



**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**"F" BENCH, MUMBAI**

**BEFORE SHRI SAKTIJIT DEY, JUDICIAL MEMBER AND**  
**SHRI MANOJ KUMAR AGGARWAL, ACCOUNTANT MEMBER**

ITA no.1583/Mum./2019  
(Assessment Year : 2012-13)

Urnish Jewellers  
907, Panchratna Building  
Opera House, Mumbai 400 004  
PAN – AAAFU4658A

..... Appellant

v/s

Asstt. Commissioner of Income Tax  
Circle-19(3), Mumbai

..... Respondent

Assessee by : Shri Dilip V. Lakhani  
Revenue by : Shri Chaudhary Arun Kumar Singh

Date of Hearing – 09.05.2019

Date of Order – 22.05.2019

**ORDER**

**PER SAKTIJIT DEY. J.M.**

The aforesaid appeal has been filed by the assessee challenging the order dated 28<sup>th</sup> February 2019, passed by the learned Commissioner (Appeals)-59, Mumbai, pertaining to the assessment year 2012-13.

2. In grounds no.1 and 2, the assessee has challenged the validity of re-opening of assessment under section 147 of the Income Tax Act,

1961 (for short "*the Act*"). Whereas, in grounds no.3 to 8, the assessee has challenged the disallowance of deduction claimed under section 35(1)(ii) of the Act for an amount of ₹ 17.50 lakh. Ground no.9 is on the issue of levy of interest under section 234B of the Act. Ground no.10, being general in nature does not require adjudication.

3. At the outset, the learned Authorised Representative expressed his willingness to argue on the grounds raised on merits. Therefore, we proceed to deal with the grounds no.3 to 8, herein after.

4. Brief facts are, the assessee, a partnership firm, filed its return of income for the impugned assessment year on 29<sup>th</sup> September 2012, declaring total income of ₹ 44,09,416 after claiming deduction of ₹ 17.50 lakh under section 35(1)(ii) of the Act. The aforesaid deduction was claimed on account of donation made of ₹ 10 lakh to School of Human Genetics and Population Health (SHG&PH). The assessment in case of the assessee was originally completed under section 143(3) of the Act allowing the deduction claimed. Subsequently, survey operations were conducted in case of SHG&PH and another two institutions viz. Matrvani Industries of Experiential Research and Education (MIER&E) and Herbicure Healthcare Bio-Herbal Research Foundation (HHBRF). In the course of such survey operation, it was found that these institutions were not carrying out any activities relating to scientific research but are being used as a front for routing

bogus donations through brokers. From the statements recorded of persons attached to such institutions it was found that donations were received through brokers and after retaining some commission amount, the money is returned back to the donors. The Assessing Officer observed, due to the irregularities committed by these institutions and also that they were not involved in research activity, the registration certificates issued to these institutions under the Act were cancelled with retrospective effect. Thus, the Assessing Officer held that since it was proved that the donation given by the assessee to SHG&PH was bogus and the registration granted to the said institution has been cancelled vide order dated 15<sup>th</sup> September 2016, with retrospective effect, assessee's claim of deduction under section 35(1)(ii) of the Act cannot be allowed. Accordingly, he added back the amount of ₹ 17.50 lakh to the income of the assessee.

5. The learned Authorised Representative submitted, at the time when the assessee gave donation to the institution, it had a valid registration certificate granted under the Act. He submitted, the subsequent cancellation of the registration certificate with retrospective effect cannot invalidate assessee's claim of deduction under section 35(1)(ii) of the Act. Drawing our attention to the Explanation to section 35(1)(ii) of the Act, learned Authorised Representative submitted, the statute has also made it clear that the

benefit of deduction under section 35(1)(ii) of the Act cannot be denied on account of subsequent withdrawal of approval granted to the Institution. Thus, he submitted, assessee's claim of deduction should be allowed. In support of such contention, he relied upon the following decisions:-

- i) *CIT v/s Chotatingrai Tea, [2003] 126 Taxman 399 (SC);*
- ii) *State of Maharashtra v/s Suresh Trading Co., 1998 taxmann.com 1747;*
- iii) *National Leather Cloth Mfg. Co. v/s Indian Council of Agricultural Research, [2000] 100 Taxman 511 (Bom.); and*
- iv) *Motilal Dahya Bhai Jhaveri & Sons v/s ACIT, ITA no.3453/Mum./2018, dated 24.04.2019.*

6. The learned Departmental Representative strongly relying upon the observations of the Departmental Authorities submitted, since the Institution to which donation was made is a bogus Institution not doing any research activity, assessee's claim of deduction cannot be allowed. He submitted, the material found during the survey clearly indicates that the Institution was issuing bogus entries towards donation on receipt of commission. He submitted, subsequently, approval granted to the Institution was also withdrawn by the CBDT with retrospective effect. Thus, he submitted, assessee's claim of deduction was rightly denied. In support, he relied upon the following decisions:-

