



ITA No.4878/Mum/2019  
Shri Mrunal H. Shah  
Assessment Year: 2015-16

**आयकर अपीलीय अधिकरण “डी” न्यायपीठ मुंबई में।**  
**IN THE INCOME TAX APPELLATE TRIBUNAL**  
**“D” BENCH, MUMBAI**

**माननीय श्री महावीर सिंह, उपाध्यक्ष एवं**  
**माननीय श्री मनोज कुमार अग्रवाल, लेखा सदस्य के समक्ष।**  
**BEFORE HON’BLE SHRI MAHAVIR SINGH, VP AND**  
**HON’BLE SHRI MANOJ KUMAR AGGARWAL, AM**  
**(Hearing through Video Conferencing Mode)**

आयकर अपील सं./ I.T.A. No.4878/Mum/2019  
(निर्धारण वर्ष / Assessment Year: 2015-16)

<b>Shri Mrunal H. Shah</b> D-1402, RNA Continental Road No. 14, Subhash Nagar, Chembur (E), Mumbai-400 071	<b>बनाम/</b> Vs.	<b>ACIT-17(2)</b> Aaykar Bhavan, M.K. Road Mumbai-400 020
स्थायीलेखासं ./जीआइआरसं ./PAN/GIR No. <b>AWAPS-5133-L</b>		
(अपीलार्थी/ <b>Appellant</b> )	:	(प्रत्यर्थी / <b>Respondent</b> )

<b>Assessee by</b>	:	Shri Kirit Sanghvi- Ld. AR
<b>Revenue by</b>	:	Shri Rajendra Joshi-Ld. Sr.DR

सुनवाई की तारीख/ <b>Date of Hearing</b>	:	24/05/2021
घोषणा की तारीख / <b>Date of Pronouncement</b>	:	24/05/2021

**आदेश / O R D E R**

**Manoj Kumar Aggarwal (Accountant Member)**

1. Aforesaid appeal by assessee for Assessment Year (AY) 2015-16 contest the order of Ld. Commissioner of Income-Tax (Appeals)-28, Mumbai, [in short referred to as ‘CIT(A)’], Appeal No.CIT(A)-28/ITBA-10386/ACIT-17(2)/2017-18 dated 10/06/2019 on following grounds: -

1. The learned CIT(A) erred in law and on facts in confirming the disallowance of Rs.15,00,000/- being claim under S.80GGA in respect of donation made to Navjivan Charitable Trust agreeing with the AO that the donation was bogus.



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**Relief claimed:** The AO be directed to allow claim u/s 80GGA in respect of donation of Rs.15,00,000/-.

2. The learned CIT(A) erred in law and on facts in not appreciating that the evidence relied upon by the AO/CIT(A) does not establish that the appellant was a beneficiary of scheme of bogus donation run by the donee trust.

**Relief claimed:** The AO be directed to allow claim u/s 80GGA in respect of donation of Rs.15, 00,000/-.

3. The learned CIT(A) erred in law and on facts in holding about Ground No.2 of appeal before him that "it contained stipulation of a generalized orientation", without realizing that it was the basic right of the appellant to be given a copy of the statement relied upon by the Revenue.

**Relief claimed:** The impugned Order be declared null and void."

As evident, the assessee is aggrieved by denial of deduction u/s 80GGA on certain donations. The assessment for the year was framed by Ld. Assessing Officer (AO) u/s 143(3) on 21/12/2017. The assessee being resident individual earned income from Salary, House Property and Income from other sources.

2. The Ld. AR advanced argument in support of assessee's claim and placed reliance on certain decisions of this Tribunal passed on identical facts. The copy of the same has been placed on record. On the other hand, Ld. DR defended the orders of lower authorities.

3. We have carefully heard the rival submissions and perused relevant material on record. Our adjudication to the subject matter of appeal would be as given in succeeding paragraphs.

4. During assessment proceedings, it transpired that the assessee made donation of Rs.15 Lacs to a Trust namely Navjeevan Charitable Trust and claimed deduction u/s 80GGA against the same. However, there was a search action u/s 132 on trust on 27/10/2014 wherein it was found that the trust was involved in the activities of providing accommodation entries by way of donation. The donation received in



cheque were stated to be returned in cash after deducting commission of 3%. Relying upon the admission made by the Trustees during search, Ld. AO proceeded to disallow the deduction so claimed by the assessee. The assessee defended the claim by submitting that the donations were paid through cheque against valid receipt. However, not convinced, Ld. AO denied the deduction to the assessee.

