

**IN THE INCOME TAX APPELLATE TRIBUNAL
MUMBAI 'SMC' BENCH, MUMBAI**

[Coram: Pramod Kumar (Vice President),

**ITA No. 7273/Mum/2019
Assessment year: 2011-12**

Met Pro Chemicals **Appellant**
*208, Alankar Building, Samuel Street,
Masjid Bander, Mumbai 400003
[PAN: AABFM0950E]*

Vs.

Income Tax Officer Ward 17(2)(2)
Mumbai **Respondent**

Appearances by

Manoj Pandit *for the appellant*

Sunil Deshpande *for the respondent*

Date of concluding the hearing : May 12, 2021
Date of pronouncement : May 19, 2021

O R D E R

Per Pramod Kumar, VP:

1. This appeal, filed by the assessee, calls into question the correctness of the order dated 29th August 2019 passed by the Assessing Officer under section 143(3) r.w.s. 147 of the Income Tax Act, 1961, for the assessment year 2011-12.

2. Grievances raised by the appellant are as follows:

(1) **In law and on facts, as well as in circumstances of the appellant's case, the Commissioner of Income Tax (Appeals) - 28 has erred in not quashing the order passed by the AO.**

(2) **The Learned CIT(A)-28 in law and on facts has erred in upholding the Ld AO's decision of disallowing donation of Rs 10,00,000/- paid to Herbicure Healthcare Bio Herbal Research Foundation (HHBRF) u/s 35(1)(ii) of IT Act given on 11.03.2011 and accordingly disallowed deduction of Rs 17,50,000/- and levy of interest u/s 234B amounting to Rs.5,40,776/-**

(3) The Ld. CIT(A)-28 has erred in confirming the erroneous conclusions of the Ld.AO regarding modus operand! as to how the said institution with active help of brokers, entry operators have arranged for the bogus donations which were returned back to the donors in lieu of commission without actual investigation or findings on his part. The Ld. AO has erred in law in relying on hear and say evidence and failed to apply his mind on the facts before him.

(4) The Learned CIT (A)-28 erred in confirming the allegations leveled by Ld AO without providing any opportunity of cross examination of the evidence relied upon by him, to your Appellant.

3. As learned representatives fairly agree, the issues raised in this appeal are covered in favour of the assessee, by the decision of coordinate bench dated 3rd March 2021, in assessee own cases for the assessment year 2010-11, wherein the coordinate bench has *inter alia* observed as follows:-

3. Learned Representative fairly agreed that this issue is covered by the decision of tribunal in the case of assessee sister concern i.e. Bhavita Chemicals Pvt. Ltd., in favour of the assessee. Learned Departmental Representative, however the orders of the authorities below.

4. We find that in the case of the Bhavita Chemicals Pvt. Ltd., vs ITO in (ITA No. 3665/Mum/2019) order dated 01.12.2020. This tribunal has inter alia observed as follows:-

4. Both sides heard, orders of authorities below perused. The assessee made donation of Rs.5,00,000/- to NCT in March, 2010 and claimed the benefit of deduction under section 35AC of the Act in its return of income for assessment year 2010-11. Subsequently, search action was carried out in the case of NCT and it was found that the Trust was issuing bogus donation receipts. On the basis of search action, the assessee's claim of deduction in assessment year 2010-11 was disallowed in reassessment proceedings. The contention of the Revenue is that the donation amount paid by the assessee to NCT has flown back to the assessee. I find that no positive evidence is brought on record by the Revenue to show that on the date of donation made by the assessee, NCT was not holding valid registration certificate. On the contrary, the assessee has filed evidence to show that NCT was holding valid registration certificate from the Department on the date of donation and the same was subsequently renewed in 2011. This fact is evident from notification issued by Ministry of Finance dated 30/11/2010 at page 70 to 72 of the Paper Book. It is further observed that on the basis of statement/evidence collected at the back of assessee, the claim of deduction under section 35AC of the Act has been disallowed in proceedings under section 147 r.w.s. 148 of the Act. It is a well settled law that any evidence collected at the back of assessee if not put to the assessee for cross-examination would result in violation of principles of natural justice. In the instant case the assessee asked for cross-examination of the trustee , however, the same was rejected by the Assessing Officer.The Hon'ble Supreme Court of India in the case of Andman Timber Industries vs.

CCE, 62 taxmann.com 3 has held that not providing opportunity to cross-examine the witness is a serious flaw which renders the order nullity. The impugned order is liable to be quashed on this ground alone. It is further observed that no cogent evidence has been brought on record by the Revenue to substantiate that the donation made by assessee through banking channel has been received back by assessee in cash. The assessment order and the impugned order has been passed purely on assumptions and presumptions.

5. The Co-ordinate Bench in the case of Jadstone Trading Pvt. Ltd., (supra), deleted the addition made for similar reasons in respect of donation made to NCT, holding that in the absence of any evidence on record that the amount has been received back by the assessee from the Charitable Trust, the addition is solely based on surmises and conjectures and, hence, is unsustainable. I find merit in the submissions of the assessee, hence, same are accepted and the impugned order is quashed.

5. We see no reasons to take any view of the matter than the view so taken by the tribunal. Respectfully following the same we uphold the plea of the assessee and delete the impugned disallowance of Rs Rs.5,00,000/-

6. Grounds no 1 to 4 are thus allowed in the terms indicated above.

4. Even though learned representative have fairly agreed that the issues raised in this appeal are squarely covered by the aforesaid decision, the learned Departmental Representative has nevertheless relied upon the stand of the Assessing Officer. We see no reasons to take any other view of the matter than the view so taken by the coordinate bench. Respectfully following the same, we uphold the plea of the assessee and hold that the observations above will apply *mutatis mutandis* here as well. The assessee gets the relief accordingly.

5. In the result, the appeal is allowed. Pronounced in the open court today on the 19th day of May, 2021.

Sd/-
Pramod Kumar
(Vice President)

Mumbai, dated the 19th day of May, 2021

N.V, Sr.PS

Copies to: (1) The appellant (2) The respondent
(3) CIT (4) CIT(A)
(5) DR (6) Guard File

By order

Assistant Registrar
Income Tax Appellate Tribunal
Mumbai benches, Mumbai