

**आयकर अपीलीय अधिकरण "SMC" न्यायपीठ मुंबई में।**

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

**श्री महावीर सिंह, न्यायिक सदस्य के समक्ष ।**

**BEFORE SRI MAHAVIR SINGH, JUDICIAL MEMBER**

**आयकर अपील सं./ ITAs No. 5121 & 5122/Mum/2018**

**(निर्धारण वर्ष / Assessment Years 2012-13 & 2014-15)**

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| Mahesh C. Thakker<br>51, Blue Heaven, 14, Mount<br>Pleasant road,<br>Mumbai-400 006 | Vs. | The Asst. Commissioner of<br>Income Tax, Circle 19(2),<br>2 <sup>nd</sup> Floor, Matru Mandir,<br>room No. 207, Tardeo<br>Road, Mumbai-400 007 |
| <b>(अपीलार्थी / Appellant)</b>  | ..  | <b>(प्रत्यर्थी / Respondent)</b>   |
| <b>स्थायी लेखा सं./PAN No. AACPT1848B</b>   |     |  |

अपीलार्थी की ओर से / **Appellant by** : Shri Sameer G. Dalal, AR

प्रत्यर्थी की ओर से / **Respondent by** : Shri Dr. Pramod Nikalje, DR

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| सुनवाई की तारीख / <b>Date of hearing:</b>       | <b>13.08.2019</b> |
| घोषणा की तारीख / <b>Date of pronouncement :</b> | <b>21.08.2019</b> |

**आदेश / ORDER**

**महावीर सिंह, न्यायिक सदस्य/**  
**PER MAHAVIR SINGH, JM:**

These appeals of the assessee are arising out of the orders of Commissioner of Income Tax (Appeals)-4, Mumbai [in short CIT(A)], in Appeal No CIT(A)-4/Tr.-133 & 99/ACIT-19(2)/2016-17 & 17-18 vide order dated 30.07.2018. The Assessments were framed by the Asst.



Commissioner of Income Tax, Circle-19(2) Mumbai (in short 'ACIT/ AO') for the A.Ys. 2012-13 & 2014-15 vide orders dated 26.10.2016, 15.11.2016 under section 143(3) of the Income Tax Act, 1961 (hereinafter 'the Act').

2. The only common issue in these two appeals of assessee is as regards to the order of CIT(A) confirming the action of the AO in making disallowance of claim of deduction under section 35(1)(ii) of the Act in regard to donation given to School of Human Genetics & Population Health (SHG&PG), which is notified under section 35(1)(ii) of the Act. The issue is common in both the years and facts and circumstances are exactly identical except the quantum. Hence, I will take the facts from AY 2012-13 in ITA No. 5121/Mum/2018. The grounds raised in AY 2012-13 read as under: -

*“1.1 the Hon'ble CIT(A) -4 erred in facts and in circumstances of the case and in Law in approving dis-allowance of claim of deduction of ₹ 3,50,000/- for donation of ₹ 2,00,000/-, which is covered under section 35(1)(ii) of the Income Tax Act, 1961.*

*1.2 The donation of ₹ 2,00,000/- given to School of Human Genetics & Population Health (SHG&PH) is notified institution under section 35(1)(ii).”*

3. Briefly stated facts are that the assessee is having income from salary, business, capital gains and other sources. The AO received information from DDIT, Investigation Kolkata that the assessee is beneficiary of bogus claim of donations, wherein deduction was claimed



under section 35(1)(ii) in relation to donations given to SHG&PG. The AO noted the fact that in this case a commission was issued u/s 131(1)(d) of the Act to DDIT (Inv.) Kolkata to conduct necessary verification to ascertain genuineness of the claim made by the beneficiaries and also to verify genuineness of the transaction. The DDIT (Investigation) Kolkata in response to the commission issued stated that complaints as also certain credible information was received against two concerns i.e. M/s Herbicare Healthcare Bio-herbal Reserved Foundation ("HHBRF") and M/s School of Human Genetics and Population Health (SHGPH) for accepting donations under section 35(1)(ii) of the Act and thereby providing accommodation entries to the beneficiaries. Accordingly, survey under section 133(A) was carried out on 27.01.2015 at the registered/ Administrative offices of HHBRF and SHGPH by DDIT (Investigation) Kolkata. Consequent to such actions by the DDIT (Investigation) Kolkata information was received through DGIT (Investigation) Mumbai, by the AO that assessee had taken accommodation entries of donations wherein deduction u/s.35(1)(ii) amounting to ₹ 3,00,000/- was claimed by the assessee for A.Y. 2012-13 by claiming a donation of ₹ 3 lacs made to School of Human Genetics and Population Health. It was based on such information received by the AO that reasons were recorded for reopening the assessment and notice under section 148 of the Act dated 28.01.2016 was issued to the assessee.

