

आयकर अपीलीय अधिकरण, जयपुर न्यायपीठ, जयपुर
IN THE INCOME TAX APPELLATE TRIBUNAL, JAIPUR BENCHES "A", JAIPUR
श्री रमेश सी शर्मा, लेखा सदस्य एवं श्री विजय पाल राव, न्यायिक सदस्य के समक्ष
BEFORE: SHRI RAMESH C SHARMA, AM & SHRI VIJAY PAL RAO, JM

आयकर अपील सं./ITA No. 1272/JP/2018
निर्धारण वर्ष / Assessment Year :2013-14

Shri Manoj Kumar Agarwal, Flat No. 302, Golden Sobhagya, B-81, Rajendra Marg, Bapu Nagar, Jaipur.	बनाम Vs.	D.C.I.T., Circle-7, Jaipur.
स्थायी लेखा सं./जीआईआर सं./PAN/GIR No.: AAJPA 1377 K		
अपीलार्थी / Appellant		प्रत्यर्थी / Respondent

निर्धारिती की ओर से / Assessee by: Shri M.L. Borad (Adv)
राजस्व की ओर से / Revenue by : Shri Karni Dan Singh (JCIT)

सुनवाई की तारीख / Date of Hearing : 27/05/2019
उदघोषणा की तारीख / Date of Pronouncement : 06/06/2019

आदेश / ORDER

PER: R.C. SHARMA, A.M.

This is an appeal filed by the assessee against the order of Id.CIT(A)-3, Jaipur dated 11/09/2018 for the A.Y. 2013-14 in the matter of denial of claim of deduction U/s 35(1)(iii) of the Income Tax Act, 1961 (in short the Act) on account of donation to School of Human Genetics and Population Health.

2. Rival contentions have been heard and record perused. In this case, the assessee has claimed deduction U/s 35(1)(iii) of the Act in

respect of donation given to School of Human Genetics and Population Health. The A.O. declined the claim of deduction on the plea that the institution is not genuine. By the impugned order, the Id.CIT(A) confirmed the disallowance and the assessee is in further appeal before us.

3. It was argued by the Id AR of the assessee Shri M.L. Borad that during the year under consideration, the assessee had made a donation to School of Human Genetics & Population Health, an institute which is engaged in scientific research and duly notified by the Central Board of Direct Taxes in terms of Section 35(1)(iii) of the Act vide notification No.4/2010 dated 28/01/2010. He further contended that the institute to whom the assessee has donated was in existence and notified during the relevant F.Y. 2012-13. As per the Id AR the CBDT has rescinded notification on 15/9/2016 which was retrospective from 01/4/2007 but the institute was validly recognized by the CBDT on the date of donation. As per the Id AR the approval so granted to the institute was very much in force at the time of donation and the assessee had no reason to disbelieve the operation of approval and notification of the institute. He further argued that the subsequent notification by the CBDT rescinding the approval retrospectively will not affect the claim of the assessee in so far as there was no information with the assessee regarding non-

genuinity or not observing the standard fixed by the CBDT for making eligible itself for deduction U/s 35 of the Act. Accordingly, it was argued that the assessee's act was in a bonafide manner and relying on the decision of the Hon'ble Supreme Court in the case of Hitendra Vishnu Thakur Vs. State of Maharashtra, it was argued that no additional tax burden can be put on the assessee by making retrospective operations of certain notifications or withdrawal of notifications. As per the Id AR, the retrospective effect can be given only for the beneficial amendments but not to put the additional burden on the assessee. He further argued that explanation to Section 35(1) of the Act also provides that deduction to association 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, referred to in clause (ii) and (iii) has been withdrawn.

4. On the other hand, the Id DR has relied on the orders of the lower authorities and contended that the huge amount of donation given by the assessee, who is a salaried person, is not genuine and that exemption granted to the School of Human Genetics & Population Health has been withdrawn by the CBDT with retrospective effect,

therefore, the A.O. was justified in declining the assessee's claim of deduction of donation so made.