5. During appellate proceedings the assessee submitted that the trustee had not named the assessee as recipient of cash and there was no substantiated statement that the appellant received the cash back from the trust. However, in the light of search findings, Ld. CIT(A) confirmed the stand of Ld. AO. Aggrieved, the assessee is in further appeal before us.

6. After going through documents on record, it could be seen that the assessee had given donation on 21/06/2004 against valid receipt issued by the Trust. The donation was made through cheque which got cleared from assessee's bank account. The assessee was issued requisite Form No.58A by the trust. The trust had valid registration at the time of making of donation. The approval was withdrawn only subsequently vide notification dated 30/11/2016. Further, it is evident from the assessment order that the deduction has been denied to the assessee only in the basis of allegations that the donations were bogus donations and the amount so donated has flown back to the assessee. However, except for statement of trustee of the society, we find that there is no positive evidence on record to substantiate the same. There is nothing on record which would show that on the date of donation, the trust did not have



ITA No.4878/Mum/2019  
Shri Mrunal H. Shah  
Assessment Year: 2015-16

valid registration or its registration stood withdrawn. It was only subsequently that the approval was withdrawn. This being so, the deduction could not be denied to the assessee since Ld. AO failed to conduct any inquiry before making disallowance and except for mere allegations, he did not brought on record any fact to establish that donation given by the assessee was subsequently returned back in cash. The assessee, in our opinion, has duly discharged the onus casted upon him and it was incumbent upon Ld. AO to refute the same. However, no such inquiry has been conducted and the deduction has been denied more on mere allegations. Therefore, the deduction could not be denied to the assessee as held by this very bench in the case of **Devajyoti N. Bhattacharya V/s ACIT (ITA No. 5051/Mum/2018 order dated 12/03/2020)**. Our observations therein were as follows: -

4. Upon due consideration, we find that the assessee was denied aforesaid deduction, in more or less similar factual matrix, in AYs 2009-10, 2012-13 & 2014-15 which was agitated before this Tribunal vide common order dated 30/09/2019. The coordinate bench, vide para-7, held that that the assessee had adduced evidence to establish that payment of donation to *Navjivan Charitable Trust* and the onus had shifted to Ld.AO. However, Ld. AO failed to conduct any inquiry before making disallowance and did not brought on record any fact to establish that donation given by the assessee was subsequently returned back in cash except mere allegations. Reliance was placed on the decision of Hon'ble Delhi High Court in **CIT V/s A and A Bakery P. Ltd. (2008 302 ITR 51)** to support the conclusions. Finally, the disallowance was deleted. We find that fact to be pari-materia the same in this year. The assessee has duly discharged the onus casted upon him and it was incumbent upon Ld. AO to refute the same. However, no such inquiry has been conducted and the disallowance has been made on mere allegations. Therefore, respectfully following the earlier order, we delete the disallowance as made by Ld. AO.

Therefore, we direct Ld. AO to grant the deduction u/s 80GGA and re-compute assessee's income.



ITA No.4878/Mum/2019  
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7. The appeal stands allowed in terms of our above order.

*Order pronounced on 24<sup>th</sup> May, 2021.*

**Sd/-  
(Mahavir Singh)**

**उपाध्यक्ष / Vice President**

**Sd/-  
(Manoj Kumar Aggarwal)**

**लेखा सदस्य / Accountant Member**

मुंबई Mumbai; दिनांक Dated : 24/05/2021  
Sr.PS, Jaisy Varghese

**आदेशकीप्रतिलिपिअग्रेषित/Copy of the Order forwarded to :**

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकरआयुक्त(अपील) / The CIT(A)
4. आयकरआयुक्त/ CIT– concerned
5. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, मुंबई/ DR, ITAT, Mumbai
6. गार्डफाईल / Guard File

**आदेशानुसार/ BY ORDER,**

**उप/सहायक पंजीकार (Dy./Asstt.Registrar)  
आयकरअपीलीयअधिकरण, मुंबई / ITAT, Mumbai.**