

THE INCOME TAX APPELLATE TRIBUNAL
"SMC" Bench, Mumbai
Before Shri Shamim Yahya (AM)

I.T.A. No. 6843/Mum/2018 (Assessment Year 2014-15)

M/s. Indianivesh Insurance Brokers Private Limited A/302, Peninsula Business Park Senapati Bapat Marg Lower Parel, Mumbai-400013 PAN : AAECA0984E (Appellant)	Vs.	DCIT Circle 4(1)(1) Room No. 529 5 th Floor, Aayakar Bhavan M.K. Road Mumbai-400 020. (Respondent)
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Assessee by	Shri Shubham Rathi
Department by	Shri R. Bhoopathi
Date of Hearing	12.12.2019
Date of Pronouncement	14.02.2020

ORDER

This appeal by the assessee is directed against the order of learned CIT(A) dated 31.7.2018 and pertains to A.Y. 2014-15.

2. Grounds of appeal read as under :-

1. In the facts and circumstances of the case and in law, the Assessing Officer erred in disallowing donation amounting to Rs. 35,00,000 on account of bogus claim of donation u/s 35(l)(ii) of the Act.
2. In the facts and circumstances of the case and in law, the additions were made on statement and evidences which were collected behind the back of the assessee and no opportunity of cross examination was allowed to the assessee. Hence, the addition should be deleted.
3. In the facts and circumstances of the case and in law, the Assessing Officer erred in disallowing the deduction of Rs. 35,00,000 u/s 35(l)(ii) of the act without making his independent inquiries and merely relying on the report of the Investigation Department. The disallowance made on such basis is bad in law and therefore the same be reversed.
4. In the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (A) erred in upholding the disallowance of Rs. 35,00,000 for deduction claimed u/s 35(l)(ii) of the Act as made by the Assessing Officer. The learned Commissioner of Income Tax (A) has totally ignored the order passed by the superior authority (Kolkatta Tribunal) for the

same trust wherein tribunal directed the assessing officer to grant deduction u/s 35(l)(ii) of the Act (Rajda Polymers vs. Deputy Commissioner of Income Tax (2017) 51 CCH 0290 Kolkatta Tribunal).

5. In the facts and the circumstances of the case and in law, the learned Commissioner of Income Tax (A) erred in disallowing the claim made u/s 35(l)(ii) of the Act by overlooking the fact that the Appellant had made payment of donation through account payee cheque.

3. Brief facts of the case are that the assessee's claim of donation @ of 175% of the amount of Rs. 20,00,000/- resulting deduction u/s. 35(1)(ii) of the Act of Rs. 35,00,000/- was denied by the Assessing Officer, upon conducting independent inquiry on the information received from the Directorate of Investigation (Kolkata) that the assessee had taken accommodation entries in the form of donation of Rs. 20,00,000/- from Berbicure Healthcare Bio Herbal Research Foundation (HHBRF) u/s. 35(1)(ii) of the Act. Learned CIT(A) by an elaborate order had confirmed the same by referring to several case laws and concluded as under :-

6.1.4 In this regard, it is relevant and also important to discuss various judicial pronouncements. The relevant judgments are reproduced hereunder:

"The Hon'ble ITAT Delhi Bench in the case of DCIT vs. Smt. Phoolwati Devi (2009) 314 ITR ATI (Delhi), wherein it is held as under:-

"despite the documentation supporting the claim of the assessee superficially, the evidence could not be accepted in view of the surrounding circumstances and human probabilities. There were certain features of the case which belie the documentary evidence."

In the case of M/s. Kachwala Gems vs. JCIT ITAT No. 134/JP/2002 dated 10.12.2013, which has been affirmed by the Supreme Court in the case of M/s. Kachwala Gems vs. JCIT (2006) 206 CTR (SC) 585, 288 ITR 10 (SC), it was held that payment by account payee cheque is not sufficient to establish the genuineness of purchases. Further, in the case of CIT vs. Prashant (P) (1994) 121 CTR (Cal) 20, the Calcutta High Court has held that even payment by account payee cheque is not sacrosanct and it would not make an otherwise non-genuine transaction genuine.

6.1.5 Further, in the case of Sumati Dayal vs. CIT (1995) 214 ITR 801, the Supreme Court, Inter-alia, held as under:

'in such cases, a superficial approach to the problem should be eschewed and the matter has to be considered in the light of human probabilities and farther that any transaction about which direct

evidence is rarely available should be inferred on the basis of circumstances available on the record. In that case, the majority opinion of the Settlement Commission was approved as it was taken after considering the surrounding circumstances and applying the test of human probabilities."

These principles also apply to the present case where the documentary evidences prima-facie does not support the appellant's claim whereas a closure look at the same in the light of surrounding circumstances and also applying test of human probabilities reveal that the documentary facade cannot be accepted.

6.1.6 It was settled in the case of CIT vs. Durga Prasad More 82 ITR 540 (SC) that where a party relies on self-serving recitals in a document, it is for that party to establish the truth of these recitals. It was further held by the Apex Court in this case that the tax authorities are entitled to look into the surrounding circumstances to find out the reality of such recitals. The Hon"ble Apex Court has specifically observed as under:

"Science has not yet invented any instrument to test the reliability of the evidence placed before a Court or Tribunal, Therefore the Courts and Tribunals are applying the test of human probabilities. Human minds may differ as to the liability of a piece of evidence."

6.1.7 From these facts & circumstances and also corroborative evidences available on record suggest that the AO has done just and fair assessment in concluding the donation claimed to have been paid by the appellant is bogus and it is nothing but a mere entry. In this back drop, I do not find any reason to interfere with the order of the AO, therefore, the disallowances made by the AO claimed u/s. 35(l)(ii) of the act is upheld. Accordingly, the grounds of the appeal are treated as disposed off and dismissed.

4. Against this order the assessee is in appeal before ITAT.

5. I have heard both the counsel and perused the records. I note that the assessee is referring to Kolkata ITAT decision claiming that the same is with respect to same issue. However, I note that this decision was passed after the order of learned CIT(A). Hence, in my considered opinion learned CIT(A) did not have an opportunity to examine the issue on the touchstone of this decision. Hence, in the interest of justice I remit this issue to the file of the learned CIT(A). Learned CIT(A) shall examine the issue afresh in the light of the aforesaid ITAT decision after giving the assessee opportunity of being heard. Both the parties fairly agreed to the same.

6. In the result, appeal stands allowed for statistical purposes.
Order has been pronounced in the Court on 14.02.2020.

Sd/-
(SHAMIM YAHYA)
ACCOUNTANT MEMBER

Mumbai; Dated : 14/2/2020

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,

(Assistant Registrar)
ITAT, Mumbai

PS