5. We have considered the rival contention and carefully gone through the orders of the authorities below and find from the record that during the year under consideration the assessee had claimed deduction for the donation given to School of Human Genetics and Population Health which was declined by the A.O.. The issue of allowability of deduction in respect of donation to School of Human Genetics and Population Health is squarely covered by the decision of the Coordinate Bench in the case of M/s P.R. Rolling Mills Pvt. Ltd. Vs DCIT in ITA No. 529/JP/2018 order dated 05/07/2018 and also the decision of the Coordinate bench of Kolkata in the case of DCIT Vs Maco Corporation (India) Pvt. Ltd. in ITA No. 16/Kol/2017 order dated 14/3/2018. The precise observation of the Tribunal in the case of M/s P.R. Rolling Mills Pvt. Ltd. Vs DCIT (supra) was as under:

"7. The Bench have heard both the sides on the issues raised in appeal, perused the material available on the record and also considered the case laws relied upon. The assessee is a private limited company engaged in manufacturing of rolled steel products. Return of income was filed electronically on 26/09/2014. The assessee has claimed weighted deduction U/s 35(1) (ii) of the Act. The assessee had made donation to an institute engaged in

Scientific Research. The authorities below has not allowed the deduction. The assessee had made donation of Rs.1,00,00,000/- to School of Human Genetics & Population Health, an institute engaged in scientific research and notified by the Central Board of Direct Taxes in terms of Section 35(1)(ii) of the Act vide notification No.4/2010 dated 28/01/2010. The institute, whom the donation was made was in existence and notified during the F.Y. 2013-14 when the assessee has made donations. The CBDT has rescinded notification on 15/9/2016. Although, it has been made retrospective effect from 01/4/2007. This institute was validly recognized by the CBDT on the date of donation made by the assessee. The approval granted to the institute was very much in force at the time of donation made by the assessee. The assessee had no reason to disbelieve the operation of approval and notification of the institute. In such a situation, the deduction claimed by the assessee is justified. The subsequent notification by the CBDT rescinding the approval retrospectively shall not or should not affect the claim of the assessee. There was no information with the assessee regarding non-genuinity or not observing the standard fixed by the CBDT for making eligible itself for deduction U/s 35 of the Act. The assessee's act was in a bonafide manner. It is well settled proposition of law that no additional tax burden can be put on the assessee by making retrospective operations of certain notifications or withdrawal of notifications. In the case of Hitendra Vishnu Thakur Vs. State of Maharastra (supra), the Hon'ble Supreme Court has held that a procedural statute should not generally speaking be applied retrospectively, where the result would be to create new disabilities or obligations, or to impose new duties in respect of transactions already accomplished. Further, a statute which not

only changes the procedure but also creates new rights and liabilities shall be continued to be prospection in operation, unless otherwise provided, either expressly or by necessary implications. Similarly in the case of CIT(Central-1), Delhi Vs Vatika Township Pvt. Ltd. (supra), the Hon'ble Supreme Court has held that the beneficial amendment which effects the public generally and where to confer such benefit appears to have been the legislators object, then the presumption would be that such a legislation, giving it a purposive construction, would warrant it to be given retrospective effect. Thus the retrospective effect can be given only for the beneficial amendments but not to put the additional burden that too on third party. Further the explanation to Section 35(1) of the Act also provides that deduction to 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 association, university, college or other institution, referred to in clause (ii) or clause(iii) has been withdrawn. The assessee has made donation i.e. on 13/01/2014, the institute was having a valid approval from the appropriate authorities and the assessee's claim cannot be denied. The Coordinate Bench of Kolkata ITAT in the case of M/s Maco Corporation (India) Pvt. Ltd. in ITA No. 16/Kol/2017, copy of which has been placed at page Nos. 82 to 91 of the paper book, wherein the donation was made to the same institute i.e. school of Human Genetics and Population Health, was held that in view of explanation to Section 35(1)(ii) of the Act, would not be withdrawn subsequently when recognition has been rescinded. Similarly the Coordinate Bench of Kolkata ITAT in the case of Saimed innovation

Vs. ITO in ITA No. 2231/Kol/2016 order dated 13/09/2017 has held that weighted deduction claimed U/s 35(1)(ii) of the Act cannot be denied on the basis of statement recorded during the survey and no opportunity was provided to cross examine the third party, who has given such statement. Further in view of the decision of Hon'ble Allahabad High Court in the case of CCE Vs. Shyam Traders 2016 (333) ELT 389 and the decision of Hon`ble Supreme Court in the case of Andaman Timber Industries (324) ELT 641 and the various other case laws relied upon by the Id. A.R., we find that the authorities below were not justified in denying claim of deduction U/s 35(1) (ii) of the Act to the assessee, hence, we set aside the orders of the authorities below.

