

IN THE INCOME TAX APPELLATE TRIBUNAL
BANGALORE BENCHES “ C ” BENCH: BANGALORE

**BEFORE SHRI A.K. GARODIA, ACCOUNTANT MEMBER
AND
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER**

ITA No.2505/Bang/2019
(Assessment Year: 2015-16)

M/s. Stone Impex India P. Ltd.,
No.107, NO.7, 1st Floor, Sophia Choice,
St. Marks Road, Bangalore-560001
PAN AAICS 1326A

....Appellant

Vs.

Dy. Commissioner of Income Tax,
Circle 6(1)(2), Bangalore.

.....Respondent.

Assessee By:	Shri Muralidhara H, Advocate.
Revenue By:	Smt. R. Premi, JCIT (D.R)

Date of Hearing :	18.02.2020
Date of Pronouncement :	19.02.2020

ORDER

PER SHRI PAVAN KUMAR GADALE, JM :

The assessee has filed an appeal against the order of Commissioner of Income Tax (Appeals)-6, Bangalore passed under Section 143(3) r.w.s. 147 and 250 of the Income Tax Act, 1961 ('the Act').

2. The assessee has raised the grounds of appeal as under :

1. The order of the learned Commissioner of Income Tax (Appeal) confirming the order of Assessing officer is opposed to law and facts of the case.
2. The appellant company has given donation of Rs.25,00,000/- and claimed weighted deduction of Rs. 43,75,000/- U/s 35(1)(ii) on 20.01.2014 to approved Herbicare Society by CBDT vide notification dated 14.03.2008. The learned Assessing Officer has disallowed Rs. 43,75,000/- .
3. The Commissioner of Income tax (Appeals) has confirmed the disallowance of donations given by the appellant company to a society which was approved and notified by the CBDT on 14.03.2008 , the appellant company had given donation to the society on 20.01.2014 and the CBDT has cancelled the approval vide notification dated 06.09.2016. The donation given by appellant company was much before the withdrawal notification by the government.
4. The assessing officer has disallowed the claim on the ground that the approval granted to the society was cancelled by the CBDT with retrospective effect and hence any donation given to such society cannot be considered as donation given U/s 35(1)(ii). The commissioner of income tax (Appeals) has affirmed the disallowance that the action of the assessing officer to disallow the deduction on the ground that the approval granted was retrospectively withdrawn. The learned Commissioner of Income tax (Appeals) has affirmed the action of the assessing officer without looking into the specific provisions contained in explanation to proviso U/s35(1)(ii) providing that the deduction to which assessee is entitled in respect of any sum paid to research association to which clause 2 and 3 applies , shall not be denied merely on the ground that , subsequent to the payment of such sum by the assessee , the approval granted to the association referred has been withdrawn by the Government.

5. The Learned Commissioner of Income Tax has erred in not following the decisions of ITAT Kolkata wherein on similar facts the ITAT has decided the issue in favour of the appellant.

a. DCIT Vs Maco Corporation (India) P.Ltd.

b. Rajda Ploymers Vs DCIT

c. Saimed Innovation vs ITO .

For the A.Y-2014-15 in appellants own case on identical facts the ITAT Bangalore in ITA No.1863/Bang/2019 has held in favour of the appellant.

6. With these and such other grounds that may be urged at the time of hearing the appellant prays for the relief sought for.

3. The Brief facts of the case are that, the assessee company is engaged in the business of process and exporting of granite slabs and filed the Return of Income for the Assessment Year 2015-16 on 26.09.2015 with total income of Rs.50,58,020/- and the case was reopened by issue of Notice under Section 148 of the Act. In response thereto, the assessee company requested to consider the return of income filed on 26.09.2015 as due compliance, under Section 148 of the Act. Further notice under Section 143(2) of the Act was issued. In compliance, the learned Authorized Representative appeared from time to time and submitted the details and case was discussed. The Assessing Officer found that the assessee has claimed deduction under Section 35(1) of the Act and certain clarifications were called for. The assessee has filed explanations on 27.09.2017 mentioning, that the assessee is eligible for the deduction under Section 35 of the Act even if the

approval of recipient organization is withdrawn subsequent to the payment made by the assessee. Whereas, the Assessing Officer has referred to the CBDT Notification No.79/2016/F.No.203/135/2007/ITA.II Dt.6.9.2016 on revoking of approval. The assessee has paid an amount of Rs.25 lakhs to Herbicare Healthcare Bio-Herbal Research Foundation, whereas the Assessing Officer has disallowed the contribution by the assessee under Section 35(1) of the Act of Rs.43,75,000 being weighted deduction of 175% and assessed the total income of Rs.94,33,020 and passed the order under Section 143(3) r.w.s. 147 of the Act dt.13.12.2018. Aggrieved by the order, the assessee has filed an appeal with the CIT(Appeals). Whereas the CIT(Appeals), considering the findings of the Assessing Officer and submissions of the assessee concurred with the action of the Assessing Officer and dismissed the appeal. Aggrieved by the CIT(Appeals) order, the assessee has filed an appeal with the Tribunal.

