

**IN THE INCOME TAX APPELLATE TRIBUNAL  
MUMBAI BENCH "D" MUMBAI**

**BEFORE SHRI C.N. PRASAD (JUDICIAL MEMBER) AND  
SHRI N.K. PRADHAN (ACCOUNTANT MEMBER)**

**ITA No. 5874/MUM/2018  
Assessment Year: 2009-10**

**&**

**ITA No. 5875/MUM/2018  
Assessment Year: 2012-13**

**&**

**ITA No. 5876/MUM/2018  
Assessment Year: 2014-15**

Shri Devajyoti N.  
Bhattacharya  
C/o. Aditya Birla  
Management Corporation  
Pvt. Ltd., Birla Aurora  
Level 17, Dr. Annie Besant  
Road, Worli, Mumbai-  
400030.

**PAN No. AADPB0965A**

**Appellant**

Asst. Commissioner of  
Vs. Income Tax, Circle-17(1),  
Mumbai.

**Respondent**

Assessee by : Mr. Sameer Dalal, AR  
Revenue by : Mrs. Jyothi Lakshmi Nayak, DR

Date of Hearing : 24/09/2019  
Date of pronouncement: 30/09/2019

**ORDER**

**PER N.K. PRADHAN, AM**

The captioned appeals filed by the assessee are directed against the order passed by the Commissioner of Income Tax (Appeals)-55, Mumbai [in short 'CIT(A)'] and arise out of assessment completed

u/s143(3) r.w.s. 147 of the Income Tax Act 1961, (the 'Act'). Facts being identical, we begin with the AY 2009-10.

2. The grounds of appeal filed by the assessee read as under :

- 1.1. The Id. CIT (A) erred in confirming the action of the assessing officer ("the A.O") whereby the AO disallowed the Appellant's claim of deduction under section 35AC of the Act amounting to Rs.3,00,000/- being amount paid to Navjeevan Charitable Trust in a very cryptic and arbitrary manner.
- 1.2. While doing so the Id. CIT (A) failed to appreciate that:
  - i. that the A.O while disallowing the Appellant's claim based his conclusion on suspicion, surmises and conjecture, taking into account irrelevant, extraneous and impermissible considerations and ignoring relevant material and considerations placed before him,
  - ii. the Appellant had complied with the all the conditions laid down for claiming the deduction under section 35AC of the Act;
  - iii. the Appellant had procured all the relevant details and documents before giving donation to the trust.
- 1.3. It is submitted that in the facts and circumstances of the case, and in law, no such disallowance was called for.

3. Briefly stated, the facts of the case are that the assessee filed his return of income for the assessment year (AY) 2009-10 on 31.07.2009 declaring income of Rs.2,07,84,190/-. The assessee is engaged in management consultancy services. During the year, the assessee has claimed deduction of Rs.3,00,000/- paid to Navjeevan Charitable Trust u/s 35AC of the Act. During the course of assessment proceedings, the AO observed that a search action u/s 132 of the Act was conducted on Navjeevan Charitable Trust on 27.10.2014 and it was found by the Investigation Wing of the Department that all the expenses of the Trust

were mere book entries and no genuine expenses were made by the said Trust for the purpose of section 35AC of the Act. One of the trustees accepted that all the expenses were bogus and the donations received in cheques were returned in cash to all the donors after deducting nominal commission. In view of the above findings, the AO asked the assessee to showcause as to why the amount given as donation should not be disallowed and added to the total income. In response to it, the assessee filed a reply stating that he had given donation by account payee cheques only and on the basis of documents produced before him by the trustee of Navjeevan Charitable Trust; as per the documents, the said Trust is registered with Charity Commissioner, Mumbai and also u/s 12A of the Income Tax Act, 1961 with PAN : AAATN6332N; the Trust is also registered under FCRA, 1976. It was explained to the AO that on presentation of the above facts by one Mr. Ashok Bagadia, trustee of the said Trust, the assessee has given donation. It was further explained to the AO that on receipt on the notice to showcause, the assessee tried to contact Mr. Bagadia but was informed that Mr. Bagadia expired on 06.11.2014. Further, it was submitted before the AO that as per the copy of the official gazette Navjeevan Charitable Trust is registered and exemption u/s 35AC is applicable for financial year 2012-13 on donation to the said Trust.

However, the AO was not convinced with the above explanation of the assessee for the reason that further survey actions conducted by the Investigation Wing of the Department on some of the donors conclusively proved that Navjeevan Charitable Trust indeed returned the donation in cash. Further, the AO noted that the assessee was unable

to produce the party to whom donation was made. Notices u/s 133(6) and 131 issued by the Investigation Wing of the Department prove the *modus operandi* and lack of genuineness of the transactions. Thus the AO made a disallowance of Rs.3,00,000/- to the income declared by the assessee.

4. Aggrieved by the order of the AO, the assessee filed an appeal before the CIT(A). It is recorded by the CIT(A) in order dated 28.08.2018 that the assessee failed to file any new material during the course of appellate proceedings in support of his claim that deduction u/s 35AC be allowed. In absence of any evidence apart from what was filed before the AO, the CIT(A) confirmed the disallowance of Rs.3,00,000/- made by the AO.

