made by the assessee to one M/s.Herbicure

Healthcare Bio Herbal Research Foundation (hereinafter referred to "HHBRF").

2. Ld. Counsel for the assessee submitted that assessee had filed return for the impugned assessment year originally on 26.09.2014 admitting income of ₹22,65,320/-. As per the Id. Authorised Representative in such return, assessee had claimed weighted deduction of 175% on a donation of ₹75,00,000/- made to HHBRF, under Section 35(1) (ii) of the Income Tax Act, 1961 (in short "the Act"). Thereafter according to the Id.AR, assessee had revised this return on 28.12.2015 withdrawing the claim of weighted deduction of ₹1,31,25,000/-. As per the Id. Authorised Representative the assessment was completed on 18.05.2016 accepting the income returned as per the revised return. However, as per the Id. Authorised Representative, through a notice u/s.148 of the Acts issued on 12.08.2016, Id. Assessing Officer sought reopening of assessment. According to the Id. Authorised Representative, such reopening was for the purpose of adding an alleged commission of ₹7,50,000/- on the donation of ₹75,00,000/- to HHBRF. As per the Id. Authorised Representative, despite assessee pointing out that it had withdrawn the claim for weighted deduction on such donation, Id. Assessing Officer completed the reassessment making an addition of ₹7,50,000/-. According to the Id. Authorised Representative, Id.

Assessing Officer took a view that assessee had incurred commission expenditure of ₹7,50,000/- for obtaining the accommodation entries for claiming deduction u/s.35(1)(ii) of the Act through the donation of ₹75,00,000/- to HHBRF.

**3.** Continuing his submission, Id. Authorised Representative submitted that assessee filed an appeal before Id. Commissioner of Income Tax (Appeals), pointing out that the addition of ₹7,50,000/- was made purely on estimation, based on a statement from one Shri. Swapan Ranjan Das Gupta, who was the founder director of HHBRF. According to him, despite pointing out the reply of Shri. Swapan Ranjan Das Gupta, which clearly mentioned that what was given back by HHBRF was only the net amount after deduction of its commission, Id. Commissioner of Income Tax (Appeals) confirmed the addition made by the Id. Assessing Officer. Contention of the Id. Authorised Representative, was that assessee having withdrawn the claim of weightage deduction, there was no question of any further addition.

**4.** Per contra, Id. Departmental Representative strongly supported the orders of the lower authorities.

**5.** We have considered the rival contentions and perused the orders of the authorities below. It is not disputed that assessee had withdrawn the claim of weighted deduction u/s.35(1) (ii) of the Act

through a revised return. Or in other words, assessee had not insisted on weighted deduction of ₹1,31,25,000/- for the donation of ₹75,00,000/- to M/s. HHBRF. Assessment was completed based on the revised return filed by the assessee. Question of any addition for commission paid on the donation against which the weighted deduction was originally claimed, in our opinion becomes irrelevant, once such deduction was withdrawn by the assessee, through a revised return which was accepted by the Revenue. That apart, we find that Shri. Swapan Ranjan Das Gupta in answer to a question regarding modus operandi through which accommodation entries were provided by HHBRF through donations, had answered as under:-

*"Please explain in detail the modus operandi of giving the accommodation entries by way of accepting donations to different beneficiaries . Also state who is the / are the broker / brokers (while giving his mobile no. and address) through which you have given accommodation entries in the form of bogus donation on commission? Please state what are the commission charged by you and broker concerned for providing accommodation entries to different beneficiaries.*

**Ans.** *The entire accommodation entries of bogus donations are facilitated by Mr. Kishan Bhawasingka having his mobile nos.9830087866 & 9883051515 who lives somewhere in Bhawanipore near Netaji Subhas Metro Station. This modus is like this. This information is given to us by Mr. Kishan Bhawasingka as to bogus donation entry is needed by a particular party. Sometimes we come to know about the accommodation entry being given to a party when we directly receive communication from the concerned bank that the amount has been credited. Thus, the accommodation entry is completely controlled and managed by Mr. Kishan Bhawasingka. The bogus donation are received vide cheque/ RTGS into any of the bank accounts mentioned by me in response to question No.7 of this statement. After this, payment is made to any of the paper / bogus companies on*

*account of bogus purchases/expense on the advice of Mr. Kishan Bhawasingka. The remaining transaction is also managed on paper by him only which happens companies in 2 to 3 layers. Finally, cheque of the donation amount (after deducting the cut of commission charged by us and broker amount Mr. Kishan Bhawasingka) is given back to the original beneficiary who gave donation to us. Sometimes, the amount is withdrawn at 3<sup>rd</sup> or 4<sup>th</sup> level and cash is given back to the original beneficiary (after deducting the cut of commission charged by us and broker Mr. Kishan Bhawasingka) who gave donation to us.*

*In the entire process of providing entry in the form of bogus donation to different beneficiary companies/individuals a commission of 5% approx is charged by us which is the actual donation we received from that particular done in reality. The commission of almost 5 to 8% is charged by Mr. Kishan Bhawasingka for facilitating the said accommodation entry.*

*Subsequently, a sanction letter is received from the donor reflecting the amount of donation and mode of payment. The particulars are then verified with the amount credited in our bank accounts after which an exemption u/s.35(1) (ii) of the I.T. Act, 1961 which qualifies him/her to claim 'one and three fourth' of the said donation as tax exempt u/s.35(1)(ii) of the I.T. Act, 1961".*

It is clear from the reply given by Shri. Swapan Ranjan Das Gupta that the amounts returned were after deducting commission. Thus, once assessee itself withdrew the claim of weighted deduction in full by necessary implication there is no more any claim of payment of commission. When donation itself is disbelieved, the question of further addition for commission paid in our opinion does not arise. The addition of ₹7,50,000/- is therefore deleted. Grounds 4 to 10 are allowed.

**6.** Though grounds taken by the assessee include grounds assailing the reopening done for the impugned assessment year, there

were no arguments advanced by the Id. Authorised Representative on such grounds. Hence grounds 1 to 3 are dismissed as not pressed.

7. In the result, the appeal of the assessee is partly allowed.

Order pronounced on Wednesday, the 1<sup>st</sup> day of August, 2018, at Chennai.

**Sd/-**

(एन.आर.एस. गणेशन)

**(N.R.S. GANESAN)**

**न्यायिक सदस्य/JUDICIAL MEMBER**

**Sd/-**

(अब्राहम पी. जॉर्ज)

**(ABRAHAM P. GEORGE)**

**लेखा सदस्य/ACCOUNTANT MEMBER**

चेन्नई/Chennai

दिनांक/Dated: 1<sup>st</sup> August, 2018

**KV**

आदेश की प्रतिलिपि अग्रेषित/Copy to:

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