

IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI BENCH "H", MUMBAI
BEFORE SHRI VIKAS AWASTHY, JUDICIAL MEMBER
AND
SHRI N.K.PRADHAN, ACCOUNTANT MEMBER
ITA NO.6372/MUM/2018(A.Y. 2012-13)

Himar Speciality Chemicals Pvt. Ltd.,
Shop No.S/15, Hazari Baug CHS,
LBS Marg, Station Road,
Vikhroli(West)
Mumbai 400 083
PAN:AAACH8277M

..... Appellant

Vs.

ITO-10(1)(1),
Mumbai

..... Respondent

Appellant by : Shri Shailesh N. Doshi
Respondent by : Shri Mohanlal

Date of hearing : 09/10/2019
Date of pronouncement : 17/10/2019

ORDER

PER VIKAS AWASTHY, JM:

This appeal by the assessee is directed against the order of CIT(A) - 17, Mumbai dated 13/08/2018 for the assessment year 2012-13.

2. The brief facts of the case as emanating from documents on record are; the assessee company is engaged in trading and marketing of pharmaceutical products. During the assessment year under appeal, the assessee made donations to the tune of Rs.4,50,000/- to Navjeevan Charitable Trust and claimed the same as deduction under section 35AC of the Income Tax Act, 1961 (in short 'the Act'). A search action under

section 132 of the Act was carried out in the case of Navjeevan Charitable Trust on 27/10/2014, consequently, assessment of the assessee for assessment year 2012-13 was reopened. In reassessment proceedings the Assessing Officer held that the donations made to Navjeevan Charitable Trust are not genuine and hence, disallowed the donations to the tune of Rs.3,00,000/-. Against the assessment order passed under section 143(3) r.w.s. 147 of the Act dated 27/12/2016, the assessee filed appeal before CIT(A).

3. The CIT(A) issued notice for enhancement and thereafter disallowed assessee's entire claim of Rs.4,50,000/- under section 35AC of the Act. Hence, the present appeal by the assessee.

4. Shri Shailesh N. Doshi appearing on behalf of the assessee submitted that the CIT(A) has passed the impugned order in a mechanical manner without appreciating the facts on record and without affording proper opportunity of hearing to the assessee. The Id.Authorized Representative of the assessee submitted that notice of enhancement was given to the assessee on 10/08/2018 with a directions to furnish explanation within seven days from the date of receipt of the said notice. The impugned order was passed by the CIT(A) within a period of three days from the date of notice i.e. on 13/08/2018, without waiting for the assessee's explanation. The impugned order has been passed without considering the fact that the statement of Shri Subhash Rajaram Kadam, which was recorded on 10/11/2014 was retracted subsequently. In cross-examination, the said Shri Subhash Rajaram Kadam admitted that he was not aware of the fact that he was one of Trustees of Navjeevan

Charitable Trust. He further admitted that he was not aware of the donations received by the Trust and was not in possession of the ledger accounts or books of the Trust. Under these circumstances, the assumption of the lower authorities that the amount paid by the assessee as donation was received back in cash is unsustainable.

5. On the other hand, Shri Mohan Lal representing the Department vehemently defended the impugned order and prayed for dismissing the appeal of assessee.

6. We have heard the submissions made by representatives of rival sides and have perused the orders of authorities below. The assessee in appeal has assailed the findings of the CIT(A) in disallowing the assessee's claim of donation of Rs.4,50,000/- under section 35AC of the Act. The main contention of the assessee is that the impugned order has been passed without appreciating the facts and documents on record and without affording proper opportunity of hearing to the assessee.

7. A perusal of the assessment order reveal that the donations made by the assessee to Navjeevan Charitable Trust has been disallowed in reassessment proceedings primarily on the basis of the statement of one Subhash Rajaram Kadam, one of the Trustees of the aforesaid Trust. Though the assessee had claimed deduction of Rs.4,50,000/- under section 35AC of the Act on account of donations made to the Trust, the Assessing Officer had disallowed Rs.3,00,000/- only. During the first appellate proceedings, the CIT(A) enhanced the disallowance to Rs.4,50,000/-. Notice of enhancement was given to the assessee on 10/08/2018 by CIT(A) seeking explanation within a period of 7 days from

the date of receipt of the said notice. However, the impugned order was passed within three days i.e. on 13/08/2018. A perusal of the impugned order reveal that the order has been passed in violation of the principles of natural justice, without affording proper opportunity of hearing to the assessee, in accordance with law. In the facts of the case, we deem it proper to restore this appeal back to the file of CIT(A) with a direction to pass fresh order on merits after considering the documents and statement on record and after affording reasonable opportunity of hearing to the assessee, in accordance with law.

8. In the result, impugned order is set-aside and the appeal of assessee is allowed for statistical purpose.

Order pronounced in the open court on Thursday, the 17th day of October, 2019.

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

Sd/-
(VIKAS AWASTHY)
JUDICIAL MEMBER

Mumbai, Dated 17/10/2019
Vm, Sr. PS(O/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,

(Dy./Asstt. Registrar)
ITAT, Mumbai