5. Before us, the Ld. counsel for the assessee submits that during the year under consideration, the assessee claimed deduction u/s 35AC of the Act amounting to Rs.3,00,000/- being paid to Navjeevan Charitable Trust and the said donation was made with respect to 'Shree Navjeevan' project of the Trust notified u/s 35AC of the Act. It is stated by him that during the re-assessment proceedings, the assessee, to substantiate his claim of donation of Rs.3,00,000/-, had filed before the AO (i) Copy of Official gazette dated 12.01.2009, where the Central Government had notified the Trust for a period of 3 years beginning from financial year 2008 - 09, (ii) Copy of letter from Ministry of Home Affairs granting registration to the Trust under the Foreign Contribution (Regulation) Act, 1976, (iii) P.A.N. Card issued to the Trust (iv) Presentation given by the Trust to the Appellant for procuring donation for its activities (v)

Receipt along with Form No. 58 A issued by the Trust for the donation given to it (vi) Copy of Bank Statement of the Appellant for the period 01.04.2008 to 31.03.2009.

Further, it is stated by him that the trustee who had approached the assessee for donation to the said Trust, Mr. Ashok Bagadia had expired on 06.11.2014 and apart from Mr. Bagadia, the assessee was not knowing any other person of the Trust, as such he was not able to produce any other authorized person from the Trust before the AO. Further, it is stated by him that the payment of donation was through account payee cheque and there was no evidence brought on record by the AO that donation given by the assessee was subsequently returned back in cash. It is further argued that though the survey proceedings conducted in the hands of certain donors revealed that the donations were bogus in nature, but no such finding had been given in the hands of the assessee, thus the genuineness of payment of donation by the assessee cannot be doubted in absence of any material to support the view taken by the AO. It is stated that when the assessee gave donation to the Trust, it was enjoying approval u/s 35AC of the Act and also by other regulatory bodies/authorities. Relying on the decision of the Tribunal dated 05.04.2019 in *Saroj Plantations Pvt. Ltd. v. ITO* (ITA No. 648/M/2018), the Ld. counsel submits that similar disallowance made in the case of donation to Navjeevan Charitable Trust has been deleted.

6. On the other hand, the Ld. Departmental Representative (DR) submits that as a result of search action conducted u/s 132 of the Act on Navjeevan Charitable Trust on 27.10.2014, it was found by the

Investigation Wing of the Department that all the expenses of the Trust were mere book entries and no genuine expenses were made by the Trust for the purpose of section 35AC of the Act. During the course of search, one of the trustees accepted that all the expenses were bogus and the donations received in cheques were returned in cash to all the donors after deducting nominal commission. The Ld. DR thus supports the order passed by the CIT(A).

7. We have heard the rival submissions and perused the relevant materials on record. Indisputably, the assessee, in order to substantiate his claim of donation of Rs.3,00,000/- paid to Navjeevan Charitable Trust, submitted documents viz. (i) Copy of Official gazette dated 12.01.2009, where the Central Government had notified the Trust for a period of 3 years beginning from financial year 2008 – 09, (ii) Copy of letter from Ministry of Home Affairs granting registration to the Trust under the Foreign Contribution (Regulation) Act, 1976, (iii) P.A.N. Card issued to the Trust (iv) Presentation given by the Trust to the Appellant for procuring donation for its activities (v) Receipt along with Form No. 58 A issued by the Trust for the donation given to it (vi) Copy of Bank Statement of the Appellant for the period 01.04.2008 to 31.03.2009.

After the assessee has adduced evidence to establish *prima facie* the payment of donation of Rs.3,00,000/- to Navjeevan Charitable Trust, the onus shifted to the AO. However, the AO failed to conduct any inquiry before making disallowance of the above claim of the assessee. The AO has not brought on record that donation given by the assessee was subsequently returned back in cash, except a mere bald statement

in the assessment order 'that survey action conducted on some of the donors have conclusively proved that the Trust indeed returned the donation in cash'. The AO has not found any fault in the documents filed by the assessee during the course of assessment proceedings.

In *CIT v. A And A Bakery P. Ltd.*(2008) 302 ITR 51(Del), it is held that "it is for the taxpayer to prove the expenditure claimed by him, But the burden will shift, where the assessee had produced *prima facie* evidence as payment by cheque, so that no further proof may be expected. Disallowance prompted by mere suspicion in such cases was held unjustified."

In view of the above, we delete the disallowance of Rs.3,00,000/- made by the AO. Facts being identical, our decision for the AY 2009-10 applies *mutatis mutandis* to AYs 2012-13 & 2014-15.

8. In the result, the appeals are allowed.

**Order pronounced in the open Court on 30/09/2019.**

Sd/-  
(C.N. PRASAD)  
JUDICIAL MEMBER

Sd/-  
(N.K. PRADHAN)  
ACCOUNTANT MEMBER

Mumbai;

Dated: 30/09/2019

*Rahul Sharma, Sr. P.S.*

**Copy of the Order forwarded to :**

1. The Appellant
2. The Respondent.
3. The CIT(A)-
4. CIT
5. DR, ITAT, Mumbai
6. Guard file.

//True Copy//

BY ORDER,

(Sr. Private Secretary)  
**ITAT, Mumbai**