

**आयकर अपीलीय अधिकरण, 'ए' न्यायपीठ, चेन्नई**

IN THE INCOME TAX APPELLATE TRIBUNAL  
' A' BENCH : CHENNAI

**श्री अब्राहमपी.जॉर्ज, लेखा सदस्य एवं**  
**श्री जॉर्ज माथन, न्यायिक सदस्य के समक्ष**

**BEFORE SHRI ABRAHAM P GEORGE, ACCOUNTANT MEMBER  
AND SHRI GEORGE MATHAN, JUDICIAL MEMBER**

आयकर अपील सं./I.T.A.No.3200/Chny/2017

निर्धारण वर्ष /Assessment year :2012-13

**Shri Raj Rattan,**  
51,Landon's Road, Kilpauk,  
Chennai 600 010.

**Vs.** The Deputy Commissioner of  
Income Tax,  
Non-Corporate Circle-10(1)  
Chennai-34.

**[PAN ADXPR 0831 L ]**  
**(अपीलार्थी/Appellant)**

**(प्रत्यर्थी/Respondent)**

अपीलार्थी की ओर से/ Appellant by  
प्रत्यर्थी की ओर से /Respondent by

: Mr.F.C.Jain,C.A  
: Mr.Sanath Kumar Raha,JCIT,D.R

सुनवाई की तारीख/Date of Hearing

: 26-09-2018

घोषणा की तारीख /Date of Pronouncement

: 08-10-2018

**आदेश / O R D E R**

**PER GEORGE MATHAN , JUDICIAL MEMBER**

This is an appeal filed by the assessee against the order of the Commissioner of Income-tax (Appeals)-12, Chennai in ITA No.22/CIT(A)-12/2015-16 dated 20.10.2017 for the assessment year 2012-13.

2. Shri F.C.Jain represented on behalf of the Assessee and Mr.Sanath Kumar Raha represented on behalf of the Revenue.

3. It was submitted by Id.A.R that the only issue in the assessee's appeal was against the action of Ld.CIT(A) in confirming the disallowance of claim of deduction u/s.35(1)(ii) of the Act in respect of the donation of ₹20 lakhs given by the assessee to M/s.Herbicure Healthcare Bio-Herbal Research Foundation (NHBHRF), Kolkata (PAN:AABCH 4849 J) and had claimed deduction of ₹35 lakhs u/s.35(1)(ii) of the Act. It was a submission that the Id. Assessing Officer had disallowed the claim of deduction on the ground that there was a survey on the premises of NHBHRF on 27.01.2015 and the one Founder Director of NHBHRF, Shri Swapan Ranjan Das Gupta was examined on oath, who stated that NHBHRF has been giving bogus entry in the form of bogus donations on a commission of 5%. It was a submission that the Id. Assessing Officer had relied upon the statement recorded on 27.01.2015. It was a further submission that the said recorded statement has not been provided to the assessee for cross examination. It was a prayer that the disallowance was liable to be deleted.

4. In reply, Id.D.R vehemently supported the orders of the Id. Assessing Officer and the Id.CIT(A). It was a submission that the issue was squarely covered by the decision of the Co-ordinate Bench of this Tribunal in the case of M/s.Megatrends Inc., Chennai Vs. The ACIT, Chennai in ITA Nos.417 & 740/Chny/2017 vide order dated 05.03.2018 wherein the issue has been held as follows:-

*"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 HHBHRF 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 AO 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 AO for re-adjudication. The AO 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 AO 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 AO for re-adjudication after granting the assessee adequate opportunity to prove the genuineness of the donation.”*

Ld. DR submitted that the issue can be restored to the file of AO for re-adjudication in line with the decision of the Tribunal cited supra.

5. We have considered the rival submissions. A perusal of the assessment order in the assessee's case clearly shows that opportunity of cross examination has not been granted to the assessee. A perusal of the decision of Co-ordinate Bench of this Tribunal in the case of M/s.Megatrends Inc., referred to supra, clearly shows that this issue has been restored to the file of Id. Assessing Officer for re-adjudication after granting the assessee adequate opportunity to prove the genuineness of the donation. Considering these facts, we are of the view that the issue in this appeal is liable to be restored to the file of Id. Assessing Officer for re-adjudication after granting the assessee adequate opportunity to substantiate its case. If the Id. Assessing Officer proposes to rely in any evidences, which is against the

assessee, the same shall be put to assessee for cross-examination and rebuttal. Under these circumstances, the issue in this appeal is partly allowed for statistical purposes.

6. In the result, the appeal of the assessee is partly allowed for statistical purposes.

Order pronounced on 08<sup>th</sup> October, 2018, at Chennai.

Sd/-

(अब्राहमपी.जॉर्ज)

( ABRAHAM P GEORGE)

लेखा सदस्य /ACCOUNTANT MEMBER

Sd/-

( जॉर्ज माथन)

(GEORGE MATHAN)

न्यायिक सदस्य/JUDICIAL MEMBER

चेन्नई/Chennai

दिनांक/Dated: 08<sup>th</sup> October, 2018.

K S Sundaram

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        |