

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.1844/Ahd/2018

निर्धारण वर्ष/Asstt. Year: 2014-15

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| Nilraj Marketing P.Ltd. 210, Sakar-3 Nr. Income Tax Cir. Ashram Road Ahmedabad. PAN : AABCN 3444 M | Vs. | ITO, Ward-3(1)(1) Ambawadi Ahmedabad. |
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| अपीलार्थी (Appellant) | प्रत्यर्थी (Respondent) |
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| Assessee by : | Shri Parimal Singh B. Parmar |
| Revenue by : | Shri L.P.Jain, Sr.DR |

सुनवाई की तारीख/Date of Hearing : 21/01/2020

घोषणा की तारीख/Date of Pronouncement: 22/01/2020

आदेश/ORDER

PER RAJPAL YADAV, JUDICIAL MEMBER:

Assessee is in appeal before the Tribunal against order of Id.CIT(A)-9, Ahmedabad dated 20.6.2018 passed for the Asstt.Year 2014-15.

2. Though the assessee has raised as many as six grounds, but only issue involved in these grounds of appeal is that the Id.CIT(A) has erred in confirming penalty of Rs.2,16,300/- levied by the AO under section 271(1)(c) of the Income Tax Act, 1961 on account of disallowance of donation of Rs.7.00 lakhs made under section 35(1)(ii) of the Act.

3. We would take note of brief facts from material available on record. That the assessee is a company engaged in marketing. It has filed its return of income on 24.9.2014 declaring total loss of Rs.11,41,301/-, which was subsequently revised on 28.4.2016 declaring loss of (-)Rs.4,31,169/-. As per the information received from Directorate of Investigation (Kolkatta) assessee has indulged in giving bogus donation to one School of Human Genetics & Population Health to extent of Rs.7.00 lakhs. Based on this information, the AO reopened the assessment by issuance of notice under section 148 of the Act. It was explained by the assessee that donation was given to that institution based on the certificate of registration issued by West Bengal Government. In support of its claim, the assessee has furnished following documents to prove that donation made by the assessee was on the basis of genuine documents:

- a) Copy of donation receipt*
- b) Request for the donation by the institute*
- c) Certificate of registration of the society by West Bengal Govt.*
- d) Letter of exemption issued to the society U/S.12A by the Director of Income-tax (Exemption)*
- e) Renewal of approval by the Director of Income-tax (Exemption-Kolkata)*
- f) Copy of official gazette, Government of India for such exemption*
- g) Letter of ministry of Science and Technology for the renewal of the recognition of scientific and Industrial research organization dtd.1.4,2013 granting renewal upto 31.3.2016.*
- h) Copy of PAN of the institute*

4. Contention of the assessee was not accepted by the AO and held that that the institution to whom assessee has made the alleged donation was a non-genuine, and therefore, the donation given by the assessee would not qualify for deduction under section 35(1)(ii) of the Act. Thereafter, the Id.AO initiated penalty proceedings and imposed penalty of Rs.7,00,000/- under section 271(1)(c) of the Act. Against this order, assessee preferred appeal before the Id.first appellate

authority, which did not yield any relief to the assessee, hence, the present appeal before the Tribunal.

5. Before us, the Id.counsel for the assessee reiterated submissions as were made before the lower authorities. He further submitted that donation was made to the donee on the basis of the documents furnished, and payment of donation was made through RTGS. At the time of payment of donation, donee was stated to be eligible institution and fall within the statutory eligibility criterion, and therefore, there was no reason for the assessee to doubt the credibility of the donee-institution. It is therefore prayed that since the impugned donation was made on the basis of some credible documents, imposition of penalty is unwarranted and liable to be cancelled. On the other hand, the Id.DR supported the orders of the Revenue authorities.

6. We have considered rival submissions and gone through the record carefully. We find that the assessee has made the alleged donation based on documents furnished to it, which cannot be said to be *mala fide*. The registration under section 80G of the Act of the donee was cancelled after filing of the return of income, when the assessee has paid the donation and claimed deduction in the return. At that point of time, the donee was in existence legally with all eligible conditions. Therefore, the assessee could not foresee the fact that this donation would be termed as bogus. The department has made investigation after the claim was made by the assessee, and more so, it is a fact revealed to the AO by the Investigation Wing of the Department at Kolkatta. Nothing was confronted with the assessee nor anybody from the donee was confronted to the assessee. There is no investigation at the end of the Revenue to pin point that these amounts were routed back to the assessee. Thus, the explanation of the assessee was not found to be false. During the course of hearing, the Id.counsel for the assessee has placed on record copy of the order

passed by the ITAT in ITA Ho.2318/Ahd/2017 in the case of ACIT Vs. M/s.Thakkar Govindbhai Ganpatlal (HUF). In this case the Tribunal has upheld the allowance of deduction of such donation in the quantum. Thus what to talk of penalty, even quantum addition has been deleted by the Revenue authorities, and such deletion has been upheld. In view of the above, the impugned penalty is deleted and ground of appeal of the assessee is allowed.

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

Order pronounced in the Court on 22nd January, 2020 at Ahmedabad.

Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(RAJPAL YADAV)
JUDICIAL MEMBER

Ahmedabad; Dated 22/01/2020