

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD - BENCH 'D'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No.1943/Ahd/2017**

**निर्धारण वर्ष/Asstt. Year: 2014-15**

S.G. Vat care P.Ltd. 1, Second Floor J.P. Commercial Centre Kalol, Dist. Gandhinagar PAN : AATCS 0725 N.	Vs.	ITO, Ward-4 Sabarkantha.
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अपीलार्थी (Appellant)	प्रत्यर्थी (Respondent)
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Assessee by :	Shri A.C. Shah, AR
Revenue by :	Shri B.P. Srivastava, Sr.DR

सुनवाई की तारीख/Date of Hearing : 11/01/2019  
घोषणा की तारीख/Date of Pronouncement: 15 /01/2019

**आदेश/ORDER**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Assessee is in appeal before the Tribunal against order of Id.CIT(A), Gandhinagar dated 21.7.2017 passed for the Asstt.Year 2014-15.

2. In the first ground of appeal, the grievance of the assessee is that the Id.CIT(A) has erred in confirming addition of Rs.8,75,000/- on account of alleged bogus donation to Herbicare Healthcare Bio-Herbal Research Foundation.

3. Brief facts of the case are that the assessee has filed return of income on 20.11.2014 declaring total income at Rs.4,47,910/-. On

scrutiny of the accounts, it revealed that the assessee-company has given donation to Herbicare Healthcare Bio-Herbal Research Foundation, Calcutta. A survey action was carried out at the premises of the donee wherein it revealed to the Revenue that this concern was misusing the benefit of notification issued by the Income Tax Department. It has been getting donations from various sources, and after deducting certain amount of commission, these donations were refunded in cash. On the basis of that survey report registration granted to its favour was cancelled. On the basis of the outcome of that survey report, the Id.AO construed the donation given by the assessee as bogus. Appeal to the Id.CIT(A) did not bring any relief to the assessee.

4. Before us, the Id.counsel for the assessee contended that donations were given on 25.3.2014. At that point of time, donee was notified as eligible institution and fall within the statutory eligibility criterion. Certificate for receiving donation was cancelled on 5.9.2016. There is no mechanism with the assessee to verify whether such donee was a genuine institute or not, which can avail donation from the society.

5. The Id.DR, on the other hand, contended that in the investigation it came to know about bogus affairs conducted by the donee. Hence, these donations are rightly been treated as bogus, and addition is rightly made.

6. We have duly considered rival contentions and gone through the record carefully. The AO is harping upon an information supplied by the survey tem of Calcutta. He has not specifically recorded statement of representatives of the donee. He has not brought on record a specific evidence wherein donee has deposed that donations received from the assessee was paid back in cash after deducting commission. On the basis of a general information collected from the donee, the donation

made by the assessee cannot be doubted. Neither representatives of the donee have been put to cross-examination, nor any specific reply deposing that such donation was not received, or if received the same was repaid in cash, has been brought on record. In the absence of such circumstances, donation given by the assessee to the donee, on which the assessee no mechanism to check the veracity, can be doubted, more particularly, when certificate to obtain donation has been cancelled after two years of the payment of donation. It is fact which has been unearthed subsequent to the donations. Therefore, there cannot be any disallowance on this issue. We allow this ground.

7. In the next ground, the assessee is challenging disallowance of Rs.1,33,018/-.

8. The assessee failed to make payment of employees' contribution towards provident fund within due date as provided under this Act, hence, its claim for deduction was disallowed under section 36(1)(va) of the Act. The Id.CIT(A) has confirmed disallowance by putting reliance upon judgment of Hon'ble Gujarat High Court in the case of Gujarat State Road Transport Corporation Ltd., 366 ITR 170. Considering reliance put forth by the Id.CIT(A) on the judgment of Hon'ble jurisdictional High Court, we are of the view that no interference is called in the order of the Id.CIT(A) on this issue. This ground of appeal is rejected.

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

Order pronounced in the Court on 15<sup>th</sup> January, 2019 at Ahmedabad.

Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER

Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER

Ahmedabad; Dated 15 /01/2019