

IN THE INCOME TAX APPELLATE TRIBUNAL KOLKATA BENCH '(SMC)', KOLKATA
[Before Shri P.M. Jagtap, Vice President (KZ)]

I.T.A. No. 1542/Kol/2019

Assessment Year: 2014-15

Kharag Singh Singhee (since deceased).....Appellant
(Rep. by Basant Kr. Singhee, Legal Heir)
9/12, 2nd Floor, Mercantile Building,
Lal Bazar Street, Dalhousie,
Kolkata - 700 001.
[PAN: AKQPS 7038 C]

Vs

JCIT (OSD) CIRCLE 9(1) Kolkata.....Respondent
P-7, Chowringhee Square,
Kolkata - 700 069.]

Appearances by:

Shri Amit Agarwal, Advocate appearing on behalf of the Assessee.

Shri Jayanta Khanra, JCIT, Sr. DR appearing on behalf of the Revenue.

Date of concluding the hearing : November 19, 2019

Date of pronouncing the order : December 18, 2019

ORDER

This appeal filed by the assessee is directed against the order of Ld. CIT(A) - 3, Kolkata dated 22.04.2019 and the solitary issue involved therein relates to the disallowance of assessee's claim for deduction of Rs. 12,25,000/- u/s 35(1)(ii) of the Income Tax Act, 1961 in respect of donation of Rs. 7,00,000/- given to "The School of Human Genetics and Population Health" and "Matrivani Institute of Experimental Research & Education".

2. I have heard the arguments of both the sides and also perused the relevant material available on record. As agreed by the Ld. Representative of both the sides, the solitary issue involved in this case is squarely covered in favour of the assessee by the decision of Division Bench of this Tribunal in the case of Narbheram Vishram

Gua, vs DCIT rendered vide its order dated 27.07.2018 passed in ITA No. 42 & 43/Kol/2018 wherein a similar issue was decided by the Tribunal vide paragraph no. 13 to 16 which read as under:

"13. We have given a careful consideration to the rival submissions and perused the materials available on record, we note that the assessee has challenged disallowance of weighted deduction of Rs.4,81,25,000/- for A.Y. 2013-14 and disallowance of weighted deduction of Rs.10,50,00,000/-, for A.Y. 2014-15, claimed by him under section 35(1)(ii) of the Act in respect of the amounts of donations made to two Institutions viz. 'Matrivani Institute Experimental Research & Education' (hereinafter referred to as 'Matrivani') and 'The School of Human Genetics and Population Health' (hereinafter referred to as 'SHG'). The Assessee Firm in A.Y. 2014-15, made donation of Rs,2,00,00,000/ to Matrivani and Rs,4,00,00,000/ to SHG and claimed weighted deduction of Rs.10,50,00,000 under section 35(1)(ii) of the Income Tax Act, 1961, being 175% of the aggregate sum of Rs.6,00,00,000/- (Rs,2,00,00,000 + Rs,4,00,00,000) donated to these two institutes which were approved by the Central Government for the purposes of section 35(l)(ii) of the Act read with Rule 5C and 5E of the Income Tax Rules, 1962. In the assessment year 2013-14, the assessee claimed weighted deduction of Rs.4,81,25,000/- under section 35(1) (ii) of the Act, which is 175% of the amount of donation being the sum of Rs.2,75,00,000/- in respect of the donation given to 'The School of Human Genetics and Population Health'. We note that the Notifications to this effect, that these two institutions viz: 'Matrivani' and 'SHG', were approved by the Central Government for the purpose of section 35 (1) (ii) of the Act, was published in the Gazette of India. However, the deduction claimed by the assessee was denied by the Assessing Officer on the basis of the allegations contained in the report of the Investigation Wing of Kolkata that the said donations were bogus. The reasons stated therein, in short, were that statements of some key persons of these two donee institutions were recorded by the Investigation authority in course of survey proceedings in their cases. The said key person, in their statements, accepted to have received donations from various entities in lieu of cash returned to them after deducting commission there from.

14. We note that, during the course of hearing, before us, the Id Counsel for the assessee submitted that, the sums paid to "Matrivani" and "SHG", were genuine donations and both of the Institutions were admittedly registered under section 12A of the Income Tax Act, 1961. We note that

both of the said two Institutions viz, "Matrivani" and "SHG", are Scientific Research Association approved as such by Central Government under section 35(1)(ii) of the Income Tax Act, 1961 vide Notification, bearing No. 229/2007 (F.No.203/135/2007/ITA-II) dated 21.08.2007 and Notification No. 4/2010 (F. No. 2B/A/2009,/ITA-II dated 28.01.2010 respectively, published in Official Gazette of India. The assessee categorically denied that it ever received back the amounts of donations in cash or in kind from the said Institutions and from any person whatsoever in lieu of the various amounts donated to these two institutions. We note that in the statements, of key persons and alleged brokers recorded by the Investigation Wing in course of survey proceedings, in their cases and the extracts of which was provided to the assessee in the show cause notice, the name of the assessee firm does not appear anywhere. It is to be noted that none of those persons implicate the assessee to have made bogus donations and that cash was paid to the donors assessee in lieu of the alleged bogus donation after deducting their commission.

