

आयकर अपीलार्थ आधिकरण, राजकोट ँयायपीठ, राजकोट ।
**IN THE INCOME TAX APPELLATE TRIBUNAL
RAJKOT BENCH, RAJKOT
BEFORE SHRI WASEEM AHMED, ACCOUNTANT MEMBER &
MS. MADHUMITA ROY, JUDICIAL MEMBER**

Sr. No.	ITA No.	Asstt. Year	Name of Appellant	Name of Respondent
1.	294/Rjt/2018	2011-12	Shri Tejas Ashok Shah, C/o. Ronak J. Snaghvi, Opp. 1 Chandha Vihar Society, Palace Compound, Dhrangadhra-363310	The Income-Tax Officer, Ward-3, Surendranagar
2.	295/Rjt/2018	2013-14	-Do-	-Do-

(अपीलाथ /Appellant)	..	(ँयथ / Respondent)
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अपीलाथ ओर से / Appellant by :	Shri D. M. Rindani, CA
ँयथ क ओर से/Respondent by :	Shri Suhas Mistry, Sr. DR
सुनवाई क तारख / Date of Hearing	27/02/2020
घोषणा क तारख /Date of Pronouncement	28/02/2020

आदेश / O R D E R

PER BENCH:

Both the appeals relate to the order under section 143(3) r.w.s 147 of the Income Tax Act, 1961 (hereinafter referred to as 'the act') for A.Ys. 2011-12 & 2013-14 respectively.

2. The matter relates to disallowance of bogus donation and the interest income. The assessee made donation/contribution of Rs. 3,67,505/- during the previous year relevant to A.Y. 2011-12 and claim

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of deduction as per provision under section 35(1)(ii) of the Income Tax Act found to be bogus by the authorities below and thus disallowed.

3. At the time of hearing of the instant appeal the Ld. Counsel appearing for the assessee submitted before us that the issue is squarely covered in favour of the assessee by and under several judgments passed by the Hon~~o~~ble Tribunal in ITA No. 2318/Ahd/2017 for A.Y. 2014-15 and also the judgment passed by the Jurisdictional High Court in R/Tax Appeal No. 881 of 2019 copies whereof have also been submitted before us.

4. Heard the parties, perused the records including the order passed by the Hon~~o~~ble Co-ordinate Bench and also the Hon~~o~~ble Jurisdictional High Court for which it appears that the deduction under section 35(1)(ii) has been allowed in respect of the donation and/or contribution to the same institution. The relevant portion of the order passed by the Jurisdictional High Court is reproduced as under:-

"2. The Revenue has proposed the following question, as substantial question of law:

"Whether Appellate Tribunal has erred in law and on facts in upholding the order of CIT(A) deleting disallowance of donation amounting to Rs. 96,25,000/- under Section 35(1)(ii) of the Act"

3. The assessee filed its return of income for the year under consideration on 09.09.2014 declaring total income at Rs. 31,23,870/-. A notice was issued

*dated 29.09.2016. The receiver foundation shall not be confirming the same unless the amount has been utilized for scientific research. The onus has been discharged by the appellant. In the circumstances, it cannot be concluded that the foundation was involved in 100% bogus activity in A.Y.2014-15 which was much before the cancellation notification issued by CBDT u/s. 35 (1) (ii). The grounds of appeal are **allowed.**"*

5. The Revenue carried the matter before the Tribunal. After considering the facts and findings given by the CIT (Appeals), relying upon the decision in the case

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of S.G.Vat Care Private Limited in ITA No. 1943/Ahd/2017, Tribunal confirmed the deletion made by the CIT (Appeals) on the ground that there was no disparity of facts in the present case and in the case of S.G.Vat Care Private Limited (Supra).

6. *Learned Senior Advocate Mr.M.R.Bhatt for the appellant submitted that there no appeal is filed by the Revenue against the decision of the Tribunal in the case of S.G.Vat Care Private Limited (Supra). It would therefore be germane to refer to the following findings, given by the Tribunal in the case of S.G.Vat Care Private Limited (Supra):-*

"2. In the first ground of appeal, the grievance of the assessee is that the ld.CIT(A) has erred in confirming addition of Rs.8,75,000/- on account of alleged bogus donation to Herbicare Healthcare Bio-Herbal Research Foundation.

3. Brief facts of the case are that the assessee has filed return of income on 20.11.2014 declaring total income at Rs.4,47,910/-. 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 donation from various sources, and after deducting certain amount of commission, these donation were refused 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 ld.AO construed the donation given by the assessee as bogus. Appeal to the ld.CIT(A) did not bring any relief to the assessee.

4. Before us, the ld. Counsel for the assessee contended that donations were given on 25.03.2014. 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 6.9.2016. 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 ld. DR, on the other hand, contended that in the investigation it came to know about bogus affairs by the donee. Hence, these donations are rightly been treated as 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 tern of Calcutta. He has not specifically recorded statement of representative of the donee. He has not brought on record a 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 veraci, can be doubted,

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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 facts of the present case, the CIT(APPEALS) has given the finding of the fact that the amount of donation was transferred to the Herbicure through Bank channel and there is no evidence that the same returned back in cash.*

8. *It is also found that the Herbicure Foundation has confirmed that the amount has been utilized for scientific research vide confirmation dated 29.09.2016. Accordingly, the onus placed upon the assessee was discharged.*

9. *In view of the aforesaid findings of the fact given by both the authorities below, no interfere in the impugned order passed by the Tribunal is required to be made. No substantial question of law arise from the order of the Tribunal. Therefore, the appeal fails and is hereby, dismissed."*

Respectfully relying upon the judgment passed by the Honøble Jurisdictional High Court we allow the donation claim by the assessee under section 35(1)(ii) of the Act. The AO is directed to grant relief to the assessee in terms of the above observation.

5. In the combined results, both the appeals are allowed for statistical purpose.

This Order pronounced in Open Court on	28/02/2020
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Sd/-
(WASEEM AHMED)
ACCOUNTANT MEMBER

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER

Dated 28/02 /2020

Tanmay Datta, Sr. PS

TRUE COPY

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आदेश क० प्रतिलिपि अपेक्षित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / Concerned CIT
4. आयकर आयुक्त(अपील) / The CIT(A)-
5. व्रभागीय प्रत्यक्ष, आयकर अपीलार्थी अधिकरण,राजकोट/DR,ITAT, Rajkot
6. गार्डफाईल / Guard file.

आदेशानुसार/ BY ORDER,

उप/सहायक पंजीकार (Dy./Asstt.Registrar)
आयकर अपीलार्थी अधिकरण, राजकोट / ITAT, Rajkot