

IN THE INCOME TAX APPELLATE TRIBUNAL
AHMEDABAD "SMC" BENCH
(Conducted Through Virtual Court)
Before: **Shri Amarjit Singh, Accountant Member**
And **Ms. Madhumita Roy, Judicial Member**

ITA No. 2387/Ahd/2018
Assessment Year 2012-13

| | | |
|---|----|--|
| Shri Jignesh Ratilal Shah, 4-B, Anand Society Part-II, Jaymala Bus Stop, Bhaduat Nagar, Ghodasar Road, Isanpur, Ahmedabad-380050 PAN: ABIPS3240B (Appellant) | Vs | Dy. Commissioner of Income Tax Circle-4(2), Ahmedabad (Respondent) |
|---|----|--|

Revenue by: Dr. Shyam Prasad, Sr. D.R.
Assessee by: Shri S.R. Shah, A.R.

Date of hearing : 09-06-2021
Date of pronouncement : 25-06-2021

आदेश/ORDER

PER : AMARJIT SINGH, ACCOUNTANT MEMBER:-

This assessee's appeal for A.Y. 2012-13, arises from order of the CIT(A)-4, Ahmedabad dated 23-10-2018, in proceedings under section 143(3) r.w.s. 147 of the Income Tax Act, 1961; in short "the Act".

2. The solitary issue in the appeal of the assessee is directed against the decision of Id. CIT(A) in upholding the disallowance of Rs. 5,25,000/- being

deduction claimed u/s. 35(1)(ii) of the Act in respect of donation of Rs. 3 lacs.

3. The fact in brief is that return of income of Rs. 18,45,500/- was filed on 13th Sep, 2012. Subsequently, the case was reopened u/s. 147 of the Act by issuing of notice u/s. 148 on 10th March, 2016 on the reason that survey was conducted by the Investigation Wing Calcutta on 27th January, 2015 at the administrative offices of the institution named School of Home Genetics and Population Health (SHG&PH) Matrvani Institution of Experimental Research and Education (MIER&E) and Herbicure Healthcare Bio-herbal Research Foundation (HHBRF). During the course of survey it was noticed that these institutions were indulged in providing accommodation entries in the form bogus donation u/s. 35(1)(ii) of the Act. During the course of assessment, the Assessing Officer has issued show cause notice to the assessee in respect of disallowance of deduction claimed u/s. 35(1)(ii) of the Act of Rs. 5,20,000/- in respect of donation of Rs. 3 lacs made to School of Home and Genetics and Population Health (SHG&PH). The assessee explained that he has given the donation to the aforesaid institute and the same has not come back to the assessee and filed supporting evidences of giving donation before the Assessing Officer. However, the Assessing Officer has not agreed with the explanation of the assessee stating that the aforesaid institution as per the survey information was engaged in providing the bogus donation entries in lieu of commission. The bogus donation was taken by cheques and the same was routed back to the donor in the form of cash. Therefore, the Assessing Officer has disallowed the claim of

deduction u/s. 35(1)(ii) of Rs. 5,25,000/- and added to the total income of the assessee.

4. Aggrieved assessee has filed appeal before the Id. CIT(A). The Id. CIT(A) has dismissed the appeal of the assessee stating that vide notification no. 82/2016 (FN 203/64/2009/ITA11) dated 15th Sep, 2016, the CBDT has withdrawn the approval granted to the institution retrospectively.

5. During the course of appellate proceedings before us, at the outset, the Id. counsel has submitted that the issue in the appeal of the assessee is squarely covered by several judgments passed by Hon'ble Tribunal in the case of S.G. Vat Care P. Ltd. in ITA No. 1943/Ahd/2017, in the case of the Thakkar Govindbhai Ganpatlal HUF in ITA No. 2318/Ahd/2017, in the case of H.N. Metal Corporation in ITA No. 1315/Ahd/2018 and in the case of Bipin Prabhudas Shah HUF in ITA No. 1149/Ahd/2018 and the judgment passed by the Hon'ble High Court of Gujarat in the case of Thakkar Govindbhai Ganpatlal HUF in R/Tax Appeal No. 881 of 2019. The Id. Departmental Representative is fair enough not to controvert these undisputed facts that identical issue on similar fact has been adjudicated in favour of the assessee by the aforesaid referred judicial pronouncements.

6. Heard both the sides and perused the material on record and gone through the judicial pronouncements referred by the Id. counsel. The relevant part of the judicial pronouncements is reproduced as under:-

S.G. Vat Care P. Ltd. vs. ITO in ITA No. 1943/Ahd/2017 dated 15.01.2019

“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 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.”

ACIT vs. Thakkar Govindbhai Ganpatlal HUF in ITA No. 2318/Ahd/2017 dated 17.07.2019

“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 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 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 team 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 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.”

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.”

H.N. Metal Corporation vs. DCIT in ITA No. 1315/Ahd/2018 dated 13-01-2020

“6. We have duly considered rival contentions and gone through the record carefully. The AO is harping upon an information supplied by the survey team of Kolkatta. He has not specifically recorded statement of representatives of the donee. He has not brought on record any 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 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.”

Hon’ble High Court of Gujarat in the case of Thakkar Govindbhai Ganpatlal HUF in R/Tax Appeal No. 881 of 2019

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

8. It is also found that the Herbicare 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.”

In light of the decision of the Jurisdictional Hon’ble High Court of Gujarat and the findings of the Co-ordinate Benches in a number of decisions as supra we consider that the issue in dispute is squarely covered in favour of the assessee since there is no disparity on the issue and facts of the case of the assessee. Respectfully following the orders of the ITAT and decision of Hon’ble Jurisdictional High Court as referred above, the appeal of the assessee is allowed.

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

Order pronounced in the open court on 25-06-2021

Sd/-
(MADHUMITA ROY)
JUDICIAL MEMBER
Ahmedabad : Dated 25/06/2021

Sd/-
(AMARJIT SINGH)
ACCOUNTANT MEMBER

आदेश की प्रतिलिपि अग्रेषित / Copy of Order Forwarded to:-

1. Assessee
2. Revenue
3. Concerned CIT
4. CIT (A)
5. DR, ITAT, Ahmedabad
6. Guard file.

By order/आदेश से,

उप/सहायक पंजीकार
आयकर अपीलीय अधिकरण,
अहमदाबाद