8. *In the result, appeal of the assessee is allowed."*

6. The precise observation of Kolkata Bench of the ITAT in the case DCIT vs. Maco Corporation (India) Pvt. Ltd. in ITA No. 16/KOL/2017 for the AY 2013-14 order dated 14.03.2018 was as under:

"8. We have heard the rival submissions and perused the materials available on record. The brief facts pertaining to HHBHRF are as under:-

8.1. The brief fact pertaining to SGPH are as under:-

a) *SGPH was recognized vide Gazette Notification dated 28.1.2009 issued by the Central Board of Direct Taxes (CBDT in short), Ministry*

of Finance (Department of Revenue), Government of India, u/s 35 (1)(ii) of the Act.

b) SGHPH was also recognized as a scientific industrial research organization (SIRO) by Ministry of Science & Technology, Government of India. The renewal of recognition as SIRO by the Department of Scientific and industrial Research under the Scheme on Recognition of Scientific and Industrial Research Organisation, 1988 was made for the period from 1.4.2010 to 31.3.2013 vide communication in F.No. 14/473/2007-TU-V dated 17.6.2010.

8.2. At the outset, we find that the Taxation Laws (Amendment) Act, 2006 with retrospective effect from 1.4.2006 had introduced an Explanation in Section 35 of the Act which reads as under:-

Section 35(1)(ii) – 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.

Hence the aforesaid provisions of the Act are very clear that the payer (the assessee herein) would not get affected if the recognition granted to the payee had been withdrawn subsequent to the date of contribution by the assessee. Hence no disallowance u/s 35(1)(ii) of the Act could be made in the instant case.

8.3. *We find that there is no provision in section 35(1)(ii) of the Act to withdraw the recognition granted to the assessee therein. When there is no provision for withdrawal of recognition in the Act, the action of the revenue in withdrawing the recognition with retrospective effect from 1.4.2007 is unwarranted. In this regard, the recent decision of the Hon'ble Supreme Court in the case of Industrial Infrastructure Development Corporation (Gwalior) M.P. Ltd vs. CIT Gwalior reported in (2018) 90 taxmann.com 281 (SC) wherein it was held that :-*

21. *In our considered opinion. the CIT had no express power of cancellation of the registration certificate once granted by him to the assessee under Section 12A till 01.10.2004. It is for the reasons that, first, there was no express provision in the Act vesting the CIT with the power to cancel the registration certificate granted under Section 12A of the Act. Second, the order passed under Section 12A by the CIT is a quasi-judicial order and being quasi-judicial in nature, it could be withdrawn/recalled by the CIT only when there was express power vested in him under the Act to do so. In this case there was no such express power.*
22. *Indeed, the functions exercisable by the CIT under Section 12A are neither legislative and nor executive but as mentioned above they are essentially quasi judicial in nature.*
23. *Third, an order of the CIT passed under Section 12A does not fall in the category of "orders" mentioned in Section 21 of the General Clauses Act. The expression "order" employed in Section 21 would show that such "order" must be in the nature of a "notification", "rules" and "bye laws" etc. (see - Indian National Congress (1) v. Institute of Social Welfare [2002] 5 SCC 685.*

24. *In other words, the order, which can be modified or rescinded by applying Section 21, has to be either executive or legislative in nature whereas the order, which the CIT is required to pass under Section 12A of the Act, is neither legislative nor an executive order but it is a "quasi judicial order". It is for this reason, Section 21 has no application in this case.*
25. *The general power, under Section 21 of the General Clauses Act, to rescind a notification or order has to be understood in the light of the subject matter, context and the effect of the relevant provisions of the statute under which the notification or order is issued and the power is not available after an enforceable right has accrued under the notification or order. Moreover, Section 21 has no application to vary or amend or review a quasi-judicial order. A quasi-judicial order can be generally varied or reviewed when obtained by fraud or when such power is conferred by the Act or Rules under which it is made. (See Interpretation of Statutes, Ninth Edition by G.P. Singh page 893).*
26. *****
27. *It is not in dispute that an express power was conferred on the CIT to cancel the registration for the first time by enacting sub-Section (3) in Section 12AA only with effect from 01.10.2004 by the Finance (No.2) Act 2004 (23 of 2004) and hence such power could be exercised by the CIT only on and after 01.10.2004. i.e. (assessment year 2004-2005) because the amendment in question was not retrospective but was prospective in nature.*
28. *The issue involved in this appeal had also come up for consideration before three High Courts, namely, Delhi High Court in the case of DIT (Exemptions) v. Mool Chand Khairati*

Ram Trust [2011] 11 taxmann.com 42/199 Taxman 1/339 ITR 622. Uttaranchal High Court in the case of Welham Boys' School Society v. CBDT 12006] 285 ITR 74/ [2007] 158 Taxman 199 and Allahabad High Court in the case of Oxford Academy for Career Development v. Chief CIT (2009) 315 1TR 382.

