IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "C" BENCH

(BEFORE SHRI MAHAVIR PRASAD, JUDICIAL MEMBER
& SHRI AMARJIT SINGH, ACCOUNTANT MEMBER)
[Through Virtual Court]

ITA. Nos: 2358 & 2359/Ahd/2018
(Assessment Years: 2011-12 & 2012-13)

Bhavin Ashokkumar Shah Vihaan-23, Sanskarbharti Society, Nr. Ankur Cross Road, Naranpura, Ahmedabad-380013 **PAN No. APUPS3323R**		**DCIT Circle-4(2), Ahmedabad**
(Appellant)		**(Respondent)**

Appellant by : Shri Kalpesh Shah, A.R.
Respondent by : Shri Lalit P. Jain, Sr. D.R.

(आदेश)/ORDER

Date of hearing : 12 -04-2021
Date of Pronouncement : 30 -04-2021

PER MAHAVIR PRASAD, J.M.

1. These two appeals have been filed by the Assessee are directed against the order of the Commissioner of Income Tax ('hereinafter called CIT(A)') order no. CIT(A)-

4/10317/2017-18 order dated 23/10/2018 arising out of assessment order dated 18/08/2017. Assessee has taken following grounds of appeal:

1. The Learned Commissioner of Income tax Appeals erred in disallowance of deduction under section 35(1)(ii) of the Act.

2. The Learned Commissioner of Income tax Appeals erred and uphold the order of assessment under section 143(3) read with Section 147, when there was no reason to re-open the completed / abated assessment.

3. The order of the Learned Commissioner of Income tax Appeals and Assessing officer has passed the order overlooking apparent Proviso (A) and (B) of Section 35(1)(ii) of the Act. The learned CIT Appeals grossly erred in ignoring the fact that the institution was ***time being approved*** *as eligible institute under Section 35(l)(ii) of the Act.*

4. The revocation of Notification with retrospective effect is unlawful for the reason that of the notification inter-alia states that the withdrawal of notification shall only be prospective b) retrospective revocation will result in hardship and punishment to person other than the defaulter c) The result is department is taking advantage of its own mistake.

5. The learned CIT Appeals and Assessing officer has placed reliance on statement of person defrauding department as against the registrations, certifications and approvals issued by Central Government Ministry" of Finance, Ministry of Science and Technology, Department of Home Affairs and approvals issued by Director Exemptions under section 12A, 35(1) and 10(23C) of the Act.

6. The learned AO has erred in passing order of assessment without observing rules of natural justice. The AO has not allowed examination of statement relied upon by him to re-open assessment and to pass the order. Further the CIT Appeal also passed order without bringing on record any material and cogent evidence against the assessee or about receipt of cash by the assessee.

2. The facts of the case are examined. AO received specific information from the investigation Wing Kolkata that the assessee has taken accommodation entry in respect of donation of Rs.5,00,000/- made to School of Human Genetics & Population Health(SHG&PH) and claimed the deduction u/s 35(1)(ii) of

Rs.8,00,000/- in F.Y.2010-11 relevant to A.Y.2011-12. Considering the above fact, the assessment was reopened u/s 147 of the Act by issuing notice u/s 148 on 15/03/2017 after recording the reasons for same and after taking necessary approval from the Jt.CIT, Range4(2), Ahmedabad. In response to the notice u/s 148 dated 15/03/2017 the assessee filed return of income on 26/09/2011 conveying that original return may be treated as compliance to notice u/s. 148 dated 15/03/2017. A copy of reasons recorded was provided to the appellant vide letter dated 13/04/2017. The assessee has raised the objection against the reopening the assessment vide letter dated 13/04/2017.

3. We have heard both the parties and gone through the impugned order. We held that A.O. was having bona fide belief, when he received information from the Investigation Wing of the department that income has been escaped assessment and assesse has not declared true and correct material fact for the purpose of original assessment.

4. In our considered view, Ld. CIT(A) has rightly dismissed this ground of appeal and same does not require any kind of interference at our end.

5. In the result, this ground relating to reopening are dismissed.

6. Now we come to merit of the case. These relating to disallowance of deduction u/s 35(1)(ii) of Rs. 8,00,000/-. The assesse has claimed to have made donation of Rs. 5,00,000/- to School of Human genetics & Population Health (SHG&PH). It is submitted that the said donee was an approved institute u/s 35(1)(ii) of the Act vide Notification No 35/2008 dated 14.03.2008 and was valid during F.Y. 2010-11 relevant to A.Y. 2011-12 in which assesse made donation to the institute and said donation was made through Banking Channel and notification was rescinded by the CBDT, vide notification no. 82/2016 dated 15.09.2016 with retrospective effect on

the basis of enquiries conducted in the case of the institute i.e. SHGPH. Thereafter a survey was carried out by the department u/s 133A of the Act in the case of donee and during the survey Treasures of the institute made statement that since 2002 to the institute made statement that source of income for this organization is mainly out of donation from corporate bodies as well as from individuals. In facts, we receive donation through cheque, RTGS and simultaneously we issue cheques in the name of some companies and the process said institute originally receives @ 7% to 8% of donation amount and total process has been maintained by brokers. She also accepted that through brokers they get donation from clients and donation money from back to the donors by bogus billing after deducting commission of 8%. On receipt of that information, Ld. A.O. made disallowance of deduction u/s 35(1)(ii).