4. At the time of hearing, the learned Authorized Representative submitted that the CIT(Appeals) has erred in confirming the action of the Assessing Officer irrespective of the fact that subsequent withdrawal of approval to the recipient shall not make the assessee ineligible for deduction under Section 35(1) of the Act, further emphasized that the assessee has paid Rs.25 lakhs by cheque dt.28.10.2014. Whereas, the withdrawal of approval by the CBDT is vide Notification dt.6.9.2016 and relied on the co-ordinate Bench decision of the

Tribunal dt.8.11.2019 in assessee's own case for the Assessment Year 2014-15 and prayed for allowing the appeal. Contra, the learned Departmental Representative supported the order of the CIT(Appeals).

5. We heard the rival contentions and perused the material on record. The sole matrix of the disputed issue is with respect to the denial of deduction under Section 35(1) of the Act by the Assessing Officer on the ground that the approval of the recipient organization was withdrawn by the CBDT vide Notification dt.6.9.2016, referred at page 3 of paper book. The contentions of the learned Authorized Representative that the assessee has paid Rs.25 lakhs for scientific research foundation and obtained receipt dt.31.10.2014 referred at page 1 of the Paper Book. We found that similar issue was dealt by the co-ordinate bench of this Tribunal in assessee own case for the Assessment Year 2014-15 in ITA No.1863/Bang/2019 dt.8.11.2019 observed at page 3 para 5, 6 & 7 which is read as under :

“ 5. We have considered the rival submissions. First of all, we reproduce the provisions of section 35(1) of the IT Act. The same is as under.

“Expenditure on scientific research.

35. (1) In respect of expenditure on scientific research, the following deductions shall be allowed— (i) any expenditure (not being in the nature of capital expenditure) laid out or expended on scientific research related to the business.

Explanation.—Where any such expenditure has been laid out or expended before the commencement of the business (not being expenditure laid out or expended before the 1st day of April, 1973) on payment of any salary [as defined in Explanation 2 below sub-section (5) of section 40A] to an employee engaged in such scientific research or on the purchase of materials used in such scientific research, the aggregate of the expenditure so laid out or expended within the three years immediately preceding the commencement of the business shall, to the extent it is certified by the prescribed authority to have

been laid out or expended on such scientific research, be deemed to have been laid out or expended in the previous year in which the business is commenced ;

(ii) an amount equal to one and one half times of any sum paid to a research association which has as its object the undertaking of scientific research or to a university, college or other institution to be used for scientific research :

Provided that such association, university, college or other institution for the purposes of this clause—
(A) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(B) such association, university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government :

Provided further that where any sum is paid to such association, university, college or other institution in a previous year relevant to the assessment year beginning on or after the 1st day of April, 2021, the deduction under this clause shall be equal to the sum so paid;

(iia) any sum paid to a company to be used by it for scientific research:

Provided that such company—

(A) is registered in India,

(B) has as its main object the scientific research and development,

(C) is, for the purposes of this clause, for the time being approved by the prescribed authority in the prescribed manner, and

(D) fulfils such other conditions as may be prescribed;

(iii) any sum paid to a research association which has as its object the undertaking of research in social science or statistical research or to a university, college or other institution to be used for research in social science or statistical research :

Provided that such association, university, college or other institution for the purposes of this clause—
(A) is for the time being approved, in accordance with the guidelines, in the manner and subject to such conditions as may be prescribed; and

(B) such association, university, college or other institution is specified as such, by notification in the Official Gazette, by the Central Government.

Explanation.—The deduction, to which the assessee is entitled in respect of any sum paid to a research association, university, college or other institution to which clause (ii) or clause (iii) applies, shall not be denied merely on the ground that, subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) has been withdrawn;

(iv) in respect of any expenditure of a capital nature on scientific research related to the business carried on by the assessee, such deduction as may be admissible under the provisions of sub-section (2):

Provided that the research association, university, college or other institution referred to in clause (ii) or clause (iii) shall make an application in the prescribed form and manner to the Central Government for the purpose of grant of approval, or continuance thereof, under clause (ii) or, as the case may be, clause (iii) :

Provided further that the Central Government may, before granting approval under clause (ii) or clause (iii), call for such documents (including audited annual accounts) or information from the research association, university, college or other institution as it thinks necessary in order to satisfy itself about the genuineness of the activities of the research association, university, college or other institution and that Government may also make such inquiries as it may deem necessary in this behalf :

Provided also that any notification issued, by the Central Government under clause (ii) or clause (iii), before the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, shall, at any one time, have effect for such assessment year or years, not exceeding three assessment years (including an assessment year or years commencing before the date on which such notification is issued) as may be specified in the notification:

Provided also that where an application under the first proviso is made on or after the date on which the Taxation Laws (Amendment) Bill, 2006 receives the assent of the President, every notification under clause (ii) or clause (iii) shall be issued or an order rejecting the application shall be passed within the period of twelve months from the end of the month in which such application was received by the Central Government.”

