

आयकर अपीलीय अधिकरण, अहमदाबाद न्यायपीठ - अहमदाबाद /

**IN THE INCOME TAX APPELLATE TRIBUNAL  
AHMEDABAD - BENCH 'C'**

**BEFORE SHRI RAJPAL YADAV, JUDICIAL MEMBER  
AND  
SHRI WASEEM AHMED, ACCOUNTANT MEMBER**

**आयकर अपील सं./ ITA No.1315/Ahd/2018**

**निर्धारण वर्ष/Asstt. Year: 2014-15**

H.N.Metal Corporation 100-D, Grain Market Nr. Gayatri Milk Dairy Anupam Cinema Khokhra, Ahmedabad 380 008.  PAN : AABFH 2806 C	Vs.	DCIT, Cir.1(2) Ahmedabad.
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<i>अपीलार्थी</i> (Appellant)	<i>प्रत्यर्थी</i> (Respondent)
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Assessee by :	Shri Mukesh Khandwala, CA
Revenue by :	Shri L.P.Jain, Sr.DR

*सुनवाई की तारीख*/Date of Hearing : 10/01/2020

*घोषणा की तारीख*/Date of Pronouncement: 13 /01/2020

**आदेश/ORDER**

**PER RAJPAL YADAV, JUDICIAL MEMBER:**

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-10, Ahmedabad dated 22.3.2018 passed for the Asstt.Year 2014-15.

2. Only effective ground raised in this appeal of the assessee is that the Id.CIT(A) has erred in confirming addition of Rs.5,25,000/- on account of donation made by the assessee to Herbicare Healthcare Bio-Herbal Research Foundation.

3. Facts in brief are that the assessee has e-filed return of income on 18.9.2014 declaring total income at Rs.49,20,280/-. As per the information received from DDIT(Invt), Ahmedabad, assessee was one of the beneficiaries indulged in giving bogus donation to one Herbicare Health care Bio Herbal Research Foundation, Kolkatta in the F.Y.2013-14 relevant to the asstt.Year 2014-15. During the year under consideration assessee has made donation of Rs.3 lakhs to the said foundation, and claimed deduction of Rs.5,25,000/- i.e. 175% of the donated amount, under 35(1)(ii) of the Income Tax Act. On scrutiny of the accounts, it revealed that the assessee-company has given donation to Herbicare Healthcare Bio-Herbal Research Foundation, Calcutta. A survey action was carried out at the premises of the donee wherein it revealed to the Revenue that this concern was misusing the benefit of notification issued by the Income Tax Department. It has been getting donations from various sources, and after deducting certain amount of commission, these donations were refunded in cash. On the basis of that survey report registration granted to its favour was cancelled. On the basis of the outcome of that survey report, the Id.AO construed the donation given by the assessee as bogus. Appeal to the Id.CIT(A) did not bring any relief to the assessee.

4. Before us, the Id.counsel for the assessee contended that donations were given on 25.2.2014. At that point of time, donee was notified as eligible institution and fall within the statutory eligibility criterion. Certificate for receiving donation was cancelled on 5.9.2016. There is no mechanism with the assessee to verify whether such donee was a genuine institute or not, which can avail donation from the society.

5. The Id.DR, on the other hand, contended that in the investigation it came to know about bogus affairs conducted by the donee. Hence,

these donations are rightly been treated as bogus, and addition is rightly made.

6. We have duly considered rival contentions and gone through the record carefully. The AO is harping upon an information supplied by the survey team of Kolkatta. He has not specifically recorded statement of representatives of the donee. He has not brought on record any specific evidence wherein donee has deposed that donations received from the assessee was paid back in cash after deducting commission. On the basis of general information collected from the donee, the donation made by the assessee cannot be doubted. Neither representatives of the donee have been put to cross-examination, nor any specific reply deposing that such donation was not received, or if received the same was repaid in cash, has been brought on record. In the absence of such circumstances, donation given by the assessee to the donee, on which the assessee no mechanism to check the veracity, can be doubted, more particularly, when certificate to obtain donation has been cancelled after two years of the payment of donation. It is fact which has been unearthed subsequent to the donations. Therefore, there cannot be any disallowance on this issue. We allow this ground.

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

Order pronounced in the Court on 13<sup>th</sup> January, 2020 at Ahmedabad.

Sd/-  
(WASEEM AHMED)  
ACCOUNTANT MEMBER

Sd/-  
(RAJPAL YADAV)  
JUDICIAL MEMBER

Ahmedabad; Dated 13/01/2020