4. The AO noted that the assessee has claimed to have given donation of ₹ 3 lacs to SHG&PG and claimed deduction under section 35(1)(ii) of the Act amounting to ₹ 5.25 lacs in the return of income. The AO noted that the evidence is gathered by DDIT investigation Unit 4(1), Kolkata, statements of the directors recorded during investigation and other employees, directors of the Trust, the enquiries conducted in the



case of entry operators, examination of bank account statements of the assessee, trust and entry operations, the reply of SHG&PG and noting down the modus operandi of the Trust it is clear that donations received by SHG&PG were never utilized for the purpose of scientific research or for setting up of new infrastructure. Hence, the accommodation entry in the form of donation of ₹ 3 lacs to SHG&PG against which the assessee has claimed deduction of ₹ 5.25 lakh under section 35(1)(ii) of the Act was disallowed. Aggrieved, assessee preferred the appeal before CIT(A). The CIT(A) also confirmed the action of the AO. Aggrieved, assessee came in appeal before Tribunal.

5. At the outset, the learned Counsel for the assessee filed complete details and stated that it has made donation / contribution to School of Human Genetics and Population Health of ₹ 3 lakhs by Demand Draft No. 504404 of State Bank of India dates 27.03.2012, SHG&PH has issued Receipt No. 933 dated 27.03.2012. Receipt No. 933 dated 27.03.2012 of ₹ 3 lakhs which is enclosed at assessee's paper book at page 16. Notification under section 35(1)(ii), which is enclosed at page 17. At the time of making donation to the said institution on 27/03/2012, the said Institution was having all the requisite certificates / approvals / recognitions necessary for it being eligible to receive such donation u/s. 35 (1) (ii) of the Act. The learned Counsel stated that in course of the assessment proceeding copies of the receipts, approvals and recognitions were submitted. The recognition / approval as envisaged in the section are not given to all and sundry. There is elaborate procedure laid down for such purpose, which involves, among other, rigorous verification process by the Government / Government Institutions. The concerned Institution has to make application in the prescribed form and in the prescribed mariner to the Central Government. The Central



Government, in turn, calls for various details / information / documents and conduct inquiries and it is only after being fully satisfied itself about genuineness of the activities of the Institution that such Institution is notified for the purpose of this section. Besides, in terms of Rule 5C read with 5E of the Income - tax Rules, 1962, before such Institution becomes eligible under this provision, there are various other obligations / conditions to be fulfilled, which include continuous monitoring of the research work undertaken by such Institution. As such, this is not a one-time process but it is a continuing monitoring process. In the present case, it was only after going through such rigorous process of verification that the Donee Institution was granted the registration. SGH&PH is holding following registration and certificates:-

- i) Certificate of Registration of societies, West Bengal Act XXVI of 1961 No.S/73334 of 1991 -1994.*
- ii) Registration u/s 12A of the I.T. Act, 1961 dated 27/10/2004.*
- iii) Certificate for the exemption u/s 80G (5)(vi) of the I.T. Act, 1961 dated 29.10.2008.*
- iv) Certificate of recognition u/s 52(23) & (4) of the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 dated 10.03.2010.*
- v) Registered with Ministry of Science and Technology, Department of Science and Industrial Research, new Delhi dated 01.04.2013.*
- vi) Registered under foreign Contribution (Regulation Act 1976 – Regn. No. 147120595 dated 14.06.2002.*



6. In view of the above submissions, it was claimed that exactly on identical issues the co-ordinate Bench of this Tribunal 'B' Bench Kolkata in the case of DCIT vs. Maco Corporation (India) Pvt. Ltd. in ITA No. 16/Kol/2017 vide order dated 14.03.2018 for AY 2013-14 has considered the issue in regard to very same trust i.e. SGHPH and holds that prior to the date of donation under cancellation of registration has happened and there is absolutely no provision of withdrawal of recognition under section 35(1)(ii) of the Act. Hence, allowed the claim of the assessee by observing in Para 8.1 and 8.5 as under: -

*“8.1. The brief fact pertaining to SGHPH are as under: -*

*a) SGHPH 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.”*

7. Similarly, the another co-ordinate Bench of this Tribunal, Jaipur Bench, in the case of P.R. Rolling Mills Pvt. Ltd. vs. DCIT in ITA No. 529/JP/2019 vide order dated 05.07.2018 for AY 2014-15 has considered



ITAs No.5122 & 5122/Mum/2018

the same Trust/ institute i.e. SHG&PG and allowed the claim of the assessee. The facts and circumstances are exactly identical in the present case also, respectfully following the decision of co-ordinate Bench, we allow the claim of deduction under section 35(1)(ii) of the Act.

8. Similar, are the facts in AY 2014-15, hence taking a consistent view we allow the claim of assessee in this year also.

9. **In the result, both, the appeals of assessee are allowed.**

Order pronounced in the open court on 21-08-2019.

Sd/-

(महावीर सिंह /MAHAVIR SINGH)

(न्यायिक सदस्य/ JUDICIAL MEMBER)

मुंबई, दिनांक/ Mumbai, Dated: 21-08-2019

सुदीप सरकार, व.निजी सचिव / Sudip Sarkar, Sr.PS

**आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. आयकर आयुक्त(अपील) / The CIT(A)
4. आयकर आयुक्त / CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, मुंबई / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

उप/सहायक पंजीकार (Asstt. Registrar)  
आयकर अपीलीय अधिकरण, मुंबई / ITAT, Mumbai