29. *All the three High Courts after examining the issue, in the light of the object of Section 12A of the Act and Section 21 of the General Clauses Act held that the order of the CIT passed under Section 12A is quasi-judicial in nature. Second, there was no express provision in the Act vesting the CIT with power of cancellation of registration till 01.10.2004; and lastly, Section 21 of the General Clauses Act has no application to the order passed by the CIT under Section 12A because the order is quasi-judicial in nature and it is for all these reasons the CIT had no jurisdiction to cancel the registration certificate once granted by him under Section 12A till the power was expressly conferred on the CIT by Section 12AA(3) of the Act w.e.f. 01.10.2004.*

We hold that the ratio decidendi of the aforesaid judgement of the Hon'ble Apex Court would squarely be applicable to the facts of the instant case. In fact, the assessee's case herein falls on a much better footing than the facts before the Hon'ble Apex Court. In the case before Hon'ble Apex Court, the power of cancellation of registration us 12A of the Act was conferred by the Act on the Id CIT w.e.f. 1.10.2004 and the Hon'ble Apex Court held that prior to that date. no cancellation of registration could happen. But in the instant case., there is absolutely no provision for withdrawal of recognition u/s 35(1)(ii) of the Act. Hence we hold that the withdrawal of recognition u/s 35(1)(ii) of the Act in the hands of the payee organizations would not affect the rights

and interests of the assessee herein for claim of weighted deduction u/s 35(1)(ii) of the Act.

8.4. We also find that the co-ordinate bench of this tribunal in exactly similar facts had decided the issue in favour of the assessee in the following cases:-

a) Rajda Polymers vs. DCIT in ITA No. 333/Kol /2017 for Asst Year 2013-14 dated 8.11.2017.

b) Saimed Innovation vs. ITO in ITA No. 2231/Kol/2016 for Asst Year 2013-14 dated 13.9.2017.

The findings of those decisions are not reiterated herein for the sake of brevity.

8.5. In view of the aforesaid findings in the facts and circumstances of the case and respectfully following the various judicial precedents relied upon hereinabove, we hold that the Id CIT(A) had rightly deleted the disallowance u/s 35(1) (ii) of the Act in the sum of Rs. 3,06,25,000/- made by the Id AO. Accordingly, the Grounds raised by the revenue are dismissed.

9. In the result, the appeal of the revenue is dismissed."

7. As the facts and circumstances during the year under consideration are exactly similar wherein donation given to School of Human Genetics and Population Health was declined by the A.O. Discussing the very same factual position as discussed in the instant case, the disallowance was deleted by the Tribunal after having a detailed observation as stated above. Respectfully following the decision of the Coordinate Benches as

discussed above, we do not find any merit in the disallowance so made by the A.O. Hence, we direct the A.O. to delete the same.

8. In the result, appeal of the assessee is allowed.

Order pronounced in the open court on 06th June, 2019.

Sd/-
(विजय पाल राव)
(VIJAY PAL RAO)
न्यायिक सदस्य / Judicial Member

Sd/-
(रमेश सी शर्मा)
(RAMESH C SHARMA)
लेखा सदस्य / Accountant Member

जयपुर / Jaipur
दिनांक / Dated:- 06th June, 2019

*Ranjan

आदेश की प्रतिलिपि अग्रेषित / Copy of the order forwarded to:

1. अपीलार्थी / The Appellant- Shri Manoj Kumar Agarwal, Jaipur.
2. प्रत्यर्थी / The Respondent- The D.C.I.T., Circle-7, Jaipur.
3. आयकर आयुक्त / CIT
4. आयकर आयुक्त(अपील) / The CIT(A)
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, जयपुर / DR, ITAT, Jaipur
6. गार्ड फाईल / Guard File (ITA No. 1272/JP/2018)

आदेशानुसार / By order,

सहायक पंजीकार / Asst. Registrar