7. In appeal before the ld. CIT(A), He held that " *In the income tax cases the suit is that of a Civil case in which one has to go by the preponderance of probability and not by an evidence to prove it to the guilt. It has been observed by the than Apex Court that the Courts will not be obvious to the notorious fact of life…"*

8. Ld. D.R. relied on the order of the Assessing Officer and Ld. CIT(A).

9. We have gone through the relevant record and impugned order and heard both the parties given thoughtful consideration. In this case, ld. A.O. rejected deduction of Rs. 2,50,000/- i.e. 50% of Rs. 5,00,000/- u/s 80G and on the basis of information of investigation wing of the department deduction was disallowed by the lower authorities. At the time of donation, done was holding registration u/s 12AA of DIT(Exemptions). And done was also having certificate from Department of Scientific Research and Industrial Research from the Ministry of Science and Technology and same was duly registered with the Registrar of the Companies.

10. In similar matter, Co-ordinate Bench in ITA No. 86/Ahd/2018 for Assessment Year 2014-15 granted relief to the assesse and relevant para of the said order is reproduced hereunder:

> *6. We have heard both the sides and perused the material on record carefully. It is observed that identical issue on similar fact has been adjudicated by the Co-ordinate Benches of the ITAT in various cases regarding claim of donation u/s. 35(1)(ii) for giving donation to the same institution i.e. Herbicure Health Care Bio Herbal Research Foundation holding that the assessee has no mechanism to check the veracity when certificate to obtain donation has been cancelled after two years of the payment of donation. It is also noticed that certificate for receiving donation was cancelled on 5th Sep, 2016 whereas in the case of the assessee the donation was given on 11th March, 2014 and 18th March, 2014 to the amount of Rs. 13 lacs. Relevant part of the decision of Co-ordinate Bench on same issue and identical facts in the case of the CIT vs. Thakkar Govindbhai Ganpatlal HUF (ITA No. 2318/Ahd/2017 dated 17/07/2019) is reproduced as under:-*
>
> *"5. We have duly considered rival contentions and gone through the record carefully. In the case of S.G.Vat care P.Ltd. (supra), the Tribunal has recorded the following finding: 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 Herbicure 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 Herbicure Healthcare BioHerbal 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 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 25.3.2014. 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 ld.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 tem of Calcutta. He has not specifically recorded statement of representatives 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 a general information collected from the donee, the donation made by the assessee cannot be doubted. Neither representatives of the donee have been put to crossexamination, 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."

6. There is no disparity on the facts. On the basis same survey report, the genuineness of the donation has been doubted in the case of the assessee also. Therefore, the issue in dispute is squarely covered in favour of the assessee.

Respectfully following the order of the ITAT in the case of S.G.Vat care P.Ltd., we do not find any merit in the appeal of the Revenue. It is dismissed."

Respectfully following the above cited decision and finding of the Coordinate Bench of the ITAT on similar facts and identical issue, the appeal of the assessee is allowed.

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

11. And in another matter, similar facts and circumstances of the case Co-ordinate Bench in ITA No. 1943/Ahd/2017 for Assessment Year 2014-15, Co-ordinate Bench granted relief to the appellant and relevant para is reproduced hereunder:

    6. We have duly considered rival contentions and gone through the record carefully. The AO is harping upon an information supplied by the survey tem of Calcutta. He has not specifically recorded statement of representatives 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 a general information collected from the donee, the donation ITA No.1943/Ahd/2017 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.

12. In view of the above, since at the time of donation, donee was having all the requisite approval and permission from the authorities in order to accept the donation as per law and in parity with the above said orders of the Co-ordinate Bench, we allow appeal of the assesse.

13. In the result, appeal filed by the assesse is allowed.

14. Now we come to ITA No. 2359/Ahd/2018 for A.Y. 2012-13, the asessee has taken following grounds of appeal:

> *1. The Learned Commissioner of Income tax Appeals erred in disallowance of deduction under section 35(1)(ii) of the Act.*
>
> *2. The Learned Commissioner of Income tax Appeals erred and uphold the order of assessment under section 143(3) read with Section 147, when there was no reason to re-open the completed / abated assessment.*
>
> *3. The order of the Learned Commissioner of Income tax Appeals and Assessing officer has passed the order overlooking apparent Proviso (A) and (B) of Section 35(1)(ii) of the Act. The learned CIT Appeals grossly erred in ignoring the fact that the institution was **time being approved** as eligible institute under Section 35(l)(ii) of the Act.*
>
> *4. The revocation of Notification with retrospective effect is unlawful for the reason that of the notification inter-alia states that the withdrawal of notification shall only be prospective b) retrospective revocation will result in hardship and punishment to person other than the defaulter c) The result is department is taking advantage of its own mistake.*
>
> *5. The learned CIT Appeals and Assessing officer has placed reliance on statement of person defrauding department as against the registrations, certifications and approvals issued by Central Government Ministry" of Finance, Ministry of Science and Technology, Department of Home Affairs and approvals issued by Director Exemptions under section 12A, 35(1) and 10(23C) of the Act.*
>
> *6. The learned AO has erred in passing order of assessment without observing rules of natural justice. The AO has not allowed examination of statement relied upon by him to re-open assessment and to pass the order. Further the CIT Appeal also passed order without bringing on record any material and cogent evidence against the assessee or about receipt of cash by the assessee.*

15. Since in connected ITA No. 2358/Ahd/2018 for A.Y. 2011-12 on similar facts and circumstances we have given relief to the appellant. Thus, in parity with the above said order, this appeal of the assesse is allowed.

16. In the combined result, appeals filed by assessee are allowed.

Order pronounced in Open Court on 30- 04- 2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER **True Copy**

Sd/-
(MAHAVIR PRASAD)
JUDICIAL MEMBER

Ahmedabad: Dated 30/04/2021

Rajesh

Copy of the Order forwarded to:-

1. The Appellant.
2. The Respondent.
3. The CIT (Appeals) –
4. The CIT concerned.
5. The DR., ITAT, Ahmedabad.
6. Guard File.

By ORDER

Deputy/Asstt.Registrar
ITAT,Ahmedabad