We note that the statements of the various parties and persons were recorded behind the back of the assessee and the Assessing Officer did not allow opportunity of cross examination. We note that in absence of opportunity of cross-examination no reliance could be made on such statements to draw any adverse inference against the assessee firm. The assessee firm denied its knowledge of the statements made by these institutes which were relied on by the Investigation Wing and the Assessing Officer. We note that not providing the opportunity of cross-examination is against the principle of natural justice and for that we rely of the judgment of Hon'ble Delhi High Court in the case of CIT vs. Dharam Pal Prem Chand Ltd. [2007] 295 ITR 105, 108 (del). We note that on identical facts, the similar proposition was upheld by the Coordinate Bench of Kolkata in the case of Rajda Polymers, ITA No.333/Kol/2017, for Assessment Year 2013-14 wherein it was held as follows:

"10.....Thus we note from the entire facts and circumstances, that the AO got swayed away with the statement recorded on oath of Mr. Swapan Ranjan Dasgupta during survey conducted at the premises of M/s. Herbicure. We have reproduced Question no. 22 and 23 and answers given by Shri Swapan Ranjan Dasgupta, wherein he admits to provide accommodation entries in lieu of cash. This information we should say can be the tool to start an investigation when the assessee made the claim for weighted deduction. The general statement of Shri Swapan Ranjan Dasgupta against donation made

the claim of assessee for deduction suspicious. However, when the AO investigated, Shri Swapan Ranjan Dasgupta has confirmed that M/s. Herbicure was in receipt of the donation and it has not given any refund in cash, then the sole basis of disallowance of claim as a matter of fact disappeared. It should be remembered suspicion howsoever strong cannot take the place of evidence. The confirmation from Shri Swapan Ranjan Dasgupta fortifies the claim of the assessee for weighted deduction u/s. 35(1)(ii) of the Act. The sole basis of the addition/disallowance based on statement recorded on oath during survey cannot be allowed as held by Hon'ble Supreme Court in Kader Khan & sons (supra). Moreover, we note that if the AO was hell bent determined to disallow the claim of the assessee, then he should have granted an opportunity to cross examine Shri Swapan Ranjan Das Gupta and Shri Kishan Bhawasingka as held by Hon'ble Supreme Court in Andaman Timber (supra).

11. In the light of the aforesaid facts and circumstances, we cannot sustain the order of the authorities below. Therefore, we set aside the impugned order and direct the AO to allow the deduction of Rs.26,28,500/- u/s. 35(1)(ii) of the Act.

15. Now, we deal with the arguments of ld DR for the Revenue. We note that the solitary grievance of the ld DR for the Revenue is that since the registration had been cancelled by the CBDT, with retrospective effect that is, with effect from 1st April 2007, by issuing notification dated 06.09.2016, for both the institutions viz: 'Matrivani' and 'The School of Human Genetics and Population Health', therefore these institutions are not entitled to claim benefit under section 35 (1) (ii) of the Act.

We note 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, for that we rely on the judgment of the Coordinate Bench, Kolkata, in the case of M/s Maco Corporation India (P) Ltd, ITA No.16/Kol/2017, for Assessment Year 2013-14, wherein it was held as follows:

"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. Infact 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 u/s [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.”

16. 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 direct the Id AO to grant deduction u/s 35(1)(ii) of the Act, in the sum of Rs. 4,81,25,000/- for A.Y. 2013-14 and in the sum of Rs.10,50,00,000/-, for A.Y. 2014-15, as claimed by him under section 35(1)(ii) of the Act in respect of the amounts of donations made to two Institutions viz. 'Matrivani Institute Experimental Research & Education' and 'The School of Human Genetics and Population Health'. Accordingly, the Grounds 1 to 4 raised by the assessee for A.Y. 2013-14 and the Grounds 1 to 5 raised by the assessee for A.Y. 2014-15 are allowed.”

3. As the issue involved in the present case as well as all the material facts relevant thereto are similar to the case of Narbheram Vishram Gaa (supra), I respectfully follow the decision of the Division Bench of this Tribunal rendered in the said case and direct the AO to allow the claim of the assessee for deduction u/s 35(1)(ii) of the Act.

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

Order Pronounced in the Open Court on 18th December, 2019.

Sd/-
(P.M. JAGTAP)
VICE PRESIDENT

Dated: 18/12/2019

Biswajit, Sr. PS

Copy of order forwarded to:

1. Kharag Singh Singhee (since deceased), (Rep. by Basant Kr. Singhee, Legal Heir), 9/12, 2nd Floor, Mercantile Building, Lal Bazar Street, Dalhousie, Kolkata – 700 001.
2. JCIT (OSD), Circle – 9(1), Kolkata.
3. The CIT(A)
4. The CIT
5. DR

True Copy,

By order,

Assistant Registrar / H.O.O.
ITAT, Kolkata