- i) *PCIT v/s NRA Iron & Steel Pvt. Ltd., Civil Appeal no.of 2019 (Arising out of SLP (Civil) no.29855 of 2018), dated 05.03.2019;*
- ii) *PCIT v/s NDR Promoters Pvt. Ltd., ITA no.49/2018, dated 17.01.2019;*
- iii) *CIT v/s Navodaya Castle Pvt. Ltd., [2014] 367 ITR 306 (Del.);*
- iv) *Navodaya Castle Pvt. Ltd. v/s CIT, 2015-TIOL-314-SC-IT);*
- v) *CIT v/s MAF Academy Pvt. Ltd., 361 ITR 258;*
- vi) *Rick Lunsford Trade & Investment Ltd. v/s CIT, [2016] 385 ITR 399 (Cal.);*
- vii) *Rick Lunsford Trade & Investment Ltd. v/s CIT, [2016-TIOL-207-SC-IT-SC];*
- viii) *CIT v/s Nipun Builders & Developers Pvt. Ltd., 30 taxmann.com 292;*
- ix) *CIT v/s Nova Promoters & Finlease Pvt. Ltd., 18 taxmann.com 217;*
- x) *CIT v/s Ultra Modern Exports Pvt. Ltd., 40 taxmann.com 458;*
- xi) *CIT v/s Frostair Pvt. Ltd., 26 taxmann.com 11;*
- xii) *CIT v/s N.R. Portfolio Pvt. Ltd. [2013] 29 taxmann.com 291 (Del.);*
- xiii) *CIT v/s Empire Builtech Pvt. Ltd., 366 ITR 110;*
- xiv) *CIT v/s Focus Exports Pvt. Ltd., 51 taxmann.com 46 (Del.);*
- xv) *N.K. Proteins Ltd. v/s CIT, 2017-TIOL-23-SC-IT; and*
- xvi) *N.K. Proteins Ltd. v/s CIT, 2016-TIOL-3165-HC-AHM-IT.*

7. We have considered rival submissions and perused the material on record. Undisputed facts are, in the previous year relevant to the assessment year under dispute, the assessee had donated an amount

of ₹ 10 lakh to SHG&PH. In the return of income filed for the impugned assessment year, assessee had claimed deduction of ₹ 17,50,000, being one and on half times of the amount of ₹ 10 lakh, in terms of section 35(1)(ii) of the Act. It is also not disputed that at the time of making such donation, SHG&PH was having a valid approval granted under the Act by the CBDT. In the aforesaid factual position, we have to examine whether the subsequent cancellation of registration to SHG&PH vide CBDT order dated 15<sup>th</sup> September 2016, with retrospective effect can invalidate assessee's claim of deduction under section 35(1)(ii) of the Act. In this context, Explanation to section 35(1)(ii) of the Act has a significant bearing. The said provision reads as under:—

*"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;"*

8. A reading of the aforesaid provision makes it clear that if at the time of giving the donation to the research Institute it had a valid registration granted under the Act, subsequent withdrawal of such approval would not be a reason to deny deduction claimed by the donor. In case of Chotatingrai Tea (supra), the Hon'ble Supreme Court while dealing with the deduction claimed under section 35CCA of the

Act, held that retrospective withdrawal of approval granted by the prescribed authority would not invalidate assessee's claim of deduction. Similar view was expressed by the Hon'ble Supreme Court in Suresh Trading Co. (supra) while dealing with the issue of effect of retrospective cancellation of registration certificate. In fact, in case of National Leather Cloth Mag. Co. (supra), the Hon'ble Jurisdictional High Court while dealing with identical issue of denial of deduction claimed under section 35(1)(ii) of the Act due to subsequent withdrawal of approval with retrospective effect, held that retrospective cancellation of registration will have no effect upon the deduction claimed by the donor since such donation was given acting upon registration when it was valid and operative. In case of Motilal Dahya Bhai Jhaveri & Sons (supra), the Co-ordinate Bench while dealing with identical issue of denial of deduction claimed under section 35(1)(ii) of the Act, in respect of donation given to the very same Institution i.e., SHG&PH held that, since, at the time of giving donation the assessee had acted on the strength of a valid registration/approval, which was subsequently cancelled with retrospective effect, assessee's claim of deduction cannot be disallowed. Thus, a reading of Explanation to section 35(1)(ii) of the Act as well as the ratio laid down in the aforesaid decisions would make it clear that if the assessee acting upon a valid registration/approval granted to an Institution has donated the amount

for which deduction is claimed, such deduction cannot be disallowed if at a later point of time such registration is cancelled with retrospective effect. Thus, keeping in view the relevant statutory provisions and the ratio laid down in the decisions discussed above, we have no hesitation in holding that assessee is entitled to claim deduction under section 35(1)(ii) of the Act. Accordingly, we delete the disallowance of ₹ 17.50 lakh. As regards the decisions cited by the learned Departmental Representative, on a careful perusal of these decisions, we find them decisions to be factually distinguishable as they are not on the issue of denial of deduction under section 35(1)(ii) of the Act due to cancellation of registration with retrospective effect. Grounds are allowed.

9. In view of our decision herein above, the issue raised in grounds no.1 and 2, having become academic, hence, do not require adjudication.

10. Ground no.9, being consequential does not require adjudication.

11. In the result, appeal is partly allowed.

Order pronounced in the open Court on 22.05.2019

**Sd/-**  
**MANOJ KUMAR AGGARWAL**  
**ACCOUNTANT MEMBER**

**Sd/-**  
**SAKTIJIT DEY**  
**JUDICIAL MEMBER**

**MUMBAI, DATED: 22.05.2019**

Copy of the order forwarded to:

- (1) *The Assessee;*
- (2) *The Revenue;*
- (3) *The CIT(A);*
- (4) *The CIT, Mumbai City concerned;*
- (5) *The DR, ITAT, Mumbai;*
- (6) *Guard file.*

*Pradeep J. Chowdhury*  
*Sr. Private Secretary*

True Copy  
By Order

Assistant Registrar  
ITAT, Mumbai