6. As per explanation below section 35(1)(iii), it is specified that deduction should not be denied to the donor merely on the ground that subsequent to the payment of such sum by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) has been withdrawn. At this juncture, we feel it proper to reproduce para no. 2.1 of the assessment order as per which this disallowance was made by the AO. This para reads as under.

“2.1 Disallowance

The assessee has paid Rs. 15,00,000/- vide Donation Cheque No. 122172 dated: 18.01.2014 of Bank of India same was acknowledge by M/s. Herbicare Healthcare Boi-Herbal Research Foundation vide No: HHBHRF/20-1-2014/001 dated: 20.01.2014. The acknowledgement was signed by one of the Director of M/s. Herbicare Healthcare Boi-Herbal Research Foundation. Donations were recorded in the Books of account and other document of the assessee vide Voucher No: 1569 dt: 20.01.2014. However the assessee has made Donation of Rs. 15,00,000/- and claimed deduction u/s. 35(1)(ii) of the IT Act as Expenses on Scientific research at 175% [150000*175/100=26.25 lakhs]. The CBDT (ITA DIVISION) have withdrawn the benefit from the M/s. Herbicare Healthcare Boi-Herbal Research Foundation at Research No:House Saral Dighi(E) Post. Boral Kolkata-700154 Retrospectively in effect. In the present situation as per No: Diss/Pr.CIT/BLR-6/2016-17 dt: 22.09.2016 from ITO(HQ)Pr.CIT/BLR-6 Doner (M/s. Stone Impex (India) Pvt Ltd. have lost their claim for weighted deductions u/s. 35(1)(ii) for the donations made. In connection with the deduction u/s 35(1)(ii) for the donations, the notification of CBDT dated 06.09.2016 read with notification of Board dated 14.03.2008 in Notification No. 79/2016/F.No. 203/135/2007/ITA.II is reproduced as under for the reference:

S.O.2882(E)-In exercise of the powers conferred under clause (ii) of sub section (1) of section 35 of the Income tax Act, 1961 read with rules 5C and SE of the Income tax Rules, 1962, the Central Government hereby rescinds the notification of the Government of India, Ministry of Finance, Department of revenue Number 35/2008 dated 14 March 2008 published in the Gazette of India, Part II, section 3, subsection (ii) vide s.O. 798 dated 14th March 2008 with effect from 1st April, 2007 and shall be deemed that the said notification has not been issued for any tax benefits under the Income tax Act, 1961 or any other law of the time being in force. Hence, Rs. 26,25,000/- being 175% of Rs. 15,00,000/-added back to the income of the assessee and completed the assessment for A.Y. 2014-15 accordingly.”

7. From this para of the assessment order, it comes out that disallowance was made by the AO merely on this basis that CBDT had withdrawn the benefit from M/s. HHBRF and hence, this explanation becomes applicable and as per this explanation, disallowance cannot be made merely on this basis that

subsequent to the payment of sum in question by the assessee, the approval granted to the association, university, college or other institution referred to in clause (ii) or clause (iii) of section 35(1) has been withdrawn. There is no other basis given by the AO for making disallowance. The Tribunal order cited by Id. AR of assessee having been rendered in the case of DCIT Vs. Maco Corporation (India) Pvt. Ltd. (supra) is also applicable in the facts of present case and hence, respectfully following this Tribunal order, we delete the disallowance made by the AO u/s. 35(1)(ii) of the IT Act. Since the issue on merit has been decided by us in favour of the assessee, the second issue being validity of reopening has become academic and hence, we do not adjudicate on the same.”

We found the facts of the present case, are similar to earlier assessment year and we respectfully follow the coordinate bench decision and set-aside the order of CIT(A) and direct the Assessing Officer to delete the addition and allow the grounds of appeal of the assessee.

6. In the result, the assessee's appeal is allowed.

Pronounced in the open court on the date mentioned on the caption page.

Sd/-

(A.K. GARODIA)
ACCOUNTANT MEMBER

Sd/-

(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Dated: 19.02.2020.

*Reddy GP

Copy to

1. The appellant
2. The Respondent
3. CIT (A)
4. Pr. CIT
5. DR, ITAT, Bangalore.
6. Guard File

By order

Assistant Registrar
Income-tax Appellate Tribunal
Bangalore